THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the South Carolina Administrative Law Court

Shirley C. Robinson, Administrative Law Court Judge

Case No. 12-ALJ-07-0050-CC

James R. Maull,

Appellant,

v.

South Carolina Department of Health and Environmental Control and David Abdo,

Respondents,

and Russell and Laura Schaible,

Respondents.

RECORD ON APPEAL
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SC Court of Appeals

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, and Russell and Laura Schaible, Intervenors.	DOCKET NO.: 12-ALJ-07- 0050 -CC **FINAL ORDER AND DECISION**

APPEARANCES:

For the Petitioner:	Michael Molony, Esquire
For Respondent SCDHEC:	Nathan Haber, Esquire
For Respondent David Abdo:	Pro Se
For the Intervenors:	Leslie S. Riley, Esquire

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a Request for Contested Case Hearing filed by James R. Maull ("Petitioner") on February 8, 2012, challenging the decision of the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("DHEC" or "Department") to issue an Amendment to critical area permit number OCRM-07-128-F ("Amendment") to David Abdo ("Respondent") for the construction of a private recreational dock. The Amendment was issued on October 6, 2011. Petitioner, Respondent Abdo and Russell and Laura Schaible ("Intervenors") requested a final review conference before the Board of Health and Environmental Control ("the Board"). A final review conference was

held, and the Board issued the final agency decision in this case on January 9, 2012. Petitioner then filed a Notice of Request for Contested Case Hearing.

On July 24, 2012, DHEC filed a Motion for Partial Summary Judgment and Motion to Dismiss. The Petitioner filed a response to DHEC's Motion on August 2, 2012. A hearing on the Motion was held at the ALC on August 23, 2012. On October 4, 2012, the Court issued an Order granting DHEC's Motion for Partial Summary Judgment as to issues raised by Petitioner regarding alleged procedural defects in the Final Review Conference process. DHEC's Motion to Dismiss was denied.

A contested case hearing was held on January 15, 2013 before the Administrative Law Court in Columbia, South Carolina. Based on the evidence before me, I find the decision to issue the Amendment should be affirmed.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion of the parties, I make the following Findings of Fact by a preponderance of the evidence:

1. The Petitioner is the owner of real property located at [redacted], Charleston, South Carolina. Respondent, David Abdo, is the owner of property that is adjacent to the [redacted] property owned by Petitioner Maull. Mr. Abdo's property is located at [redacted]. These properties are the permanent residences of both Petitioner and Respondent.

2. The Intervenors, Russell and Laura Schaible, reside at [redacted], and their property is also adjacent to Mr. Abdo's property.

3. Petitioner has lived at [redacted] since the 1980s, and he has a private recreational dock that was originally constructed approximately 23 years ago. According to Petitioner's testimony, he has modified this dock at least twice since it was originally constructed. The Petitioner currently owns a 48-foot sport fishing boat which he prefers to moor on the landward side of his dock for the purpose of protecting it from wave action.

4. The action giving rise to this contested case, the Amendment to critical area permit number OCRM-07-128-F was issued to Mr. Abdo on October 6, 2011 and authorized movement of the dock structure towards the Petitioner's dock and property. The permit was originally issued to Charles R. Palmer, acting on behalf of the Estate of Rebecca Palmer

("Palmer Estate"), on August 2, 2007.[1] Mr. Abdo purchased the [redacted] property from the Palmer Estate in August 2007. A condition of the purchase was that the Palmer Estate obtain the dock permit. The purchase occurred after the Permit was issued, and Charles R. Palmer assigned and/or transferred the Permit to Mr. Abdo on June 29, 2011.

5. The Petitioner testified as to his recollection of the process resulting in the issuance of the 2007 dock Permit to Charles R. Palmer. According to the Petitioner, the Intervenors in this matter objected to the location of the dock as proposed in the 2007 application submitted to the Department by Charles Palmer. Prior to issuing the Permit, OCRM staff, specifically Amanda Flake, contacted the Petitioner, the Palmers, and the Schaibles for purposes of meeting to discuss the application. The Petitioner suggested that the Palmers move the proposed boatlift from the side of the dock closest to the Schaibles, to the other side, bringing it closer to the Petitioner's property. This configuration resulted in 82.5 feet of separation between the Petitioner and the Palmer (now Abdo) dock. The dock was approved as suggested by the Petitioner. Thereafter, the Schaibles sought review by the Board and such review was denied.[2] No further challenge was made and the Permit was issued.

6. Following resolution of the configuration of the Palmer dock in August 2007, the Petitioner sought and obtained authorization on May 14, 2008 to change the configuration of the floating docks at [redacted]. In accordance with this authorization, the Petitioner removed the existing floats which was in a "U" configuration and installed a 10 feet by 44 feet floating dock. The 10 feet by 44 feet floater replaced a 10 feet by 30 feet floater, which reduced the off-set between Mr. Abdo's boatlift as shown on the Permit and the Petitioner's float.[3] Specifically, the Petitioner moved his dock to within 19.8 feet from the shared extended property line; slightly less than the 20 feet required by the regulations. The Petitioner submitted the as-built drawings for his dock to DHEC sometime after September 14, 2009. The drawings reflected that Petitioner's dock was built 18 feet from the extended property line shared with Mr. Abdo, rather than the 19.8 feet as set forth in Petitioner's modification application.

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[1] Rebecca Palmer was Petitioner's aunt.

[2] During the course of the Palmer Permit application process, Mr. Abdo was not consulted about the configuration or the location of the dock.

[3] The separation between the Abdo dock and Schaible dock increased from 132.1 linear feet as shown in the Permit (Schaible Ex. 7) to 138.6 linear feet as shown in the Amendment (DHEC Ex. 3)

7. After completing renovations and moving into the [redacted] property in February 2008, Mr. Abdo discussed with Petitioner and the Intervenors his intent to modify the Palmer Permit, and the manner in which he would be seeking to change it. According to Mr. Abdo, upon review of the Permit, he determined that the dock did not suit his or his family's needs. In particular, he found the configuration and location of the dock was different from every other dock in the vicinity and would make the boatlift unusable at times. The Intervenors were amenable to Mr. Abdo's proposed modification; however, the Petitioner was not.

8. In May 2011, Mr. Abdo submitted an amendment application to reconfigure the Palmer Permit. The requested reconfiguration consisted of reconfiguring the pierhead, floater and lift, and that the dock be located 20.5 feet from the extended property line shared with Petitioner.

9. On October 6, 2011, DHEC staff authorized the Amendment to critical area Permit Number OCRM-07-128-F ("Amendment") with a condition that the dock be situated 30.5 feet off the shared extended property line of Mr. Abdo and Petitioner, which resulted in 50 feet of separation between the Abdo and Maull docks.

10. All parties to this matter requested review by the DHEC Board. At the final review conference on December 8, 2011, the Board removed the special condition, and approved the Amendment as applied for in the application. The Board's removal of the special condition was to correct an error made by the DHEC staff in interpreting Petitioner's permit drawings (this error was the staff's basis for the imposition of the 30.5 feet condition). In reviewing the drawings, staff initially believed Petitioner's dock was located 10 feet from the extended property line (the 10-foot measurement initially relied on by DHEC staff was the width of Petitioner's floating dock, not the distance between Petitioner's dock and the extended property line). In fact, Petitioner's dock is located almost 20 feet off the extended property line.[4]

11. Additionally, the edge of Mr. Abdo's dock will be located nearly 85 feet from the edge of the federal navigation channel. The Petitioner's dock is closer at 75.7 feet from the edge of the federal navigation channel.

12. Mr. Abdo testified that when applying for the Amended Permit, he configured his dock and floating dock, and the location of the pierhead in a manner that would preserve space

[4] A supplement to DHEC staff's response to the request for review provides that "[s]taff's intent is to require that the Abdo dock be 40 feet away from the Maull dock as it is constructed and permitted today." As approved by the Board, there is approximately 40 feet of spacing between the Maul and Abdo docks.

for future additions or alterations to the dock if he or a subsequent property owner so desires, and to maximize its use. Currently, Mr. Abdo's dock is 40 feet from the extended property line shared by Intervenors.

13. The Intervenor, Russell Schaible, testified that he and his wife purchased their property in 2005. According to Mr. Schaible, one of the main reasons they purchased the property was because of the expansive view of the water. Subsequent to the purchase of the property, the Schaibles had a dock drawing made, which would have located the dock in the middle of their property. Because of the importance they placed on the view, they decided to relocate the dock and construct it on the far western side of their property. The Schaibles do not object to Mr. Abdo having a dock, but do object to any location which is closer than what was approved by the Board and which would have a negative impact on their view.

14. Petitioner also does not object to Mr. Abdo building a dock; however Petitioner objects to the location approved by the Amendment. The Petitioner and his expert witness, Crayton Walters, opined that the dock's location will prohibit Petitioner from mooring his 48-foot sport fishing boat on the landward side of his dock. Mr. Walters was qualified as an expert in Maritime matters, including navigation, tidal and water current issues and vessel navigation.

15. According to Mr. Walters, the Petitioner and Mr. Abdo docks are both located on the Wappoo Creek, which is a section of the Intracoastal Waterway ("AIWW"). Mr. Walters testified that he had frequently boated and navigated on the AIWW and Wappoo Creek in several different types of boats, and he noted that the section of the AIWW where the docks are located is one of the most heavily trafficked areas for recreational boating activity in the Charleston Area. According to Mr. Walters, there are especially strong currents near the Petitioner's dock and Mr. Abdo's proposed dock which pose unique navigational hazards to commercial and recreational traffic due to the difficulty of maneuvering and docking in that area.

16. In anticipation of testifying in this case, Mr. Walters took Petitioner's boat out and navigated it in and around the Wappoo Creek. He testified that if Petitioner were to try to get his boat in and out of a 40-foot space it would be unsafe for members of the public who were navigating in the channel. In order to safely navigate in and out of Petitioner's dock, given the length of Petitioner's boat, Mr. Walters testified that he would want 100 feet of space, or approximately two boat lengths. He also testified that because of the siltation and given the lack of water at lower stages, Petitioner has to wait until certain stages of the tide to get his boat out.

17. In terms of the proximity of other docks, the Petitioner's expert agreed that there are many docks existing on the Wappoo Creek and that "they're all very close." He also acknowledged that there were few, if any, boats as large as Petitioner's on that side of the Wappoo Creek, and that it was possible for Petitioner to reconfigure his dock to allow him to continue docking his boat on the landward side.

18. While the Petitioner could dock on the channelward side of the dock (and has done so previously), he prefers docking on the landward side, which he believes reduces wear and tear on his boat and dock. Petitioner also acknowledges that his dock could be reconfigured to enable him to continue to dock on the landward side however Petitioner is unwilling to undertake the expense of another dock modification. Additionally, the Petitioner testified that he would not have undertaken his 2008/2009 dock modifications had he known that Mr. Abdo's dock would be moving closer to him.

19. Jeff Thompson, a senior wetland project manager with DHEC, testified on behalf of the Department. Mr. Thompson testified that amendments to critical area permits are not uncommon occurrences and that property owners who purchase property with an existing dock will often apply for amendments to make changes to the permitted dock. He applies the critical area regulations to every permit application he reviews, and in issuing the Amendment, Mr. Thompson testified that he considered navigational concerns related to the public's ability to navigate in the Wappoo Creek. The Wappoo Creek is approximately 565 feet in width, and due to its width, Mr. Thompson disagreed with Mr. Walters testimony that Petitioner's trying to dock his boat would create a safety hazard in the channel. He also testified that Petitioner's docking would not have much of an impact on public safety.

20. According to Mr. Thompson, the Amendment is consistent with the applicable statute and regulations, and 40 feet between two docks is a standard distance required by the regulations. That distance is based on the requirement each property owner stay 20 feet off extended property lines under most circumstances.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, I conclude the following as a matter of law:

1. This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. §1-23-600(A) (Supp. 2012) and S.C. Code Ann. §44-1-60(F)(2) (Supp. 2010). The hearing before this Court is a contested case hearing in which the Administrative Law Judge serves as the

finder of fact and makes a *de novo* determination regarding the matter in controversy. Olson v. South Carolina Dept. of Health and Environmental Control., 663 S.E.2d 497, 379 S.C. 57 (Ct. App. 2008). While the ALC acts as the fact finder and is not restricted to the factual findings of the administrative agency, it is nevertheless required to give consideration to the provisions of S.C. Code Ann. § 1-23-330 (2005) regarding the Department's specialized knowledge in environmental matters. See Risher v. South Carolina Department of Health and Environmental Control, 398 S.C. 198, 712 S.E.2d 428 (2011), and § 44-1-60(F)(2) ("The Court shall give consideration to the provisions of Section 1-23-330 regarding the department's specialized knowledge.")

2. The standard of proof in this proceeding is a preponderance of the evidence. See Anonymous (M-156-90) v. State Bd. of Med. Examiners, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (stating the standard of proof in administrative hearings is generally a preponderance of the evidence); also see National Health Corp. v. Dep't of Health and Envtl. Control, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989) (referencing the use of the preponderance of the evidence standard in contested case proceedings involving the Department).

3. Furthermore, the burden of proof is upon the party asserting the affirmative of an issue. See 2 Am.Jr.2d Administrative Law § 360 (1994); Alex Sanders, et al., South Carolina Trial Handbook § 9:3 Party With Burden, Civil Cases (1999) (In civil cases, generally, the burden of proof rests upon the party who asserts the affirmative on an issue). Therefore, the Petitioner bears the burden in this case of proving by a preponderance of the evidence that the Amendment is contrary to the Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10 et seq. (Act), Regulations and the CMP and that the Amendment should have been denied.

4. "It is generally recognized that the trier of fact, who has the opportunity to observe the witnesses and listen to their testimony in person, is in the best position to determine issues of witness credibility." Dixon v. Dixon, 336 S.C. 260, 263, 519 S.E.2d 357, 358 (Ct. App. 1999); see e.g. Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992).

5. "As a creature of statute, a regulatory body is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged." Captain's Quarters Motor Inn, Inc. v. South Carolina Coastal Council, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991) (citing, City of Rock Hill v. South Carolina Dept. of Health &, Env. Control, 302 S.C. 161, 394 S.E.2d 327 (1990)); and City of Columbia v. South Carolina Dept. of Health & Env. Control, 292 S.C. 199, 355 S.E.2d 536 (1987).

6. When the permitted dock is to be located in a critical area as defined in S.C. Code Ann. §48-39-10 (Supp. 2011), S.C. Code Ann. §48-39-130(C) (Supp. 2008) requires a person or entity to obtain a permit for any alteration of the "critical area" of the coastal zone.

7. OCRM must consider "the extent to which the proposed use could affect the value and enjoyment of adjacent owners." S.C. Code Ann. §48-39-150(a)(10), 23A S.C. Code Ann. Regs. 30-11(B)(10).

8. Reg. 30-12.A(1)(p) provides:

> No docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.

9. The language of this regulation specifically provides the Department has the discretion and authority to permit construction of docks closer than 20 feet to a shared extended property line where there is no material harm to the policies of the Coastal Tidelands and Wetlands Act, S.C. Code Ann. §48-39-10 et seq. Here, however, the Amendment was approved by the Board to be 20.5 feet from the shared extended property lines.

10. S.C. Code Ann. §48-39-150(B) provides, "[t]he permit may be conditioned upon the applicant's amending the proposal to take whatever measures the department feels are necessary to protect the public interest."

11. The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Brown v. South Carolina Dept. of Health & Env. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002); citing Dunton v. South Carolina Bd. of Examnrs. in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). Courts will reject an agency's interpretation of its own regulations

where the plain language of the statute is contrary to the interpretation of the agency. Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003).

12. In the case before the Court, the Petitioner argues that the core issue in the case is the impact of the proximity of Mr. Abdo's dock on Petitioner's ability to navigate the Intercoastal Waterway and the impact on commercial and private boating on the Intercoastal Waterway. However, the Department takes the position that this is a dispute between property owners as it relates to navigation of Petitioner's large boat in and out of his dock, and does not involve the protection of the public interest.

13. In White v. S.C. Dept. of Health and Envtl. Control, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011), the appellant cited the case of Dorman v. S.C. Dept. of Health and Envtl. Control, 392 S.C. 247 (2011) in support of its argument that policing disputes between neighboring dock owners is not proper under the OCRM statute and regulations. White, 392 S.C. at 256, 708 S.E.2d at 816. Dorman involved objections to a proposed private recreational dock from neighbors on both sides of the applicant's property. The neighboring property owners objected on the grounds that the proposed dock would be too close to their existing docks and their views would be obstructed. Id. The Court of Appeals adopted the OCRM's interpretation of Regulation 30-12, which was that any issues based solely on private concerns between docks are a private property issue. By contrast, the respondent in White objected to the OCRM's amendment of a dock permit due to a disruption of a commercial business and its customers. In that instance, the Court of Appeals concluded that the dispute was not a private dispute, but also affected members of the general public and the local shrimping industry. Specifically, the Court found the ALC's determination that the dock constituted a significant navigational hazard did not "conflict with OCRM's policy of avoiding the regulation of private navigational disputes. Id., 708 S.E.2d at 816-817.

14. While Petitioner has attempted to characterize this dispute as impacting the public interest, I disagree. These docks are located on a well-travelled water body with numerous docks and a significant amount of traffic, but as the evidence reflects, if Petitioner cannot moor his 48-foot boat on the landward side of his dock, there will be no impact on the public interest. Moreover, there was no evidence that Mr. Abdo's dock itself will negatively impact the public interest. And even if there were a navigational impact, this impact is not unreasonable given the nature of the area and the water body in question. Where these docks are located, the Wappoo

Creek is approximately 565 feet in width: more than 11 times the length of Petitioner's boat. Mr. Abdo's dock will be located no farther channelward than the other adjoining docks on the Wappoo Creek, and in fact, Petitioner's own dock is closer to the channel than Mr. Abdo's will be. Any maneuvering of his vessel that Petitioner asserts he would have to undertake in order to navigate between the two docks, if he can at all, would take place in close proximity to his and Mr. Abdo's docks and would have little or no impact on waterway traffic.

15. Importantly, the Petitioner's expert testified that 100 feet between Petitioner's and Mr. Abdo's docks is necessary to allow for safe navigation by Petitioner to get his large boat between the docks and to moor landside. The evidence clearly establishes that such a clearance is impossible: there is no change to the Amendment nor sufficient movement of Mr. Abdo's dock toward the Intervenors that would provide Petitioner the 100 feet of space required by his expert while still enabling Respondent Abdo to have a dock that complies with the regulations.

16. In conclusion, the Amendment and Mr. Abdo's dock location is consistent with other docks in the area, and construction of the dock as authorized by the Board will not have an unreasonable impact on navigation in the area. South Carolina law is clear that a reasonable and standard space between a pierhead and extended property line is 20 feet. The Amendment places Mr. Abdo's dock 20.5 off the shared extended property line and therefore complies with the law.

17. I further conclude the Amendment falls within and complies with the applicable regulations and statute.

18. This controversy is personal to Petitioner. The evidence establishes Petitioner's dispute would not exist but for the length of Petitioner's boat and his desire to moor it landward rather than channelward.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above and the applicable statutory and regulatory requirements discussed above, I find and conclude that DHEC has fully complied with the requirements of 23A S.C. Code Ann. Regs. 30-2, 30-4, 30-11, and 30-12 and S.C. Code Ann. §48-39-150.

IT IS THEREFORE ORDERED that DHEC's issuance of the October 6, 2011 amendment to critical area permit OCRM-07-128-F, to Respondent David Abdo be, and is hereby, **AFFIRMED**, as authorized.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

August 1st, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid or via the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 1 day of August 2013

By: Tebra A. Henderson
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, Russell Schaible and Laura Schaible, Intervenors.	Docket No.: 12-ALJ-07-0050-CC **ORDER GRANTING MOTION FOR INTERVENTION**

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Request for Contested Case Hearing filed by James R. Maull ("Petitioner") on February 8, 2012. The Petitioner challenges the action of the South Carolina Department of Health and Environmental Control ("Respondent" or "Department") in granting an amendment of a critical area permit to David Abdo ("Respondent").

On February 28, 2012, Russell Schaible and Laura Schaible filed a Motion requesting that this Court allow them to intervene in the contested case. The Petitioner does not object to the intervention.

After reviewing the Motion and determining that, as adjoining property owners, the Schaibles have a substantial interest in the adjudication of this matter, I find that the Motion should be granted.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion for leave to intervene filed by Russell Schaible and Laura Schaible shall be, and hereby is, **GRANTED.**

AND IT IS SO ORDERED.

FILED

MAR 08 2012

SC ADMIN. LAW COURT

March 8, 2012
Columbia, South Carolina

SHIRLEY C. ROBINSON
Administrative Law Judge

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 8 day of March 2012

By: Teeba A. Henderson
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, Russell Schaible and Laura Schaible, Intervenors.	)	Docket No.: 12-ALJ-07-0050-CC **ORDER FOR PREHEARING STATEMENTS**

IT IS HEREBY ORDERED that each party who intends to appear at the hearing must file with the undersigned's office a Prehearing Statement stating to the best of the party's ability, the following:

1. The nature of this proceeding;

2. The statutory provision(s) conferring subject matter jurisdiction to the Court and other applicable statutes and regulations;

3. The issues to be presented for determination, including any claims or defenses expected to be raised;

4. The action requested of the Court, if any;

5. A brief summary of the facts to be presented at the hearing;

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion (In the interest of judicial expediency, all motions should be submitted to the Court within fifteen (15) days before the date of the scheduled hearing. Returns should be submitted at least five (5) days before the scheduled hearing.);

7. A list of proposed witnesses and exhibits;

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SC ADMIN. LAW COURT

8. A statement regarding the necessity of discovery, if any;

9. The estimated time required for the hearing, and any dates the parties, counsel or key witnesses are specifically unavailable during the next three months; and

10. An email address where you can be reached.

IT IS FURTHER ORDERED that the Prehearing Statement, and all subsequent pleadings, are to be **FILED DIRECTLY WITH MY OFFICE** at the address below and served on all parties within fifteen (15) days of the date of this Order. It is NOT necessary to send a copy to the Clerk of the ALC, or to send the original to the Clerk with a copy to this office. The parties have a continuing obligation to update the information provided in the Prehearing Statement, as necessary during the course of the proceeding, to render it true and accurate.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
SC Administrative Law Judge
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

March 14th, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 14 day of March 2012

By: Jeebh Henderson
Judicial Law Clerk

FILED
OCT 04 2012
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, and, Russell Schaible and Laura Schaible, Intervenors.	DOCKET NO. 12-ALJ-07-0050-CC **ORDER GRANTING RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST PETITIONER JAMES R. MAULL AND ORDER DENYING RESPONDENT'S MOTION TO DISMISS**

STATEMENT OF THE CASE

This matter comes before me pursuant to the Respondent's Motion for Partial Summary Judgment against Petitioner James R. Maull ("Petitioner") filed on July 24, 2012 and pursuant to the Motion to Dismiss Respondent South Carolina Department of Health and Environmental Control ("DHEC") filed on July 24, 2012. Both Motions arise from the Final Agency Decision issued by the South Carolina Board of Health and Environmental Control (the "Board") on January 9, 2012. Petitioner challenges the Board's granting of an amendment to critical area permit number OCRM-07-128-F (the "permit") to Respondent David Abdo ("Abdo") for his personal use at [redacted] in Charleston, South Carolina, and filed a Notice of Request for Contested Case with the South Carolina Administrative Law Court ("ALC") on February 8, 2012.

DISCUSSION

As discussed above, the matter currently before the Court comes pursuant to the Respondent's Motion for Partial Summary Judgment Against Petitioner filed on July 24, 2012. The Respondent argues that partial summary judgment in favor of DHEC should be granted on Petitioner's claims that the Board did not have specific authority to hold the Final Review Conference on December 8, 2011; that the Final Agency Decision issued by the Board was

inappropriate because it did not contain separately-stated Findings of Fact and Conclusions of Law; and that the Board's authority was limited to remanding the permit application to DHEC staff rather than "arbitrary" modification of the staff's determination. Because the Board fully complied with the applicable statutory provisions regarding the procedures for conducting a Final Review Conference and issuing a Final Agency Decision on Abdo's permit amendment, Respondent argues there is no genuine dispute of material fact.

This matter also comes before the Court pursuant to the Respondent's Motion to Dismiss filed on July 24, 2012. Respondent argues that the ALC should dismiss Petitioner's claim that the Board's approval of Abdo's permit will create an issue of safe navigation of the waterway between Petitioner's dock and Abdo's dock because the Board interpreted the regulations concerning safe navigation as not encompassing disputes between adjacent property owners that do not involve matters of public interest. Petitioner argues that the ALC should deny Respondent's motion to dismiss because DHEC is required by law to resolve dispute between riparian property owners of safe usage of a public waterway.

FINDINGS OF FACT

Having read the Memorandums in Support of the motions and the responses filed and taking into consideration the burden of persuasion, I make the following findings of fact by a preponderance of the evidence:

1. Charles R. Palmer ("Palmer"), predecessor in title to Abdo, applied for a dock permit at [redacted] in May of 2007. The permit application drawings showed the flood-side section of the dock was to be located 21 feet from the extended property line between Russell and Laura Schaible (the "Schaibles") and Palmer.

2. The Schaibles objected to the permit because they believed the proposed dock would be too close to their property line, so they asked the Board to include a condition that Palmer's dock be located farther away from their property line and closer to the shared extended property line between Palmer and Petitioner.

3. DHEC's Office of Ocean and Coastal Resource Management ("OCRM") concluded there was no negative impact to the Schiables, but that if the dock were moved closer to the shared property line between Palmer and Petitioner, it would likely affect Petitioner's ability to steer a large boat to and from his dock. Petitioner was particularly concerned with docking his 48-foot sport fishing vessel on the landward side of his floating dock.

4. OCRM staff ultimately issued the permit to allow for the construction of a boatlift, pierhead, ramp, and floating dock, with the floating dock extending in front of the pierhead in order to mitigate Petitioner's concerns.

5. The permitting decision was challenged but the Board declined review, making the staff permitting decision the final agency decision.

6. Abdo, successor in title to Palmer, sought to amend the permit in July of 2011. While including the same components as previously permitted, the amendment submitted by Abdo also included a request for a longer floating dock.

7. As approved, the Palmer floating dock was 20 feet in length and was located channel-ward of the pierhead; as requested, Abdo's proposed floating dock is 34.5 feet in length and is located flood-side of the pierhead. While the permit only allowed 32.5 linear feet of structure extending in front of the critical line, Abdo's amendment includes 88 linear feet of structure extending in front of the critical line. The Palmer permit proposed 82.5 feet of separation from Petitioner's dock, while Abdo's amendment reduced the separation between the proposed dock and Petitioner's extended property line to 20.5 feet.

8. DHEC staff authorized the permit amendment on October 6, 2011, but with a condition that the dock be situated 30.5 feet off the shared extended property line of Abdo and Petitioner.

9. All parties to this matter filed timely requests for review with the Board.

10. On December 8, 2011 the Board held a Final Review Conference to review Abdo's amendment to the permit. Department staff explained during the Final Review Conference, they understood Mr. Maull's dock to be 10 feet off of the extended property line. Therefore, to address Mr. Maull's concerns, Department staff imposed the 30.5 foot condition with the purpose of providing 40 feet of separation between Mr. Maull's dock and Mr. Abdo's dock.

11. During the Final Review Conference Department staff explained to the Board the previous belief of Mr. Maull's dock being located 10 feet off the extended property line was erroneous and based upon an unintentional error while interpreting Mr. Maull's permit. Based upon Mr. Maull's submitted survey, it was determined his dock was 18.5 feet away from the extended property.

12. Staff explained to the Board if they had known Mr. Maull's dock was 18.5 feet off of the extend property line rather than 10 feet away, they would not have imposed the special condition and Mr. Abdo's permit would have been amended as requested.

13. On January 9, 2012, the Board concluded in its Final Agency Decision that the amendment requested by Abdo complies with the law and should be issued as requested, but that no special conditions to the permit are necessary to protect the public interest. The Board authorized construction of the requested walkway with handrails leading to a covered pierhead with handrails, benches and ramp leading to a floating dock, and the addition of a four-pile boat lift for Abdo's personal use, with the special condition that the structure be located 30.5 feet from the extended property line deleted from the permit.

14. In response to this decision, Petitioner filed a Notice of Request for Contested Case with the ALC on February 8, 2012.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, I conclude the following as a matter of law:

Summary Judgment

1. Rule 68 of the South Carolina Rules of Procedure for the Administrative Law Court ("RPALC") provides that the South Carolina Rules of Civil Procedure ("SCRCP") may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by the RPALC. Rule 71(D)(1), RPALC, specifically envisions motions for summary judgment by setting forth a filing fee for such motions. Rule 56(b), SCRCP, provides that a party against whom a claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof. Rule 56(c), SCRCP, provides that "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law."

2. "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law." Brandt v. Gooding, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006); Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). "In determining whether any triable issue of fact exists, the evidence

and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id.

3. "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

4. Once the absence of a genuine issue of material fact is established, the burden shifts to the nonmoving party to "set forth specific facts showing there is a genuine issue for trial." SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990).

5. S.C. Code Ann. § 44-1-50 grants the Board the authority to conduct administrative reviews as required by law and "as considered necessary by the Board to render a final agency determination". (Supp. 2011). It is clear from the statutory language that the Board has the authority to hold a Final Review Conference in order to render a Final Agency Decision.

6. Section 44-1-60(F) outlines the manner in which the Board must hold a final review conference and provides that an applicant or affected party "shall state the reasons for protesting the staff decision and *may provide* evidence to support amending, modifying, or rescinding the staff decision" (emphasis added). While this statute allows Petitioner to present evidence, as it did when it presented exhibits to the Board on December 8, 2011 during the final review conference, there are no due process requirements regarding submission of evidence, sworn testimony, or opportunities to cross-examine witnesses outlined in the statute.

7. S.C. Code Ann. § 44-1-60 provides that "[w]ithin thirty calendar days after the receipt of the decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision *may request a contested case hearing before the Administrative Law Court*, in accordance with the Administrative Procedures Act." S.C Code Ann. § 44-1-60(F)(2) (emphasis added). Therefore, I find that ALC and not the Board is the appropriate administrative body to hear such contested cases arising from final agency decisions issued at final review conferences.

8. While "findings of fact and conclusions of law, separately stated" are required in a "Final decision or order in [a] contested case" per S.C. Code Ann. § 1-23-350, this Administrative Procedures Act requirement does not apply to Final Review Conferences held by the Board for purposes of issuing final agency decisions. Therefore, I find that the Board was

not required to present separately stated findings of fact and conclusions of law in its decision on this matter.

9. In an earlier decision in which it considered the provisions of § 44-1-60(F), the ALC found that "[t]he language of the statute referring to the Board's hearing as a 'final review' does not suggest that DHEC will engage in further review of the matter by staff" and that "DHEC's authority to remand a permit to staff following the Final Review Conference is questionable." South Carolina Department of Transportation v. South Carolina Department of Health & Environmental Control, 06-ALJ-07-0804-CC (April 12, 2008). Although this Court is not bound by the earlier decision, I do however agree that the Board's authority to remand is questionable, and that the Board's authority is not limited to remanding a permit back to DHEC for further consideration. In this case, I find that the Board was within its authority to modify the staff's decision and was not required to remand the permit application back to DHEC staff.

10. Accordingly, I find that there is no legal basis for Petitioner's claims that he was denied due process, and as there is no genuine issue as to any material fact relative to this particular issue, the Respondent is entitled to partial judgment relative to Petitioner's due process claims as a matter of law.

Motion to Dismiss

1. Rule 68, RPALC provides that the South Carolina Rules of Civil Procedure ("SCRCP") may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by the RPALC. Rule 12(b)(6), SCRCP, provides that a party against whom a claim is asserted may, as a defense, move the court to dismiss the claim for failure to state facts sufficient to constitute a cause of action.

2. "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

3. "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." Id.; Baird v. Charleston Cnty, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995).

4. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id. (quoting Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)).

5. "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dorman v. S.C. Dep't of Health & Envtl. Control, 350 S.C. 159, 167, 565 S.E.2d 119, 123 (Ct. App. 2002) (quoting Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002)).

6. Regulation 30-12.A of the South Carolina Code of Regulations covers the Specific Project Standards for Tidelands and Coastal Waters that relate to the construction of Docks and Piers. R.30-12.A(1) covers standards that are applicable for the construction of all docks and piers. R.30-12.A(1)(p) states:

> "No docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act." (Supp. 2008).

7. In determining whether approval of a permit risks material harm to the policies of the Coastal Zone Management Act, Regulation 30-11.B(2) requires DHEC to consider the "extent to which the activity would harmfully obstruct the natural flow of navigable water" when assessing the potential impact of a project in the critical area.

8. In addition, Regulation 30-12.A(1)(a) states that docks and piers "shall not restrict the reasonable navigation or public use of State lands and waters." (Supp. 2008).

9. In Dorman V. S.C. Dep't of Health & Envtl. Control, 350 S.C. 159, 167, 565 S.E.2d 119, 123 (Ct. App. 2002) "[t]he [Coastal Zone Management] Panel [of DHEC], interpreting its own regulation, held that navigation, as contemplated in the regulation, did not encompass problems between neighbors or conflict with nearby docks but only applied to impediments to the general public's use of the waters." Id.

10. The Department argues that this matter does not involve impediments to the general public's use of the waters, but is merely a dispute between neighbors, Petitioner and Abdo, and should be dismissed. Petitioner argues otherwise. After hearing arguments from all the parties involved in this matter, I find that further proceedings are necessary to determine

whether the amended permit would restrict reasonable navigation or public use of State lands and waters, and the Department's request for dismissal should be denied.

CONCLUSION

Based upon the above findings of fact and conclusions of law, it is hereby:

ORDERED that the Department's Motion for Partial Summary Judgment is hereby **granted.**

IT IS FURTHER ORDERED that the Department's Motion to Dismiss is **denied.**

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

October 4th, 2012.
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 4 day of October 2012

By: Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, and, Russell Schaible and Laura Schaible, Intervenors.	)	DOCKET NO. 12-ALJ-07-0050-CC **ORDER GRANTING PETITIONER REQUEST**

APPEARANCES:

Petitioner	Michael A. Molony, Esq.
Respondent SCDHEC	Nathan Haber, Esq.
Respondent David Abdo	Pro Se
Intervenors Russell and Laura Schaible	Leslie, S. Riley, Esq.
Court Reporter	Andrea R. Taylor

BACKGROUND

This contested case arises out of Respondent the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management's ("SCDHEC" and "OCRM") issuance of an amendment (hereinafter "the Amendment") to the permit ("the Permit") identified as P/N # OCRM-07-128-F to Respondent David Abdo ("Abdo"). The Permit issued to Abdo's predecessor in title on August 2, 2007, Charles R. Palmer, authorized construction of a private recreational dock adjacent to the Atlantic Intracoastal Waterway ("AIWW") at property identified as [redacted], Charleston County, S. C. The Permit

authorized the location of the dock, at the water's edge, as 82.5 feet from Petitioner James R. Maull's ("Maull") existing dock. Maull resides at [redacted]. The Permit further authorized a distance of 132.1 linear feet at the water's edge between Abdo's dock and the dock constructed at [redacted] owned by the Intervenors Russell and Laura Schaible ("Schaible(s)"). Schaible Ex. 7.

The action giving rise to this contested case, the Amendment, was issued to Abdo on October 6, 2011 and authorized movement of the dock structure towards Maull's dock and property.[1] This reduces the distance between the Abdo dock and the Maull dock, at the water's edge, to approximately 39 feet. (Tr. p. 179 l. 20.)

Maull testified as to his recollection of the process resulting in issuance of the Permit in 2007 to Abdo's predecessor in title, Charles R. Palmer. OCRM staff, Amanda Flake, contacted Maull, the Palmers, and the Schaibles for purposes of meeting to discuss permitting of the Palmer (now Abdo) dock. The Schaibles had objected to the location of the Palmer dock. Maull suggested that Palmer move the boatlift from the side of the dock closest to Schaible, to the other side, pushing it closer to Maull, which resulted in 82.5 feet of separation between the Maull and Palmer/Abdo dock. The dock was approved as suggested by Maull, with the boatlift move away from the Schaibles. The Schaibles sought review by the Board of Health and Environmental Control ("the Board") and such review was denied. No further challenge was made to the Permit upon issuance in 2007. (Tr. p. 65-68.)

Abdo's purchase contract for [redacted] was contingent upon Palmer obtaining a permit for a dock. The purchase occurred after the Permit was issued. Following the purchase of the property, Abdo concluded that the configuration of the approved dock wasn't acceptable

[1] As will be discussed more fully herein, the DHEC staff included a condition requiring that the Abdo dock be located "30.5 feet from the property line on the eastern side of the property." DHEC Ex. 1. The Board in its review removed this condition, pushing the dock ten feet closer to Maull.

since the floating dock was located in front of the pierhead and the boatlift was located to the side of the pierhead. Abdo concluded that "at low tide you wouldn't be able to get your boat in and out of the boat lift." Tr. p. 118 l. 17-25. Consequently, the Amendment reflects that the floating dock extends towards the Schaibles' dock. In order to maintain separation between Abdo and Schaible, the Abdo pierhead and floating dock, and boatlift are relocated closer to the shared property line with Maull. This results in substantially reducing the separation between the Maull dock and the Abdo dock, but increasing the separation between the Abdo dock and Schaible dock.[2]

Importantly, following resolution of the configuration of the Palmer dock in August of 2007, Maull sought and obtained authorization on May 14, 2008, to change the configuration of the floating docks at [redacted], OCRM-07-33-Y, Schaible Ex. 4. In accordance with this authorization Maull removed the existing floats which were in a "U" configuration and installed a 10' x 44' floating dock. The 10' x 44' floater replaced a 10' by 30' floater, reducing by a few feet the off-set between the Palmer boatlift as shown on the Permit and the Maull float.[3] Maull modified his dock and added the longer floating dock in September of 2008. (Tr. p. 121 l. 4-10.)

Abdo testified that the basis for pushing the dock closer to Maull was to preserve as much space as possible between Abdo and Schaible in the event Abdo decides to purchaser a larger boat and requires a longer floating dock. (Tr. p. 125 l. 21-25, 126 l. 1-10.) Maull testified that the reasons for his challenge to the Amendment and this contested case are his concerns

[2] The separation between the Abdo dock and Schaible dock increases from 132.1 linear feet as shown in the Permit (Schaible Ex. 7) to 138.6 linear feet as shown in the Amendment (DHEC Ex. 3.)

[3] In comparing the Palmer Permit to the Maull permit (Schaible 7 and Schaible 4) 83' of separation is maintained from Palmer's floating dock to Maull's floating dock.

regarding navigational safety, which is impaired by moving Abdo's dock closer to Maull's dock. (Tr. p. 74 l. 3-25, p. 75. l. 1-25.)

APPLICABLE REGULATORY REQUIREMENTS

OCRM staff considered the following regulations and statutory provisions in evaluating Abdo's request to amend the permit for [redacted].

S. C. Code Sec. 48-39-150

Sec. 48-39-150(A) sets forth the general considerations for evaluation of every critical area permit application. Of particular applicability here are Sec. 48-39-150(A)(5) – "[t]he extent to which the development could affect existing public access to tidal and submerged lands, navigable waters and beaches, or other recreational coastal resources" and (A)(10) – "[t]he extent to which the proposed use could affect the value and enjoyment of adjacent owners."

S. C. Code Reg. 30-12

In addition to the general considerations, S. C. Code Reg. 30-12(A)(1)(p) is applicable: "No docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act." And, S. C. Code Reg. 30-12(A)(1)(a): "Docks and piers shall be limited to one structure per parcel or lot and in all instances, parcels or lots must be waterfront as defined by 30-1.D(53), shall not restrict the reasonable navigation or public use of State lands and waters." (DHEC Ex. 4, Tr. p. 173-177.)[4]

APPLICABLE LEGAL PRECEDENT

[4] Importantly DHEC witness Jeff Thompson, who was the project manager for the Abdo Amendment, testified that he considered S. C. Code Reg. 30-12(A)(1)(p), but did not testify regarding S. C. Code Reg. 30-12(A)(1)(a), which is clearly applicable.

In Dorman v. Department of Health and Environmental Control, 350 S. C. 159, 565 S.E. 2d 119 (S. C. App. 2002), the Court gave recognition to DHEC's position that the protection of navigation does not extend to problems between neighbors with nearby docks. However, in White v. SCDHEC and Coffin Point POA, 392 S. C. 247, 708 S. E.2d 812 (S. C. App. 2011) the Court of Appeals determined that DHEC was required to protect navigation between neighboring property owners when "members of the public are affected" by the permitted structure. @ 816.

Moreover, while not controlling precedent, the ALC has affirmed DHEC's position that an obstruction of navigation arising from construction of a dock constitutes "material harm to the policies of the Act" as contemplated in S. C. Code Reg. 30-12(A)(1)(p). *See* Crane v. SCDHEC, 2007 WL 756378, Evan and Leslie Jones v. SCDHEC and Arthur Moore, 2005 WL 3061995, Brown v. SCDHEC and Neal, 2002 WL 31423789. "The basic state policy in the implementation of the Act is to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all people of the State.[5] ... In addition, the policies of the Act also include providing the combination of uses of critical areas which will insure the maximum benefit to the people. ... While these policies are stated in general terms, obvious circumstances may present material harm to the policies of the Act. For example, crossing extended property lines that will impede navigation in a creek ... ." Caulder v. SCDHEC, 2000 WL 33174781.[6]

In reviewing permit applications under the considerations set forth in S. C. Code Sec. 48-39-150(A), this Court has determined that "[t]he ten general considerations ... are guides that are

[5] S. C. Code Sec. 48-39-30 sets forth the Legislative declaration of state policy in administering the Coastal Tidelands and Wetlands Act.

[6] Maull isn't claiming that the Abdo dock crosses extended property lines. Instead Maull is concerned about the navigational hazard caused by not maintaining sufficient separation between the two docks. As with the analysis in Caulder, the navigational hazard created when sufficient separation isn't maintained between two docks on a heavily travelled waterway results in material harm to the policies of the Act.

considered in all permitting decisions." Georgetown County League of Women Voters and SCCCL v. Smith Land Company and SCDHEC, 2007 WL 2193669.

DISCUSSION

At the contested case hearing Petitioner Maull testified regarding his familiarity with the Wappoo Creek section of the AIWW which is where the Maull, Schaible, and Abdo docks are situated. Maull constructed his dock 24 years ago and has owned multiple boats, the most recent boat being a 48' long offshore fishing boat. (Tr. p. 57 l. 22-25, 58 l. 1-12.) Maull testified regarding the extensive boat traffic and types of vessels – both commercial and recreational - that utilize Wappoo Creek and the AIWW in the vicinity of Maull's dock. (Tr. p. 59-60.) Maull objects to the Amendment based on safety and navigation and his knowledge of the "wind and the tides in the river, and .... [t]raffic out there on the weekends." (Tr. p. 74 l. 5-10.)

Importantly Maull presented the testimony of William Crayton Walters, III, a licensed harbor pilot qualified by this Court as an expert witness in maritime matters "including currents in the creek area, navigability of boats, vessels,... the appropriate distance between two docks." (Tr. p. 29 l. 2-8.) Walters testified that the current is particularly strong in the area around the Schaible, Abdo, and Maull docks. (Tr. P. 29-31.) Walters testified that more space was needed between the Abdo and Maull docks to protect "property, casualty, people and other vessels." (Tr. p. 32 l. 1-12.) Walters considered the close proximity of the docks to be a "hazard and danger to the public in general" because the difficulty that Maull may have maneuvering into his dock and avoiding Abdo's dock would impact "commercial traffic or other vessels, other people" using the AIWW. (Tr. p. 35, l. 10-17.) According to Walters, "any maneuvering in and out of those docks is – it takes a level of expertise and what I call situation awareness because of the traffic, because of the current. ... You don't have a lot of leeway when it comes to getting in and

out with the traffic as bad as it is." (Tr. p. 53 l. 23-25, p. 54 l. 1-5.) Walters concluded that the distance between the Abdo dock and the Maull dock was "an important consideration[s] for public safety." (Tr. p. 55 l. 1-3.)

Respondent Abdo testified as a witness for the Intervenors. Abdo's basis for the Amendment is that he "may buy a larger boat and need a floater that is longer, in which case I could ... make it narrower and longer and it would extend further towards the Schaibles if I end up with a larger vessel and need to have more length in my floating dock." (Tr. p. 125 l. 21-25, p. 126 l. 1-6.) However Abdo acknowledged that the Palmer Permit configuration is cureently acceptable. (Tr. p. 125 l. 22-23.)

Intervenor Russell Schaible testified that he supported the Abdo Amendment because it is "better for [his] view." (Tr. p. 149 l. 2-14.)

DHEC presented the testimony of Jeff Thompson that "a 40 foot separation" "is pretty standard based on the alignments of waterfront properties and distances between docks." (Tr. p. 180 l. 6-12.) Thompson acknowledged that the DHEC staff, in its initial review of the Abdo Amendment, determined that the Amendment would likely affect Mr. Maull's ability to navigate a boat and, as a result, required that Abdo construct the dock 30.5 feet from the extended property lines – an additional ten feet. (Tr. p. 185 l. 6-16.) The Board modified this condition following the Final Review Conference that it conducted. Thompson was unfamiliar with the Palmer permit and had not discussed the contested case challenge with Curtis Joyner, DHEC staff member who had processed the Palmer permit. (Tr. p. 187 l. 8-16.)

The issue for resolution by this Court is whether the hazards as described by Petitioner's expert have the potential to impact the boating public and whether Schaibles' interest in protecting their view and Abdo's interest preserving his ability to undertake dock modifications

in the future outweigh Maull's interests in safe navigation in the AIWW. Further, this Court is guided by the Court of Appeals' conclusions in Dorman v. DHEC et al., 350 S. C. 159, 565 S. E. 2d 119 (S. C. App. 2002). In Dorman, justification for one party's position was based on speculation about whether a floating dock may or may not be authorized as an addition to an existing dock. The Court of Appeals concluded that "[t]he current approach is to consider this dock permit in light of what is actually there, as did the ALJ. S. C. Code Ann. Sec. 48-39-150(A) (Supp. 2001) provides that each permit must be considered on its own merits. The ALJ is confined to make his decision on the record before him, as are we." @ 124. Consequently, Abdo's speculation that he might want a larger boat and need a longer floating dock in the future is no basis upon which to conclude that the Amendment was justified.

As is set forth below, this Court is mindful of the undisputed testimony related to the extensive public use of the Wappoo Creek and AIWW in the vicinity of the parties' property and docks, and finds and concludes that the navigational concerns established by the Petitioner exceed private concerns between two adjoining neighbors and trigger consideration of S. C. Code Ann. Reg. 30-12(A)(1)(a): "Docks and piers .. shall not restrict the reasonable navigation or public use of State lands and waters."

FINDINGS OF FACT

Having heard the facts of the case and taking into consideration the burden of persuasion on Petitioner Maull, I make the following findings of fact by a preponderance of the evidence:

1. Charles R. Palmer ("Palmer"), predecessor in title to Abdo, applied for a dock permit at [redacted] in May of 2007. The permit application drawings showed the flood-side section of the dock was to be located 21 feet from the extended property line between Schaibles

and Palmer, 132.1 feet from Schaibles' dock, and 82.5' from Maull's dock. The Palmer permit was a condition of the sale of the home on [redacted] to Abdo.

2. The Schaibles objected to the Palmer permit because they believed the proposed dock would be too close to their property line. They requested OCRM include a condition that Palmer's dock be located farther away from their property line and closer to the shared extended property line between Palmer and Maull.

3. DHEC's Office of Ocean and Costal Resource Management ("OCRM") concluded there was no negative impact to the Schiables, but that if the dock were moved closer to the shared property line between Palmer and Maull, it would likely affect navigability to and from the Maull dock. (Tr. p. 69 l. 18-22, Maull Ex. 1).

4. OCRM staff ultimately issued the permit to Palmer to allow for the construction of a boatlift, pierhead, ramp, and floating dock, with the floating dock extending in front of the pierhead and located 82.5 feet from the Maull dock in order to mitigate navigational concerns. (Schaible Ex. 7.) Abdo had had notice of the Palmer permit and was provided copy of the permit at closing. (Tr. p. 127 l. 22-25, p. 127 l. 3-9.)

5. The permitting decision was challenged by the Intervenors but the Board declined review, making the staff permitting decision the final agency decision on August 2, 2007. The Intervenors were represented in that matter by Cotton Harness. Neither the Intervenors, Palmer or Abdo appealed the final agency decision.

6. In reliance on the parties' negotiations, and lack of challenge to the Palmer permit, Maull sought a permit for and made modifications to his dock by removing the "U" shaped floater and increasing the length of the floating dock. (Schaible Ex. 4) Maull testified that "I would not have spent the money I spent to move my floats into a single float if I knew the dock was coming

that close to me. I had that option, but they had permitted, they had all agreed and it was a done deal." (Tr. p. 78 l. 17-25, p. 79 l. 1-7.)

7. Abdo, successor in title to Palmer, sought to amend the Palmer Permit in July of 2011. The amendment included moving the dock closer to the Maull dock. The amendment submitted by Abdo also included, *inter alia*, a request for a longer floating dock.

8. As approved in 2007, the Palmer floating dock was 20 feet in length and was located channel-ward of the pierhead. Abdo's proposed floating dock is 34.5 feet in length and is located flood-side of the pierhead. While the Palmer Permit only allowed 32.5 linear feet of structure extending in front of the critical line, Abdo's Amendment includes 88 linear feet of structure extending in front of the critical line. The Palmer Permit provided 82.5 feet of separation from Maull's dock. The Abdo's Amendment, following Board review, reduced the separation between the proposed dock and Maull's extended property line to 20.5 feet with 39 feet of separation between the two docks. (Schaible Ex. 7, DHEC Ex. 1, 2, 3.)

9. DHEC staff authorized the Amendment on October 6, 2011, with a condition that the dock be situated 30.5 feet off the shared extended property line of Abdo and Maull which resulted in 50 feet of separation between the Abdo and Maull docks. Despite telling the Board that the staff misinterpreted the permit drawings, it is clear from the staff's evaluation that the condition requiring 30.5 feet of separation from the extended property line was for purposes of addressing Maull's navigational concerns. (DHEC 4). I find that contrary to DHEC's arguments that this is a private dispute between property owners, DHEC's staff's actions in 2007 and again in 2011 demonstrate that S. C. Code Reg. 30-12(A)(1)(a) imposes a requirement that Maull's navigational concerns be considered and addressed.

10. All parties to this matter filed timely requests for review with the Board.

11. On December 8, 2011 the Board held a Final Review Conference to review Abdo's Amendment.

12. During the Final Review Conference Department staff explained to the Board the previous belief of Mr. Maull's dock being located 10 feet off the extended property line was erroneous and based upon an unintentional error while interpreting Maull's permit. The staff determined his dock was actually 18.5 feet away from the extended property line. This explanation is in conflict with the Administrative Summary of Review, DHEC Ex. 4, wherein DHEC staff sought to address Maull's navigational concerns, not just impose the minimum 20 foot off-set from extended property lines contemplated in S. C. Code Reg. 30-12(A)(1)(p).

13. On January 9, 2012, the Board in a 5-2 decision, issued its Final Agency Decision granting the amendment requested by Abdo. The Board decided that no special conditions to the permit were necessary to address navigational concerns. The Board further authorized construction of the requested walkway with handrails leading to a covered pierhead with benches and a ramp leading to a floating dock as well as the addition of a four-pile boat lift for Abdo's personal use and the extended dock. The Board's decision eliminated the special condition that the structure be located 30.5 feet from the extended property line. Despite the claim that this permit condition was based on a mistake in interpreting the Abdo permit drawings, the DHEC staff had clearly included this condition of separation to address Maull's concerns regarding navigation. (DHEC Ex. 4, Administrative Summary of Review.) A distance of 30.5 feet from the extended property line created a separation of approximately 50 feet between the two docks.

14. In response to this decision, Maull filed a Notice of Request for Contested Case with the ALC on February 8, 2012.

15. On July 24, 2012, DHEC filed a Motion for Partial Summary Judgment and Motion to Dismiss against Maull. On August 2, 2012, Maull filed a response to DHEC's Motion to Dismiss and Motion for Partial Summary Judgment. On August 23, 2012, a Motion Hearing was held at the ALC. On October 4, 2012, this Court issued an Order granting DHEC's Motion for Partial Summary Judgment as to issues raised by Maull regarding alleged procedural defects in the process of conducting a Final Review Conference. This Court also denied DHEC's Motion to Dismiss.

16. Maull presented witness Crayton Walters ("Walters"), who was qualified as an expert Witness in Maritime Matters including navigation, tidal and water current issues and vessel navigation (Tr. p. 28 l. 8-25, p. 29 l. 1-14).

17. Since 1988, Walters has been employed by the Charleston Navigation Company/Charleston Branch Pilots Association. As a Harbor Pilot, Walters has navigated and/or been in command of over 6,000 ship movements through Charleston Harbor on a variety of vessels. Walters holds licenses from United States Coast Guard 200 ton Masters, Near Coastal Radar Certificate United States Coast Guard First Class Pilot, Unlimited Tonnage, Charleston and Port Royal South Carolina State Pilots License, and Unlimited Tonnage Charleston and Port Royal. Walters was the only expert witness to testify in this proceeding.

18. Walters testified that both the Maull and Abdo docks are located on the Wappoo Creek which is a section of the AIWW and one of the most heavily trafficked areas for commercial maritime activity on the East Coast. Walters testified that this part of the AIWW is extensively utilized by commercial and pleasure craft. (Tr. p. 20 l. 11-16) This testimony and Walters' opinions were not challenged or disputed by any other party or witness in the contested case.

19. Walters testified that he had frequently boated and navigated in the AIWW and Wappoo Creek hundreds of times in several different types of boats and that section of the AIWW is one of the most heavily trafficked areas for recreational boating activity in the Charleston area (Tr. p. 24 lines 1-24).

20. There are especially strong currents near the Maull dock and proposed Abdo dock which pose unique navigational hazards to commercial and recreational traffic due to the difficulty of maneuvering and docking in that area (Tr. p. 35 l. 1-16). He testified that this difficulty in navigation was present regardless of the size of the boat or vessel docking that area (Tr. p. 34 lines 17-25 and Tr. p. 35 lines 1-9).

21. The section of the AIWW known as Elliott Cut, located in the vicinity of the parties' properties and the Schaible and Maull docks, is man-made and was needed for continuation of the AIWW. (Tr. p. 19 l. 10-25). The excavation and creation of Elliott Cut contributed to strong currents in the area around both the Abdo and Maull docks (Tr. p. 5-25).

22. The Abdo dock, as currently approved, poses navigational/safety issues not only to Maull or Abdo but to the public who utilize the waterway. (Tr. p. 26 l. 22-25 and p. 37 l. 1-17).

23. The only reason that the Intervenors oppose any modifications to the Amendment, away from Maull's dock and extended property line, is because of the impact that Abdo's dock will have on Intervenor's view from their backyard to the waterway. Intervenor's use their own dock infrequently.

24. DHEC, Abdo and the Intervenors did not present any evidence to contradict the observations and testimony of Petitioner's expert witness regarding his opinions as to the potential navigation issues that could impact the boating public based on the Amendment.

Based on the foregoing Findings of Fact, I conclude the following as a matter of law:

CONCLUSIONS OF LAW

Jurisdiction and General Principles

1. The ALC has jurisdiction over this case pursuant to the South Carolina Administrative Procedures Act, S.C. Code Ann. §§44-1-60, 1-23-600 et seq. ("APA"), and the S.C. Coastal Tidelands and Wetlands Act, S.C. Code Ann. § 48-49-10 et seq. (Rev. 2008 and Supp. 2011.) In reviewing this matter, the Court serves as the finder of fact and makes a de novo determination regarding the matters in controversy. *See* S.C. Code Ann. § 1-23-600(B) (Supp. 2010); Brown v S.C. Dep't of Health and Envtl. Control, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002); see also Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control, 358 S.C. 573, 595 S.E.2d 851 (2004).

2. The proper standard of proof to be applied in a contested case before the ALC is a "preponderance of the evidence" standard. Anonymous (M-156-90) v. State Bd. Of Medical Examiners, 329 S.C. 371, 375-76, 496 S.E.2d 17, 19 (1998); National Health Corp. v. Dep't of Health and Envtl. Control, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. *See* S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, the burden of proof is upon the party asserting the affirmative of an issue, and, therefore, the Petitioner bears the burden of proving that the agency decision was in error under the statutory and regulatory standards. Leventis v. Dep't of Health and Envtl Control, 340 S.C. 118, 530 S.E.2d 643 (Ct. App. 2000).

3. "It is generally recognized that the trier of fact, who has the opportunity to observe the witnesses and listen to their testimony in person, is in the best position to determine

issues of witness credibility." Dixon v. Dixon, 336 S.C. 260, 263, 519 S.E.2d 357, 358 (Ct. App. 1999).

4. With regard to expert testimony, it is generally recognized that "expert opinion evidence is to be considered or weighed by the triers of the facts like any other testimony or evidence" and that "the triers of the facts cannot, and are not required to, arbitrarily or lightly disregard, or capriciously reject, the testimony of experts or skilled witnesses, and make an unsupported finding contrary to the opinion." 32A C.J.S. Evidence § 727, at 82-83 (1996). However, the trier of fact may give an expert's testimony the weight he or she determines it deserves, Florence County Dep't of Soc. Servs. v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992), and may accept the testimony of one expert over that of another, S.C. Cable Television Ass'n v. S. Bell Te. & Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992). In weighing such expert testimony, the general principles for determining whether evidence warrants a finding remain applicable; accordingly, "an expert's opinion which is based on guess, surmise, or conjecture has little evidentiary value, and expert opinion evidence lacks probative force where the conclusions are contingent, speculative, or merely possible." 32A C.J.S. Evidence § 730, at 87 (1996).

5. Permits for the construction of private docks in the coastal zone are governed by the South Carolina Coastal Zone Management Act, S.C. Code Ann. §§ 48-39-19 (West Supp. 2005). Those regulations govern the management, development, and protection of the critical areas and coastal zones of the state. DHEC's Office of Ocean and Coastal Resource Management (OCRM) has the duty of carrying out South Carolina's coastal zone policies and issuing permits for docks and piers in the critical areas of the coastal waters and tidelands. S.C. Code Ann. § 48-39-130 (West Supp. 2005). S.C. Code Reg. 30-12.A(2) requires that "docks and

piers....shall not restrict the reasonable navigation or public use of State lands and waters." 23A *S.C. Code Ann. Reg.* § 30-12(A)(1)(a) (West 2004).

6. This case is not a private dispute between neighbors; rather, it is dispute between two riparian property owners which impacts the safe usage of a public waterway.

7. Owners of riparian land possess rights relating to the water, its use, and the ownership of soil under the water. Horry County. v. Tilghman, 283 S.C. 475, 480, 322 S.E.2d 831, 834 (Ct. App. 1984).

8. A riparian owner is one whose land is traversed or bounded by a natural watercourse. Lowcountry Open Land Trust v. State, 347 S.C. 96, 107, 552 S.E.2d 778, 784 (Ct. App. 2011).

9. The South Carolina Constitution provides that: All navigable waters shall forever remain public highways free to the citizens of the State and in the United States..." S.C. Const. Art. 16, § 4. See also S.C. Code Ann. § 49-1-10 (West 2011).

10. OCRM is required to consider the extent to which a proposed dock may affect existing access to tidal and navigable waters. 23A S.C. Code Ann. Regs. 30-12 (A)(1)(a) West Supp. 2004).

11. OCRM specifically found navigational concerns in the Palmer permit but the Board ignored those concerns in its decision approving the Abdo permit.

12. In determining whether a waterway is navigable, it must by its nature have the capacity for valuable floatage, irrespective of the fact of actual use or the extent of such use. Arthur L. and Martha Y. Crosby et al. v. SCDHEC et al. WL 1640931 S.C. Admin. Law Judge. Div. (May 17, 2006).

13. Valuable floatage is defined broadly to include any legitimate and beneficial use, whether commercial or recreational. Brownlee v. S.C. Dept. of Health and Envtl. Control, 382 S.C. 129, 139, 676 S.E.2d 116, 121 (2009). Commercial use of the waterway is not required for it to be navigable. In this instant case, there is undisputed testimony of heavy commercial and recreational traffic, factors not addressed by the Board's decision. Id. at 138, 676 S.E.2d 116, 121.

14. In White v. S.C. Dept. of Health and Envtl. Control, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011), the appellant cited the case of Dorman v. S.C. Dept. of Health and Envtl. Control, 392 S.C. 247 (2011) in support of its argument that policing disputes between neighboring dock owners is not proper under the OCRM statute and regulations. White, 392 S.C. at 256, 708 S.E.2d at 816. Dorman involved objections to a proposed boat dock from neighbors on both sides of the applicant's property. The neighboring property owners objected on the grounds that the proposed dock would be too close to their existing docks and their views would be obstructed. Id. The Court of Appeals adopted OCRM's interpretation of Regulation 30-12, which was that any issues based solely on private concerns between docks are a private property issue.

15. In White, the respondent objected to the OCRM's amendment of a dock permit due to disruption of a commercial business and its customers. The dispute was not a private dispute, but also affected members of the general public and the local shrimping industry. Id., 708 S.E.2d at 816-817.

16. Chapter III of Part II of the Coastal Management Program states: "The policies of the Coastal Management Program include the [the policy that] 'docks and piers will not be approved where they interfere with navigation or reasonable public use of the waters.'" White,

392 S.C. at 257, 708 S.E.2d at 817. The ALC, and the Court of Appeals, concluded that because White's customers are members of the public, their navigation to and from White's commercial dock to conduct business constitutes "reasonable public use of the waters" within the meaning of the Coastal Management Program.

17. The Adbo amendment affects not only Maull's ability to navigate safely but the public as well. The AIWW is heavily traveled in the vicinity of Abdo's and Maull's docks and Maull's potential inability to safely moor at his dock creates a hazard for other boaters. Thus, this case is not solely a private dispute. The core issue in this case is the impact of the proximity to the Abdo dock on Maull's ability to navigate the Intercoastal Waterway and the impact on commercial and private boating on the Intercoastal Waterway, a heavily trafficked waterway.

18. In 2007, the OCRM determined that if the dock was amended to lengthen the float to 34.5' from 20' in length, and pushed closer to Maull's dock, Maull's ability to navigate a large boat to and from a "u" shaped slip on his dock would be negatively affected[7]. The regulations pertaining to docks in South Carolina prohibit docks and piers that interfere with navigation or reasonable public use of the waters.

19. Maull has provided proof, by a preponderance of the evidence, that the boating public and Maull will be adversely affected due to the decrease of distance from 40.5' to 30.5' from his extended property line.

20. In accordance with S. C. Code Ann. Sec. 48-39-150(A) DHEC, in its review of the request for the Amendment, is required to consider "the extent to which the development [proposed by the permit] could affect existing public access to ... navigable waters." Here Maull has demonstrated by a preponderance of the evidence that the Amendment will hinder public

[7] In its technical summary of review for the Palmer permit, in 2007, the DHEC staff concluded that the proposal to shift the dock closer to Maull "would likely affect Maulls' ability to navigate a large boat to and from a "U" shaped slip on his dock."

access in the AIWW by creating a potentially hazardous navigational condition. DHEC is also required to consider "the extent to which the proposed use could affect the value and enjoyment of adjacent owners." Here Schaible has testified that the only interest impacted is his view of the water from his home. It is well settled that there is no prescriptive right to a view in South Carolina. Hill v. Beach Co., 279 S. C. 313, 306 S. E. 2d 604 (1983). Sec. 48-39-150 further requires DHEC to consider the "individual merits of an application." Abdo's speculation that he might buy a larger boat and build a longer floating dock in the future should be given little consideration and lacks merit, particularly with the competing interest of safe navigation of a heavily traveled public waterway.

CONCLUSION

Based upon the above findings of fact and conclusions of law, it is hereby:

ORDERED that the decision of the Board be reversed and the action of the DHEC staff be reinstated to require that the Abdo dock be located 30.5 feet from the east side extended property line between Abdo and Maull.

AND IT IS SO ORDERED.

_____
SHIRLEY C. ROBINSON

Dated: _____, 2013.
Columbia, South Carolina

SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

FINAL AGENCY DECISION

In Re: Staff Decision dated October 16, 2011, to amend Permit No. OCRM-07-128-F for the construction of a walkway with handrails leading to a covered pierhead with handrails and benches and a ramp leading to a floating dock and the addition of a four-pile boatlift for the applicant's personal recreational use

Board Docket Number 11-RFR-56

Appearances:

Michael Molony, Esq. for Requestor James R. Maull

Leslie S. Riley, Esq. for Requestors Russell and Laura Schaible

David Abdo, pro se, Requestor/Permittee

Davis A. Whitfield-Cargile, Esq. for South Carolina Department of Health & Environmental Control

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This matter comes before the South Carolina Board of Health and Environmental Control for final review pursuant to S.C. Code Ann. § 44-1-60. David Abdo submitted to the Department an application to amend Critical Area Permit No. OCRM-07-128-F. The applicant requested approval to make changes to an existing permit, which was originally issued to Mr. Charles Palmer and subsequently transferred to Mr. Abdo. After the public comment period ended, Department staff considered the application in conjunction with the comments submitted and the applicable laws. Department staff reviewed the location of the pierhead in relation to the shared extended property line of Mr. Abdo and James R. Maull.

On October 6, 2011, Department staff authorized the permit amendment sought by Mr. Abdo, but with a condition that the dock be situated 30.5 feet off the shared

extended property line of Mr. Maull and Mr. Abdo. Mr. Maull, Russell and Laura Schaible, and Mr. Abdo all filed timely requests for review. The Board conducted a final review conference on December 8, 2011. The sole issue raised by the requestors in this matter is the location of the dock in relation to the shared extended property line of Mr. Maull and Mr. Abdo ("extended property line"). As noted above, Department staff required that the dock be 30.5 feet off the extended property line. Mr. Abdo requested permission to construct the dock 20.5 feet off the extended property line. The Schaible also request that the dock be placed 20.5 feet off the extended property line. Mr. Maull requests that the dock be 40.5 feet off the extended property line.

Department staff explained that normally the regulations require docks to be a minimum distance of 20 feet off shared extended property lines. *23A S.C. Code Ann. Reg. 30-12(A)(1)(p)*[1]. Therefore, if both docks on either side of a shared property line are the minimum distance, then docks typically have forty feet of separation. When making the staff decision, Department staff understood Mr. Maull's dock to be 10 feet off the extended property line. To address Mr. Maull's navigation concerns, Department staff therefore imposed the condition on the staff decision that required Mr. Abdo to construct the dock 30.5 feet off the extended property line. The purpose of the condition imposed by Department's staff was to provide 40 feet of separation between Mr. Maull's dock and Mr. Abdo's dock.

In the Department staff's supplemental response to the request for final review and at the review conference, Department staff brought to the Board's attention that the staff's previous belief that Mr. Maull's dock was 10 feet off the extended property line

[1] As the regulation notes, DHEC has discretion to authorize docks to be closer to extended property lines, or to cross extended property lines, when there is no material harm to the policies of the Act. Department staff explained that navigation is the primary policy of concern with regard to extended property lines.

was incorrect, That conclusion was based on an inadvertent error in interpreting Mr. Maull's permit. Mr. Maull submitted a survey showing that his dock was, in fact, 18.5 feet off the extended property line. Department staff explained that had they known that Mr. Maull's dock was 18.5 feet away from the extended property line instead of 10 feet away, the condition would not have been included and Mr. Abdo's permit would have been amended as requested by Mr. Abdo. As a result, Department staff has no objection to issuance of Mr. Abdo's permit amendment as he requested. In addition, Mr. and Mrs. Schaible ask the Board for the same result—that the permit be amended to require the dock to be constructed 20.5 feet off the extended property line. Therefore, at the final review conference, the DHEC staff and requestors Mr. Abdo and Mr. and Mrs. Schaible were in agreement.

Mr. Maull requests that the dock be constructed 40.5 feet away from the shared extended property line. The Board concludes, however, that the permit requested by Mr. Abdo complies with the law and should therefore be issued as requested. As staff explained, when a property owner desires to construct a dock from his waterfront property, there will likely be a number of possible alignments, many of which may be permittable by the Department. Department staff has authority to condition permits to require the applicant to take "whatever measures the Department feels are necessary to protect the public interest." S.C. Code Ann.§ 48-39-150(B). The Department only exercises this authority when a condition is necessary to protect the public interest or to bring an activity into compliance with the regulations. If various alignments for a proposed structure do not violate the regulations and it is a merely matter of choice,

DHEC allows the applicant to weigh the competing options and construct the option he chooses, so long as that option complies with the law.

The Board has considered the arguments made by Mr. Maull in support of his request that the dock be constructed 40.5 feet off the extended property line. In his comment letter to Department staff during the public comment period, he explained that "in the event that both neighbors at [redacted] [Mr. Abdo and Mr. Maull] come to their dock at the same time, there will not be enough space for safe docking for either party." The Board, however, does not believe the permit amendment as requested by the permittee violates the public interest. While the Board is sympathetic to the concerns raised by Mr. Maull with regard to docking his 48-foot sport fishing boat on the landward side of his floating dock, Mr. Maull raises no objections that invoke the public interest or prohibit the permit amendment from being issued on the terms requested by the permittee. DHEC does not have an obligation to place conditions on neighbors' dock permits to ensure that all nearby docks have the ability to dock large boats on the landward side of their floating dock.

Having reviewed the administrative record and heard from the parties in this matter, the Board concludes that Mr. Abdo's application to amend his existing permit complies with the regulations and existing law and that no special conditions are necessary to protect the public interest. Accordingly, the Board modifies the staff decision and authorizes the amendment as requested by Mr. Abdo. The language "provided the structure is located 30.5' from the extended property line on the eastern side of the property" is to be deleted from the permit.

Allen Amsler
Chairman
Board of Health and Environmental Control
For the Board

January 6, 2012

Notice of Right to Request Contested Case Hearing Before Administrative Law Court

S.C. Code §44-1-60(F)(2) provides that within thirty days after the receipt of the Board's written final agency decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

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

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: http://www.scalc.net. If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the following address:

Lisa L. Longshore
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control, and David Abdo, Respondent.	Docket No.: 12-ALJ-__-_____-CC **NOTICE OF REQUEST FOR CONTESTED CASE**

TO: THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND DAVID ABDO.

The undersigned, on behalf of Petitioners James R. Maull ("Maull"), files this contested case challenging the action of the South Carolina Department of Health and Environmental Control ("SCDHEC") in granting an Amendment to Critical Area Permit No. OCRM-07-128 F to Respondent David Abdo ("Abdo") for property located in Charleston, S.C. [redacted] at [redacted] The permit, known as OCRM-07-128 F, authorized construction of a walkway with handrails leading to a covered pier head with handrails and benches and ramp leading to a floating dock and the addition of a four-pile boat lift for the Respondent Abdo's personal use at [redacted], Charleston, S.C. [redacted]. However, the permit as amended and subsequently issued to Respondent Abdo at [redacted], is too close to Petitioner James R. Maull's existing dock to ensure safe navigation of the waterway.

Procedural History

In May of 2007 Charles R. Palmer ("Palmer"), predecessor in title to Abdo,

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applied for a dock permit for [redacted]. Permit drawings show the flood-side section of dock located 21 feet from extended property line between Russell and Laura Schaible (the "Schailbes") and Palmer (now Abdo). The Schaibles objected because the dock, as shown on the Palmer application, was too close to their property line. At the time the Office of Coastal Resource Management ("OCRM") staff gives no weight to Schaibles' objection and concluded that if the dock were moved away from the shared property line extension between Palmer and Schaible, it would *"likely affect Maulls' ability to navigate a large boat to and from a "u" shaped slip on his dock."* The 2007 permit authorized the construction of a boatlift, pier head, ramp and floating dock with a floating dock to extend in front of the pier head, in order to mitigate any navigational concerns of Maull.

In July of 2011, Abdo seeks to amend the Palmer permit. Abdo's proposal includes the same components permitted previously – float, pier head, boat lift and ramp with some modifications. The amendment submitted by Abdo now includes a request for a longer floating dock. The Palmer floating dock as approved was 20' in length. The Abdo proposed floating dock is 34.5' in length and requests that the floating dock be located flood-side of the pier head. The Palmer floating dock was channelward of the pier head. Abdo's amendment includes 88 linear feet of structure extending in front of critical line, while the Palmer permit only allowed 32.5 linear feet of structure extending in front of critical line. The Palmer dock proposed 82.5 feet of separation from the Maull dock, while the Abdo dock is permitted 30.5 feet from the Maull dock. The Palmer dock was 21' from the shared extended property line with Schaible and the Abdo dock is 40' from the shared extended property line with Schaible.

In 2007 the Schaibles asked the agency to include a condition on the Palmer permit that the dock be located farther away from the Schaibles and closer to the shared extended property line between Maull and Palmer. The agency's final administrative action was to conclude that Maull's navigation could be negatively impacted by this request, while there was no negative impact to the Schaibles. That decision was challenged, the Board declined review, and the decision was final. Significant consideration was given during the Palmer permit application review and OCRM staff sought to mediate with the disputing property owners. It was Curtis Joyner's conclusion that the Palmer dock should be configured to place the floating dock channelward of the pier head to further address Maull's concerns.

The DHEC permit issued to Palmer is attached as Exhibit A. The amended Permit issued to Abdo is attached as Exhibit B. The Final Agency Decision dated January 9, 2012 is attached as Exhibit C. Maull's presentation for the Final Review Conference is attached as Exhibit D.

Grounds for Contested Case

Maull notes that the South Carolina Board of Health and Environmental Control ("Board") does not have specific authority pertaining to a Final Review Conference which was held on December 8, 2011 which is the subject for the Board's Final Agency Decision dated January 9, 2012.

At the Final Review Conference there were no procedures established for presentations, nor was any evidence submitted to the Board for consideration. Additionally, no sworn testimony was taken during the Final Review Conference; therefore, Maull was

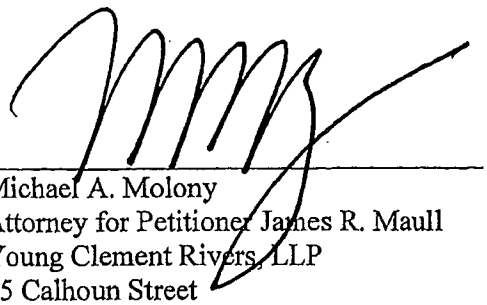
not afforded the opportunity to cross examine any witnesses presented by Requestor Abdo, Requestors Schaibles, and the South Carolina Department of Health and Environmental Control. Maull respectfully disagrees with the characterization that he raised "no objection that invoked public interest or would prohibit the permit amendment from being issued in the terms requested by the permittee", in that this is the basis for his appeal which is clearly delineated in the OCRM Regulations. The agency's final administrative action in 2007 was to conclude that Mr. Maull's navigation could be negatively impacted by this request, while there was no negative impact to the Schaibles. That decision was challenged, the Board declined review, and the decision was final. Absent a clear demonstration of a change in circumstances, the staff's refusal to adhere to its 2007 conclusions of potential harm to Mr. Maull, and to recognize administrative finality is fundamentally unfair, and Indefensible.

Additionally, the Final Agency Decision does not contain separately stated Findings of Fact and Conclusions of Law as required by the South Carolina Administrative Procedures Act and, therefore, is not an appropriate Final Agency Decision.

Petitioner Maull reserves the right to add additional grounds for this challenge once discovery commences in this contested case.

Requested Relief

Based on the grounds set forth above, the Petitioners asks that the Administrative Law Court to issue an Order reversing the action of the Board and modifying the actions of the staff and maintaining a 40.5' offset from Petitioner Maull's dock.



Michael A. Molony
Attorney for Petitioner James R. Maull
Young Clement Rivers, LLP
25 Calhoun Street
Charleston, SC 29401
Phone: (843) 724-6631
Fax: (843) 579-1356
mmolony@ycrlaw.com

Charleston, SC
February 8, 2012

Exhibit A

D H E C

PROMOTE PROTECT PROSPER

G. Earl Hunter, Commissioner

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

July 08, 2011

Mr. David Abdo
[redacted]
Charleston, SC 29407

Re: OCRM-07-128-F
Transfer of Permit

Dear Mr. Abdo:

This is to confirm that the above referenced permit has been transferred from Charles R Palmer and assigned to David Abdo.

Sincerely,

D. J. Thompson

David J. Thompson
Wetland Section Project Manager

cc: Mr. Blair Williams

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office · 1362 McMillan Ave, Suite 400 · Charleston, SC 29405-2047
Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

D H E C

South Carolina Department of Health and Environmental Control

RECEIVED
JUN 29 2011
DHEC-OCRM
CHARLESTON OFFICE

ASSIGNMENT/TRANSFER FORM

PLEASE ENCLOSE THE FOLLOWING ADMINISTRATIVE FEE. ASSIGNMENT/TRANSFER REQUESTS WILL NOT BE PROCESSED UNITL THIS FEE IS RECEIVED:

$25.00 -Minor activities-i.e, private residential dock, general permits, etc.
$100.00 -Major activities-i.e, Commercial development, marina's, etc.

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

The undersigned, Charles R. Palmer (Permit Owner(s)), does hereby assign unto David Abel (New Permit Owner(s)) that certain DHEC-Office of Ocean and Coastal Resource Management Permit Number OCRM-07128-E (Permit Number) with an issue date of Aug 2, 2007 (Permit Issue Date) and an expiration date of Aug 2, 2012 and authorized Private dock (Work authorized by permit) on the lands of [redacted] (Address/location of work) in the County of Charleston (County) South Carolina.

By _____ (Permit Owner(s))

Attested by _____ (Witness to above signature)

Date _____

The undersigned, David Abel (New Permit Owner), does hereby accept the foregoing Assignment/Transfer and does agree to be bound by all of the terms, conditions, and obligations existing with regards to said permit as were applicable to OCRM-07128-E (Permit Number), at the date of it's issuance and thereafter until the date of this Assignment/Transfer and hereby agree to discharge the undersigned, Charles R. Palmer (Former Permit Owner), from all such responsibilities and abide by such requirements as are imposed by the aforesaid permit.

By _____ (New Permit Owner(s))

Attested By _____ (Witness to above signature)

Date 6-29-11

IMPORTANT: A CURRENT MAILING ADDRESS TO RETURN ASSIGNMENT/TRANSFER CONFIRMATION LETTER MUST BE PROVIDED, [redacted] Charleston SC [redacted]

DHEC 3900 (3/2007)

P95

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

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s):	**Charles R Palmer**
Permit Number(s):	**OCRM-07-128-F**
Date of Issuance:	**August 2, 2007**
Expiration Date:	**August 2, 2012**
Location:	**On and adjacent to the AIWW/Wappoo Cut at [redacted] Charleston, Charleston County, South Carolina**

SEE SPECIAL CONDITIONS

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

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

This permit has been issued authoring the requested work with changes. Specifically, the permittee is authorized to construct a private dock that will consist of a 4' x 52' walkway, with handrails, leading to a 20' x 20' covered pierhead, also with handrails and benches. Channelward of the pierhead, a 3' x 20' ramp will lead to a 10' x 20' floating dock. On the right hand side of the pierhead there will be a 12.5' by 12.5' boat lift. The work as described is for the applicant's private, recreational use.

SPECIAL CONDITIONS

1. Provided the maximum height of the roof is limited to 15' above Mean High Water (MHW).

2. Provided the decking of the walkway and fixed pierhead is constructed a minimum of 3' above MHW.

3. Provided the handrail height is limited to 36" above decking.

1 of 7

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4. Provided the benches do not cantilever beyond the outermost dimensions of the 20' x 20' fixed pierhead.

5. Provided that an as-built survey of the dock must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the dock, and must list the starting and ending coordinates of the dock walkway in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

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

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

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

Permit Number: OCRM-07-128-F

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

(PERMITTEE(S))
Charles R Palmer

8-6-2007
(DATE)

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

8/8/07
(MANAGER, CRITICAL AREA PERMITTING) (DATE)
Curtis M. Joyner
Or his Designee
Other Authorized State Official

RECEIVED
AUG 08 2007
DHEC-OCRM
CHARLESTON OFFICE

3 of 4

08/08/2007 14:48 FAX 8435772125 PLANNERS INN 843569/098 Aug 07 07 01:54p Dockmaster/a P.001

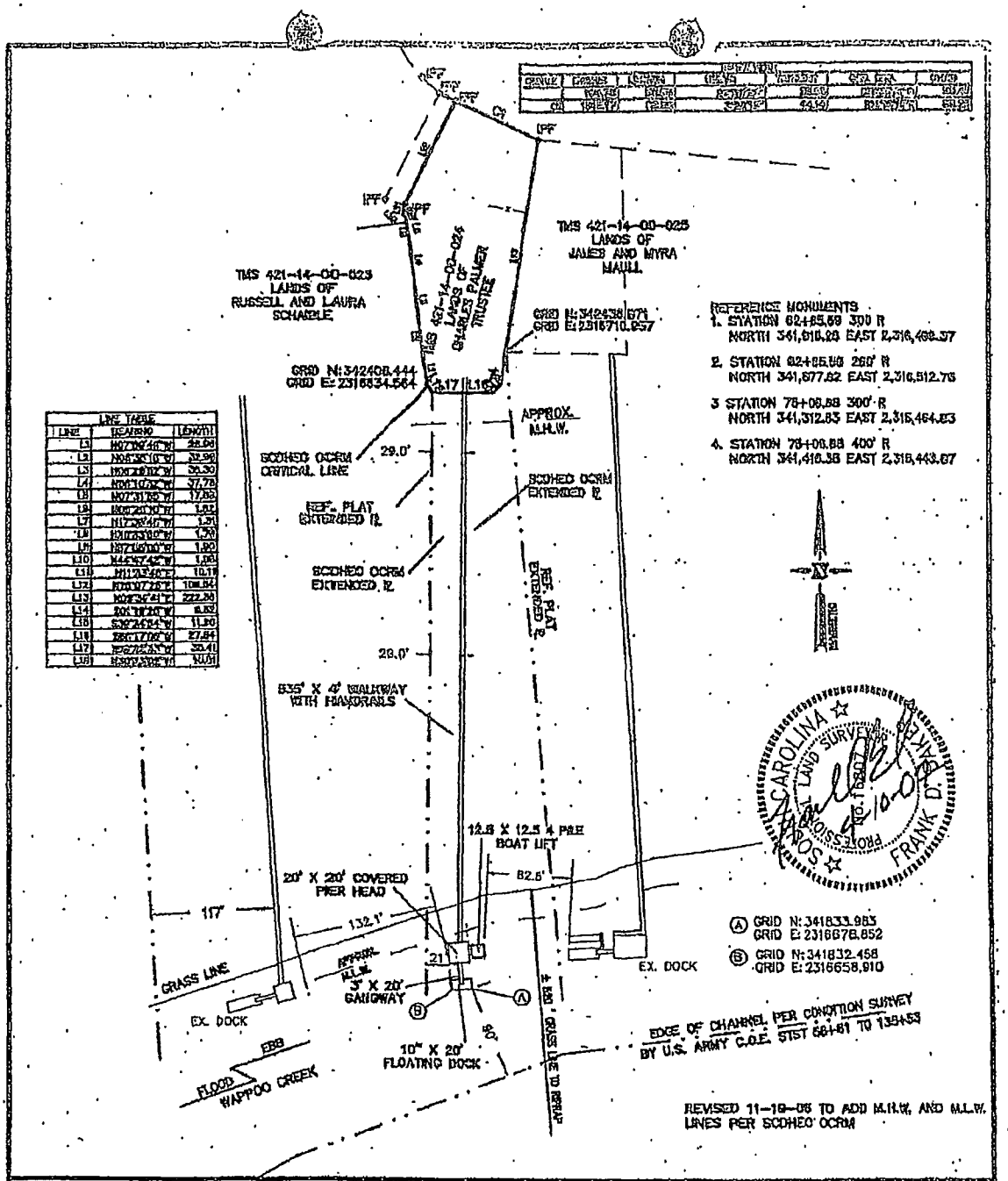
GENERAL CONDITIONS:

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

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

4 of 7

P99

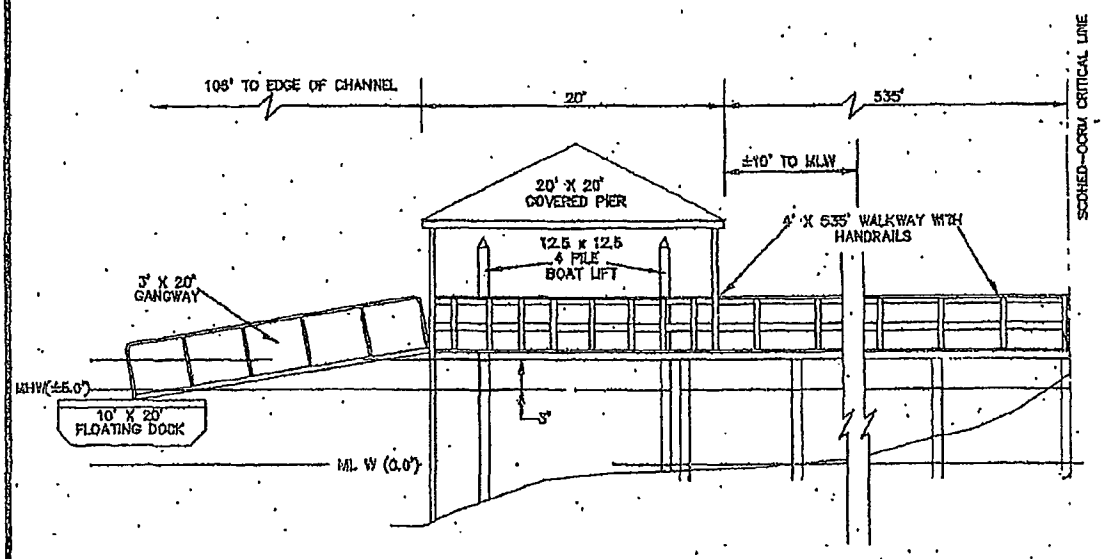


PROPOSED: PRIVATE DOCK CONSTRUCTION ADJACENT OWNERS: 1. RUSSEL & LAURA SCHAIBLE 2. JAMES AND MYRA MAULL	FIGURE 1 PLAN VIEW SCALE 1" = 125' MR. CHARLES PALMER [redacted]	PROPOSED: PRIVATE DOCK CONSTRUCTION WATERWAY: WAPPOO CREEK COUNTY OF: CHARLESTON, SC APPLICATION BY : CHARLES PALMER P/N #: TBD DATE: revised 4-10-07

5 of 7

OCRM-07-128-F

P100



WAPPOO CREEK

DOCK CROSS SECTION

SCALE 1"=10'

NORTH CAROLINA REGISTERED PROFESSIONAL LAND SURVEYOR 24897 PHILIP D. FRANK

PROPOSED: PRIVATE DOCK CONSTRUCTION ADJACENT OWNERS: 1. RUSSEL & LAURA SCHAIBLE 2. JAMES AND MYRA MAULL	FIGURE 2 DOCK SIDE VIEW SCALE 1" = 10' MR. CHARLES PALMER [redacted] CHARLESTON SC 29407	PROPOSED: PRIVATE DOCK CONSTRUCTION WATERWAY: WAPPOO CREEK COUNTY OF: CHARLESTON, SC APPLICATION BY: CHARLES PALMER P/N #: TBD DATE: 10-27-06

6 of 7

OCRM-07-128-F

P1.0

Sorry! When printing directly from the browser your map may be incorrectly cropped. To print the entire map, try clicking the "Printer-Friendly" link at the top of your results page.

MAPQUEST

[redacted]
Charleston, SC [redacted]

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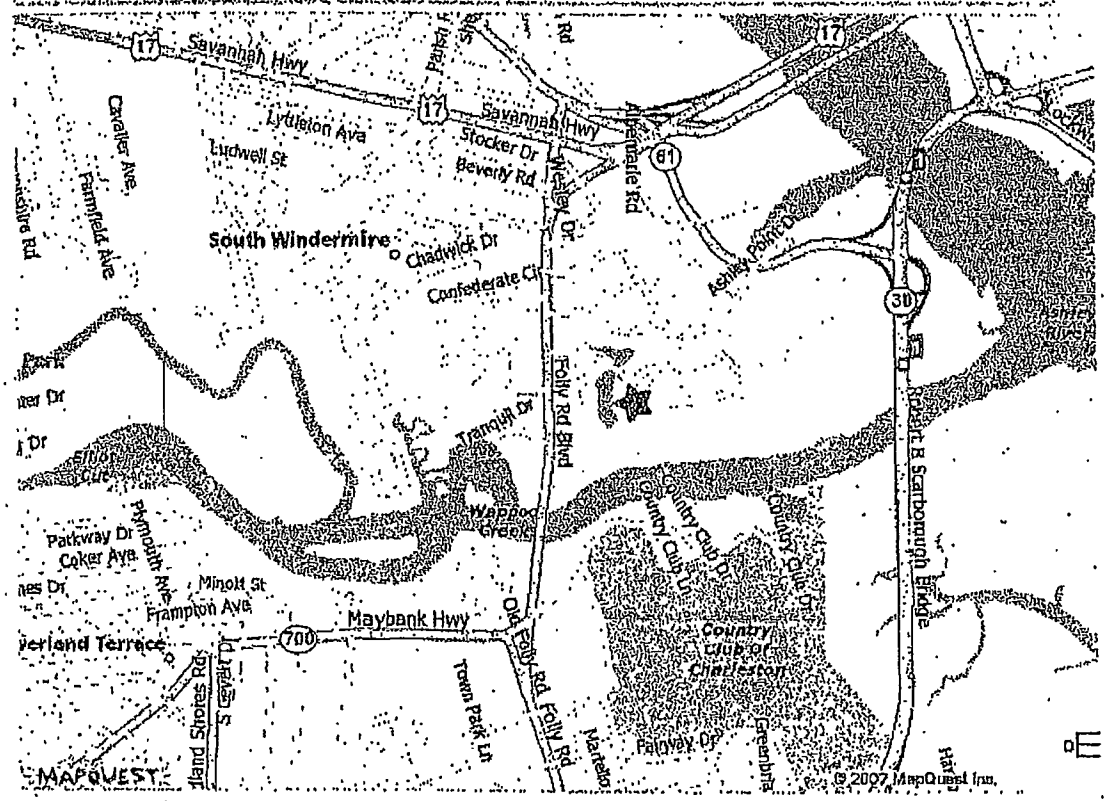

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DHEC-OCRM
CHARLESTON OFFICE

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

May 11, 2007

Permit Number: OCRM-07-128-F
Permit ID: 58688

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

APPLICANT: Charles R. Palmer
C/O Dockmasters Construction, LLC
491 Main Rd.
Johns Island, SC 29455

LOCATION: On and adjacent to Wappoo Creek at [redacted] Charleston, Charleston County, South Carolina.
TMS#: 421-14-00-024.

WORK: The work as proposed and shown on the attached plans consists of constructing a dock. Specifically, the applicant seeks to construct a 4' x 529' walkway with handrails leading to a 20' x 20' covered pierhead with handrails and benches. Channelward of the pierhead, a 3' x 20' ramp will lead to a 10' x 20' floating dock. Ebbside, a 12.5' x 12.5', four-pile boatlift is proposed. The work as described is for the applicant's private, recreational use.

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

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

To assure review by OCRM, comments regarding this application must be received by OCRM on or before May 26, 2007. For further information please contact the project manager for this activity, Amanda Flake at 843-953-0258.

PLEASE REPLY TO:

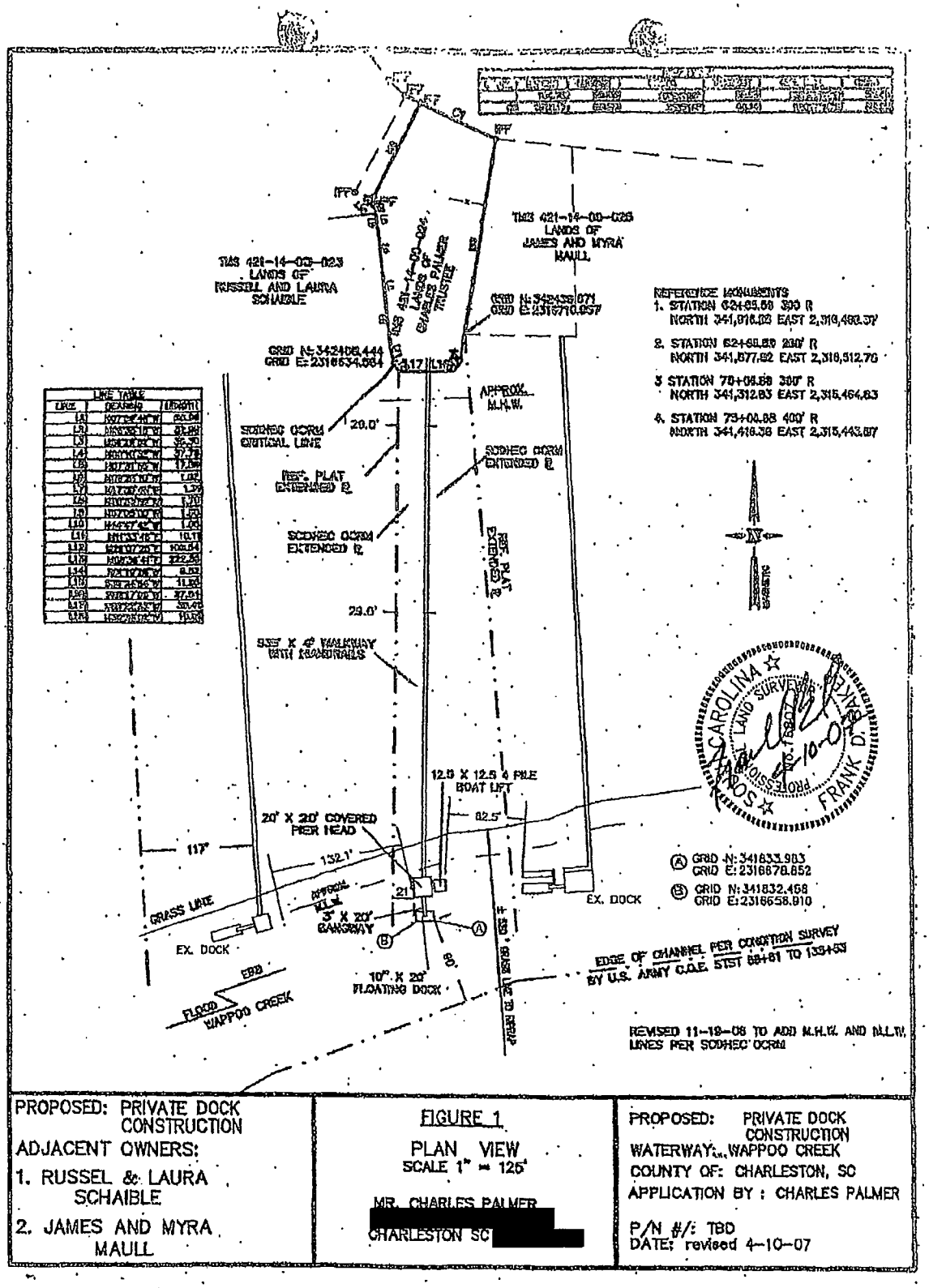
SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

Please refer to P/N# OCRM-07-128-F

Amanda Flake for
Tess Rodgers, Regulatory Coordinator

-m-

P103



PROPOSED: PRIVATE DOCK CONSTRUCTION

ADJACENT OWNERS:

1. RUSSEL & LAURA SCHAIBLE
2. JAMES AND MYRA MAULL

FIGURE 1

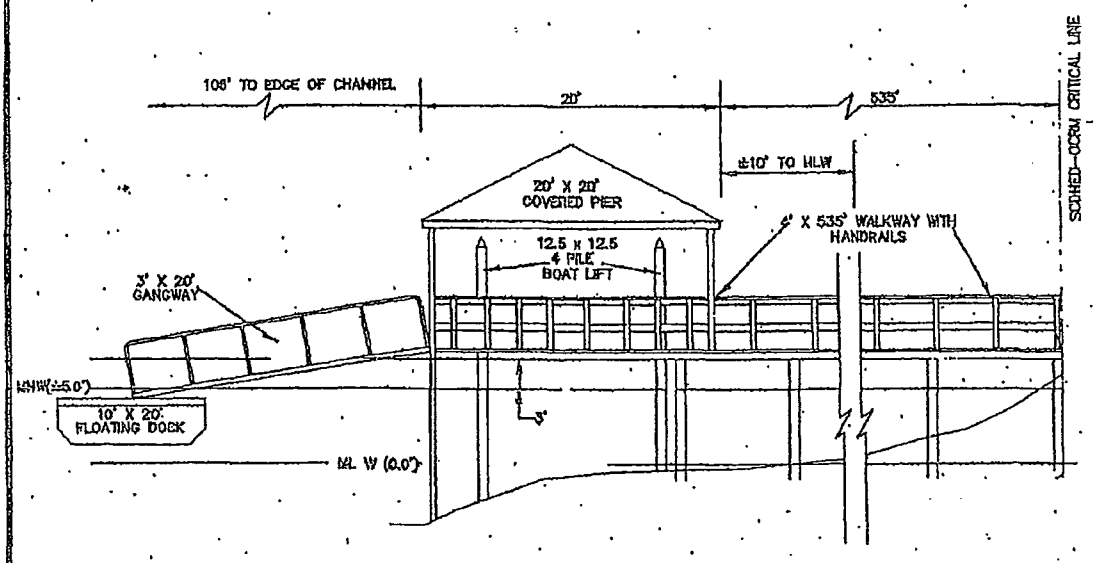
PLAN VIEW
SCALE 1" = 125'

MR. CHARLES PALMER
[redacted]
CHARLESTON SC [redacted]

PROPOSED: PRIVATE DOCK CONSTRUCTION
WATERWAY: WAPPOO CREEK
COUNTY OF: CHARLESTON, SC
APPLICATION BY : CHARLES PALMER

P/N #/: TBD
DATE: revised 4-10-07

OCRM-07-128-F



WAPPOO CREEK

DOCK CROSS SECTION

SCALE 1"=10'

PROPOSED: PRIVATE DOCK CONSTRUCTION ADJACENT OWNERS: 1. RUSSEL & LAURA SCHAIBLE 2. JAMES AND MYRA MAULL	FIGURE 2 DOCK SIDE VIEW SCALE 1" = 10' MR. CHARLES PALMER [redacted] CHARLESTON SC [redacted]	PROPOSED: PRIVATE DOCK CONSTRUCTION WATERWAY: WAPPOO CREEK COUNTY OF: CHARLESTON, SC APPLICATION BY: CHARLES PALMER P/N #: TBD DATE: 10-27-06

OCRM-07-128-F

P105

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MAPQUEST

[redacted]

Charleston, S[redacted] US

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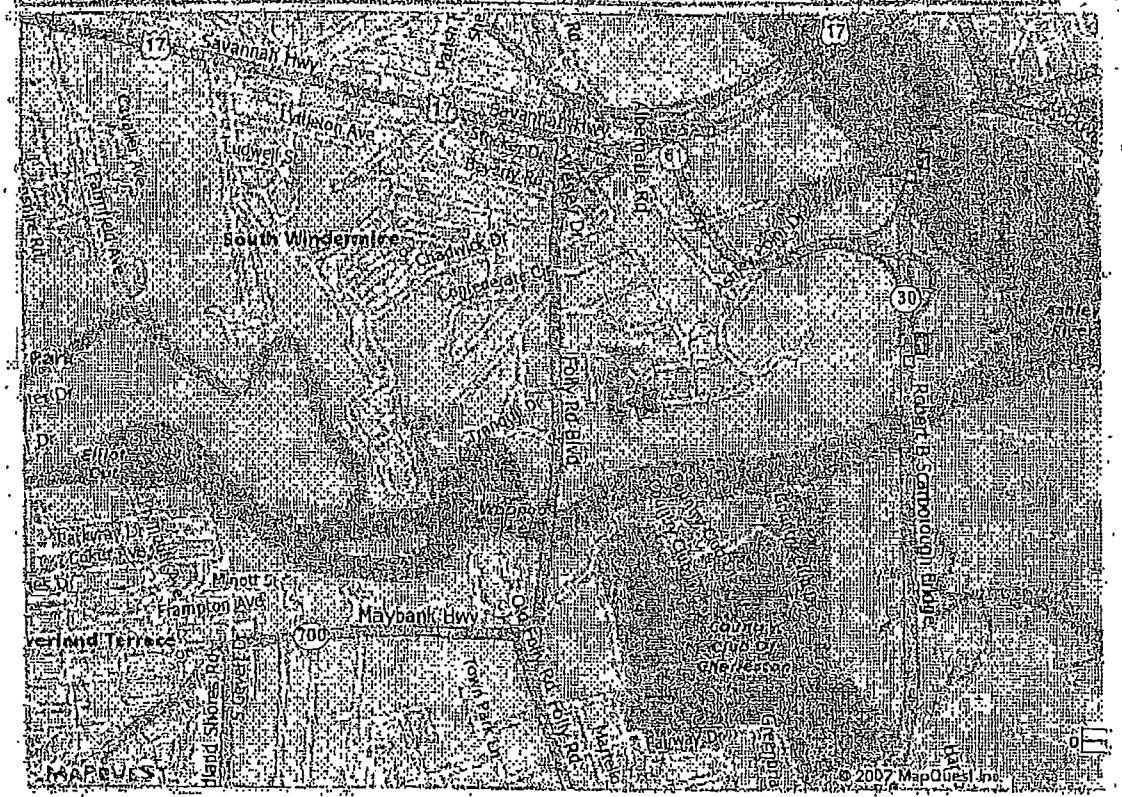

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CHARLESTON OFFICE

OCRM-07-128-F

P10

Turn RIGHT onto SC-61 / ASHLEY RIVER RD. Continue to follow SC-61.	2.1 miles	Map
3:	Turn RIGHT onto WESLEY DR / SC-171. Continue to follow SC-171.	0.6 miles	Map
4:	Turn LEFT onto BROUGHTON RD.	0.2 miles	Map
5:	Turn RIGHT to stay on BROUGHTON RD.	<0.1 miles	Map
END 6:	End at [redacted] Charleston, SC 29407-7503, US		

OCRM-07-128-F

P107

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

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

Notification of Public Notice

Enclosed are public notices issued by the SCDHEC Office of Ocean and Coastal Resource Management. All interested parties are allowed 30 days for major developments and 15 days for minor developments after receipt of the public notices to file written comments to the OCRM pertaining to the applications. Only those comments received within this period must be reviewed by the OCRM in processing the permit application. Any person wishing notification of the initial OCRM decision on any specific public notice must make written request within the designated review period for that public notice.

APPLICANT	PUBLIC NOTICE NUMBER	SUSPENSE DATE
Raymond T. Rufo	ORCM-07-011-M	June 10, 2007
Stuart Cass	OCRM-07-107-F	May 26, 2007
Leigh Smalley & Jerry Pettus	OCRM-07-109-M	May 26, 2007
Kenneth O. Grayson	OCRM-07-118-F	May 26, 2007
Charles R. Palmer	OCRM-07-128-F	May 26, 2007
Katherine J. Snyder	OCRM-08-853	May 26, 2007
Kirland & Wolfson	OCRM-07-854	May 26, 2007
Joseph H. Eton	OCRM-07-855	May 26, 2007
Jonathan G. Verity	OCRM-07-856	May 26, 2007

May 11, 2007

P10

DC3Dx-07-128-3

D H E C

PERMIT APPLICATION

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

Charleston	Beaufort	Myrtle Beach
744-5838	524-4085	626-7217
744-5847 (fax)	524-4039 (fax)	626-2391 (fax)

NAME AND MAILING ADDRESS OF APPLICANT:

Charles E Palmer
[redacted]
Tampa, FL [redacted]

PHONE #: (Bus.) 813-207-0018
(Home) 813-545-4527
(Fax) 813-207-0019

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

Dockmasters Construction, LLC.
Attn: David Richardson
491 Main Rd
Johns Island, SC 29455

PHONE #: (Bus.) (843) 559-7010
(Home) (843) 870-2485 (mobile)
(Fax) (843) 559-7096

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

Construction of a dock. The proposed structure will consist of a 4' x 529' walkway with handrails, 20' x 20' covered pier head with handrails and benches, 12' x 12' boat lift on the east side of pier head and a 10' x 20' floating dock on the south side of pier head. The proposed dock will be for the owner's private, recreational use.

NAMES AND COMPLETE MAILING ADDRESSES OF ADJOINING PROPERTY OWNERS: (If the applicant owns adjoining property, give name and address for nearest property owners by applicant.)

Russell And Laura Schable
[redacted]
Charleston, SC [redacted]

James and Myra Maull
[redacted]
[redacted]

(Attach additional sheet if necessary.)

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

[redacted], Charleston, SC

See attached directions.

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CHARLESTON OFFICE

COUNTY: Charleston

TAX MAP NUMBER (Required on all applications): 421-14-00-024

LOCAL GOVERNING BODY WITH JURISDICTION OVER SITE: City of Charleston

NAME OF WATERWAY: Wappo Creek (ICW)

P109

D H E C

PROMOTE PROTECT PROSPER

PERMIT APPLICATION

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

Charleston	Beaufort	Myrtle Beach
744-5838	524-4835	626-7217
744-5847 (fax)	524-4839 (fax)	626-2381 (fax)

IS ANY PORTION OF ACTIVITY FOR WHICH AUTHORIZATION IS SOUGHT NOW COMPLETE?
YES [ ] NO [X]

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

N/A

ADDITIONAL REMARKS:

N/A

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

Signature of Applicant — Date: 10-Apr-07

David Richardson
Signature of Agent (if agent has been listed) — Date: 10-Apr-07

RECEIVED
MAY 02 2007
DHEC-OCRM
CHARLESTON OFFICE

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

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

AFFIDAVIT OF OWNERSHIP OR CONTROL

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

Charleston	Beaufort	Myrtle Beach
744-5838	524-6835	626-7217
744-5847 (fax)	524-4839 (fax)	626-2381 (fax)

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

X	Record Owner
	Lessee
	Record Easement Holder
	Applicant To Record Owner For Easement
	Contract To Purchase Property

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

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

SEE ATTACHED

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

Signature

Sworn to and subscribed before me at Johns Island, Charleston County, South Carolina, this 10 day of April, 2007

Notary Public

My commission expires: July 19th, 2016

RECEIVED
MAY 02 2007
DHEC-OCRM
CHARLESTON OFFICE

P11

DOCKMASTERS
491 MAIN ROAD
Johns Island, SC 29455

Number of Copies: 1

AFFIDAVIT OF PUBLICATION

The Post and Courier

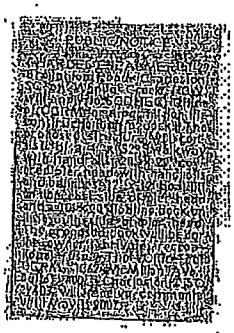
State of South Carolina
County of Charleston

Personally appeared before me the undersigned advertising Clerk of the above indicated newspaper published in the City of Charleston, County and State aforesaid, who, being duly sworn, says that the advertisement of

(Copy attached)

appeared in the issues of said newspaper on the following day(s):

04/23/2007



at a cost of $ 44.86
Account# C0234657
Order# C2217QRV
P.O. Number: palmer

Subscribed and sworn to before me this 25th day of APRIL A.D. 2007

Advertising Clerk

NOTARY PUBLIC, SC
My Commission expires 10/10/13

Form 3020

RECEIVED
MAY 02 2007
DHEC-OCRM
CHARLESTON OFFICE

P1.1

Mary Rodgers - Re: A RFR has been received on OCRM-07-128-F, Charles R. Palmer

From: Lisa M. Lucas
To: Rodgers, Mary
Date: 8/3/2007 10:45:10 AM
Subject: Re: A RFR has been received on OCRM-07-128-F, Charles R. Palmer

Sure, you can ask. I'll start attaching a copy of the appeal for the files in Charleston.

Lisa Lucas Longshore, Administrative Coordinator
Clerk, SC Board of Health and Environmental Control
SC Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201
Phone: (803) 898-3309
cell: (803) 530-0065
Fax: (803) 898-3393
lucaslm@dhec.sc.gov

>>> Mary Rodgers 8/3/2007 10:25 AM >>>
Will be faxing the permit to you in a few... Who appealed if I may ask??

Thanks - Tess

>>> Lisa M. Lucas 8/3/2007 9:38 AM >>>
Mary, please send me a copy of the staff decision.

Thank you.

Lisa Lucas Longshore, Administrative Coordinator
Clerk, SC Board of Health and Environmental Control
SC Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201
Phone: (803) 898-3309
cell: (803) 530-0065
Fax: (803) 898-3393
lucaslm@dhec.sc.gov

CC: Joyner, Curtis

Lucia H. Daniel
[redacted]
Charleston, SC [redacted]

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29301

Dear Sir,

I received the enclosed notice informing me of a permit issued to [redacted] to build a dock with a walkway over the marsh. I do object to hand railings over the marsh. What used to be a beautiful, unblemished vista has turned into an unsightly view of treated lumber. The railings make it even worst. I recommend that walkways not be allowed hand rails except over water.

Sincerely yours,

Lucia H. Daniel

Lucia H. Daniel
8/1/07

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL
2007 AUG -2 PM 3:43
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDHEC BOARD

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

D H E C
PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

BOARD:
Henry C. Scott
M. David Mitchell, MD
Glenn A. McCall
Coleman B. Buckhouse, MD

Promoting and protecting the health of the public and the environment

S.C. Board of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201
Telephone: (803) 898-3309 Fax: (803) 898-3393

MEMORANDUM

TO: *Lucia H. Daniel, Requestor*

[redacted] Permittee

Elizabeth A. Diecl, Attorney for Department

FROM: *Lisa Lucas Longshore, Clerk*

RE: Docket No. 07-RFR-95 – *Request review of staff decision to issue Permit No. [redacted] for the construction of a dock with handrails for private, recreational use.*

Issue Date: July 30, 2007.

DATE: *August 20, 2007*

The S.C. Board of Health and Environmental Control decided on August 16, 2007 not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F), 2006 Act No. 387, Section 48, provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

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

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

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

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

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

OCG # 20539

S:\Share\LEGAL\ALL\MATTERS\20539 RFR OCRM Charles Palmer\rc denial.doc

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

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BOARD:
Henry C. Scott
M. David Mitchell, MD
Glenn A. McCall
Coleman F. Buckhouse, MD

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

CERTIFICATE OF SERVICE

I, Lisa Lucas Longshore, Clerk, S.C. Board of Health and Environmental Control, with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 20th day of August 2007 served the foregoing ***Memorandum re: Final Review Conference Denial– Board Docket No. 07-RFR-95*** upon all parties and counsel of record by placing a copy of same in an envelope and depositing it in the U.S. Mail, with sufficient postage paid, at the address indicated below:

U.S. Mail - CERTIFIED – Return Receipt
Lucia H. Daniel
[redacted]
Charleston, South Carolina[redacted]

91 7108 2133 3933 7187 9096

Charles R. Palmer
c/o Dockmasters Construction, LLC
491 Main Road
Johns Island, South Carolina 29455

91 7108 2133 3933 7187 9102

Via Interagency Mail Delivery
Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
SC DHEC – Office of General Counsel
2600 Bull Street
Columbia, South Carolina 29201

Lisa Lucas Longshore
Lisa Lucas Longshore, Clerk

August 20, 2007
Columbia, South Carolina

BOARD:
Elizabeth M. Hagood
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kisher
Secretary

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BOARD:
Henry C. Scott
Paul C. Aughtry, III
Glenn A. McCall
Coleman F. Buckhouse, MD

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

S.C. Board of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201
Telephone: (803) 898-3309 Fax: (803) 898-3393

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW AND NOTICE OF PROCEDURES

TO: *Lucia H. Daniel, Requestor*

Charles R. Palmer, Permittee

Elizabeth A. Dieck, Attorney for Department

FROM: *Lisa Lucas Longshore, Clerk*

RE: Docket No. 07-RFR-95 – *Request review of staff decision to issue Permit No. OCRM-07-128-F for the construction of a dock with handrails for private, recreational use.*

Issue Date: July 30, 2007.

DATE: *August 3, 2007*

A Request for Final Review of the above-referenced decision was filed by *Lucia Daniel* on *August 2, 2007.* A copy of the request is attached.

PROCEDURES FOR FINAL REVIEW CONFERENCE

The Board of Health and Environmental Control has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair. If a final review conference is scheduled, all parties will be given at least 10 days' written notice of the conference.

Procedures for the final review conference are provided in 2006 Act No. 387, Section 48. The final review conference is not a formal hearing. Final review conferences are open to the public. The burden of proof in a conference is on the Requestor.

During the final review conference, the Department must explain the Department decision and the materials relied upon in the administrative record to support the Department decision. The applicant or affected party shall state the reasons for protesting the Department decision. All parties may provide evidence to support affirming, amending, modifying, or rescinding the Department decision. All parties may rebut information and arguments presented by other

P1

parties. The officials conducting the final review conference may request additional information and may question the applicant or affected party, the Department, and anyone else providing information at the conference.

Any party may request a transcript of the proceedings of the final conference by mailing a request for a transcript to the Clerk of the Board at the above address within 30 days of the date of this memorandum, along with a statement that the party will pay all costs of the transcript.

The parties are encouraged to engage in mediation during the final agency review process. The terms of any mediation, including selection and payment of a mediator, must be agreed to by all parties. Any mediation must be completed in time to allow compliance with statutory time frames unless all parties agree to a waiver of such time limits.

FURTHER APPEAL IF FINAL REVIEW CONFERENCE IS NOT CONDUCTED

If a final review conference is not conducted within 60 days from the date of receipt of a Request for Final Review, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court (ALC) within 30 days after the deadline for the final review conference. A request for a contested case hearing before the ALC must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

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

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

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

OCG # 20539

S:\Share\LEGAL\ALJ\MATTERS\20539 RFR OCRM Charles Palmer\RFR acknowledgement.doc

P1

BOARD:
Elizabeth M. Hagood
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kisner
Secretary

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C. Earl Hunter, Commissioner

Henry C. Fin...
Paul C. Aughtry, III
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Coleman F. Buckhouse, MD

Promoting and protecting the health of the public and the environment

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

CERTIFICATE OF SERVICE

I, Lisa Lucas Longshore, Clerk, S.C. Board of Health and Environmental Control, with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 3rd day of August 2007 served the foregoing ***Acknowledgement of Request For Final Review and Notice of Procedures – Docket No. 07-RFR-95*** upon all parties and counsel of record by placing a copy of same in an envelope and depositing it in the U.S. Mail, as indicated below, with sufficient postage paid, at the address indicated below:

U.S. Mail - CERTIFIED – Return Receipt
Lucia H. Daniel
[redacted]
Charleston, South Carolina[redacted]

91 7108 2133 3932 9311 7955

Charles R. Palmer
c/o Dockmasters Construction, LLC
491 Main Road
Johns Island, South Carolina 29455

91 7108 2133 3932 9311 7962

Via Interagency Mail Delivery
Nancy S. Layman, Esquire
Ashley C. Biggers, Esquire
SC DHEC – Office of General Counsel
2600 Bull Street
Columbia, South Carolina 29201

Lisa Lucas Longshore
Lisa Lucas Longshore, Clerk

April 3, 2007
Columbia, South Carolina

Lucia H. Daniel
[redacted]
Charleston, SC [redacted]

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29301

Dear Sir,

I received the enclosed notice informing me of a permit issued to 29 Broughton Road to build a dock with a walkway over the marsh. I do object to hand railings over the marsh. What used to be a beautiful, unblemished vista has turned into an unsightly view of treated lumber. The railings make it even worst. I recommend that walkways not be allowed hand rails except over water.

Sincerely yours,

Lucia H. Daniel

Lucia H. Daniel
8/1/07

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL
2007 AUG -2 PM 3:43
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDHEC BOARD

C. Earl Hunter, Commissioner
Promoting and protecting the health of the public and the environment.

MEMORANDUM

TO: All Interested Parties

FROM: Curtis Joyner, Manager

RE: Charles R Palmer
P/N# OCRM-07-128-F

DATE: July 30, 2007

This is to inform you that the above referenced permit was issued and validated on July 20, 2007.

Any person adversely affected by this decision has the right to appeal as outlined in the enclosed "Notice of Appeal Procedure."

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office • 1362 McMillan Avenue, Suite 400 • Charleston, SC 29405
Phone: 843-953-0200 • Fax: 843-953-0201 • www.scdhec.gov

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

May 25, 2007

Charles Palmer
[redacted]
Tampa, [redacted]

Re: Dock Permit Application OCRM-07-128-F (Charles Palmer)

Dear Mr. Palmer,

Due to concerns with your dock application at [redacted], the SCDHEC's office of Ocean and Coastal Resource Management strongly suggests that a meeting be arranged between the dock applicant, Charles Palmer, and the adjoining neighbors, Rick Maull and Russell Schlable. If possible, we would like to schedule a meeting at the SCDHEC/OCRM office sometime during the week of May 28, 2007 to discuss the matter. Once you receive this letter, please let me know if and when you are available for a meeting. My office phone number is 953-0258 and my email is flakeah@dhec.sc.gov. Thank you for your time and consideration.

Sincerely,

Amanda Flake

Amanda Flake
Critical Area Project Manager
SCDHEC/OCRM

Cc: Curtis Joyner
Barbara Neale
Van Whitehead

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

May 25, 2007

Russell Schiable
C/O C.C. Harness, III
[redacted]
Mt. Pleasant, SC [redacted]

Re: Dock Permit Application OCRM-07-128-F (Charles Palmer)

Dear Mr. Schiable,

Due to concerns with the dock application at [redacted] the SCDHEC's office of Ocean and Coastal Resource Management strongly suggests that a meeting be arranged between the dock applicant, Charles Palmer, and the adjoining neighbors, Rick Maull and Russell Schiable. If possible, we would like to schedule a meeting at the SCDHEC/OCRM office sometime during the week of May 28, 2007 to discuss the matter. Once you receive this letter, please let me know if and when you are available for a meeting. My office phone number is 953-0258 and my email is flakeah@dhec.sc.gov. Thank you for your time and consideration.

Sincerely,

Amanda Flake

Amanda Flake
Critical Area Project Manager
SCDHEC/OCRM

Cc: Curtis Joyner
Barbara Neale
Van Whitehead

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

May 25, 2007

James Maull
[redacted]
Charleston, SC [redacted]

Re: Dock Permit Application OCRM-07-128-F (Charles Palmer)

Dear Mr. Maull,

Due to concerns with the dock application at [redacted], the SCDHEC's office of Ocean and Coastal Resource Management strongly suggests that a meeting be arranged between the dock applicant, Charles Palmer, and the adjoining neighbors, Rick Maull and Russell Schlable. If possible, we would like to schedule a meeting at the SCDHEC/OCRM office sometime during the week of May 28, 2007 to discuss the matter. Once you receive this letter, please let me know if and when you are available for a meeting. My office phone number is 953-0258 and my email is flakeah@dhec.sc.gov. Thank you for your time and consideration.

Sincerely,

Amanda Flake
Critical Area Project Manager
SCDHEC/OCRM

Cc: Curtis Joyner
Barbara Neale
Van Whitehead

From: Curtis Joyner
To: cpalmer6@tampabay.rr.com
Date: 8/2/2007 7:15:56 AM
Subject: RE: [redacted] Dock Permit

Charles, thanks for the call. I'll call him today and then reissue the permit the way it was requested. Thanks for your effort in clearing this up.

Curtis M. Joyner
Manager, Critical Area Permitting
SCDHEC-OCRM
843-953-0232
joynercm@dhec.sc.gov

>>> "Charles Palmer" <cpalmer6@tampabay.rr.com> 8/1/2007 5:39 PM >>>
Curtis - I LM for you today to let you know that I spoke with Rick Mault and he is fine with the dock application as it was originally submitted to you. He will not object or appeal the original lift placement on the side of the pier head rather than between the floater and the pier head.

What needs to be done to revise the permit?

Thanks for working with us on this.

Charles
813-545-4527

CONFIDENTIALITY NOTICE
This message is intended only for the use of the individual entity to which it is addressed and is covered by the Electronic Communications Privacy Act, 18 U.S.C. "2510-2521. This message is legally privileged and confidential and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by telephone at (813) 207-0018 and delete the original message, and all copies, from your system.

Thank you. Charles Palmer

---Original Message---
From: Charles Palmer [mailto:cpalmer6@tampabay.rr.com]
Sent: Tuesday, July 31, 2007 4:44 PM
To: 'Curtis Joyner'
Subject: RE: [redacted] Dock Permit

I left a message for you. I didn't get back into my office until about 15 minutes ago. I would like to speak with you about the permit. Jennifer just sent it to me.

Please call me when you can. The best number to reach me is 813-545-4527. You can text me to call you on this number and I will get right back with you.

Thanks.

Charles

CONFIDENTIALITY NOTICE
This message is intended only for the use of the individual entity to which it is addressed and is covered by the Electronic Communications Privacy Act, 18 U.S.C. "2510-2521. This message is legally privileged and confidential and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by telephone at (813) 207-0018 and delete the original message, and all copies, from your system.

Thank you. Charles Palmer

----Original Message----
From: Curtis Joyner [mailto:JOYNERCM@dhec.sc.gov]
Sent: Tuesday, July 31, 2007 12:52 PM
To: cpalmer6@tampabay.rr.com
Subject: Re: [redacted] Permit

Can you call me when you get this email? 843-953-0232.

Curtis M. Joyner
Manager, Critical Area Permitting
SCDHEC-OCRM
843-953-0232
joynercm@dhec.sc.gov

>>> "Charles Palmer" <cpalmer6@tampabay.rr.com> 7/30/2007 3:22 PM >>>
Curtis - if you haven't done so yet today, please don't issue the permit until we have a chance to review what you propose. I haven't been able to speak with Davey although Jennifer assures me that Davey told her that it can be done. We need to be shown how a 32'-40' boat can be placed in between the pier head and the floating dock.

You know that I really want the permit issued ASAP and that we have gone to great lengths to assuage the neighbors. Perhaps if Rick were allowed to move his dock further out into the channel to get to deeper water as he has told me that he wants to do, he will have more room to navigate between the docks at an angle.

Charles

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It is addressed and is covered by the Electronic Communications Privacy Act, 18 U.S.C. "2510-2521. This message is legally privileged and confidential and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by telephone at (813) 207-0018 and delete the original message, and all copies, from your system.

Thank you. Charles Palmer

From: Curtis Joyner
To: Loeber, Tommy
Date: 7/30/2007 11:34:11 AM
Subject: Re: [redacted]

No, I haven't, but I plan to issue the permit today anyway with a slight change. The change will consist of locating the boat lift between the floating dock and pierhead to give Mr. Maull more room to navigate. I've talked with Davey Richardson, the dock builder, and he thought the permit would be accepted.

Curtis M. Joyner
Manager, Critical Area Permitting
SCDHEC-OCRM
843-953-0232
joynercm@dhec.sc.gov

>>> "Tommy Loeber" <loeber@kltthrash.com> 7/30/2007 10:45 AM >>>
Curtis, I met you at [redacted] n last week and was wondering if you still plan on issuing the dock permit for [redacted] this week. I'm representing the buyer for the property and we're supposed to set the closing date based on when the permit is issued. Did you receive the letter from Cotton Harness from the neighbor?

Thanks,

Tommy Loeber

Tommy & Michelle Loeber

Residential Real Estate Agents

[redacted]

Charleston, SC [redacted]

Tommy's Cell: (843)478-0519

Michelle's Cell: (843)568-7573

Fax (Toll Free): (866)568-7694

Email: Loeber@KltThrash.com

Curtis Joyner - 29 Broughton Dock Permit

From: "Charles Palmer" <cpalmer6@tampabay.rr.com>
To: <JOYNERCM@dhec.sc.gov>
Date: 7/30/2007 3:23 PM
Subject: [redacted] Dock Permit

Curtis – if you haven't done so yet today, please don't issue the permit until we have a chance to review what you propose. I haven't been able to speak with Davey although Jennifer assures me that Davey told her that it can be done. We need to be shown how a 32'-40' boat can be placed in between the pier head and the floating dock.

You know that I really want the permit issued ASAP and that we have gone to great lengths to assuage the neighbors. Perhaps if Rick were allowed to move his dock further out into the channel to get to deeper water as he has told me that he wants to do, he will have more room to navigate between the docks at an angle.

Charles

CONFIDENTIALITY NOTICE
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Thank you. Charles Palmer

SOUTH CAROLINA COASTAL COUNCIL

Ashley Corporate Center
[redacted]
Suite 300
Charleston, S.C. [redacted]
(803) 744-5838
FAX 744-5847

William W. Jones, Jr.
Chairman

H. Wayne Beam, Ph.D.
Executive Director

September 24, 1992

Mr. James R. Maull
[redacted]
Charleston, South Carolina 29407

Re: P/N# 89-3E-091-P
Wappoo Creek, Charleston Co.

Dear Mr. Maull:

The above referenced permit has been amended to allow the installation of a 6' by 30' floating dock landward of the existing floating dock. This amendment is made a part of your permit and is subject to the full terms of the permit as issued.

This letter does not relieve you of the responsibility of acquiring any other applicable federal or local permits that may be required. Any person adversely affected by this action has the right of direct appeal to the Council within 15 days of notification.

Please sign the attached copy of this letter indicating your acceptance of these terms and return the signed copy to this office.

Sincerely,

Steve Moore
Permit Administrator

SM:0026M(3)
enclosure
cc: Dr. H. Wayne Beam
Mr. John L. Hensel
Corps of Engineers
Enforcement Officer
Regional Office

Printed on Recycled Paper

RECEIVED
JUL 17 2007
DHEC-OCRM
CHARLESTON OFFICE

LAW OFFICES OF
C. C. HARNESS, III, P.C.
ATTORNEYS AT LAW
505 BELLE HALL PARKWAY, SUITE 101
MT. PLEASANT, SOUTH CAROLINA 29464
TELEPHONE (843) 856-2627
FACSIMILE (843) 856-2664

C.C. Harness, III

Jefferson D. Griffith, III
(Of Counsel)
*also admitted in N.C.

July 13, 2007

Curtis Joyner
SCDHEC/OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

RE: Palmer Dock Permit
OCRM-07-121-F

Dear Curtis:

As promised at our recent meeting, I met Stanley Rodgers (buyer's attorney) at the site on July 10, 2007. No stakes locating the walkway or pierhead have been placed as discussed. I need this done in order to advise my client.

Mr. and Mrs. Schaible understand that OCRM is inclined to permit a dock. In order to properly analyze the situation, I request (under FOIA if necessary) to review the following files:

(1) Palmer file

(2) Maull permit file 89-3E-091-P

Given there are different plats locating the Maull dock in relation to property lines in the marsh, I also ask the agency for clarification in this regard. While it may make no difference in the agency decision, this may help avoid an appeal.

It is my clients' desire that the dock be placed as far away from their property line as possible. As I understand it, the two competing distances from the Schaible dock shown on application drawings are 132 feet or 103 feet. I have no comment on these distances until I can review the files. I would propose, however, that no future amendment expanding the float or walkway toward Shaible's property be allowed and that the lift be moved to the Maull side of the facility.

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Based on the forgoing, I ask that you help resolve this matter by:

(1) Asking for an accurate plat on the marsh lines.

(2) Allow me to review the files as soon as possible.

(3) Require that the dock position be staked.

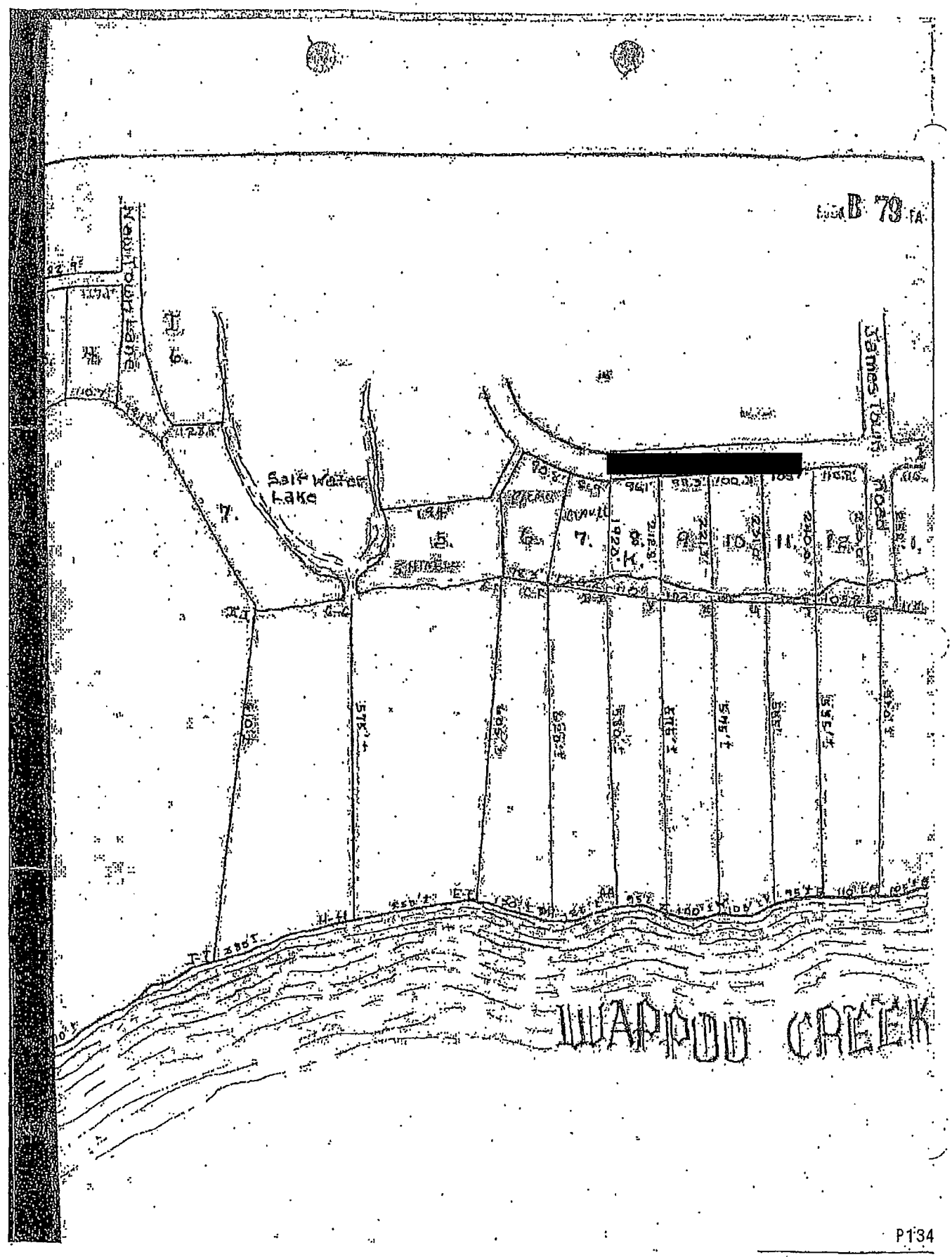
(4) Meet on site to see the location.

Please confirm that I can see the files and that OCRM will address the other requests.

Sincerely,

C.C. Harness, III

Cc: Russell and Laura Schaible
Stanley Rodgers



P134

May 21, 2007

Mr. Curtis Joyner
SCDHEC
Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

Dear Mr. Joyner:

This is to advise the South Carolina State Ports Authority has no objections to the following named applications on which public notices have been received:

Dated: Feb. 09, 2007

City of Charleston/Laura Cabiness	2006-1457-2IR-P

Dated: May 11, 2007

Dexter Bunch	OCRM-06-348-M
Jerry Zucker	OCRM-06-062-M
Raymond T. Rufo	OCRM-07-011-M
Stuart Cass %Billy Bryan	OCRM-07-107-F
Leigh Smalley & Jerry Pettus	OCRM-07-109-M
Kenneth O. Grayson	OCRM-07-118-F
Charles R. Palmer %Dockmasters Constr	OCRM-07-128-F
Katherine J. Snyder	OCRM-07-853
Kirkland & Wolfson %Sea Island Dock	OCRM-07-854
Joseph H Etton/Atlantic Marine Const	OCRM-07-855
Jonathan G Verity %Atlantic Marine	OCRM-07-856
Gulf Stream Devel. %Newkirk Environ	SAC-2007-970-1IW
Seacrest Marine %GEL Engineering	SAC-2007-1004-2IG
Frank Avent/AMC Properties	2007-1005-2IV
Frank Avent/AMC Properties	2007-1008-2IV

Sincerely,

Timothy A. Sherman
Engineering Project Manager

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South Carolina Department of
Natural Resources

John E. Frampton
Director
Robert H. Boyles, Jr.
Deputy Director for
Marine Resources

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May 14, 2007

Mr. Curtis Joyner
SCDHEC/OCRM
1362 McMillan Ave., Suite 400
Charleston, SC 29405

REF: OCRM-07-011-M, Raymond Rufo
OCRM-07-107-F, Stuart Cass
OCRM-07-109-M, Leigh Smalley & Jerry Pettus
OCRM-07-118-F, Kenneth Grayson
OCRM-07-[redacted], Charles Palmer
OCRM-07-853, Katherine Synder
OCRM-07-854, Kirkland & Wolfson.
OCRM-07-855, Joseph Etton
OCRM-07-856, Jonathan Verity

Dear Mr. Joyner:

The South Carolina Department of Natural Resources has received the above referenced public notices of permit applications to conduct various activities that are subject to the jurisdiction of your agency. Due to staffing limitations and associated workload priorities, our department has elected to not conduct an investigation of the proposed projects nor provide any comments on the proposed activities.

Sincerely,

Ed Duncan

Robert E. Duncan
Environmental Programs Director

LAW OFFICES OF
C. C. HARNESS, III, P.C.
ATTORNEYS AT LAW
[redacted]
MT. PLEASANT, SOUTH CAROLINA [redacted]
TELEPHONE (843) 856-2627
FACSIMILE (843) 856-2864

C.C. Harness, III.

Jefferson D. Griffith, III
(Of Counsel)
*also admitted in N.C.

May 21, 2007

Bill Eiser
SCDHEC/OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

RE: P/N # OCRM-07-128-F - Charles R. Palmer
[redacted] Charleston, SC
(TMS# 421-14-00-024)

Dear Mr. Eiser:

This letter is in response to the public notice for the above described dock permit. I represent the adjacent property owners to the west of the project, Russell and Laura Schiable. This is the third dock application representing another effort to permit a dock on Wappoo Creek where the lot lines converge making entitlement to a dock permit questionable. This time, however, the extended property lines have been expanded inconsistently with the highland property line projections. I do not understand this creative expansion and my clients oppose this permit application. Additionally, the permit application is problematic in that:

(1) The proposed dock is moved unnecessarily from the middle of the proposed corridor to a point twenty (20) feet off the westward extended line;

(2) By extending the Schiable property line properly, there remains sufficient area to place the dock near the Maulls;

(3) The proposed location ends up directly in front of the Schiable home; and

(4) The last permit application used a different dock corridor with lines overlapping. Why the change?

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Until these questions are answered, the agency should refuse to consider the application. There appears to be no legitimate reason to issue the permit based on common principles used by the agency to consider dock permits. I ask for a meeting to discuss our concerns.

Sincerely,

C.C. Harness III

Lucia H. Daniel
[redacted]
Charleston, SC [redacted]

April 23, 2007

The office of OCRM
1362 McMillan Avenue
Suite 400
Charleston, SC 29405

Dear Sir:

I wish to object to the approval of handrails on the dock application at 29 Broughton Road in The Crescent. A walkway over the marsh with handrails ruins the view of all of the property owners within sight of it. I realize it is necessary to have handrails over the water but not over the marsh. If your permitting practice continues, all we will be looking at is wooden handrails. I invite you to come to my backyard to understand what I am saying.

Lucia H. Daniel

Lucia H. Daniel

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[redacted]

Charleston, SC [redacted]

To Whom It May Concern:

We are responding to requests for dock permits for [redacted]. The Crescent). We are not in favor of allowing handrails on the walkways across the marsh.

We are not allowed this option when our dock was built at [redacted]; and now we appreciate the fact that the marsh view was not compromised.

Due to handrails being built on the dock at [redacted] are able to see how it detracts from the beauty of the marsh along this small stretch of the JCD. Please consider this request; and if need be, come take a look for yourself to see the impact environmentally.

Thank you -

Jackie Thompson

Joseph A. Thompson

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MAY 1 - 2007

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

ADMINISTRATIVE SUMMARY OF REVIEW

Commenting Agencies	Adjoining Property Owners	Agent or Contact
SCDNR: Woody	Schable	Dockmasters Construction, LLC
SPA:	Maull	491 Main Road Johns Island, SC
SCDAH:		Business Ph (843) 559-7010 29455
SCDAA:		Fax Number (843) 559-7096
Others:		

*NOTE: See list of Interested Persons on Reverse
APO's Notified? Please Initial & Date: 5-11-07 (CS)
Local Government Notified? Please Initial & Date: 5-11-07 (CS)

APPLICATION REQUIREMENTS

Please Circle When Complete YES

	Date Received	Letters to Applicant
Administrative Fee received	5-8-07	1.
Aff. Of Ownership received	5-2-07	2.
Certified Deed, plat or lease	5-2-07	3.
Date Published	X	4.
Which Paper		5.
County/State News ad recd	5-2-07	6.
Date Published	4-23-07	7.
Which Paper	P&C	8.

LETTER OF OBJECTIONS SUMMARY

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

[redacted]

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

[redacted]

TECHNICAL SUMMARY OF REVIEW

P14

TECHNICAL SUMMARY OF REVIEW

Permit Name: Charles Palmer

Decision:

Permit:	
Permit with Conditions:	X
Deny:	

I. Background Information: Database ID# 58688

Permit Number OCRM-07-128-F

P/N Date 5/11/07 Date Received 5/2/07

Permit Type: Minor dock Other Agency Permits

County: Charleston

Location Description: [redacted], Charleston

II. Project Description and Stated Purpose:

Description: The work consists of constructing a dock. Specifically, the applicant seeks to construct a 4' x 529' walkway with handrails leading to a 20' x 20' covered pierhead with handrails and benches. Channelward of the pierhead, a 3' x 20' ramp will access a 10' x 20' floating dock. Ebbside, a 12.5' x 12.5', four-pile boatlift is proposed.

Purpose: The work as described is for the applicant's private, recreational use.

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

Federal or other State Agencies: SCDNR – no objection
SC State Ports Authority - no objection

Local Agencies:

Public Comment (Include all names from Public Hearing):

Adjoining Property Owners (Include all names of those who commented):
Joe Thompson, [redacted] Charleston, SC [redacted]
Lucia H. Daniel, [redacted], Charleston, SC [redacted]
Mr. Thompson and Ms. Daniel object to the handrails on the dock because it will block their view. Mr. Thompson also wrote that he wasn't allowed to have handrails when his dock was permitted.
Russell and Laura Schiable, [redacted], Charleston, SC [redacted]
The Schiables oppose the dock because the say there is inconsistency in the extended property lines, the dock is too close to their property line, the proposed location ends up directly in front of their house.

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IV. Environmental Assessment:

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

Spartina Alterniflora .

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

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

2. Existing system conditions (i.e. shellfish closures, 303d, and shellfish lease name and #): N/A

3. Name and width of waterbody: Wappoo Creek – 520 feet wide

4. Any small tributary issue, width, change in grade: N/A

5. List total square footage requested and allowed: 600 ft.^{2} requested (including 12.5' x 12.5' boatlift) – 600 ft.^{2} allowed

6. Any geographic circumstances to consider or boat storage sq. ft considerations: N/A

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

8. If roof requested, any roofs in the area: yes

9. Property width and width of spacing at edge of creek/river: 40 feet at edge of property more at edge of creek

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

V. Policy Assessment:

A. Regulatory History:

1) Previous OCRM authorizations (Critical Area Permits, land disturbance, Federal cert.): Previously applied for under Andrea Woodfield, OCRM-06-354-F .

2) Previous Enforcements (is project in compliance w/all previous permits, etc.): N/A

3) Dock Master Plan and was it required to be recorded: N/A

4) Shellfish lease area number: N/A

5) Marsh ownership claim: N/A

B. Applicable Regulations and Policies (list those that apply only):

1) CZMA: 4839-150

2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards):
R30-12(A)1-2.
R30-11(B)(C)

3) CZ Policies (Management Program Document): III-37,38

☐ YES ☒ NO

C. Does the project contravene any coastal zone regulations?

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

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

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

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

VII. Field assessment by: Amanda Flake 6/6/07
(Name) (Date)

VIII: Reviewed By:

1. Project Manager: [signature] 7/27/07
(Signature) (Date)

IX. Notes:

The foremost and most relevant regulations used to make a decision relative to the request and concerns by neighbors are:

30-12(A)(1)(e) All applications for docks and piers should accurately illustrate the alignment of property boundaries with adjacent owners and show the distance of the proposed dock from such extended property boundaries. For the purpose of this section, the extension of these boundaries will be an extension of the high ground property line. The Department may consider an alternative alignment if site specific characteristics warrant or in the case of dock master plans, when appropriate.

30-12(A)(1)(o) This section applies to lots subdivided or resubdivided after May 23, 1993. Additionally, lots subdivided or resubdivided after June 27, 1997 must meet the minimum, local requirements to construct a habitable structure in order to qualify for a dock.

(i) To be eligible for a private, community or commercial dock, a lot must have:

(a) 75 feet of frontage at the marsh edge, and

(b) 75 feet between its extended property lines at the location in the waterbody of the proposed dock.

30-12(A)(1)(p) No docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.

30-12(A)(2)(v) On creeks larger than 150 feet, as measured from marsh vegetation on each side, total allowable dock square footage shall be restricted to 600 square feet unless special geographic circumstances and land uses warrant a larger structure;

The majority of the comments received for this application as well as the previous application, Andrea Woodfield (P/N# 2006-3558-2IM-P), were specific to the placement of the dock relative to the extended property lines or the lack thereof. The subdivision of the property predates the 1977 Coastal Zone Management Act by at least 30 years which grandfathers the property with respect to the second regulation listed above, 30-12(A)(1)(o). Therefore, the lost does not need to possess a minimum of 75' of frontage along the critical area line nor at the edge of the water. Since this distance is not required, staff used the more relevant measurement provided which was the available spacing between the Schlable and Maull docks. As part of that, the Department did require a minimum of 20' from the extended property lines, however, these were chosen by the applicant's Agent/surveyor respectively based on the Maull plat and other information. This is not really important for Department purposes, though, because there little material harm by placing the dock in the proposed location, req. 30-12(A)(1)(p). Department Staff has historically said that "material harm" occurs when a proposed dock would block access, navigation, or reasonable enjoyment of adjacent waters. The proposed dock would likely affect Maulls' ability to navigate a large boat to and from a "u" shaped slip on his dock and the Department should address this issue through a conditional permit. Therefore, the dock configuration will be condensed without any movement towards Schlable. This act should present an agreeable solution to all parties.

X. Attachments Required:

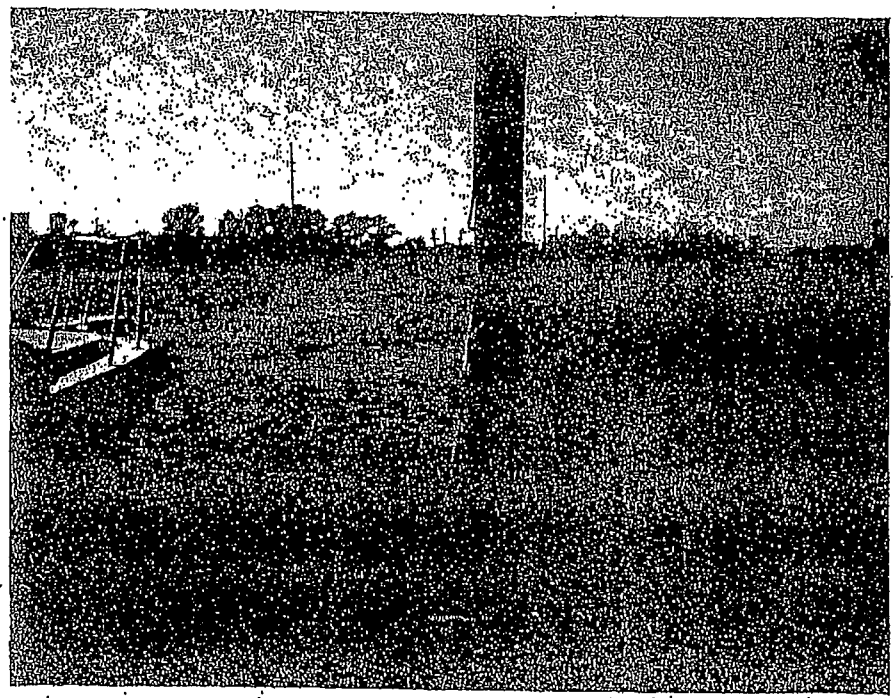
GIS Review (See Section IV.C. above)
Site Photographs

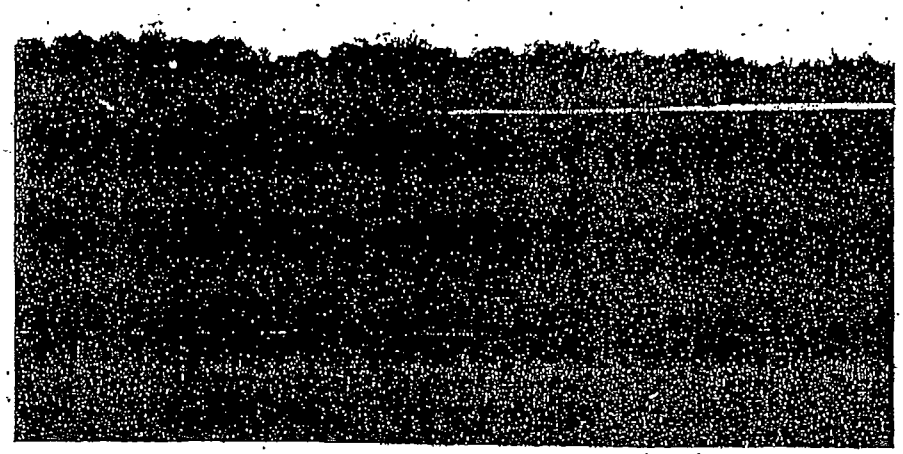
OCRM-07-128-F (Palmer)

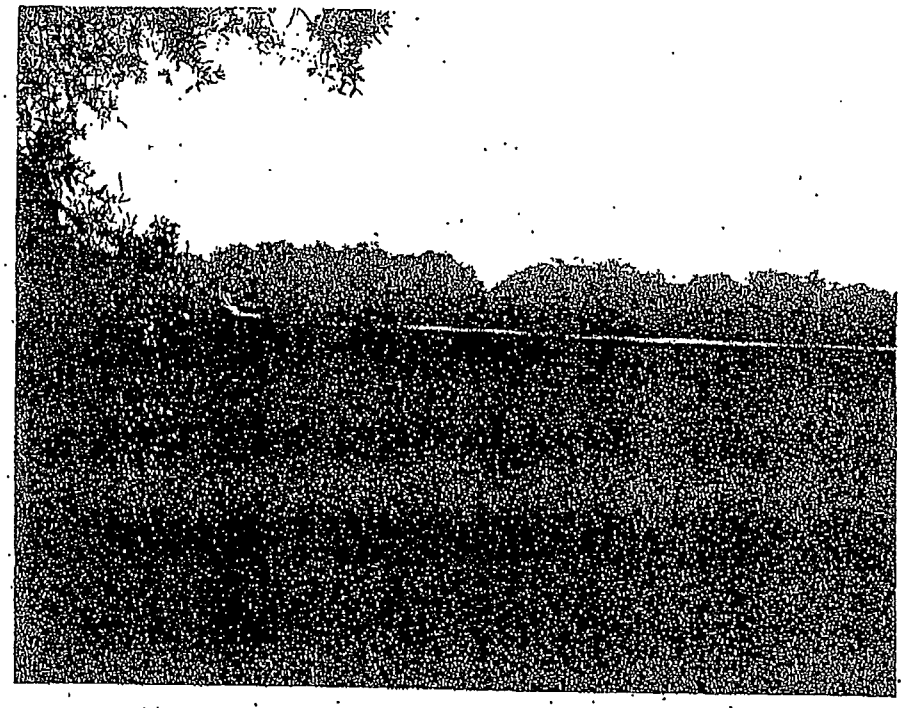
1000 0 1000 2000 Feet

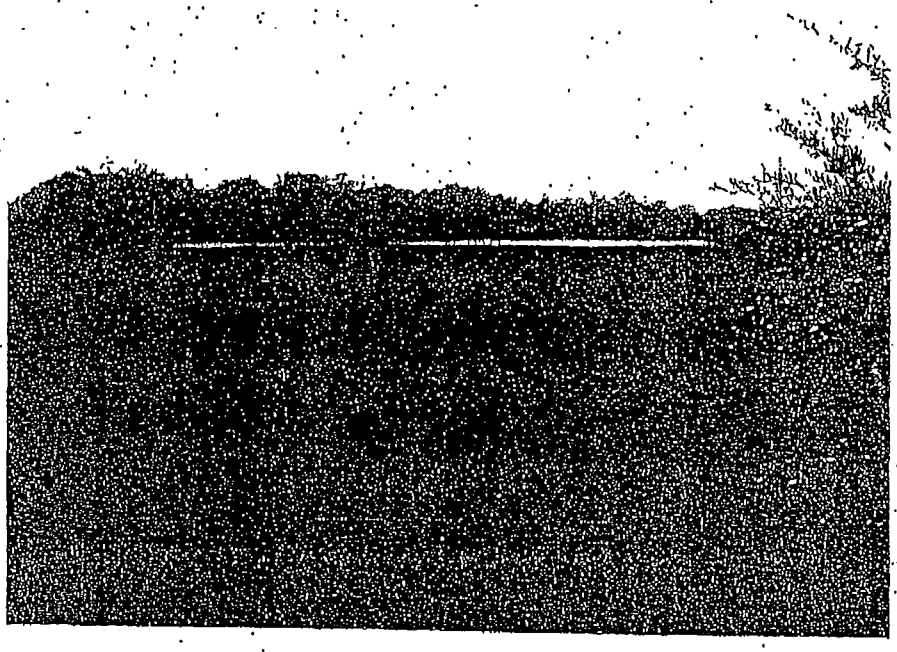
- Critical Area Permits 2005
- Critical Area Permits 2004-2005
- Critical Area Permits 2001-2003
- Critical Area Permits 1992-2000
- Critical Area Permits 1980-1991
- Maintenance and Repair
- DMP
- Nav Channel AIWW
- Shellfish Bed
- Shellfish Permit
- Enforcements
- Federally Protected
- State Protected
- Privately Protected
- Edisto Island Trust
- 303d
- Endangered Species
- Archaeological Points
- Aerial Photo Index (Use lightening bolt to locate)
- Charleston Parcels

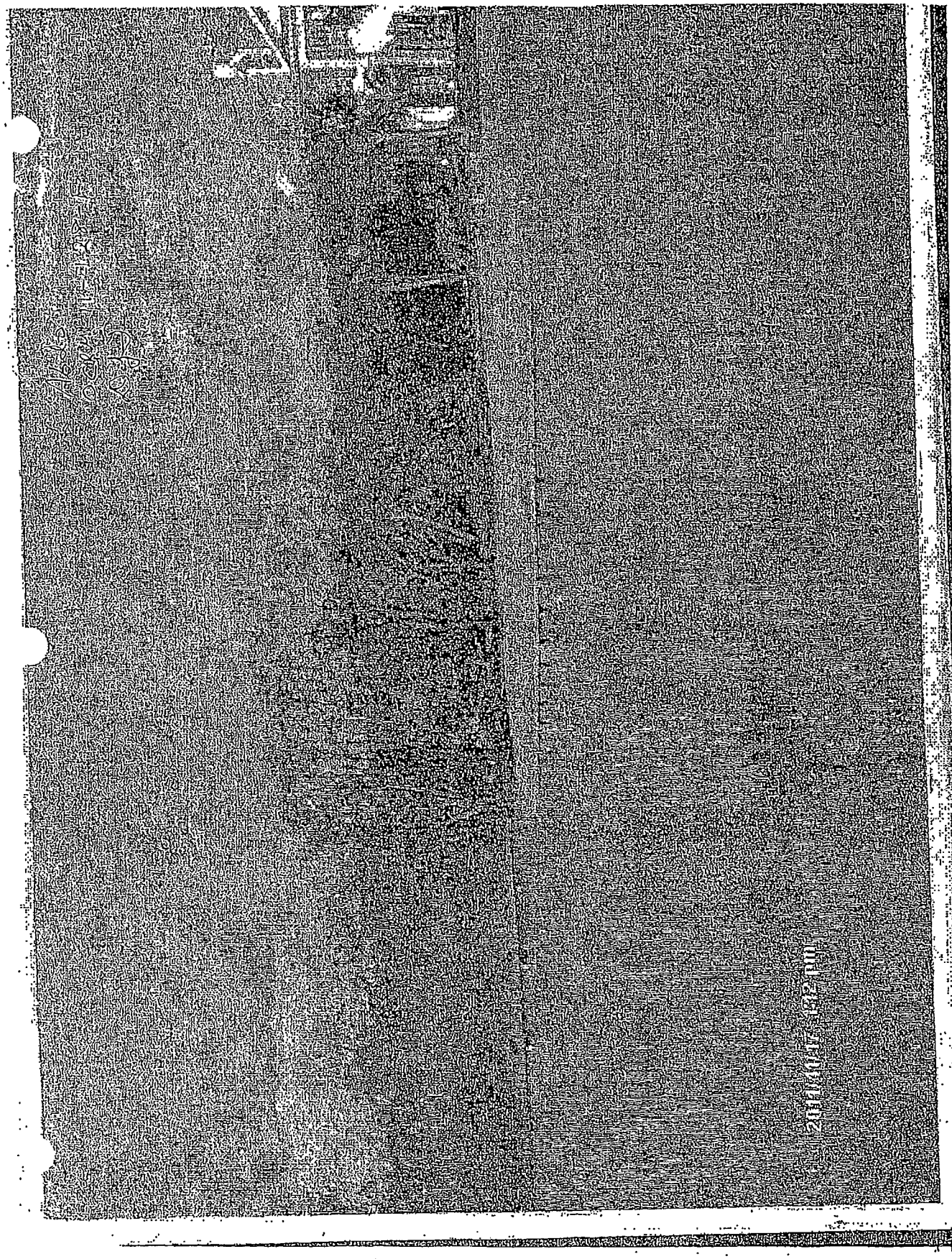
N W E S











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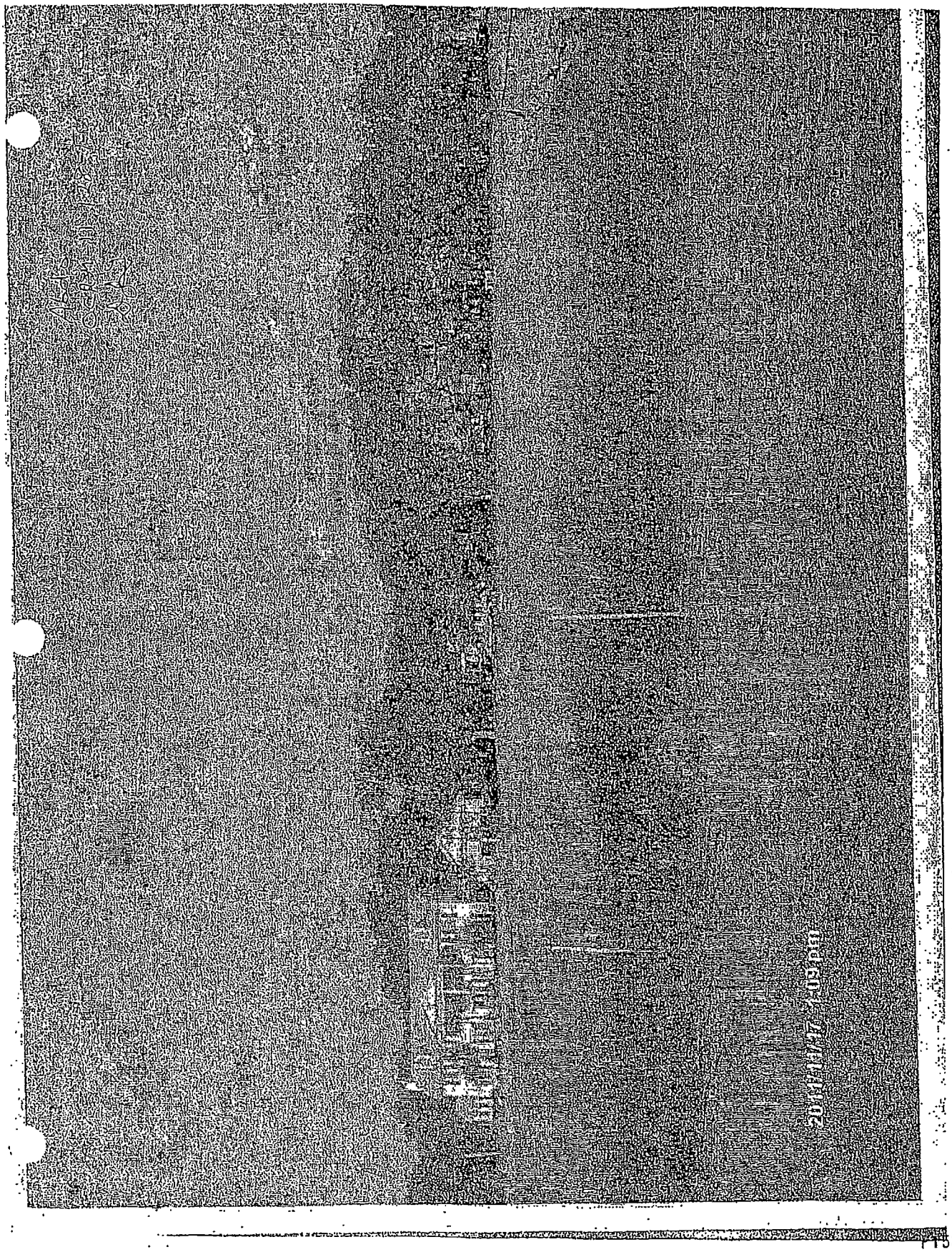
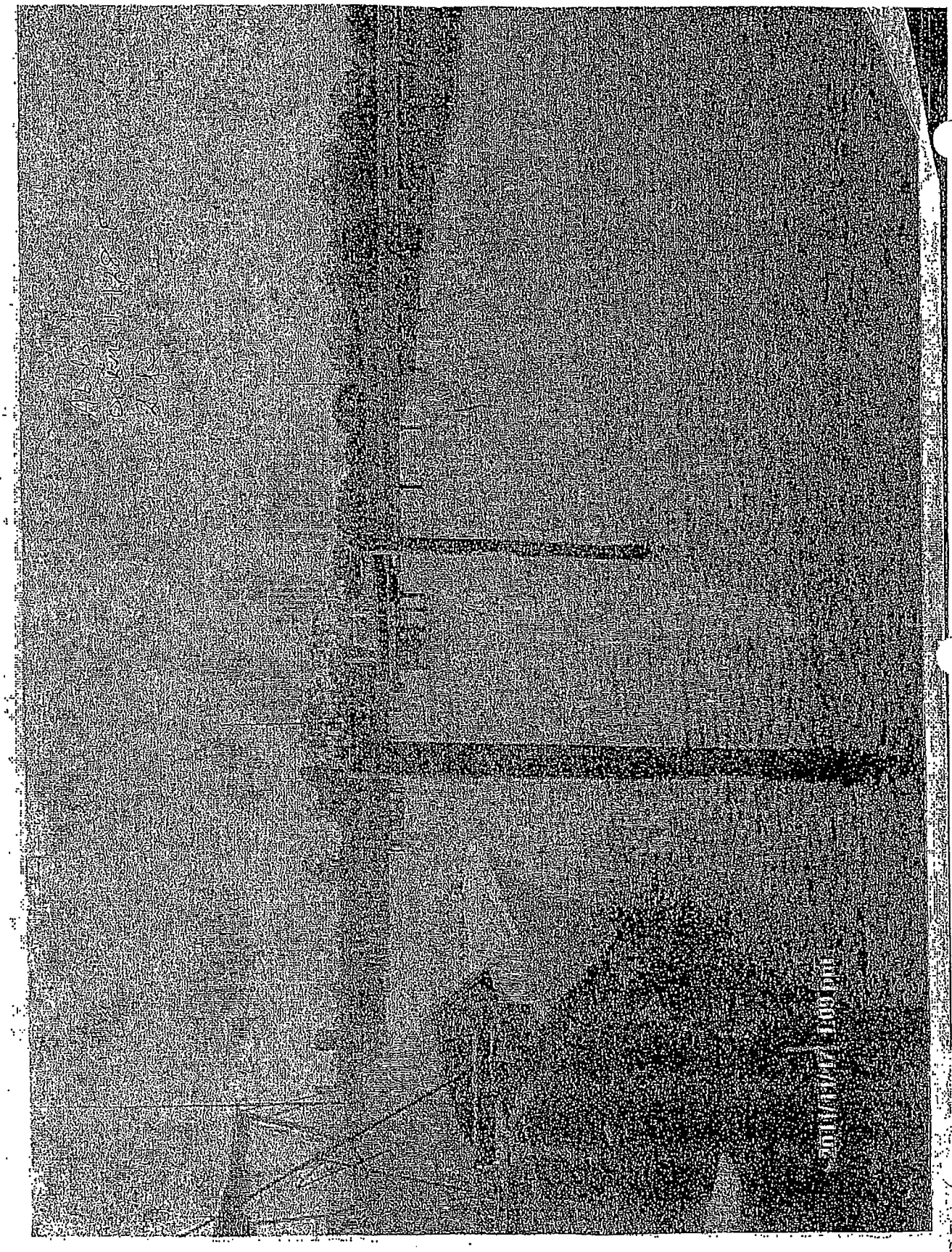




2011/11/17 1:07 pm

2011/11/07 1:06 pm

2011/11/17 1:06 pm

David Abdo
OCRM-11-128-F
Amendment
CA_Permits_11
CA_Permits_08-10
CA_Permits_01-07
CA_Permits_92-00
CA_Permits_80-91
CA Maint Repair
OCRM_Marinas
Claimed Marsh
Dock Master Plans
PORTS
Streets
Parcels
Coastal Zone Counties
charl06sw.jp2
RGB
Red: Band_1
Green: Band_2
Blue: Band_3
0 0.0125 0.025 0.05
Miles

Exhibit B

BOARD:
Allen Amsler
Chairman
Mark S. Lutz
Vice Chairman
Steven G. Kisner
Secretary

D H E C

PROMOTE PROTECT PROSPER

Docket No. 11-RFR-56

BOARD:
R. Kenyon Wells
L. Clarence Batts, Jr.
Ann B. Kirol, DDS
John O. Hutto, Sr., MD

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

S.C. Board of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201
Telephone: (803) 898-3309 Fax: (803) 898-3393

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: *James R. Maull, Requestor*

Russell and Laura Schaible, Requestors

David Abdo, Requestor/Applicant

Bradley Churdar and Davis Whitfield-Cargile, Attorneys for Department

FROM: *Lisa Lucas Longshore, Clerk*

RE: *Docket No. 11-RFR-56 – Decision dated October 16, 2011, to amend Permit No. OCRM-07-128-F for the construction of a walkway with handrails leading to a covered pierhead with handrails and benches and a ramp leading to a floating dock and the addition of four-pile boatlift for the applicant's personal recreational use.*

DATE: *November 1, 2011*

Requests for Final Review of the above-referenced matter were filed on October 17, 2011 by Mr. Maull and on October 21, 2011 by Mr. and Mrs. Schaible and Mr. Abdo. Copies of the requests are attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference in this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference in this matter.

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

OGC # 21309

I:\Share\LEGAL\ALL\MATTERS\21309 RFR OCRM David Abdo\RFR acknowledgement.doc

BOARD:
Allen Amsler
Chairman
Mark S. Lutz
Vice Chairman
Steven G. Kisner
Secretary

D H E C

PROMOTE PROTECT PROSPER

BOARD:
R. Kenyon Wells
L. Clarence Batts, Jr.
Ann B. Kirol, DD
John O. Hutto, Sr., M.

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

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

CERTIFICATE OF SERVICE

I, Lisa Lucas Longshore, Clerk, S.C. Board of Health and Environmental Control, with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 1st day of November 2011 served the foregoing ***Acknowledgement of Request For Final Review and Notice of Procedures – Docket No. 11-RFR-56*** upon all parties and counsel of record by placing a copy of same in an envelope and depositing it in the U.S. Mail, as indicated below, with sufficient postage paid, at the address indicated below:

U.S. Mail
James R. Maull
[redacted]
Charleston, SC [redacted]

Russell and Laura Schaible
[redacted]
Charleston, SC [redacted]

David Abdo
[redacted]
Charleston, SC [redacted]

Via Interagency Mail Delivery
Bradley Churdar, Esq.
David Whitfield-Cargile, Esq.
SCDHEC – Office of General Counsel
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

Lisa Lucas Longshore
Lisa Lucas Longshore, Clerk

November 1, 2011
Columbia, South Carolina

D H E C

PROMOTE PROTECT PROSPER

G. Earl Hunter, Commissioner

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

October 06, 2011

David Abdo
[redacted]
Charleston, S.C. [redacted]

SEE SPECIAL CONDITIONS(S)

Re: P/N# OCRM-07-128-F

Dear Mr. Abdo:

The above referenced permit has been amended to authorize the work as proposed and shown on the attached plans consisting of constructing a dock. Specifically, the applicant seeks to construct a 4' x 560' walkway with handrails leading to a 15' x 20' covered pierhead with handrails and benches. Floodside of the pierhead, a 3' x 20' ramp will lead to an 8' x 34.5' floating dock. Ebbside a 12' x 14', four-pile boatlift is proposed. The work as described is for the applicant's private, recreational use.

This amendment is made a part of your permit and is subject to the full terms of the permit as issued **provided the structure is located 30.5' from the extended property line on the eastern side of the property.**

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

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

Please sign the attached copy of this letter indicating your acceptance of these terms and return the signed copy to this office. If this amendment letter is not signed and returned within thirty (30) days of issuance, *OR* appealed as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit amendment. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit amendment.

Sincerely,

D. J. Thompson

David J. Thompson
Wetland Section Project Manager

Permittee

Enclosure

Date

cc: Mr. Blair Williams, Section Manager
USACOE
Mr. Steve Johnson, George A.Z. Johnson, Jr., Inc.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office · 1362 McMillan Ave, Suite 400 · Charleston, SC 29405-2047
Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

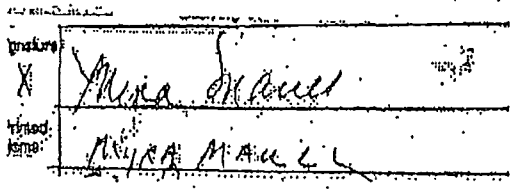
UNITED STATES POSTAL SERVICE

Date: 10/12/2011

OCRM DHEC:

The following is in response to your 10/12/2011 request for delivery information on your Certified Mail(TM) item number 7108 2133 3936 1128 3263. The delivery record shows that this item was delivered on 10/08/2011 at 05:50 PM in CHARLESTON, SC 29407. The scanned image of the recipient information is provided below.

Signature of Recipient:

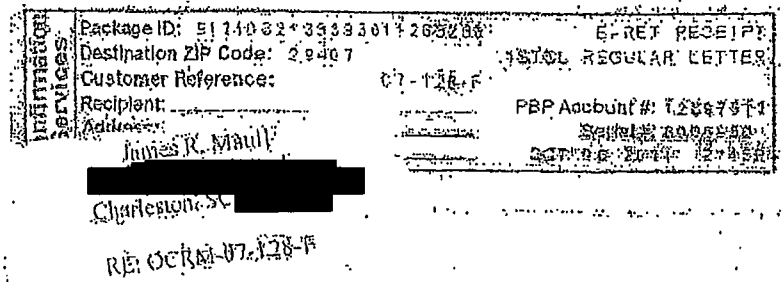


Address of Recipient:

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service



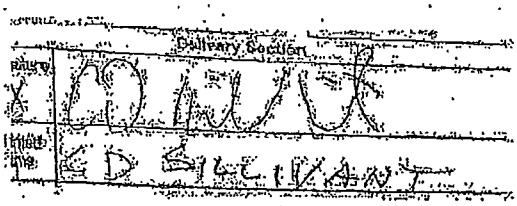
UNITED STATES POSTAL SERVICE

Date: 10/12/2011

OCRM DHEC:

The following is in response to your 10/12/2011 request for delivery information on your Certified Mail(TM) item number 7108 2133 3936 1128 3249. The delivery record shows that this item was delivered on 10/08/2011 at 05:48 PM in CHARLESTON, SC 29407. The scanned image of the recipient information is provided below.

Signature of Recipient:

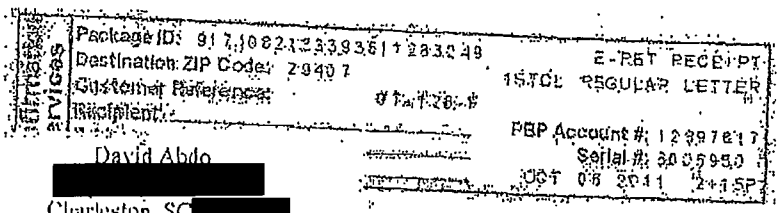


Address of Recipient: [redacted]

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service



David Abdo
[redacted]
Charleston, SC [redacted]

RE: OCRM-07-128-F

P33

UNITED STATES
POSTAL SERVICE.

Date: 10/12/2011

OCRM DHEC:

The following is in response to your 10/12/2011 request for delivery information on your Certified Mail(TM) item number 7108 2133 3936 1128 3256. The delivery record shows that this item was delivered on 10/11/2011 at 03:47 PM in RAVENEL, SC 29470. The scanned image of the recipient information is provided below.

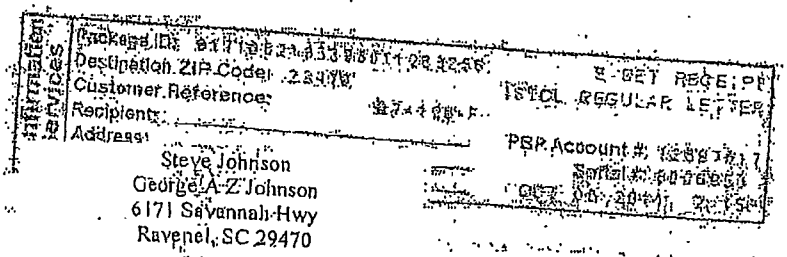
Signature of Recipient:

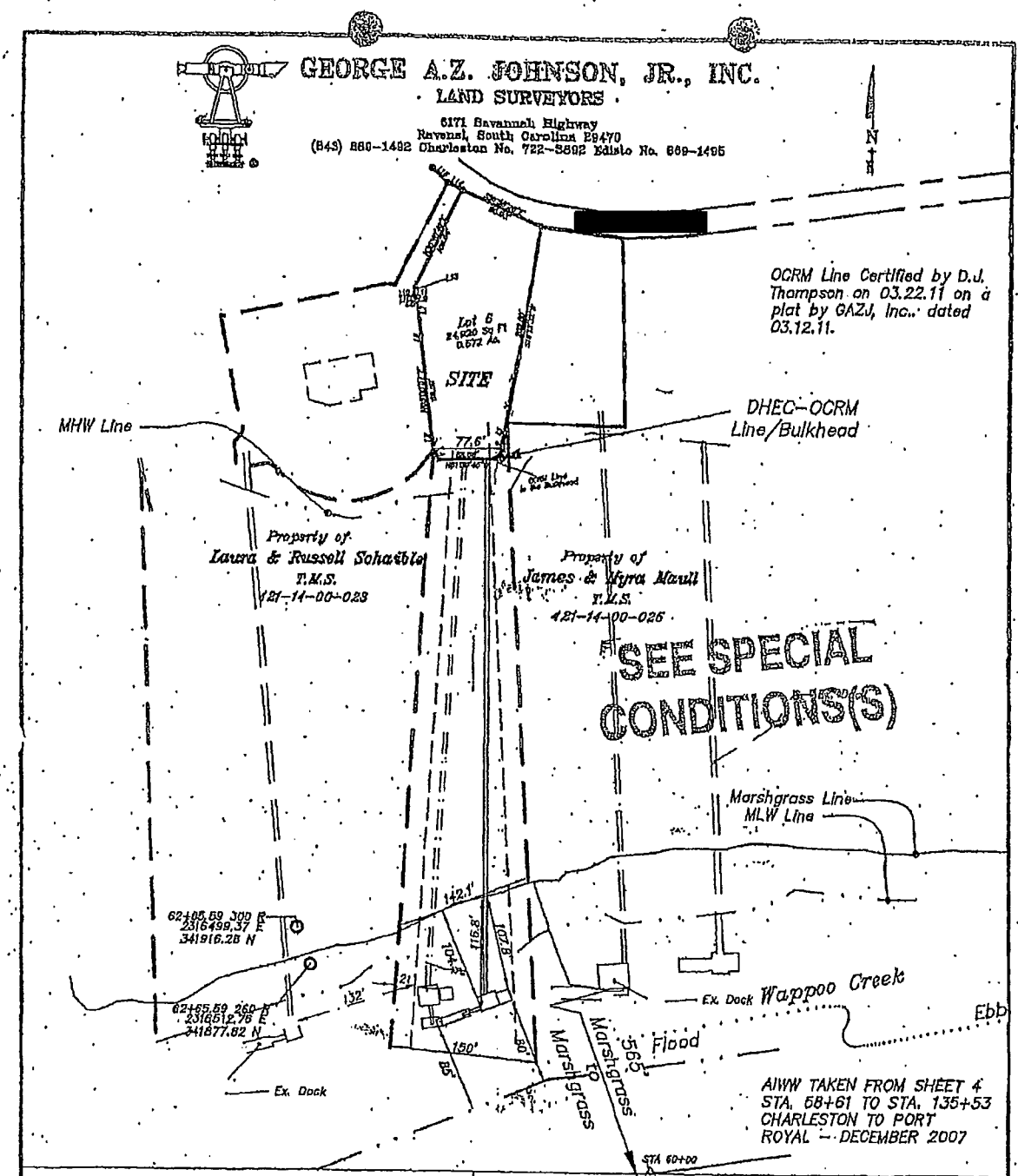
Address of Recipient: [redacted]

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service





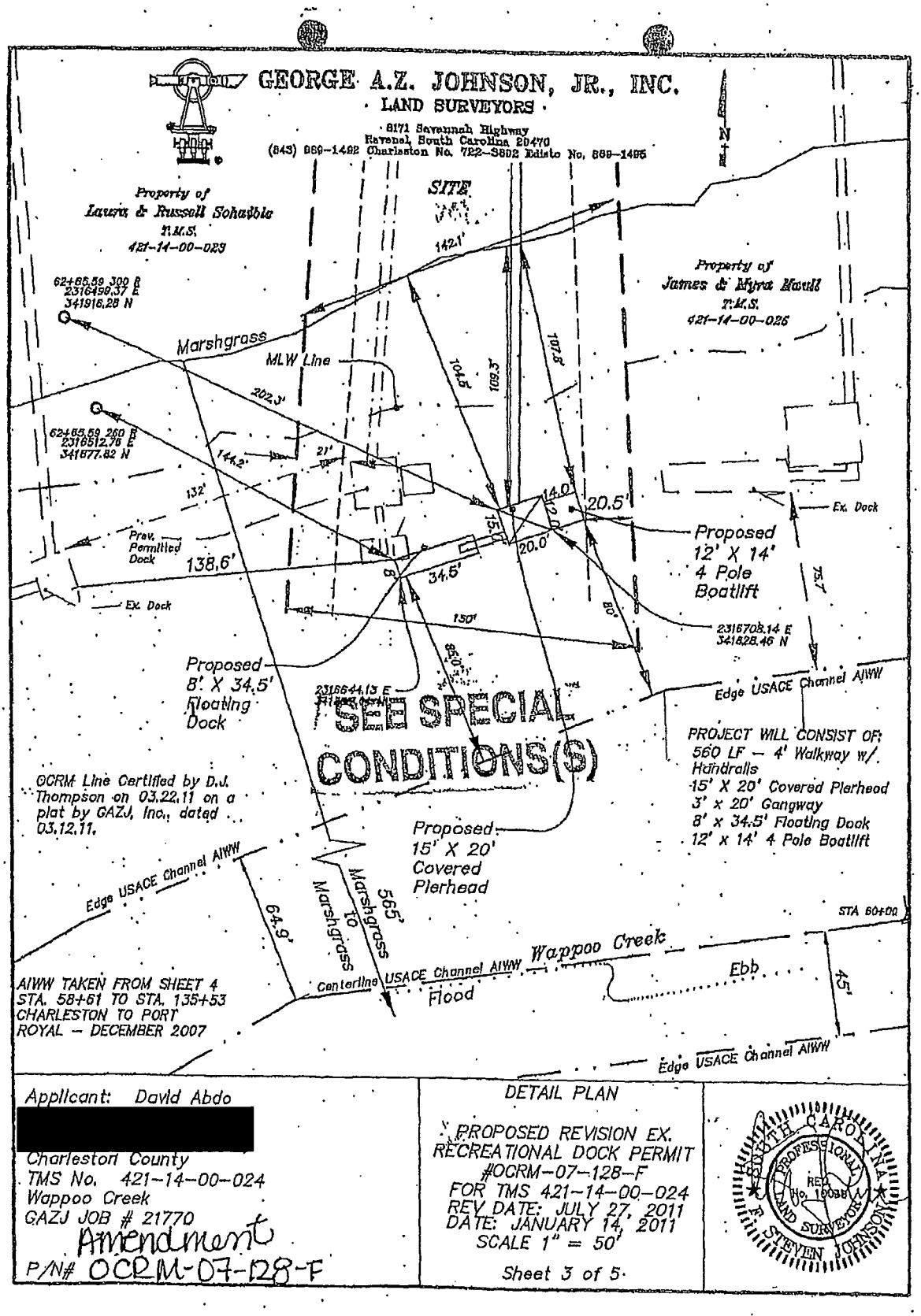
Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770
Amendment
P/N# OCRM-07-128-F

OVERALL PLAN

PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT
#OCRM-07-128-F
FOR TMS 421-14-00-024
REV DATE: JULY 27, 2011
DATE: JANUARY 14, 2011
SCALE 1" = 50'
Sheet 2 of 5

SOUTH CAROLINA PROFESSIONAL REG. No. 16038 LAND SURVEYOR STEVEN JOHNSON

P3



Applicant: David Abdo

[redacted]

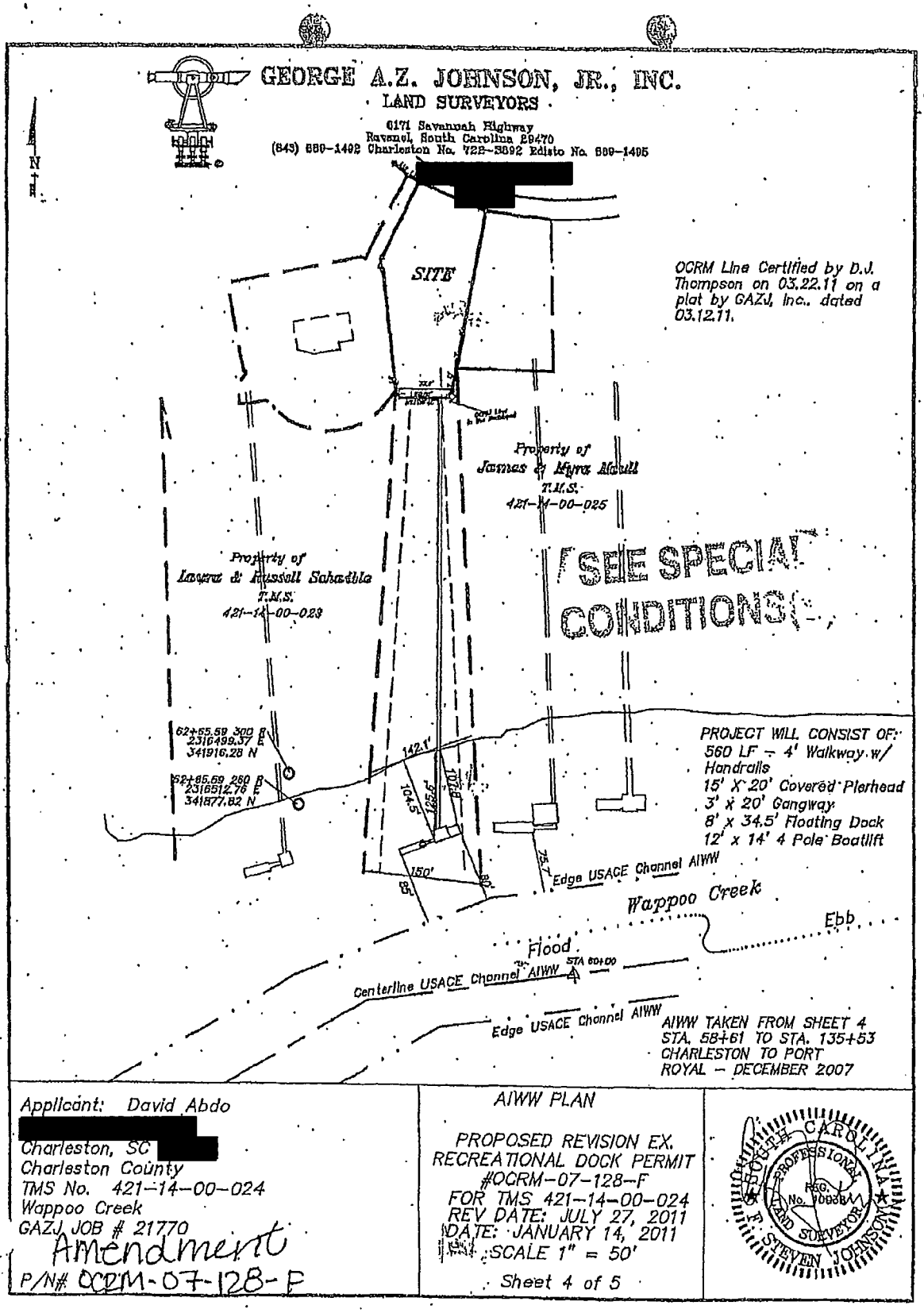
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770
Amendment
P/N# OCRM-07-128-F

DETAIL PLAN

PROPOSED REVISION EX.
RECREATIONAL DOCK PERMIT
#OCRM-07-128-F
FOR TMS 421-14-00-024
REV. DATE: JULY 27, 2011
DATE: JANUARY 14, 2011
SCALE 1" = 50'

Sheet 3 of 5

SOUTH CAROLINA
PROFESSIONAL
REG. No. 19038
LAND SURVEYOR
F. STEVEN JOHNSON



Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770
Amendment
P/N# OCRM-07-128-F

AIWW PLAN

PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT #OCRM-07-128-F FOR TMS 421-14-00-024
REV DATE: JULY 27, 2011
DATE: JANUARY 14, 2011
SCALE 1" = 50'

Sheet 4 of 5

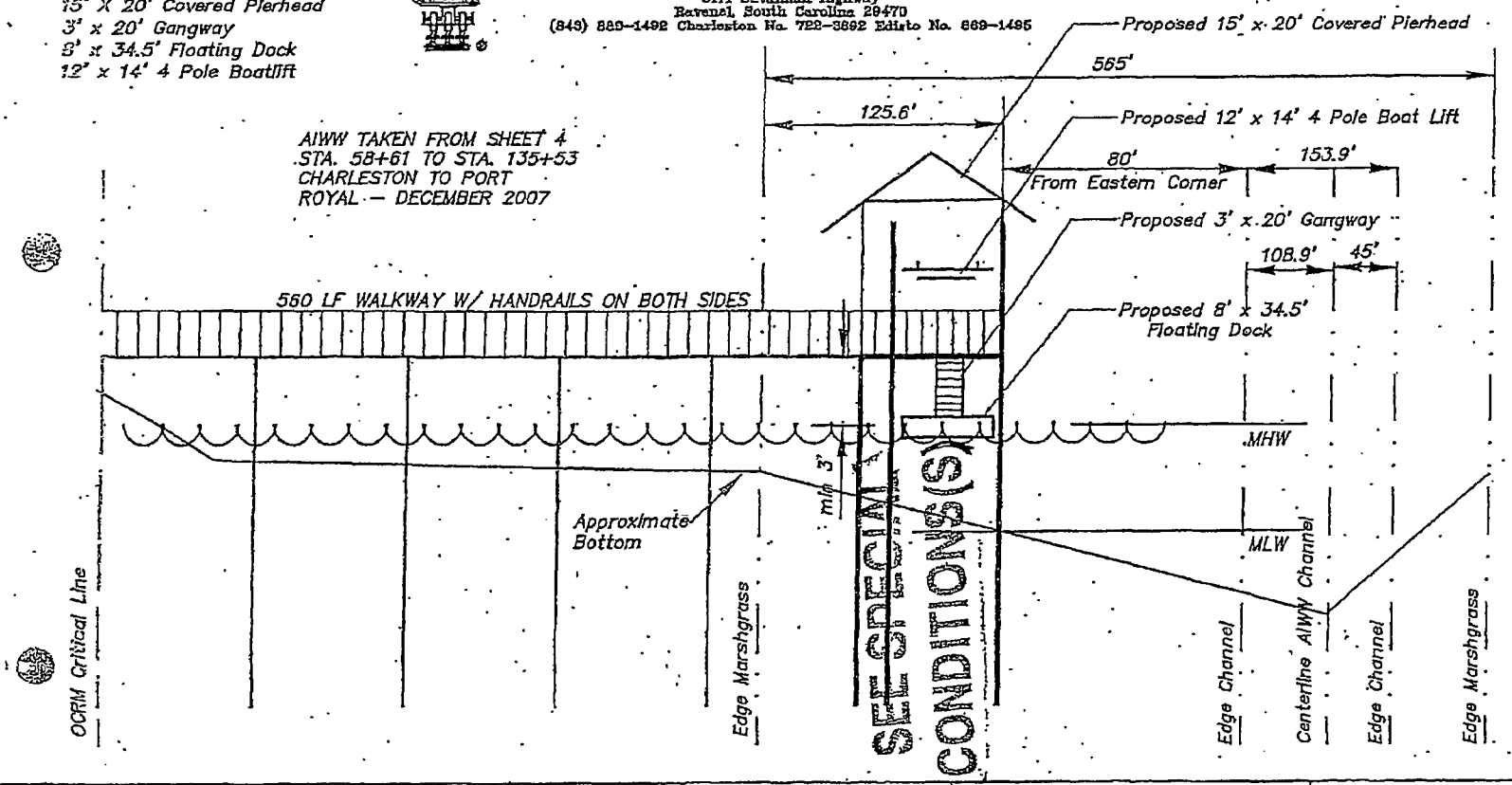
SOUTH CAROLINA PROFESSIONAL REG. No. 19038 LAND SURVEYOR STEVEN JOHNSON

P37

PROJECT WILL CONSIST OF:
560 LF ± 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift

GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS

6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3892 Edisto No. 869-1495



Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

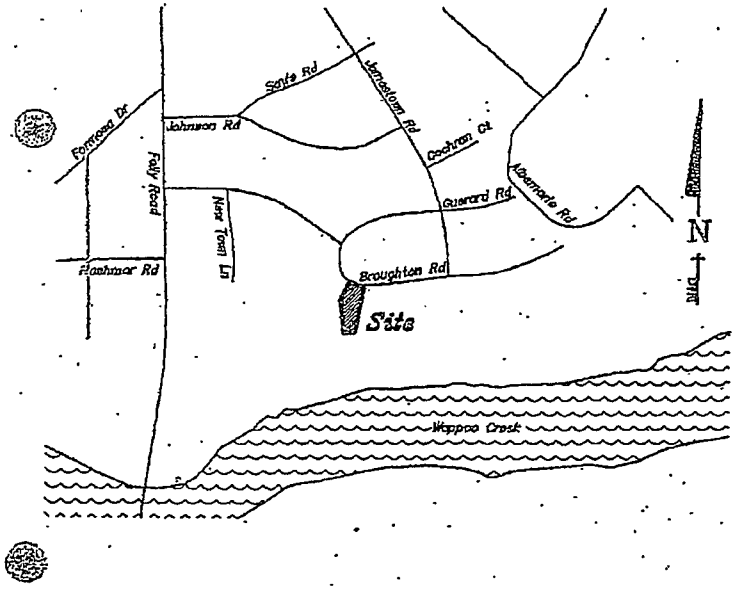
Amendment

P/N# OCRM-07-128-F

SIDE VIEW
PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT #OCRM-07-128-F FOR TMS 421-14-00-024
DATE: JANUARY 14, 2011
SCALE "NTS"
Sheet 5 of 5

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR REG. No. 16058 STEVEN JOHNSON

GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3892 Edisto No. 869-1495



1. Start out going SOUTHWEST on MCMILLAN AVE / 3RD ST toward NOISETTE BLVD. Continue to follow MCMILLAN AVE.
2. Turn LEFT onto SPRUILL AVE.
3. Turn RIGHT onto COSGROVE AVE.
4. COSGROVE AVE becomes SC-7 S.
5. SC-7 S becomes SC-171 S.
6. Turn SLIGHT LEFT onto ASHLEY RIVER RD / SC-61. Continue to follow SC-61. 1.6 mi
7. Turn RIGHT onto WESLEY DR / SC-171. Continue to follow SC-171. 0.6 mi
8. [redacted]
9. [redacted]

SEE SPECIAL CONDITIONS(S)

Location Map "NTS"

PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift

Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770 amendment
P/N# OCRM-07-128-F

LOCATION MAP:

PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT #OCRM-07-128-F FOR TMS 421-14-00-024

DATE: JANUARY 14, 2011

Sheet 1 of 5

SOUTH CAROLINA PROFESSIONAL REG. No. 10336 LAND SURVEYOR STEVEN JOHNSON

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

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

Document Review Signature Sheet

Document Type:

- X Permit
- ☐ Certification
- ☐ MOA
- ☐ Restrictive Covenant
- ☐ Conservation Easement
- ☐ Other _____

Notes: David Abdo, P/N OCRM-07-128-F

Objection letter received from James Maul (APO), asking that the dock be constructed further from his dock than requested and referencing the original permit issues resolved in 2007. I asked Mr. Abdo if he would be willing to move the dock over to accommodate Mr. Maul but he said no. His request is 20.5' from an awkwardly extended property line that Mr. Maul says will interfere with his ability to dock his large fishing boat on the inside of his float. It will not interfere with his use of the outside of the float. It appears Mr. Abdo meets regulatory requirements and I would like to issue the amendment with the possibility of an appeal.

- Discuss Extension of property lines.
- still efforts to compromise/resolve concerns between Abdo & APO
- special condition?

Project Manager D. J. Hoyle **Date** 9/16/11

Section Manager _____ **Date** 9/22/2011

Regulatory Division Director _____ **Date** _____

Legal _____ **Date** _____

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 953-0200 • Fax: (843) 953-0201 • www.scdhec.gov

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

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

PUBLIC NOTICE
AMENDMENT REQUEST

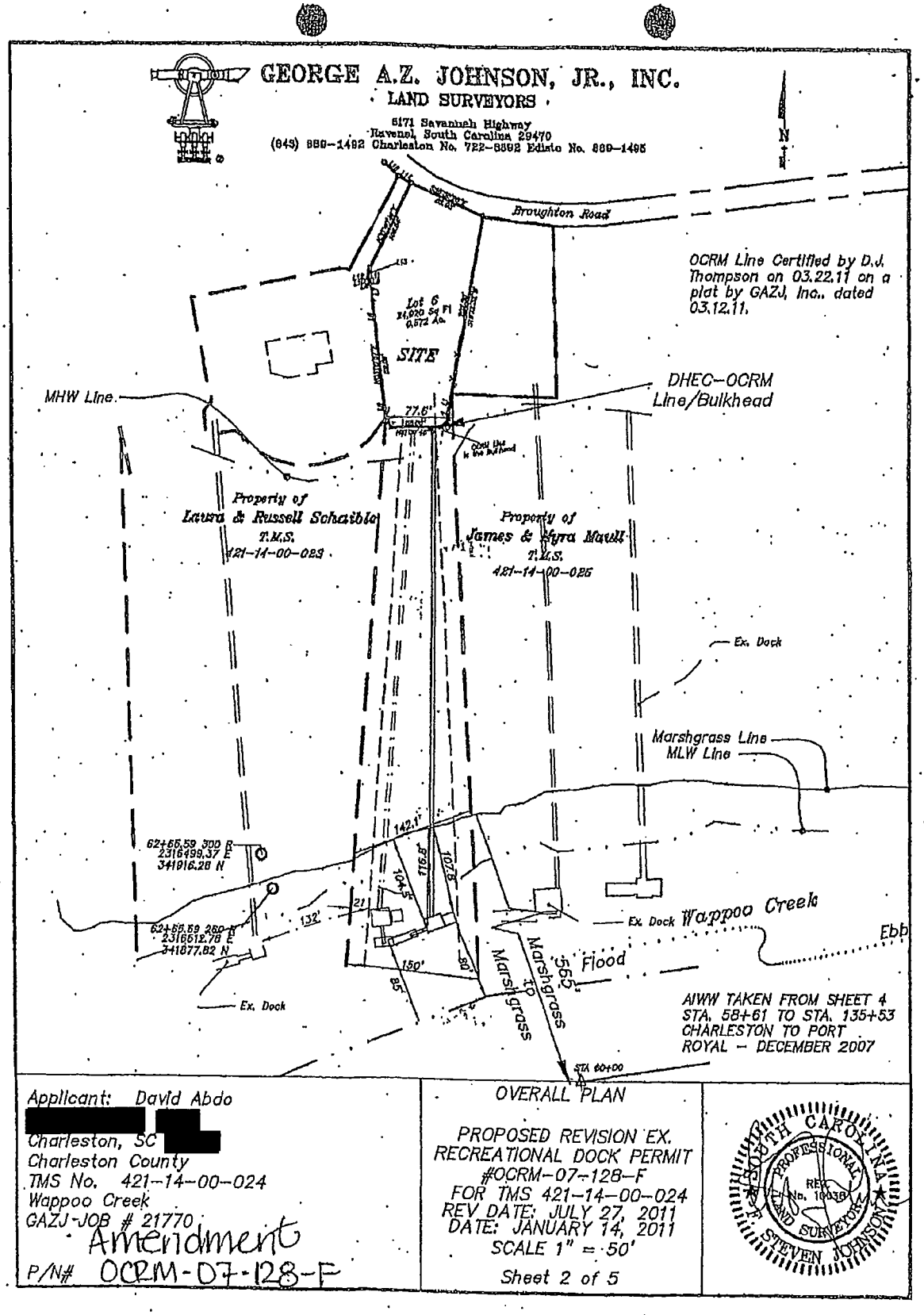
The permittee for P/N# **OCRM-07-128-F, David Abdo,** has requested an amendment to that issued permit. Specifically, the applicant seeks to reconfigure the structure to be a 4' x 560' walkway, with handrails, leading to a covered 15' x 20' fixed pierhead. Floodside of the pierhead, an 8' x 34.5' floating dock will be accessed by a 3' x 20' gangway. Ebbside of the pierhead, a 12' x14', four-pile boatlift is proposed. The proposed amendment is for modifications to a private recreational use dock on and adjacent to Wappoo Creek at [redacted], Charleston, Charleston County, South Carolina.
Please Note: The Army Corps of Engineers has approved this modification under their dock GP, 2006-10-001(M)

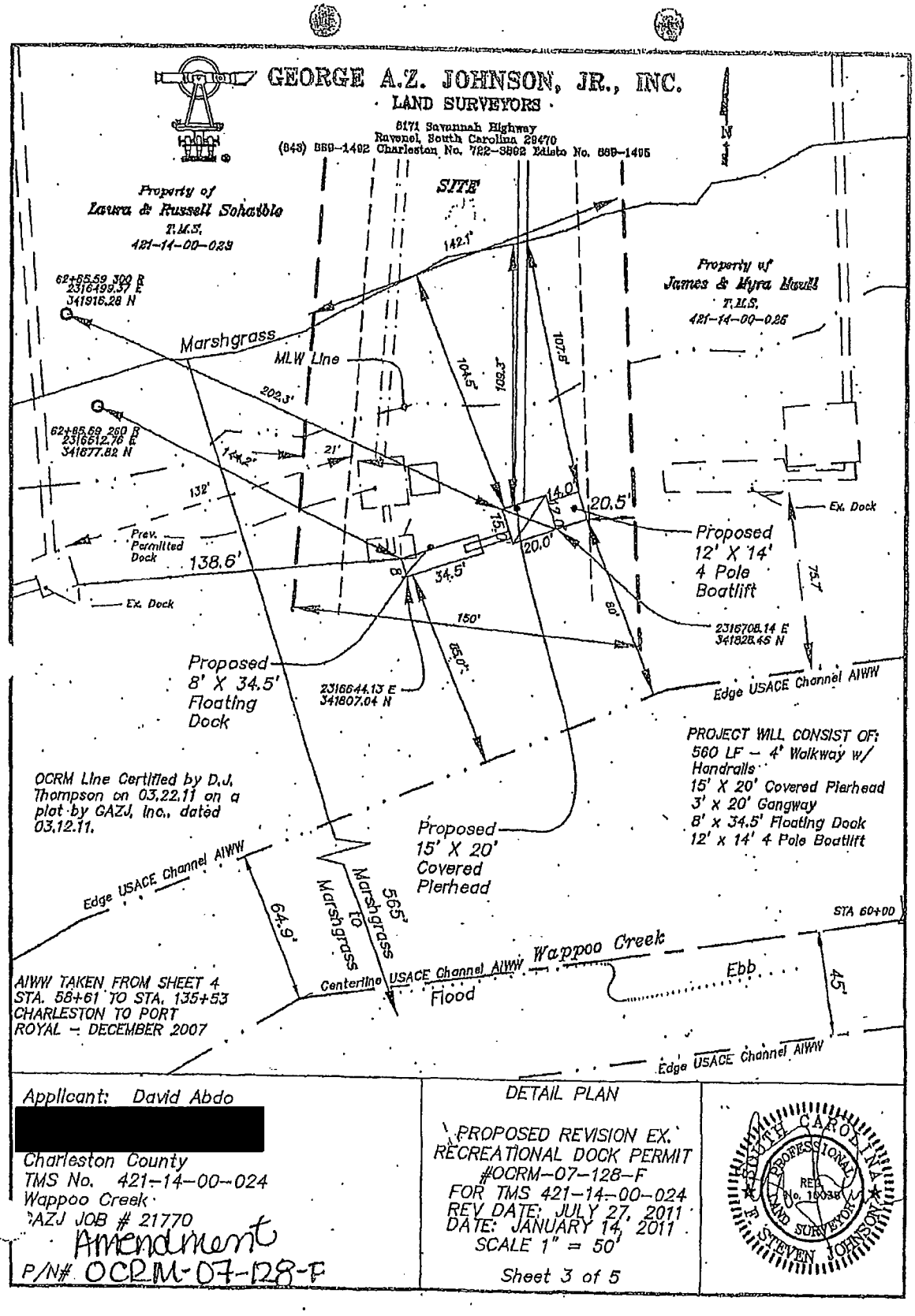
Written comments will be received on this amendment request until August 8, 2011 at the address listed below. For further information please contact the project manager, Jeff Thompson, 843-953-0219.

MT **July 22, 2011**

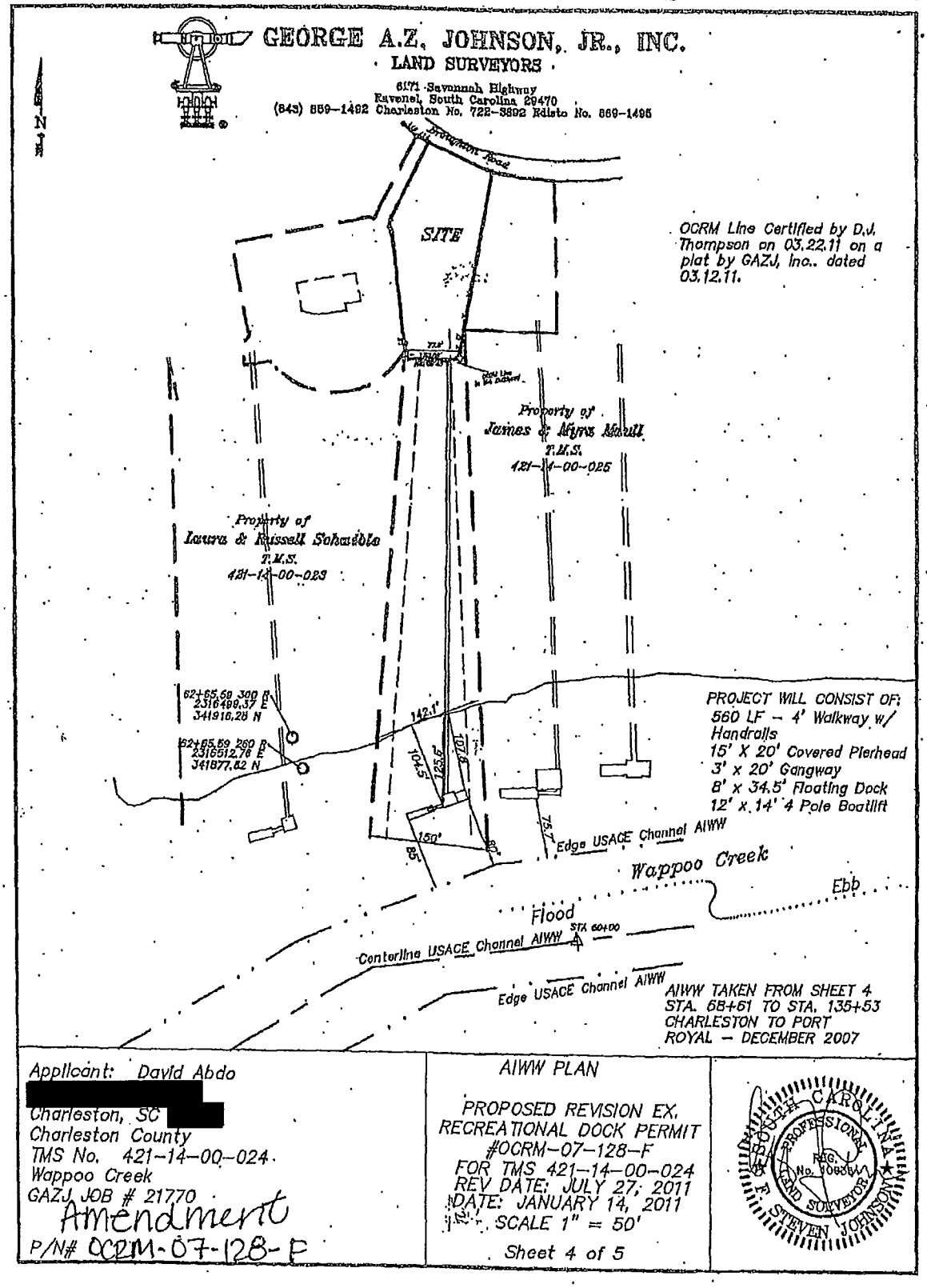
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office · 1362 McMillan Ave, Suite 400 · Charleston, SC 29405-2047
Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

P41


GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
5171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-8592 Edisto No. 869-1495
N
Broughton Road
OCRM Line Certified by D.J. Thompson on 03.22.11 on a plat by GAZJ, Inc., dated 03.12.11.
Lot 6
14,020 Sq Ft
0.572 Ac.
SITE
MHW Line
DHEC-OCRM Line/Bulkhead
77.6'
Property of
Laura & Russell Schaible
T.M.S.
421-14-00-023
Property of
James & Myra Mault
T.M.S.
421-14-00-025
Ex. Dock
Marshgrass Line
MLW Line
62+65.59 300 ft
2316499.37 E
341916.28 N
62+68.59 280 ft
2316612.78 E
341877.82 N
142.1'
116.8'
104.5'
107.2'
132'
21
150'
80'
85'
Ex. Dock
Marshgrass
Marshgrass
Wappoo Creek
Ebb
Flood
565'
Ex. Dock
AIWW TAKEN FROM SHEET 4
STA. 58+61 TO STA. 135+53
CHARLESTON TO PORT
ROYAL - DECEMBER 2007
STA 60+00
Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ-JOB # 21770
Amendment
P/N# OCRM-07-128-F
OVERALL PLAN
PROPOSED REVISION EX.
RECREATIONAL DOCK PERMIT
#OCRM-07-128-F
FOR TMS 421-14-00-024
REV DATE: JULY 27, 2011
DATE: JANUARY 14, 2011
SCALE 1" = 50'
Sheet 2 of 5
SOUTH CAROLINA
PROFESSIONAL
REG. No. 10038
LAND SURVEYOR
STEVEN JOHNSON


GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
8171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1402 Charleston No. 722-3862 Edisto No. 869-1495
SITE
Property of
Laura & Russell Sohaible
T.M.S.
421-14-00-023
Property of
James & Myra Maull
T.M.S.
421-14-00-026
62+85.59 300 E
2316499.37 E
341916.28 N
62+85.69 280 E
2316612.76 E
341677.82 N
Marshgrass
MLW Line
202.3'
142.1'
104.5'
109.3'
107.8'
144.2'
21'
132'
138.6'
Prev. Permitted Dock
Ex. Dock
14.0'
12.0'
20.5'
15.0'
20.0'
8'
34.5'
150'
80'
75.7'
Ex. Dock
Proposed
12' X 14'
4 Pole
Boatlift
2316708.14 E
341828.45 N
Proposed
8' X 34.5'
Floating
Dock
2316644.13 E
341807.04 N
85.0'
Edge USACE Channel AIWW
PROJECT WILL CONSIST OF:
560 LF - 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift
OCRM Line Certified by D.J. Thompson on 03.22.11 on a plot by GAZJ, Inc., dated 03.12.11.
Proposed
15' X 20'
Covered
Pierhead
Edge USACE Channel AIWW
64.9'
Marshgrass to Marshgrass
565'
Centerline USACE Channel AIWW
Wappoo Creek
Ebb
Flood
STA 60+00
45'
AIWW TAKEN FROM SHEET 4
STA. 58+61 TO STA. 135+53
CHARLESTON TO PORT
ROYAL - DECEMBER 2007
Edge USACE Channel AIWW
Applicant: David Abdo
[redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770
Amendment
P/N# OCRM-07-128-F
DETAIL PLAN
PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT
#OCRM-07-128-F
FOR TMS 421-14-00-024
REV DATE: JULY 27, 2011
DATE: JANUARY 14, 2011
SCALE 1" = 50'
Sheet 3 of 5
SOUTH CAROLINA
PROFESSIONAL
REG. No. 15038
LAND SURVEYOR
STEVEN JOHNSON

P43

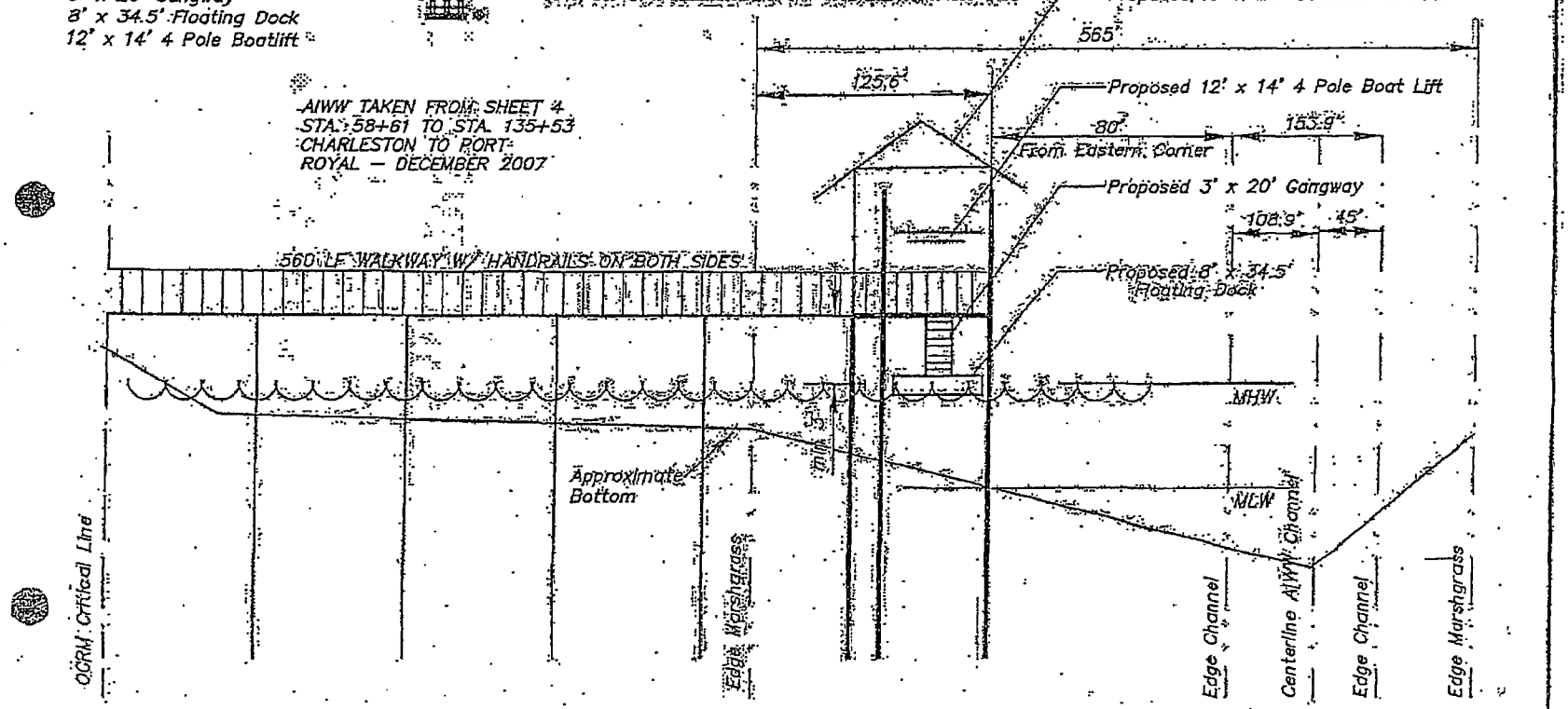

GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 559-1492 Charleston No. 722-3892 Edisto No. 869-1495
N
Johnson Road
SITE
OCRM Line Certified by D.J. Thompson on 03.22.11 on a plat by GAZJ, Inc., dated 03.12.11.
Property of
James & Myra Maull
T.M.S.
421-14-00-025
Property of
Laura & Russell Schaible
T.M.S.
421-14-00-023
62+65.69 300 ft
2316499.37 E
341916.28 N
62+65.69 250 ft
2316512.76 E
341877.62 N
142.1'
104.5'
125.6'
101.6'
150'
80'
75.7'
Edge USACE Channel AIWW
Wappoo Creek
Ebb
Flood
STA. 60+00
Centerline USACE Channel AIWW
Edge USACE Channel AIWW
PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift
AIWW TAKEN FROM SHEET 4
STA. 68+61 TO STA. 135+53
CHARLESTON TO PORT
ROYAL – DECEMBER 2007
Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770
Amendment
P/N# OCRM-07-128-F
AIWW PLAN
PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT
#OCRM-07-128-F
FOR TMS 421-14-00-024
REV DATE: JULY 27, 2011
DATE: JANUARY 14, 2011
SCALE 1" = 50'
Sheet 4 of 5
SOUTH CAROLINA
REG. No. 9083
PROFESSIONAL
LAND SURVEYOR
F. STEVEN JOHNSON

PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift

GEORGE A.Z. JOHNSON, JR., INC.

LAND SURVEYORS

1071 Savannah Highway
Ravenel, South Carolina 29470
(843) 869-1492 Charleston No. 722-5892 Fax No. 869-1485



Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

Amendment

P/N# OCRM-07-128-F

SIDE VIEW
PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT
#OCRM-07-128-F
FOR TMS 421-14-00-024

DATE: JANUARY 14, 2011
"SCALE "NTS"

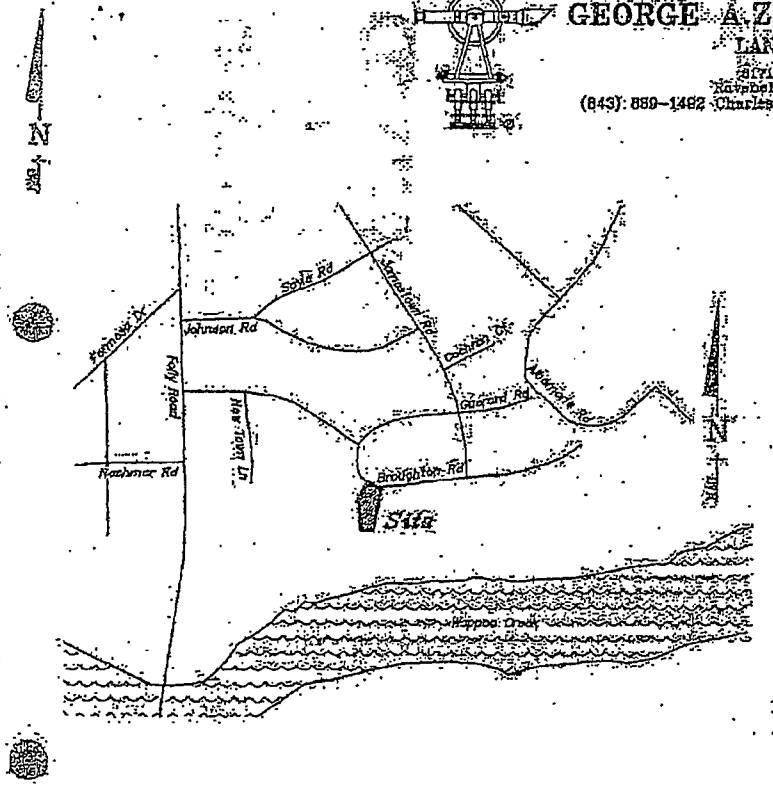
Sheet 5 of 5

SOUTH CAROLINA PROFESSIONAL REG. No. 16058 LAND SURVEYOR STEVEN E. JOHNSON

GEORGE A.Z. JOHNSON, JR., INC.

LAND SURVEYORS

3171 Savannah Highway
Ravenel, South Carolina 29470
(843): 889-1482 Charleston No. 722-3692 Edisto No. 869-1495



1. Start out going SOUTHWEST on MCMILLAN AVE / 3RD ST toward NOISETTE BLVD. Continue to follow MCMILLAN AVE.
2. Turn LEFT onto SPRUILL AVE.
3. Turn RIGHT onto COSGROVE AVE.
4. COSGROVE AVE becomes SC-7 S.
5. SC-7 S becomes SC-171 S.
6. Turn SLIGHT LEFT onto ASHLEY RIVER RD / SC-61. Continue to follow SC-61. 1.6 mi
7. Turn RIGHT onto WESLEY DR / SC-171. Continue to follow SC-171. 0.6 mi

[redacted]

PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift

Location Map "NTS"

Applicant: David Abdo

[redacted]

Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

amendment

P/N# OCRM-07-128-F

LOCATION MAP

PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT #OCRM-07-128-F FOR TMS 421-14-00-024

DATE: JANUARY 14, 2011

Sheet 1 of 5

SOUTH CAROLINA PROFESSIONAL REG. NO. 10638 LAND SURVEYOR STEVEN JOHNSON

1.) ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.

2.) AREA DETERMINED BY COORDINATE METHOD.

3.) THE BEARINGS SHOWN HEREON ARE MAGNETIC AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION.

4.) THE PRESENCE OR ABSENCE OF U.S. ARMY CORP OF ENGINEERS JURISDICTIONAL WETLANDS IS UNDETERMINED AS OF THE DATE OF THIS SURVEY.

5.) THIS PLAT REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY, AND IS NOT THE RESULT OF A TITLE SEARCH.

6.) TREE SPECIES SHOWN HEREON ARE OUR OPINION ONLY AND HAVE NOT BEEN VERIFIED BY A CERTIFIED ARBORIST. PRIOR TO ANY DEVELOPMENT OR TREE REMOVAL TREE SPECIES SHALL BE VERIFIED.

7.) DECLARATION IS MADE TO THOSE PERSONS FOR WHOM THIS PLAT WAS PREPARED. IT IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS. THIS DRAWING/PLAT IS AN INSTRUMENT OF SERVICE AND IS THE SOLE PROPERTY OF GEORGE A.Z. JOHNSON, JR., INC. IT SHALL NOT BE REPRODUCED OR USED IN ANY WAY, WHATSOEVER, WITHOUT THE EXPRESS PERMISSION OF F. STEVEN JOHNSON, PLS, SC REG No. 10038.
COPYRIGHT © 2011, F. Steven Johnson

8.) USE OF UNSEALED COPIES OF THIS DOCUMENT IN ANY COURT, FINANCIAL OR LAND TRANSACTION, OR FILING WITH ANY PUBLIC AGENCY OR OFFICE IS UNAUTHORIZED USE AND IS A VIOLATION OF FEDERAL COPYRIGHT LAWS.

9.) "SURVEY INSPECTIONS" OR "UPDATES" OF THIS MAP ARE PROHIBITED.

10.) THESE CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.

11.) NO IMPROVEMENTS SHOWN. THE PURPOSE OF THIS PLAT IS TO OBTAIN OCRM CRITICAL LINE CERTIFICATION.

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREIN OR NOT.

D. J. Thompson 3/22/2011
SIGNATURE DATE

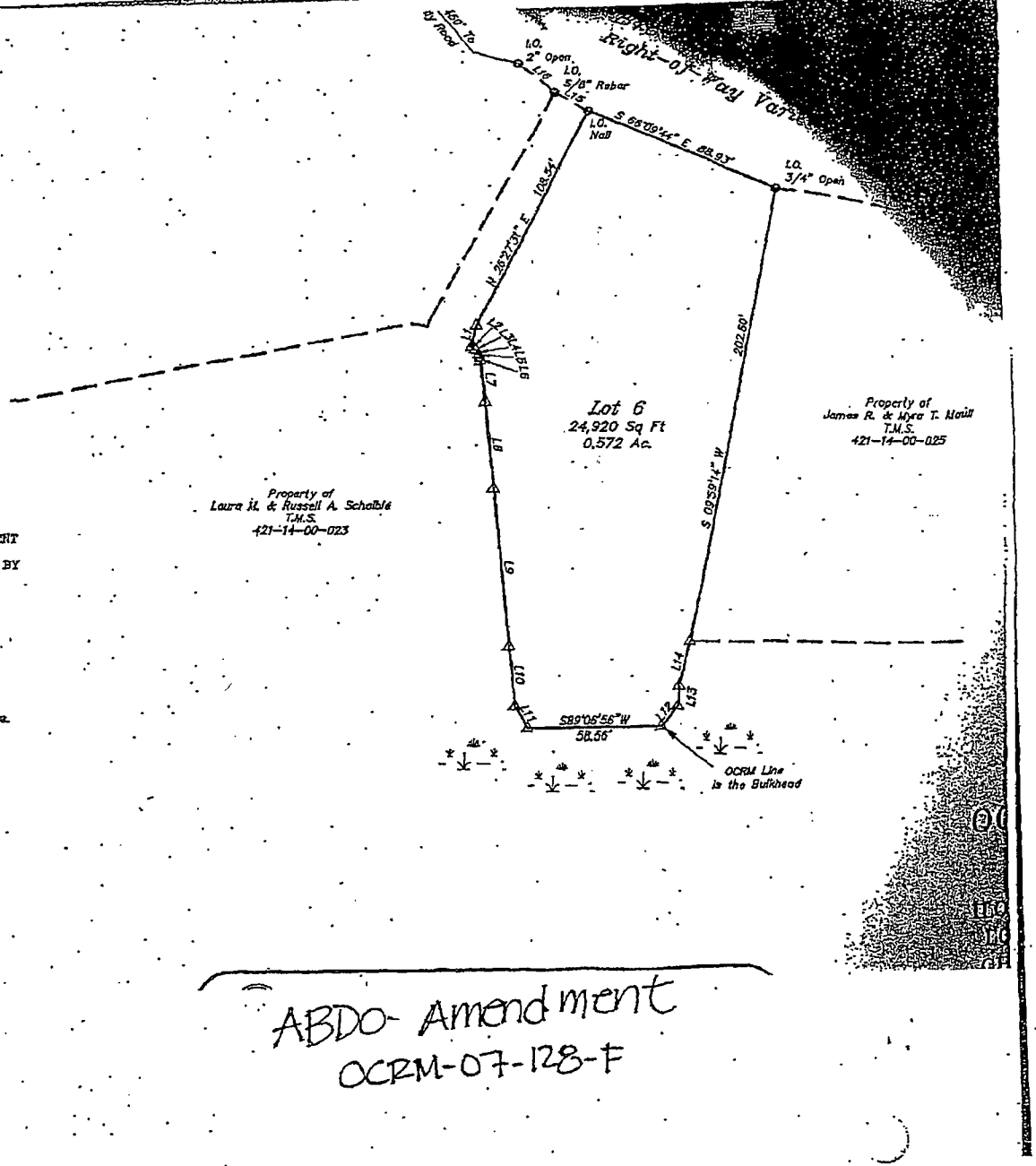
The critical line shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.

General Property Survey

I, F. Steven Johnson, a Registered Professional Land Surveyor in the State of South Carolina, certify to owner(s) shown hereon that this survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein.

SOUTH CAROLINA PROFESSIONAL ENGINEER REG. No. 10038

SOUTH CAROLINA



ABDO- Amendment
OCRM-07-128-F

D H E C
PROMOTE PROTECT PROSPER

PERMIT APPLICATION

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

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

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

David Abdo
[redacted]
Charleston, SC [redacted]

PHONE #: (Bus.) 843-813-3466
(Home)
(Fax)

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

George A. Z. Johnson, Jr., Inc. - F. Steven Johnson, Jr.
6171 Savannah Hwy
Ravenel, SC 29470
sjohnson@gazj.net

PHONE #: (Bus.) 843-889-1492
(Home)
(Fax) 843-889-1054

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

The proposed project includes the modification to existing approved permit OCRM-07-128-F. The modified project includes 560 LF - 4' Wide Walkway w/ Handrails, a 15' x 20' Cover Pierhead, a 3' x 20' gangway, a 8' x 34.5' Floating Dock floodside of Pierhead and a 12' x 14' 4 Pole Boatlift ebbside of Pierhead.

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

Russell & Laura Schalble
[redacted]
Charleston, SC [redacted]

James & Myra Maull
[redacted]
Charleston, SC [redacted]

(Attach additional sheet of paper if necessary.)

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

Start out going SOUTHWEST on MCMILLAN AVE / 3RD ST toward NOISETTE BLVD. Continue to follow MCMILLAN
Turn LEFT onto SPRUILL AVE. Turn RIGHT onto COSGROVE AVE. SC-7 S becomes SC-171 S.
Turn SLIGHT LEFT onto ASHLEY RIVER RD / SC-61 Turn RIGHT onto WESLEY DR / SC-171.
LEFT onto [redacted] [redacted] is on the RIGHT. COUNTY: Charleston County

TAX MAP NUMBER (Required on all applications): 421-14-00-024

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DHEC-OCRM
CHARLESTON OFFICE

LOCAL GOVERNING BODY WITH JURISDICTION OVER SITE: Charleston County

NAME OF WATERWAY: Wappoo Creek

sjohnson@gazj.net

Amendment
OCRM-07-128-F

D H E C
PROMOTE PROTECT PROSPER

PERMIT APPLICATION

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

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

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

YES ☐ NO ☒

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

ADDITIONAL REMARKS:

This project plans to modify an existing permit for the applicants private recreational use.

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

Signature of Applicant — Date: 3/31/11

Signature of Agent (if agent has been listed) — Date: 4/2/11

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

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

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CHARLESTON OFFICE

P49

D H E C
PROMOTE PROTECT PROSPER

AFFIDAVIT OF OWNERSHIP OR CONTROL

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

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

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MAY 18 2011
DHEC-OCRM
CHARLESTON OFFICE

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

- [X] Record Owner
- [ ] Lessee
- [ ] Record Easement Holder
- [ ] Applicant To Record Owner For Easement
- [ ] Contract To Purchase Property

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

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

SEE ATTACHED PLAT AND/OR DEED

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

Signature of Record Holder or Lessee

Sworn to and subscribed before me at _____, Charleston County, South Carolina, this 5th day of April, 20 11.

Notary Public

My Commission Expires

My commission expires: September 8, 2018

P5

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

REPLY TO
ATTENTION OF

RECEIVED
JUN 23 2011
DHEC-OCRM
CHARLESTON OFFICE

June 17, 2011

Regulatory Division

COPY

Mr. F. Steven Johnson
6171 Savannah Highway
Ravenel, South Carolina 29470

Dear Mr. Johnson:

This is in response to your application for a Department of the Army permit to construct a private recreational dock on Wappoo Creek at [redacted] in the City of Charleston, Charleston County, South Carolina. Note: This permit supersedes the earlier permit issued to Charles Palmer on this site. Since the Palmer dock was not constructed, the early permit could not be modified. The Abdo permit is therefore issued under General Permit 2006-10-001(Modified) using the original permit number.

The information you submitted contains the following identifying information for this project. The work affecting waters of the United States is part of an overall project known as the David Abdo Recreational dock as shown on drawing sheets 1-5 of 5 titled "Recreational Dock David Abdo [redacted] Charleston, S.C. [redacted]" The work specifically consists of the construction of a 4' x 560' walkway with a 15' x 20' covered pierhead. There is also a 3' x 20' ramp leading to an 8' x 34.5' floating dock and a 12' x 14' four pole boatlift.

Please be advised that General Permit 2006-10-001(Modified) has been issued, copy enclosed, which conveys a Federal authorization for the construction and/or installation of piers, floating docks (including joint use docks and excluding community docks), mooring piles or dolphins, covered boat sheds and dock covers for private, non-commercial uses within Navigable Waters of the United States within the regulatory jurisdiction of the Charleston District in the State of South Carolina. For this authorization to remain valid, the project must comply with the terms and conditions listed in the enclosed General Permit.

Prior to beginning the authorized work you must obtain all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit). I am, by copy of this letter, forwarding the application to South Carolina Department of Health and Environmental Control Office of Ocean and Coastal Resource Management for necessary action.

P51

In all future correspondence concerning this matter, please refer to our file number SAC 2007-00940-2GV. If you have any questions concerning this matter, please contact David Chamberlain at 843-329-8044, or toll free at 1-866-329-8187.

Respectfully,

RECEIVED
JUN 2 8 2011
DHEC-OCRM
CHARLESTON OFFICE

Tina B. Hadden
Chief, Regulatory Division

Enclosures:
General Permit 2006-10-001 (Modified)

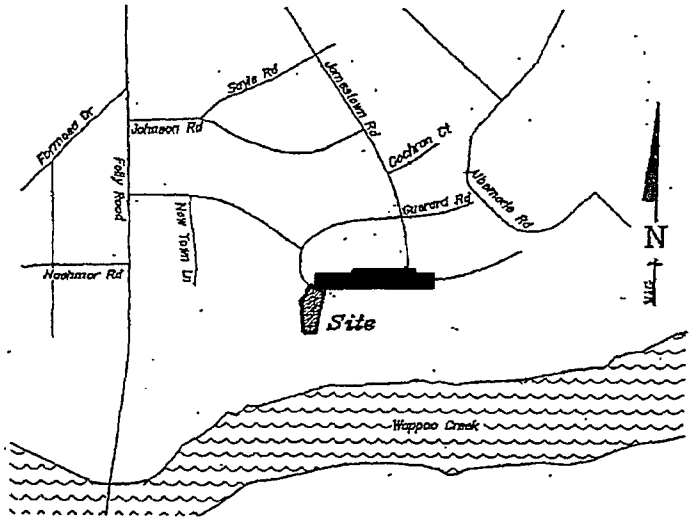
Copy Furnished:

South Carolina Department of Health
and Environmental Control
Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

GEORGE A.Z. JOHNSON, JR., INC.

LAND SURVEYORS

6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3822 Edisto No. 869-1485



1. Start out going SOUTHWEST on MCMILLAN AVE / 3RD ST toward NOISETTE BLVD. Continue to follow MCMILLAN AVE.
2. Turn LEFT onto SPRUILL AVE.
3. Turn RIGHT onto COSGROVE AVE.
4. COSGROVE AVE becomes SC-7 S.
5. SC-7 S becomes SC-171 S.
6. Turn SLIGHT LEFT onto ASHLEY RIVER RD / SC-61. Continue to follow SC-61. 1.6 mi
7. Turn RIGHT onto WESLEY DR / SC-171. Continue to follow SC-171. 0.6 mi
8. Turn LEFT onto [redacted] 0.06 mi
9. 29 [redacted] is on the RIGHT.

PERMITTED PLANS

PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift

Location Map "NTS"

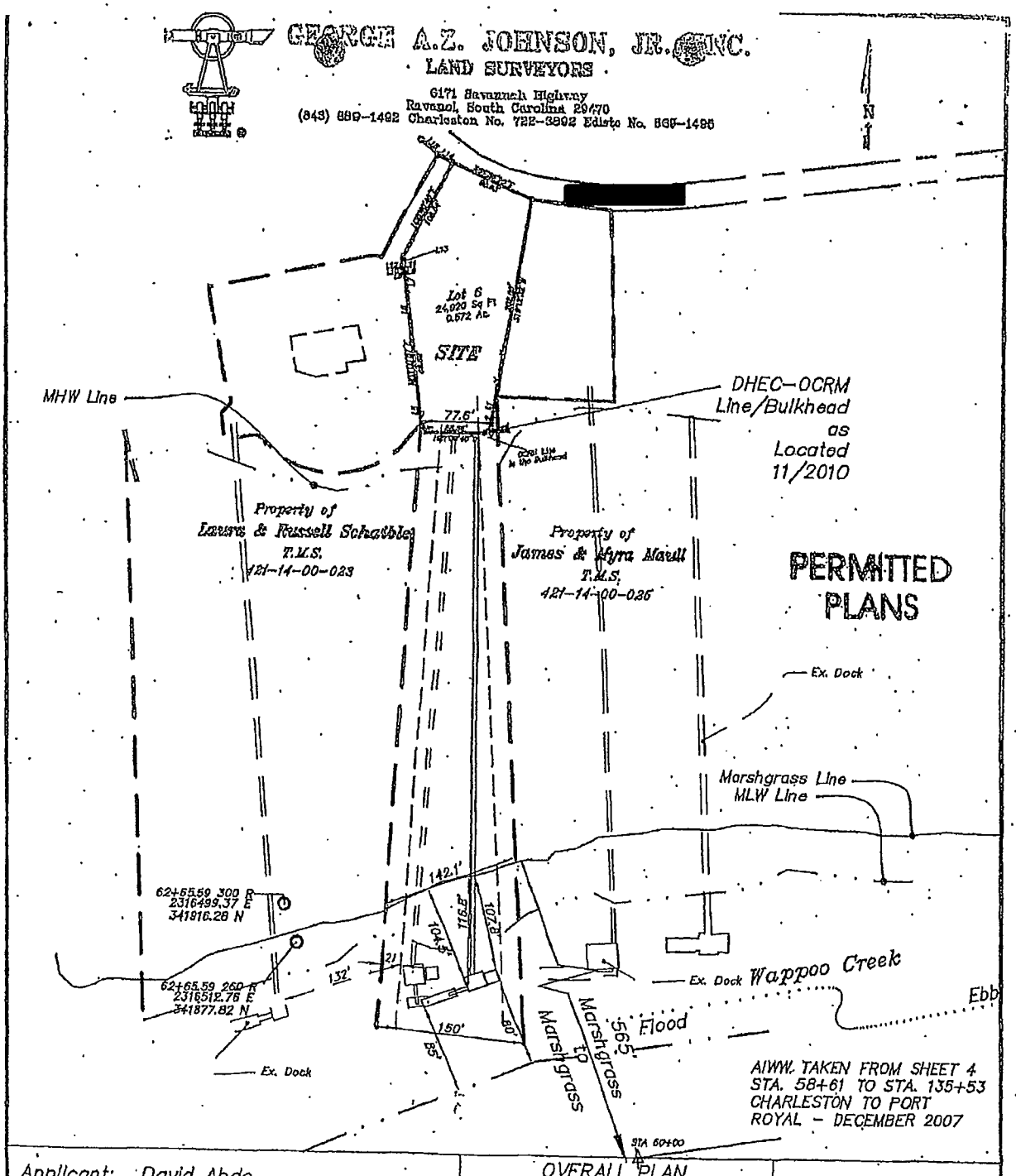
Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

LOCATION MAP

PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT

David Abdo Private Recreational Dock
[redacted]
SAC 2007-00940-2GV June 17, 2011
Sheet 1 of 5

SOUTH CAROLINA PROFESSIONAL ENGINEER



Applicant: David Abdo
[redacted]
Charleston, SC 29407
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

P/N#

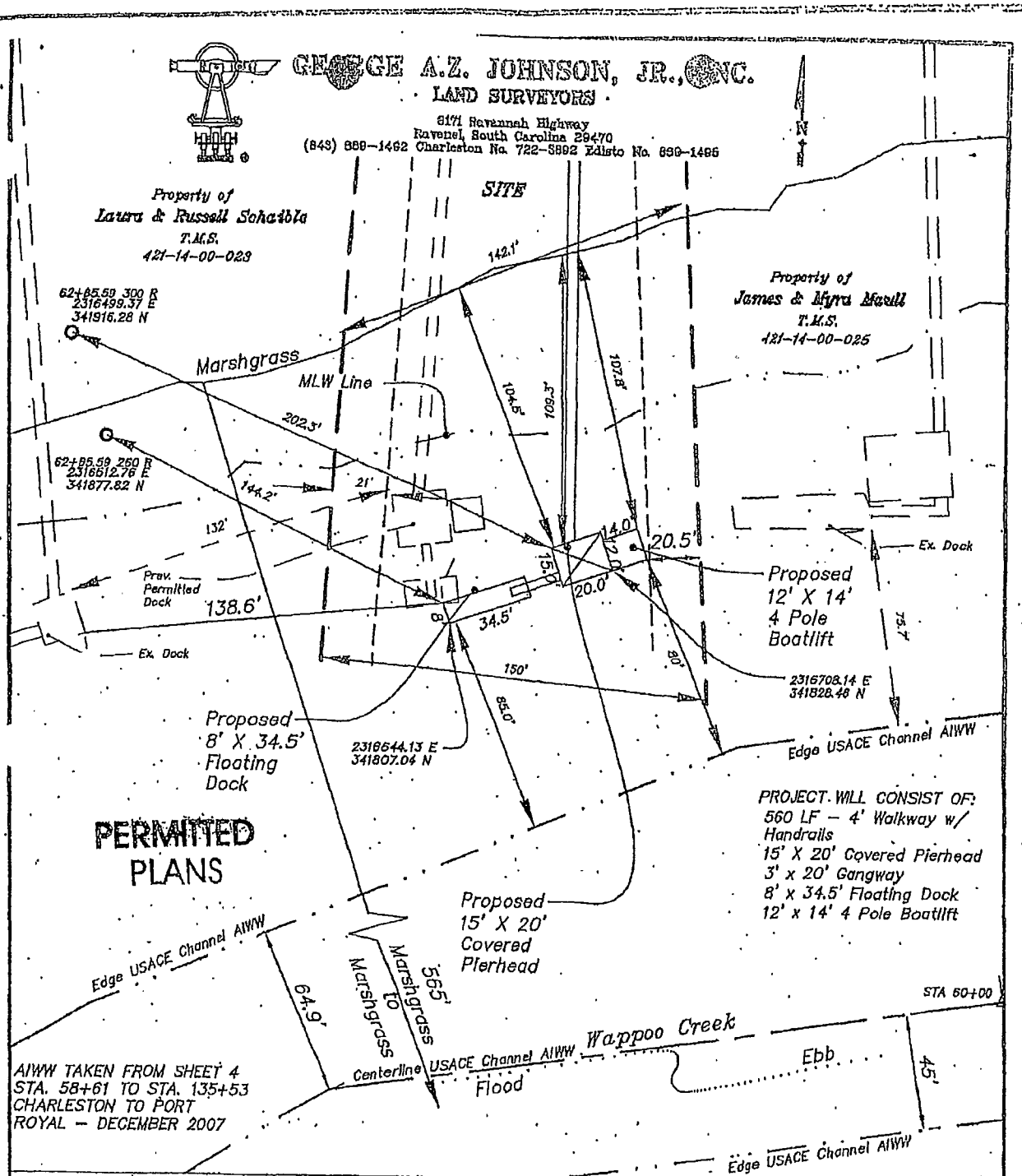
OVERALL PLAN

PROPOSED REVISION EX.
RECREATIONAL DOCK PERMIT

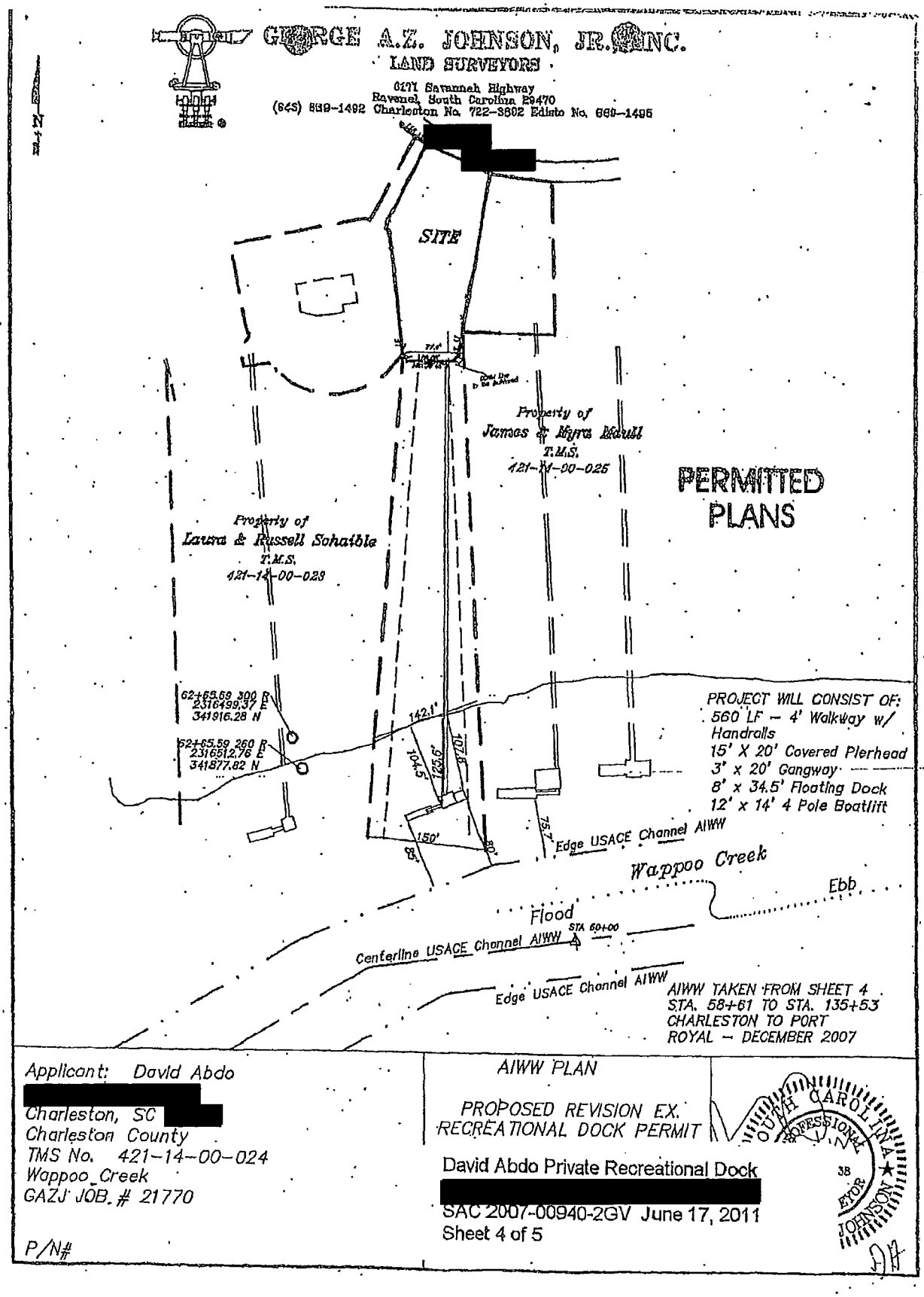
David Abdo Private Recreational Dock
[redacted]
SAC 2007-00940-2GV June 17, 2011
Sheet 2 of 5

SOUTH CAROLINA PROFESSIONAL ENGINEER
GEORGE A.Z. JOHNSON, JR.

P54


GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
8171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1462 Charleston No. 722-3892 Edisto No. 869-1495
SITE
Property of
Laura & Russell Schaible
T.M.S.
421-14-00-023
Property of
James & Myra Mazll
T.M.S.
421-14-00-025
62+85.59 300 R
2316499.37 E
341916.28 N
62+85.59 260 R
2316512.76 E
341877.82 N
Marshgrass
MLW Line
202.3'
144.2'
21'
132'
138.6'
Prev. Permitted Dock
Ex. Dock
142.1'
104.5'
109.3'
107.8'
14.0'
20.5'
15.5'
20.0'
8'
34.5'
150'
85.0'
80'
75.7'
Ex. Dock
Proposed
12' X 14'
4 Pole
Boatlift
2316708.14 E
341828.48 N
Proposed
8' X 34.5'
Floating
Dock
2316644.13 E
341807.04 N
Edge USACE Channel AIWW
PERMITTED
PLANS
PROJECT WILL CONSIST OF:
560 LF - 4' Walkway w/
Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift
Proposed
15' X 20'
Covered
Pierhead
Edge USACE Channel AIWW
64.9'
565'
Marshgrass
to
Centerline USACE Channel AIWW
Flood
Ebb
Wappoo Creek
STA 60+00
45'
AIWW TAKEN FROM SHEET 4
STA. 58+61 TO STA. 135+53
CHARLESTON TO PORT
ROYAL - DECEMBER 2007
Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
ZJ JOB # 21770
P/N#
DETAIL PLAN
PROPOSED REVISION EX.
RECREATIONAL DOCK PERMIT
David Abdo Private Recreational Dock
[redacted]
SAC 2007-00940-2GV June 17, 2011
Sheet 3 of 5
SOUTH CAROLINA
PROFESSIONAL
SURVEYOR
JOHNSON

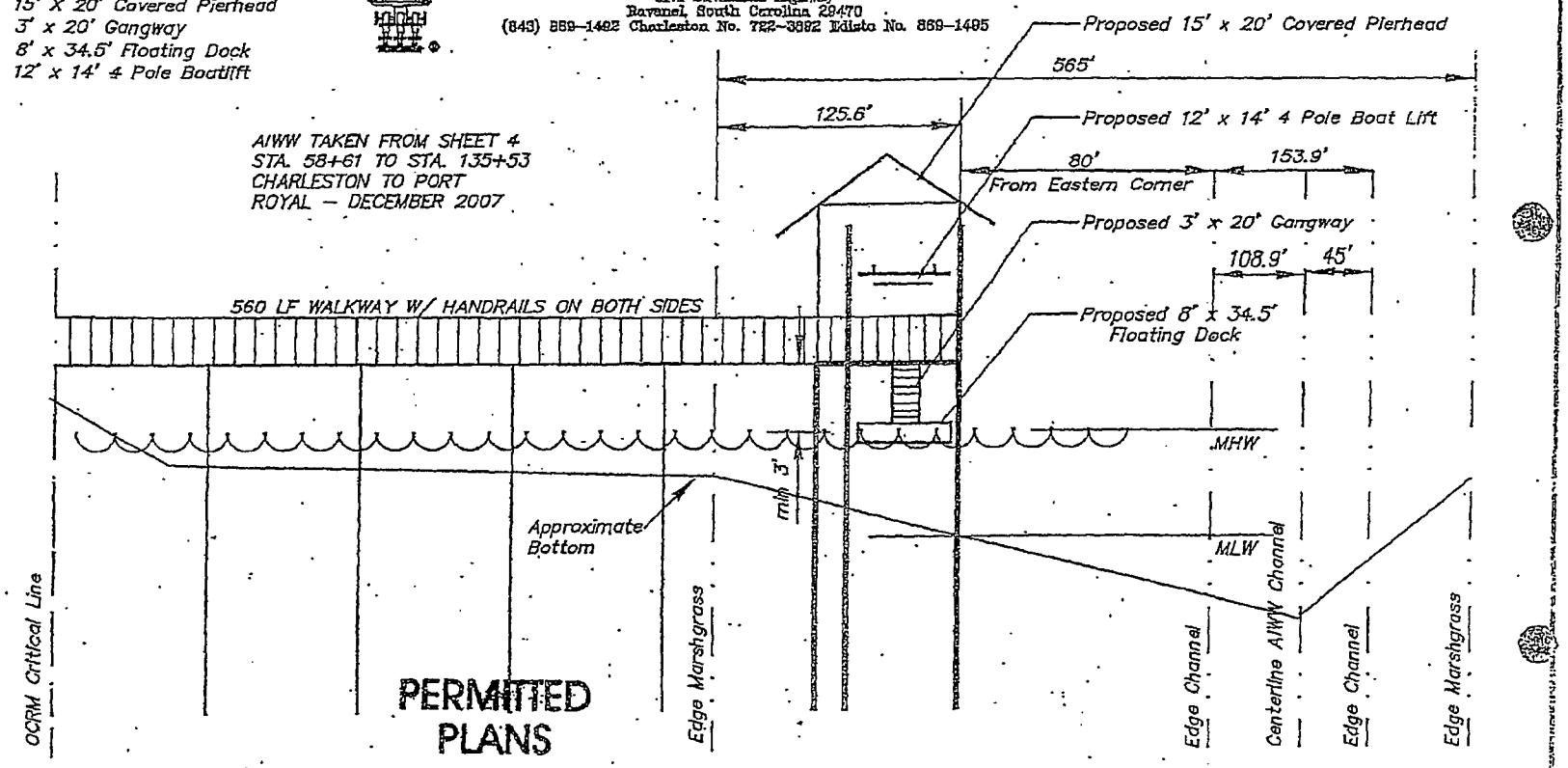
P55


GEORGE A.Z. JOHNSON, JR. INC.
LAND SURVEYORS
6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3802 Edisto No. 869-1496
SITE
Property of
James & Myra Mahull
T.M.S.
421-14-00-025
Property of
Laura & Russell Sohatble
T.M.S.
421-14-00-029
PERMITTED
PLANS
62+65.69 300 R
2316499.37 E
341916.28 N
62+65.59 260 R
2316512.76 E
341877.82 N
142.1'
104.5'
125.6'
107.6'
150'
75.7'
PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/
Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift
Edge USACE Channel AIWW
Wappoo Creek
Ebb
Flood
STA 60+00
Centerline USACE Channel AIWW
Edge USACE Channel AIWW
AIWW TAKEN FROM SHEET 4
STA. 58+61 TO STA. 135+53
CHARLESTON TO PORT
ROYAL – DECEMBER 2007
Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB. # 21770
P/N#
AIWW PLAN
PROPOSED REVISION EX.
RECREATIONAL DOCK PERMIT
SOUTH CAROLINA
PROFESSIONAL
ENGINEER
38
JOHNSON
David Abdo Private Recreational Dock
[redacted]
SAC 2007-00940-2GV June 17, 2011
Sheet 4 of 5

P56

PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift

GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3892 Edisto No. 869-1495



SIDE VIEW
PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT

Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

David Abdo Private Recreational Dock
[redacted]
SAC 2007-00940-2GV June 17, 2011
Sheet 5 of 5

P/N#

James R Maull
[redacted]
Charleston, SC [redacted]

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CHARLESTON OFFICE

August 5, 2011

South Carolina Department of Health and Environmental Control
Ocean and Coastal Resource Management
1362 McMillan Ave Suite 400
Charleston SC 29405
Att: Jeff Thompson

Re: P/N OCRM-07-128F notice dated 7-22-2011

Dear Mr Thompson:

I received notice in December 2006 that a prospective buyer for [redacted], Andrea Woodfield, had made application # 2006-3558-21M-P to build a dock at the same address. I later received written notice from OCRM that that permit application was withdrawn and suspended on May 7, 2007.

I received notice from Amanda Flake at OCRM that a dock permit had been submitted by the Palmer family, heirs of [redacted], and that the location of the dock was in dispute by the neighbor on the west side, the Schaibles. I attended a meeting with the Palmer family, the Schaible's attorney, and OCRM representatives, Amanda Flake and Curtis Joyner.

Drawings were presented showing the walkway connected to the dock pier head and in front of the pier facing the river, a boatlift, and in front of the lift, a floating dock. After much discussion, I recommended and all agreed, to pull the boatlift from the front river side of the dock and place it on the east side of the dock facing my property. My concern at that meeting was to maintain adequate space to get my sport fishing boat away from my floating dock and into the river, because of the strong river current which hits the river bank in that area. All parties agreed during the meeting to the dock location, the the boat lift location, the floating dock location and the walkway location.

Four 2 ½ " grey electrical pvc pipes were placed in the marsh on the exact location of the I approved pier by the sellers for buyers and neighbors on both sides to look at so that everyone could see where the proposed dock would be located. On August 8, 2007 I received permit copies including drawings with the agreed design from the earlier meeting. These were delivered by courier from Sonja Taylor, wife of Dave Abdo. I do not understand, with all parties involved meeting and agreeing to the new drawings, why there is any change needed to the approved permit.

I am concerned that placing this dock too close to my dock will be dangerous for boats and boaters due to the strong Wappoo Cut current which moves very swiftly. On an outgoing tide, the water coming under the bridge going toward the harbor makes a swift "S" turn and hits the bank between my dock and the proposed dock for [redacted]. This current is very difficult to navigate and the closeness of the proposed dock will only increase the danger to all boaters. As I am sure that you are aware, there is heavy boat traffic in the Wappoo Cut and boat safety should not be endangered by

constructing docks too close together. If the event that both neighbors at [redacted] come to their dock at the same time, there will not be enough space for safe docking for either party.

The area has built up a great deal of silt in and around the current docks. This has become a problem and the Army Corps of Engineers does not allow dredging. I have had to relocate the floats around my dock in order to have adequate water to maneuver my boat and to keep the boat afloat.

The purpose of this letter is to request that the new dock drawing on the revised plan dated July 2011 not be approved at this drawing location. I feel as if we have dealt with this situation already and should not have to continuously address it. This amendment request is the third time that the applicant has applied to relocate the dock. At the current requested location, the dock will endanger the small creeks that flow in and out of the marsh grass in that area. The close proximity would thus effect the production of shrimp, fish, oysters, crabs and other marine life which exist in and around the marsh and perhaps endanger the environment they require for well being and growth.

The requested new location also would effect the value and enjoyment of my adjacent dock by cutting off my boat access to the river. This new location would make it unreasonable to access my dock with my boat due to the previously mentioned current concerns. It seems that this new location benefits the applicant while penalizing my position at [redacted]. Therefore, it is my request that this dock be permitted and built as required with the drawings dated April 10, 2007 which was agreed upon in 2007 by all parties involved.

Yours truly,

James R. Maull

James R Maull

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DHEC-OCRM
CHARLESTON OFFICE

KERNODLE TAYLOR & ROOT
Attorneys At Law

914 Folly Road, Suite 2
Post Office Box 13897
Charleston, South Carolina 29422-3897
phone (843) 795-7800 • *fax* (843) 795-3032

I. Sonja Taylor, Esquire
staylor@kernodlelaw.com
direct 843-266-7601

August 8, 2007

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AUG 0 5 2011
DHEC-OCRM
CHARLESTON OFFICE

Rick Maull
[redacted]

Re: SCDHEC Critical Area Permit & Coastal Zone Consisteney Certification, Permit Number OCRM-07-128-F

Dear Mr. Maull:

Per your discussion with Charles, our runner has today delivered to you the enclosed:

1) August 2, 2007 letter from Curtis Joyner/SCDHEC to Charles Palmer regarding OCRM-07-128-F; and

2) SCDHEC Critical Area Permit & Coastal Zone Consistency Certification, Permit Number OCRM-07-128-F, dated August 2, 2007, with attached General Conditions, Figures 1 and 2 by Frank Peake Land Surveyor dated 4-10-07, and DHEC Notice of Appeal Procedures.

Thank you. With kindest regards, I am

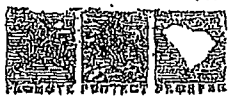
Very truly yours,

KERNODLE, TAYLOR & ROOT

I. Sonja Taylor

IST/jbl
Enclosure

c: Charles Palmer



C. Earl Hunter, Commissioner
Promoting and protecting the health of the public and the environment

August 2, 2007

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AUG 0 5 2011
DHEC-OCRM
CHARLESTON OFFICE

Mr. Charles Palmer
c/o Dockmasters Construction, LLC
491 Main Road
Johns Island, S. C. 29455

Re: OCRM-07-128-F
Charles R Palmer

Dear Mr. Palmer:

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

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

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

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

Sincerely,

Curtis Joyner
Manager, Critical Area Permitting
Enclosure

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

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

RECEIVED
AUG 0 5 2011
DHEC-OCRM
CHARLESTON OFFICE

Permittee(s):	**Charles R Palmer**
Permit Number(s):	**OCRM-07-128-F**
Date of Issuance:	**August 2, 2007**
Expiration Date:	**August 2, 2012**
Location:	**On and adjacent to the AIWW/Wappoo Cut at [redacted]d, Charleston, Charleston County, South Carolina**

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

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

This permit has been issued authoring the requested work with changes. Specifically, the permittee is authorized to construct a private dock that will consist of a 4' x 529' walkway, with handrails, leading to a 20' x 20' covered pierhead, also with handrails and benches. Channelward of the pierhead, a 3' x 20' ramp will lead to a 10' x 20' floating dock. On the right hand side of the pierhead there will be a 12.5' by 12.5' boat lift. The work as described is for the applicant's private, recreational use.

SPECIAL CONDITIONS

1. Provided the maximum height of the roof is limited to 15' above Mean High Water (MHW).
2. Provided the decking of the walkway and fixed pierhead is constructed a minimum of 3' above MHW.
3. Provided the handrail height is limited to 36" above decking.

1 of 7

4. Provided the benches do not cantilever beyond the outermost dimensions of the 20' x 20' fixed pierhead.

5. Provided that an as-built survey of the dock must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the dock, and must list the starting and ending coordinates of the dock walkway in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

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

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

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

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2 of 7

Permit Number: OCRM-07-128-F

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

8-4-2007

(PERMITTEE(S)) (DATE)
Charles R Palmer

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

(MANAGER, CRITICAL AREA PERMITTING) (DATE)
Curtis M. Joyner
Or his Designee
Other Authorized State Official

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GENERAL CONDITIONS:

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

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

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D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

Protecting and protecting the health of the public and the environment

Notice of Appeal Procedure

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

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An Applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393.

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

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

4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.

6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.

7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision; and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

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

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office · 1362 McMillan Avenue, Suite 400 · Charleston, SC 29405
Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

parties. The officials conducting the final review conference may request additional information and may question the applicant or affected party, the Department, and anyone else providing information at the conference.

Any party may request a transcript of the proceedings of the final conference by mailing a request for a transcript to the Clerk of the Board at the above address within 30 days of the date of this memorandum, along with a statement that the party will pay all costs of the transcript.

The parties are encouraged to engage in mediation during the final agency review process. The terms of any mediation, including selection and payment of a mediator, must be agreed to by all parties. Any mediation must be completed in time to allow compliance with statutory time frames unless all parties agree to a waiver of such time limits.

FURTHER APPEAL IF FINAL REVIEW CONFERENCE IS NOT CONDUCTED

If a final review conference is not conducted within 60 days from the date of receipt of a Request for Final Review, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court (ALC) within 30 days after the deadline for the final review conference. A request for a contested case hearing before the ALC must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

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

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

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

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

OCG # 20539

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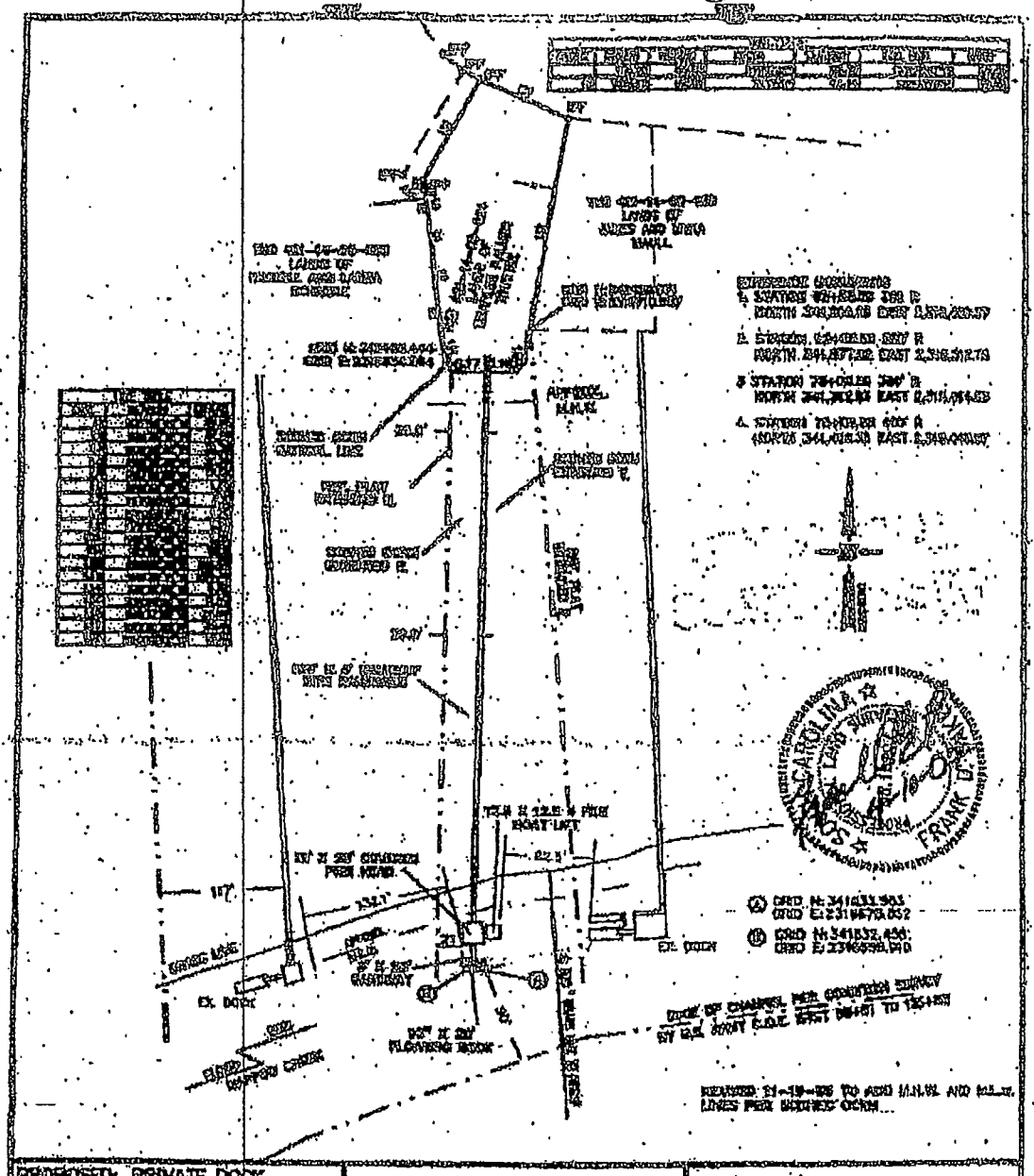

PROPOSED: PRIVATE DOCK CONSTRUCTION ADJACENT OWNERS: 1. RUSSEL & LAURA SCHABLE 2. JAMES AND MYRA MAULL	FIGURE 1 PLAN VIEW SCALE 1" = 125' MR. CHARLES PALMER 29 BROUGHTON ROAD CHARLESTON SC 29407	PROPOSED: PRIVATE DOCK CONSTRUCTION WATERWAY: WAPPOO CREEK COUNTY OF: CHARLESTON, SC APPLICATION BY : CHARLES PALMER P/N #'s: TBD DATE: revised 4-10-07

RECEIVED 5 of 7 OCRM-07-128-F

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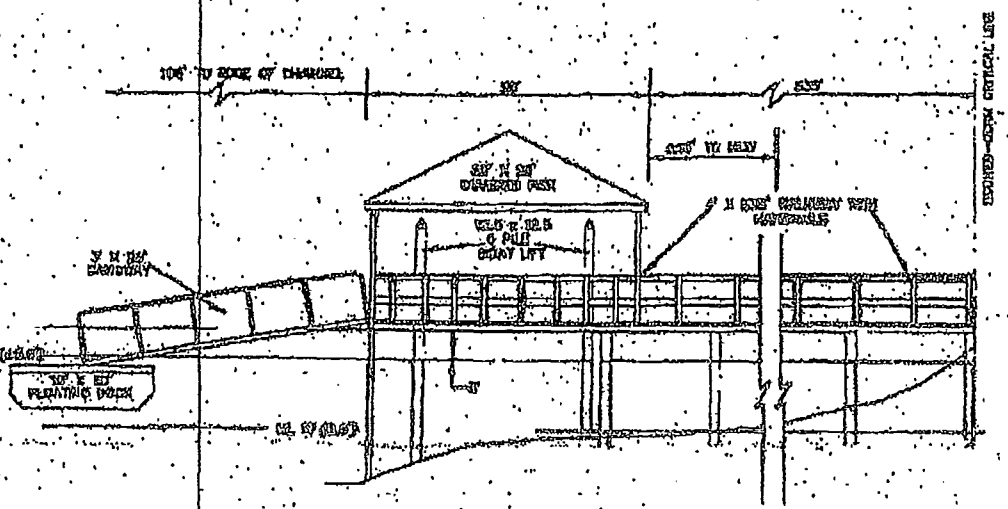

DOCK CROSS SECTION

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PROPOSED: PRIVATE DOCK CONSTRUCTION ADJACENT OWNERS: 1. RUSSEL & LAURA SCHAIBLE 2. JAMES AND MYRA MAULL	FIGURE 2 DOCK SIDE VIEW SCALE 1" = 10' MR. CHARLES PALMER [redacted]	PROPOSED: PRIVATE DOCK CONSTRUCTION WATERWAY: WAPPOO CREEK COUNTY OF: CHARLESTON, SC APPLICATION BY: CHARLES PALMER P/N #: TBD DATE: 10-27-06

OCRM-07-128-F

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August 02, 2011

Mr. Blair Williams
SCDHEC
Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

Dear Mr. Williams:

This is to advise the South Carolina State Ports Authority has no objections to the following named applications on which public notices have been received:

Dated: July 22, 2011

David Abdo	OCRM-07-128-I
Raymond Duxbury %G&T Marine Construction	OCRM-11-844-L
Alice B Scardino %Sea Island land Survey, LLC	OCRM-11-846-L
The Salty Dog, Inc. %GEL Engineering	2001-12284-1IW
SCSPA %Jeannie Adame	2011-00062-2IR
SCSPA %Jeannie Adame	2011-00063-2IR
SCSPA %Jeannie Adame	2011-00078-8IN
Seabrook Island POF %F. Steven Johnson, Jr	2011-601-2IG

Dated: July 29, 2011

Louie Garvin, Jr. %Robert Frank Land Surveying	OCRM-11-072-E
Natalie Long	OCRM-11-078-M
Cecil Duffie %Robin Duffie	OCRM-11-079-E
Eric Wade %John Wade	OCRM-11-080-E
Timothy & Susan Kock %Locklair Consulting	OCRM-11-081-D
Kevin & Donna Barth %Seven Sea Marine Const	OCRM-11-582-S
Honor Bonds %Fetter Marine Construction	OCRM-11-529-S
Jeffery A Myers %Steadfast Marine Services, Inc.	OCRM-11-845-L
John D Ivans %Cary Griffin/McNair Law Firm	OCRM-11-847-L
William Blalock %Bailey Marine Construction	OCRM-11-848-G
City of North Myrtle Beach %DDC Engineers, Inc.	2011-000634-3IB

Sincerely,

Ben Morgan, P.E.
Staff Engineer

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James R Maull
[redacted]
Charleston SC[redacted]

August 5, 2011

South Carolina Department of Health and Environmental Control
Ocean and Coastal Resource Management
1362 McMillan Ave Suite 400
Charleston SC 29405
Att: Jeff Thompson

Re: P/N # OCRM-07-128F

Dear Mr Thompson:

Thank you for meeting with my wife and I this morning.

Please notify me of any staff and agency decisions regarding the dock request noted above.

I am having difficulty understanding the basis for the current request since these issues have been worked thru in the past. I do not see the need for them to be addressed again.

Yours truly,

James R. Maull

James R Maull

James R Maull
[redacted]
Charleston, SC 29407

August 8, 2011

South Carolina Department of Health and Environmental Control
Ocean and Coastal Resource Management
1362 McMillan Ave Suite 400
Charleston SC 29405
Att: Jeff Thompson

Re: P/N # OCRM-07-128F

Dear Mr Thompson:

Following our meeting on Friday, August 6, 2011 I had meant to extend an offer to visit the job site to you or any other member of OCRM staff. We could walk down to my dock to get an idea of the area being considered. I would be happy to meet you. I can be reached at 843 576-9260.

Yours truly,

James R. Maull

James R Maull

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

REPLY TO
ATTENTION OF

June 17, 2011

Regulatory Division

Mr. F. Steven Johnson
6171 Savannah Highway
Ravenel, South Carolina 29470

Dear Mr. Johnson:

This is in response to your application for a Department of the Army permit to construct a private recreational dock on Wappoo Creek at [redacted] in the City of Charleston, Charleston County, South Carolina. Note: This permit supersedes the earlier permit issued to Charles Palmer on this site. Since the Palmer dock was not constructed, the early permit could not be modified. The Abdo permit is therefore issued under General Permit 2006-10-001(Modified) using the original permit number.

The information you submitted contains the following identifying information for this project. The work affecting waters of the United States is part of an overall project known as the David Abdo Recreational dock as shown on drawing sheets 1-5 of 5 titled "Recreational Dock David Abdo [redacted] Charleston, S.C. [redacted] The work specifically consists of the construction of a 4' x 560' walkway with a 15' x 20' covered pierhead. There is also a 3' x 20' ramp leading to an 8' x 34.5' floating dock and a 12' x 14' four pole boatlift.

Please be advised that General Permit 2006-10-001(Modified) has been issued, copy enclosed, which conveys a Federal authorization for the construction and/or installation of piers, floating docks (including joint use docks and excluding community docks), mooring piles or dolphins, covered boat sheds and dock covers for private, non-commercial uses within Navigable Waters of the United States within the regulatory jurisdiction of the Charleston District in the State of South Carolina. For this authorization to remain valid, the project must comply with the terms and conditions listed in the enclosed General Permit.

Prior to beginning the authorized work you must obtain all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit). I am, by copy of this letter, forwarding the application to South Carolina Department of Health and Environmental Control Office of Ocean and Coastal Resource Management for necessary action.

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In all future correspondence concerning this matter, please refer to our file number SAC 2007-00940-2GV. If you have any questions concerning this matter, please contact David Chamberlain at 843-329-8044, or toll free at 1-866-329-8187.

Respectfully,

for Tina B. Hadden
Chief, Regulatory Division

Enclosures:
General Permit 2006-10-001 (Modified)

Copy Furnished:

South Carolina Department of Health
and Environmental Control
Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

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General Permit No.: 2006-10-001
Name of Permittee: GENERAL PUBLIC
Effective Date: December 4, 2006
Expiration Date: December 4, 2011

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DEPARTMENT OF THE ARMY
GENERAL PERMIT

A General Permit to perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) is hereby issued by the authority of the Secretary of the Army by the

District Engineer
U.S. Army Engineer District, Charleston
Corps of Engineers
69-A Hagood Avenue
Charleston, South Carolina 29403-5107

to authorize, subject to the following special and general conditions, the construction, installation, maintenance and/or repair of piers, floating docks (including joint use and community docks), boat/jet ski lifts, mooring piles, dolphins, covered boat sheds and dock covers, for private non-commercial uses within navigable waters of the United States in the State of South Carolina.

Projects authorized by this General Permit may also require other state or local authorizations. The installation of structures in state navigable waters is subject to the jurisdiction of South Carolina Department of Health and Environmental Control (SCDHEC). Projects located within Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper Counties are subject to the South Carolina Coastal Zone Management Plan, which is administered by SCDHEC, Office of Ocean and Coastal Resource Management (OCRM). If the proposed project will occur in the critical area of the above listed counties, then a direct Critical Area Permit will be required from OCRM. Projects located outside of the critical area are also subject to the R. 19-450; Permit for Construction in Navigable Waters (*et. seq.*, 1976 S.C. Code of Laws, as amended).

SPECIAL NOTE: Activities covered under previously authorized General Permits for specific areas do not qualify for this general Permit. Those areas include:
Lake Murray (2002-14-001), Lakes Marion & Moultrie (2002-14-002), Lake Wylie (2002-14-004), Fishing Creek Reservoir (2002-12-004), Great Falls (2002-14-004), Rocky Creek (2002-14-004), Lake Wateree (2002-14-004), Lake Keowee (2002-14-004), Ninety-Nine Islands (2002-14-004), and Gaston Shoals (2002-14-004).

I. SPECIAL CONDITIONS:

A. Piers and Floating Docks, Mooring Piles, Dolphins and Boat Lifts

SPECIAL NOTE: There are 3 categories of restrictions for structures listed below: 1) those located on or adjacent to a federal channel, 2) those **not** located on or adjacent to a federal channel and 3) those for all structures regardless of their location. It is imperative that you read and comply with all terms and conditions. (All structures must meet the terms and conditions listed below in "1" or "2" **AND** all terms and conditions listed in "3").

1. Structures located ON OR ADJACENT TO FEDERAL CHANNELS:

a. Federal channels include all or portions of the following waterways:

Adams Creek
Atlantic Intracoastal Waterway (AIWW)
Ashley River
Brookgreen Garden Canal
Calabash Creek
Charleston Harbor (including the Cooper River and Town Creek)
Folly River
Georgetown Harbor (Winyah Bay, Sampit River, and Bypass Channel)
Jeremy Creek
Little River Inlet
Murrells Inlet
Port Royal Harbor
Savannah River
Shem Creek (including Hog Island Channel & Mount Pleasant Channel)
Shipyard Creek
Village Creek
Wando River

b. Prior to any work being done, written permission must be obtained from the Corps of Engineers **for all activities located on or adjacent to a federally authorized waterway prior to commencement of work.** In order to receive this written permission, a Pre-Construction Notification (PCN) is required. Failure to provide this PCN and obtain written permission prior to commencement of work will be considered a violation of federal law and appropriate legal action may be taken. The following information shall be submitted to the Charleston District Engineer in order to fulfill the requirements of the PCN (copies must be submitted to the SCDHEC OCRM and Bureau of Water):

- Completed "Joint Federal And State Application Form For Activities Affecting Waters Of The United States Or Critical Areas Of The State Of South Carolina",
- Plans of the proposed work (8.5 X 11" black and white drawings showing all proposed structures) in tidal areas relative to the mean high water (MHW) and mean low water (MLW) or in non-tidal areas relative to the mean sea level (MSL). Distance to the federal channel must be included. Plan view and cross-section diagrams are both required (all diagrams must be drawn to scale or include dimensions of all proposed structures),
- The State Plane Coordinates, NAD 1983, for a minimum of two corners on each structure where it is closest to the federal channel,
- A precise location of the proposed structure located by use of two (2) Corps of Engineers Waterway Control Markers that currently exist in the area and the distance from the federal channel. The survey must be completed by a registered land surveyor,
- Statement that the work will be conducted in compliance with the terms and conditions of this General Permit.

c. A signed compliance certification will be submitted to the Charleston District Engineer within 60 days following completion of the authorized work and shall include the following:

- A statement that the authorized work was done in accordance with this General Permit,
- The signature of the permittee certifying the completion of the work,
- As-built drawings which indicate all dimensions of the structure as well as the distance between the centerline of the federal channel and the waterward edge of the authorized structure. These drawings must be prepared by a registered land surveyor.

d. Structures located on or adjacent to federally authorized waterways shall extend no closer than eighty feet (80') from the near bottom edge of the federal channel, unless a variance has been granted by the Charleston District Engineer. If located on the Charleston Harbor, Georgetown Harbor, or Port Royal Harbor, the existing setback is 125'. A copy of the appropriate Federal Project Channel map can be obtained from our website (http://www.sac.usace.army.mil) or by writing to:

U.S. Army Corps of Engineers
Charleston District, Technical Services
69-A Hagood Avenue
Charleston, South Carolina 29403-5107

2. Structures located in other areas (NOT located on or adjacent to federal channels):

a. The channelward extension of the structure shall not exceed the lesser of: one-third of the width of the waterbody, or the minimum length necessary to accomplish the project purpose provided there is no undue interference with navigation.

b. In situations where the navigable depth is not located in the center of the waterbody, the structure shall not extend further than one-third of the width of the navigable channel.

SPECIAL NOTE: The term *waterbody*, for the purposes of this General Permit, is defined as the area measured across the channel from vegetation to vegetation, or in non-vegetated areas, Mean High Water to Mean High Water or Ordinary High Water to Ordinary High Water.

3. ALL Structures:

a. Piers and Floating Docks (on both federal and non-federal channels):

i. All structures authorized by this General Permit shall be designed, located, and/or operated in a manner not to impede the full and free use by the public of all navigable waters. The following standards for the size of piers and floating docks will be followed unless the Corps determines in writing that a larger structure is authorized:

(1) Waterbodies smaller than 20 feet wide, as measured from vegetated areas on both sides shall be restricted to a walkway with a fixed or floating structure no greater than 50 square feet;

(2) Waterbodies between 21 feet and 50 feet wide, as measured from vegetated areas on both sides, shall be restricted to a fixed pier and floating dock combination up to 120 square feet;

(3) Waterbodies between 51 feet and 150 feet wide, as measured from vegetated areas on both sides, shall be restricted to a fixed pier and floating dock combination up to 160 square feet;

(4) Waterbodies larger than 151 feet wide, as measured from vegetated areas on both sides, shall be restricted to a fixed pier and floating dock combination up to 600 square feet.

ii. The maximum width for the dock approach (fixed walkway) shall be restricted to four (4) feet unless the Corps determines in writing that a greater width is necessary for safe use or to support a water dependent use that cannot otherwise occur. The dock approach shall also be elevated at least three (3) feet above mean high water.

iii. Structures located within twenty (20) feet of the waterward extension of the adjacent property lines are not authorized by this General Permit unless the adjacent property owners agree in writing to a variance in this dimension.

iv. The structure shall be constructed of uniform materials, and be structurally adequate and aesthetically compatible with other existing structures.

v. Wood treated with creosote or chromated copper arsenate (CCA) may not be used in the construction.

vi. Flotation units of floating structures shall be constructed of material which will not become waterlogged or sink when punctured. Styrofoam billets or equivalent must be encapsulated. Barrels or similar devices are not permitted.

vii. Sinks, toilets, showers, or other equipment which will create or cause any liquid or solid waste to be discharged into waters of the United States are not authorized by this General Permit.

viii. Dock cover roofs may be gabled or monosloped. Gabled roofs will not exceed fifteen (15) feet in height from the top of the gable to the pier flooring. Monosloped roofs will not exceed twelve (12) feet in height from the top of the slope to the pier flooring.

ix. Enclosed buildings or other structures are not authorized. Boat lifts, boat sheds, and dock covers are permissible provided that they do not block cross-vision. Storage compartments are permissible but will not exceed 14 inches in width, 30 inches in height, and 8 feet in length.

x. Docks that require dredging or excavation in order to create or improve access to navigable waters are not considered single and complete projects and therefore are not authorized by this general permit. All dock structures that require dredging or excavation will be evaluated under an individual permit.

xi. This General Permit does not authorize the construction of docks on individual lots for the purposes of selling parcels in newly constructed or proposed subdivisions or developments.

xii. This General Permit does not authorize the construction of more than one dock per individual parcel.

b. Mooring Piles, Dolphins and Boat Lifts

i. Mooring piles, dolphins, boat/ jet ski lifts and covered boat sheds that are associated with a fixed pier or floating dock shall be located no farther channelward and no farther than 30 feet from either end of the authorized structure.

ii. All mooring structures must be well marked in accordance with US Coast Guard regulations.

iii. Mooring piles or dolphins must be a minimum of twenty (20) feet from the waterward extension of the adjacent property lines. In addition, any vessels moored to these structures shall not swing or otherwise encroach into the riparian limits of the adjacent property unless the adjacent property owner agrees, in writing, to a variance in this dimension.

iv. Mooring piles or dolphins may not be included if the entire docking facility (including piles, dolphins, and/or floats) will provide docking space for more than 10 boats.

v. This General Permit does not authorize more than two (2) personal watercraft lifts.

vi. Boat shed roofs may be gabled or monosloped. Gabled roofs will not exceed fifteen (15) feet in height from the top of the gable to the mean high water mark. Monosloped roofs will not exceed twelve (12) feet in height from the top of the slope to the mean high water mark.

vii. Wood treated with creosote or chromated copper arsenate (CCA) may not be used in the construction.

II. GENERAL CONDITION

A. This General Permit authorizes only those activities and structures specifically addressed below. The permittee must obtain Department of the Army authorization, such as the issuance of an individual permit, for all other activities that are regulated pursuant to Section 10 of the Rivers and Harbors Act within waters of the United States.

B. All activities identified and authorized herein shall be consistent with the terms and conditions of this General Permit; any variance not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit and may result in the modification, suspension, or revocation of the authorization, as set forth more specifically in General Condition F. below and in the institution of such legal proceedings as the United States Government may consider appropriate.

C. The permittee must make every reasonable effort to conduct the work authorized herein in a manner so as to minimize any adverse impact to fish, wildlife, and other environmental resources, including shellfish beds.

D. The permittee must make every reasonable effort to conduct the work authorized herein in a manner so as to avoid and minimize any degradation of water quality.

E. The permittee shall allow the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

F. Authorization of a specific work or structure authorized herein may be summarily suspended in whole or in part upon a finding by the District Engineer that immediate suspension would be in the general public interest or there has been a violation of any terms or conditions of this permit. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by a permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. A permittee shall take immediate action to comply with the provisions of this notice. Within ten (10) days following the receipt of this notice of suspension, the permittee may request a meeting with the District Engineer or a public hearing to present information relevant to a decision whether their permit should be reinstated, modified, or revoked. If a public hearing is requested it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the public hearing or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the authorization of the specific work or structure will be reinstated, modified, or revoked. Any modification, suspension, or revocation of authorization under this General Permit shall not be the basis for any claim for damages against the United States.

G. Upon receipt of a notice from the District Engineer for failure to comply with the terms, conditions, or standards of this General Permit, the structure owner must within sixty (60) days without expense to the United States and in such manner as directed by the District Engineer or his authorized representative(s), effect compliance with the terms, conditions, and standards or remove the previously authorized structure.

H. This General Permit does not convey any property rights, either in real estate or material, or any exclusive privileges; it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws, nor does it obviate the requirement to obtain other Federal, State, or local assent or to comply with any applicable standards required by ordinance for the activities authorized herein. Other Federal, State, or local agencies are not limited by this document and may impose more stringent requirements than those stated herein as they see fit.

I. Works or structures authorized herein may be subject to damage by wave wash from passing vessels and wind-driven waves. The issuance of this General Permit does not relieve the permittee from taking all proper

steps to ensure the integrity of works permitted herein and the safety of boats moored thereto from wave wash and the permittee shall not hold the United States liable for any such damage.

J. The permittee shall maintain the work or structure authorized herein in good condition. If and when a permittee desires to abandon an authorized structure, unless such abandonment is part of a transfer procedure by which the individual is transferring ownership of the structure, the permittee may be required to remove the structure.

K. If the display of lights and signals on any structure authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

L. Any activity that may affect any federally listed threatened or endangered species, a species proposed for listing, or designated critical habitat is **NOT** authorized by this General Permit. These activities will be evaluated under the individual permit review process as specified in 33 CFR 325.

M. Any activity that may affect any historic properties listed, or which may be eligible for listing on the National Register of Historic Places is **NOT** authorized by this General Permit. These activities will be evaluated under the individual permit review process as specified in 33 CFR 325.

N. If the permittee, prior to or during the performance of the work authorized herein, encounters previously unidentified archeological remains or cultural resources within the area subject to Department of the Army authorization, the applicant agrees to cease work and contact the District Engineer, so that further coordination with the South Carolina Institute of Archaeology and Anthropology and the South Carolina Department of Archives and History may be conducted.

O. This general permit relates only to activities authorized herein and does not convey the right to place any structures for any nonwater-related commercial use on or adjacent to any piers, floating docks, mooring piles, dolphins, covered boat sheds and/or dock covers without the prior approval of the District Engineer.

P. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Q. The Charleston District Engineer, at his discretion, may determine that this General Permit will not be applicable to a specific construction proposal. In such case, the procedure for processing an individual permit in accordance with 33 CFR 325 will be available.

R. This General Permit authorizes certain structures to be constructed on/or adjacent to areas subject to a prism and/or disposal easement held by the United States in perpetuity in conjunction with a Congressionally authorized project for the maintenance and improvement of the federal channel. This General Permit does not convey any property rights either in real estate or material or any exclusive use privileges, nor does it relinquish any right the United States has for the use of its easement or the maintenance and future widening or deepening of the federal channel pursuant to its easement rights.

S. If the District Engineer determines this structure shall in any way in the future conflict with the improvement, operation, maintenance and widening or deepening of the federal channel, the owners themselves, their heirs, successors and assigns will remove said structure within 45 days from the date that written notice is given by the District Engineer, and there shall be no entitlement to compensation from the United States for damage or injury.

T. No permanent structures will be placed on the prism easement or any adjacent disposal easement without written approval of the District Engineer.

U. The term "joint use dock" means the dock to be constructed can be used by no more than four (4) property owners.

V. The term "permittee" means the individual authorized by the District Engineer to accomplish work under this General Permit. The activities authorized under this permit are for private, non-commercial use. Work will not be considered private if its planned or ultimate purpose is commercial or industrial in nature, it is in support of operations that charge for the production, distribution, or sale of goods or service, or it will be for the use of the general public. In certain instances the term "permittee" may include corporations or other commercial entities that are requesting authorization to construct joint use or community docks as amenities to residential developments.

W. The term "community dock", for the purposes of this General Permit, means the structure shall be constructed for the use of those individuals within a specific community and shall provide temporary mooring space only.

X. A variance in the dimensions or locations of the activities herein may be granted in instances where conformity with existing structures would be practical and in cases where exceptions would be desired due to curvature and/or slope of the shoreline. Under normal circumstances, for activities **not** requiring a PCN that are **NOT ON OR ADJACENT TO FEDERAL CHANNELS**, private individuals may presume a variance is in effect for purposes of this general permit upon issuance of a permit by the South Carolina Department of Health & Environmental Control, Office of Coastal Resource Management. For activities located **ON OR ADJACENT TO FEDERAL CHANNELS**, a variance must be granted in writing by the USACE District Engineer, prior to commencement of work. The District Engineer reserves the right to issue a specific or written variance if, in his judgment, navigational, aesthetic or environmental concerns so require.

III. PROHIBITED ACTIVITIES:

All work that exceeds the terms and conditions specified herein is prohibited unless an Individual Department of the Army Permit or Nationwide Permit authorization has been obtained from the Corps of Engineers. All work for purposes other than those specified herein is expressly not authorized by this document.

IV. REQUIRED AUTHORIZATIONS:

A. Prior to performing any of the work authorized herein the permittee shall obtain the necessary state permits from the South Carolina Department of Health and Environmental Control and any other required Federal, State or local authorizations.

B. For activities located in the Critical Area, the permittee shall obtain a Critical Area Permit and a Coastal Zone Consistency Certification from SCDHEC, Office of Ocean and Coastal Resource Management.

C. For activities located outside the Critical Area in Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper Counties, the permittee shall obtain a Construction in Navigable Waters Permit and a Coastal Zone Consistency Certification from SCDHEC, Office of Ocean and Coastal Resource Management.

D. For activities located outside the eight coastal counties listed in IV(C) above, the permittee shall obtain a Construction in Navigable Waters Permit from SCDHEC, Bureau of Water.

V. PENALTIES FOR VIOLATIONS:

Authorization obtained under this General Permit limits the size, length and use of structures. Any deviation from the specifications, or other terms or conditions of the General Permit shall constitute a violation of Section 10 of the Rivers and Harbors Act of 1899 and may result in the District Engineer seeking judicial relief to have the permittee remove the structure or work and/or restore the project area to its former condition, as well as the imposition of penalties as provided by law.

VI. REVOCATION OF THE GENERAL PERMIT:

This permit may be revoked by issuance of a public notice at any time the District Engineer determines that the cumulative effects of the activities authorized herein have an adverse effect on the public interest. Following such revocation, any future activities in areas covered by this General Permit will be processed as an individual Department of the Army Permit or Nationwide Permit authorization.

VII. DURATION OF THE GENERAL PERMIT.

This General Permit will cover activities started within five (5) years and completed within six (6) years after the date of issuance unless this permit is revoked in the interim. Revoking the General Permit will not affect work performed in accordance with the conditions stated herein. At the end of the first year and every succeeding year, the Corps of Engineers and the Federal and State regulatory and resource agencies will jointly review activities authorized by this General Permit to determine if significant cumulative impacts have resulted. If the District Engineer determines revocation of this permit, in whole or in part, may be in order due to cumulative impacts, a public notice of the intention will be issued and after a review of all additional data submitted, action will be taken to amend, modify or revoke this permit as appropriate. Revocation of the General Permit will not affect the work that had been authorized when the General Permit was in effect if such work is in accordance with the provisions contained herein.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

This permit shall become effective on the date of the District Engineer's signature.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

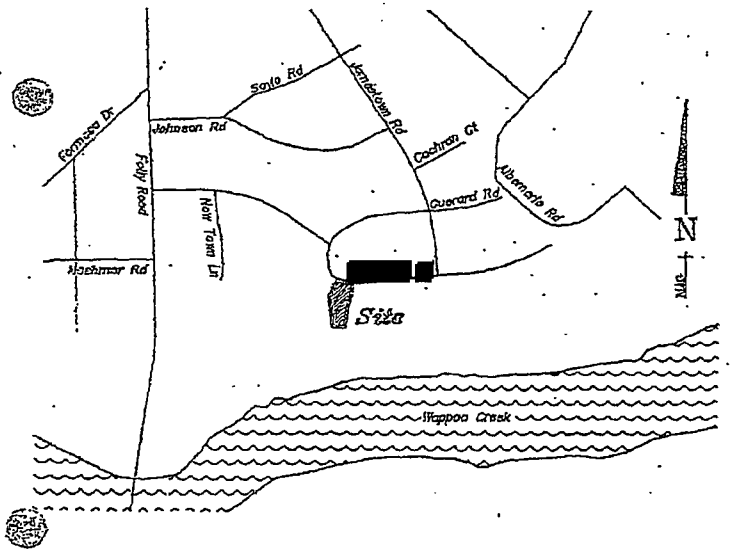
Edward R. Fleming
LTC, Corps of Engineers
District Engineer

4 December 2006
Date

RECEIVED
JUN 28 2011
DHEC-OCRM
CHARLESTON OFFICE

P82

GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3892 Edisto No. 869-1495



1. Start out going SOUTHWEST on MCMILLAN AVE / 3RD ST toward NOISETTE BLVD. Continue to follow MCMILLAN AVE.
2. Turn LEFT onto SPRUILL AVE.
3. Turn RIGHT onto COSGROVE AVE.
4. COSGROVE AVE becomes SC-7 S.
5. SC-7 S becomes SC-171 S.
6. Turn SLIGHT LEFT onto ASHLEY RIVER RD / SC-61. Continue to follow SC-61. 1.6 mi
7. [redacted]
9. [redacted] is on the RIGHT.

PERMITTED PLANS

PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift

Location Map "NTS"

Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

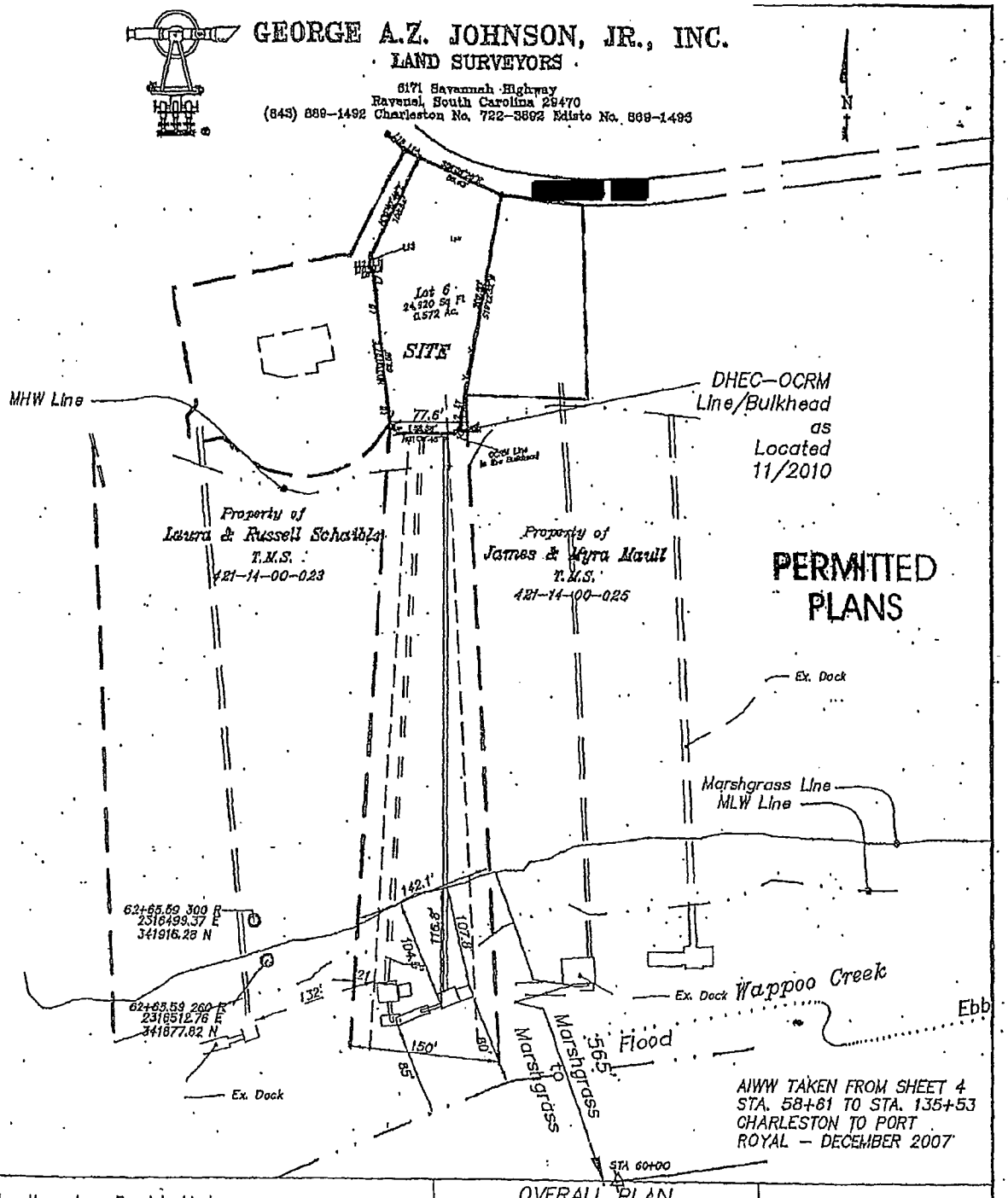
LOCATION MAP

PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT

David Abdo Private Recreational Dock
[redacted]
SAC 2007-00940-2GV June 17, 2011
Sheet 1 of 5

SOUTH CAROLINA PROFESSIONAL ENGINEER

GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3802 Edisto No. 869-1495



Applicant: David Abdo
[redacted]
Charleston, SC 29407
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

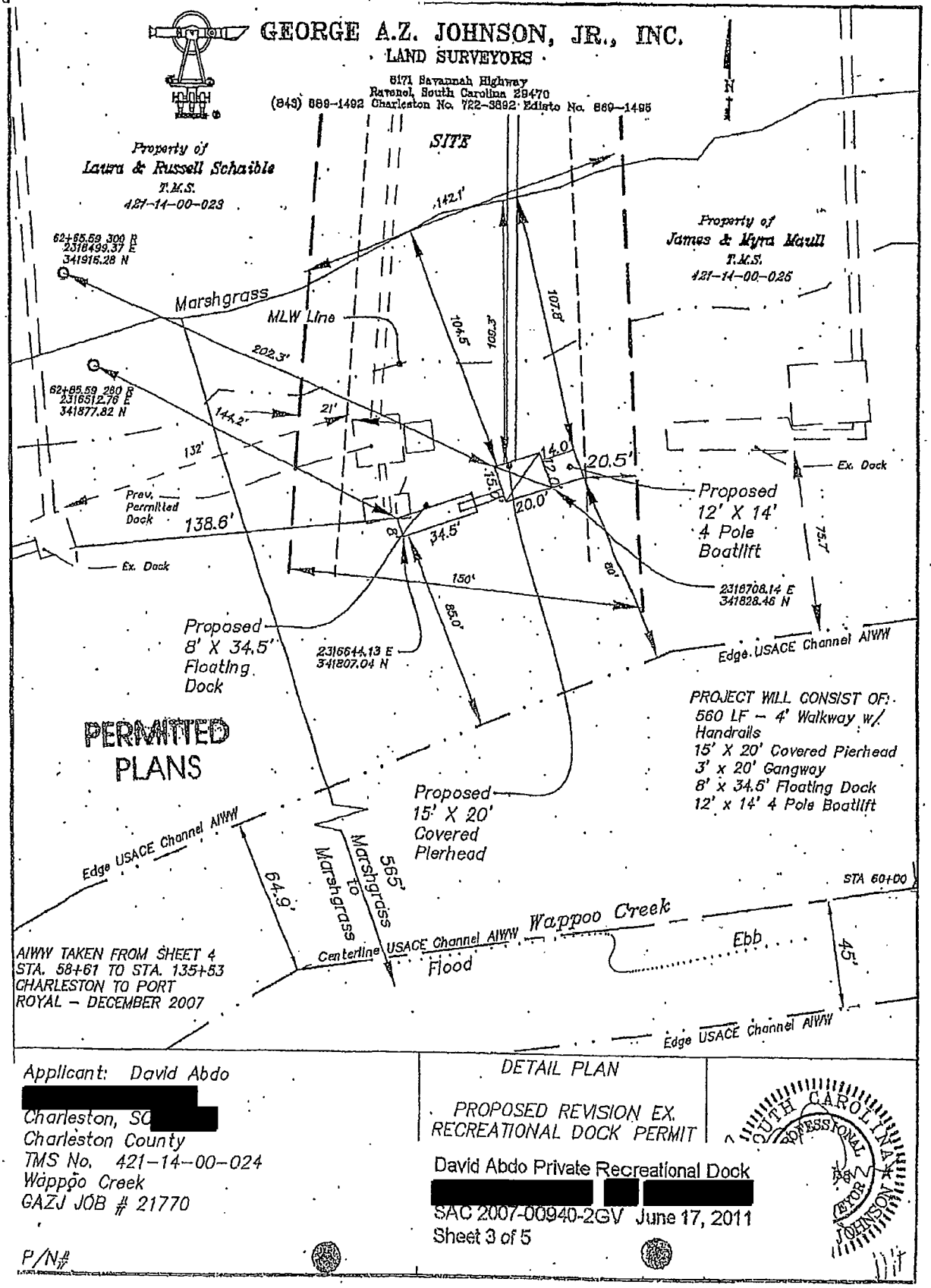
P/N#

OVERALL PLAN

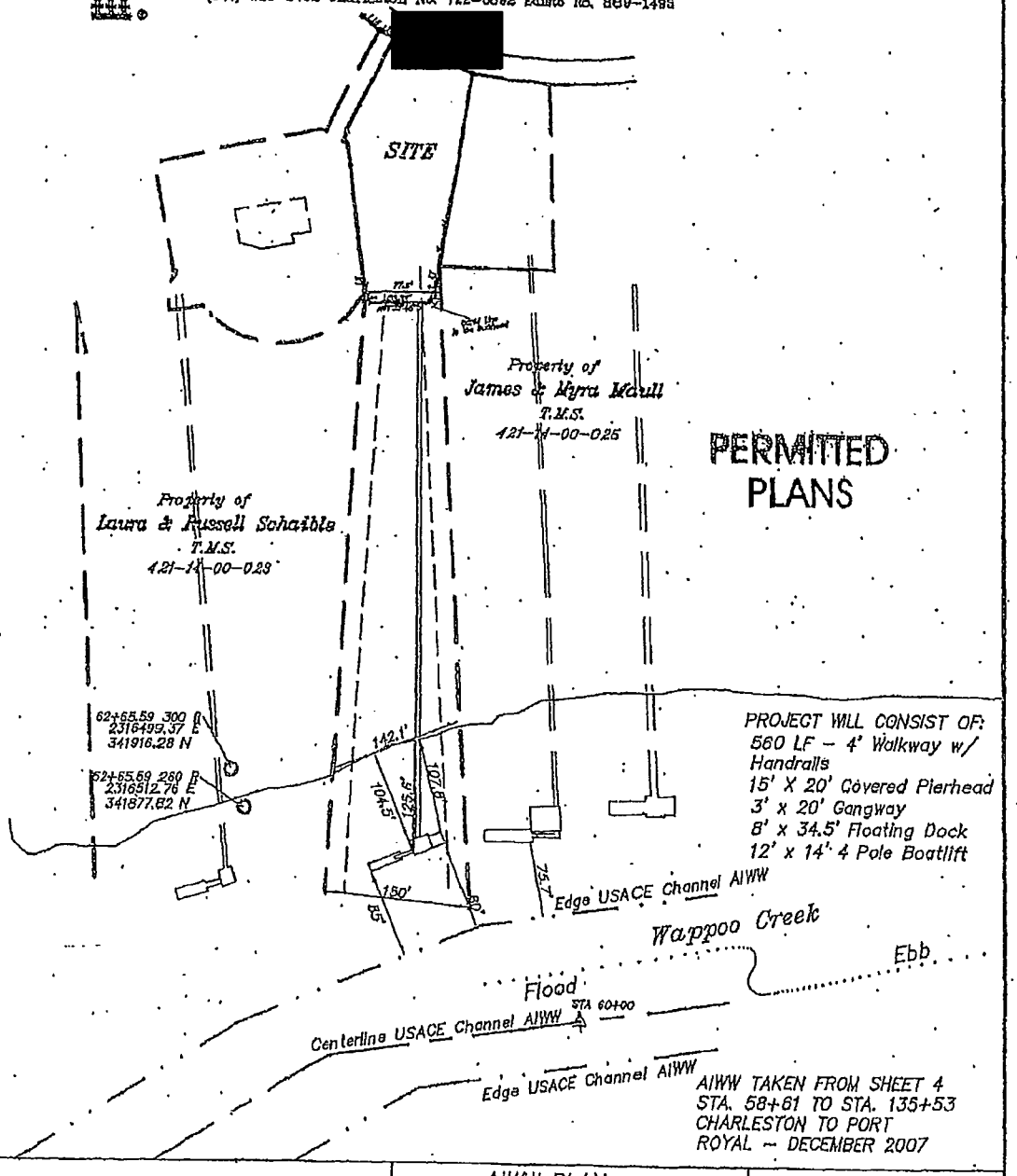
PROPOSED REVISION EX.
RECREATIONAL DOCK PERMIT

David Abdo Private Recreational Dock
[redacted] City of Charleston
SAC 2007-00940-2GV June 17, 2011
Sheet 2 of 5

SOUTH CAROLINA PROFESSIONAL ENGINEER JOHNSON


GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3892 Edisto No. 869-1495
SITE
Property of
Laura & Russell Schaible
T.M.S.
421-14-00-023
Property of
James & Myra Mault
T.M.S.
421-14-00-026
62+85.59 300 R
2318499.37 E
341915.28 N
62+85.59 280 R
2316512.76 E
341877.82 N
Marshgrass
MLW Line
202.3'
142.1'
104.5'
100.3'
101.8'
144.2'
21'
132'
138.6'
Prev. Permitted Dock
Ex. Dock
14.0
15.0
20.5'
20.0'
34.5'
150'
80'
85.0'
75.7'
Ex. Dock
Proposed 12' X 14' 4 Pole Boatlift
2316708.14 E
341828.46 N
Proposed 8' X 34.5' Floating Dock
2316644.13 E
341807.04 N
Edge USACE Channel AIWW
PERMITTED PLANS
PROJECT WILL CONSIST OF:
560 LF - 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift
Proposed 15' X 20' Covered Pierhead
Edge USACE Channel AIWW
64.9'
565' Marshgrass to Centerline USACE Channel AIWW
STA 60+00
Wappoo Creek
Ebb
Flood
45'
Edge USACE Channel AIWW
AIWW TAKEN FROM SHEET 4
STA. 58+61 TO STA. 135+53
CHARLESTON TO PORT
ROYAL - DECEMBER 2007
Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770
P/N#
DETAIL PLAN
PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT
David Abdo Private Recreational Dock
[redacted]
SAC 2007-00940-2GV June 17, 2011
Sheet 3 of 5
SOUTH CAROLINA
PROFESSIONAL
SURVEYOR
JOHNSON

GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS
6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3892 Edisto No. 869-1493



PERMITTED PLANS

PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift

AIWW TAKEN FROM SHEET 4
STA. 58+61 TO STA. 135+53
CHARLESTON TO PORT ROYAL – DECEMBER 2007

Applicant: David Abdo
[redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

AIWW PLAN
[redacted]
RECREATIONAL DOCK PERMIT

David Abdo Private Recreational Dock
[redacted] City of Charleston
SAC 2007-00[redacted]V June 17, 2011
Sheet 4 of 5

P/N#

PROJECT WILL CONSIST OF:
560 LF – 4' Walkway w/ Handrails
15' X 20' Covered Pierhead
3' x 20' Gangway
8' x 34.5' Floating Dock
12' x 14' 4 Pole Boatlift

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0171 Savannah Highway
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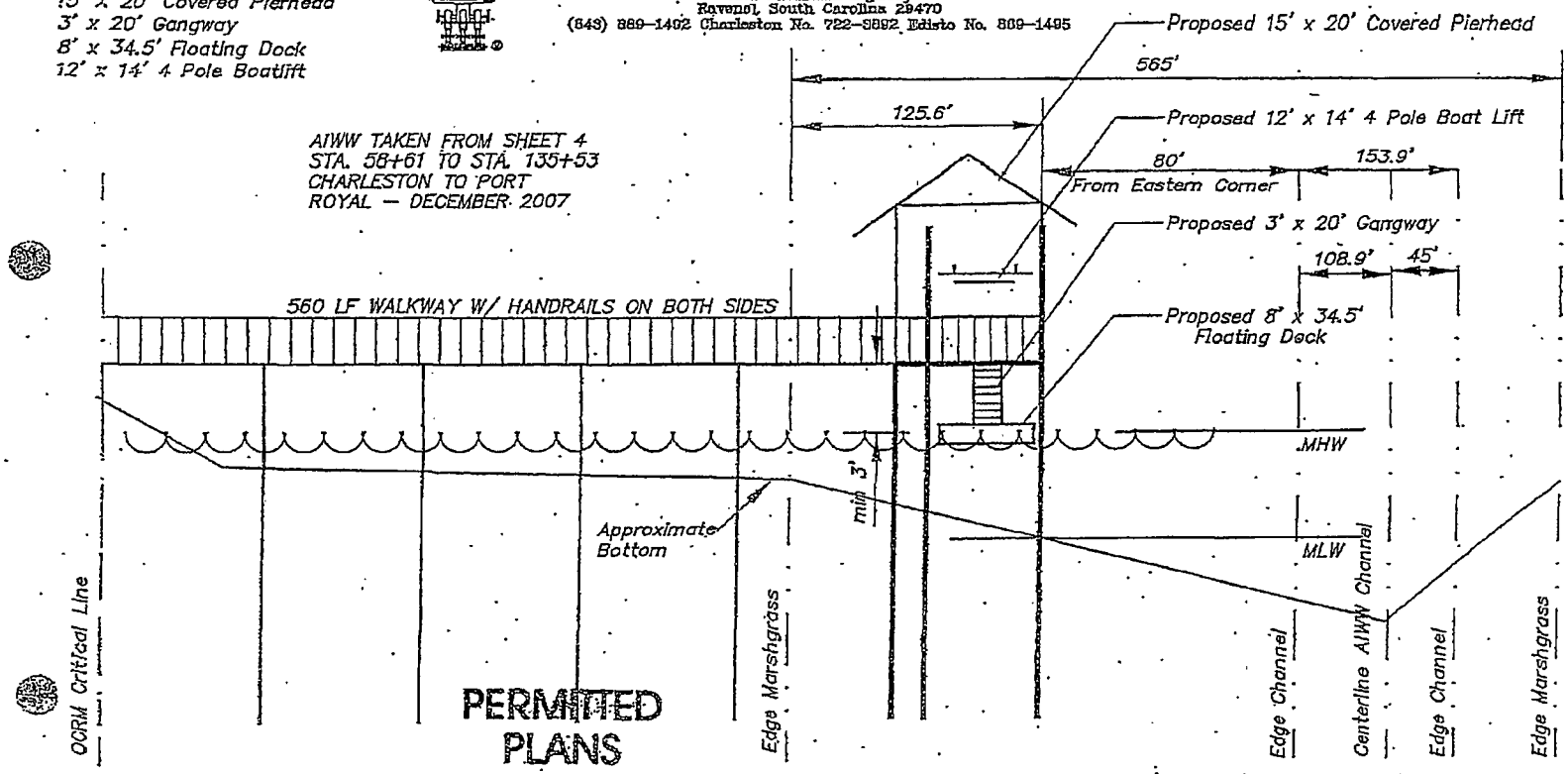

Applicant: David Abdo
[redacted]
Charleston, SC [redacted]
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB #: 21770

P/N#

SIDE VIEW
PROPOSED REVISION EX. RECREATIONAL DOCK PERMIT

David Abdo Private Recreational Dock
[redacted]
SAC 2007-00940-2GV June 17, 2011
Sheet 5 of 5

SOUTH CAROLINA PROFESSIONAL ENGINEER 58 GEORGE A.Z. JOHNSON, JR.

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

ADMINISTRATIVE SUMMARY OF REVIEW

Commenting Agencies	Adjoining Property Owners	Agent or Contact
SCDNR:	See 1 of 1	George AZ Johnson
SPA:		Business Ph: 843-889-1499
SCDAH:		Fax Number: 843-889-1054
SCDAA:		
Others:		

*NOTE: See list of Interested Persons on Reverse
APO's Notified? Please Initial & Date: 7-29-11 CG
Local Government Notified? Please Initial & Date: 7-29-11 CG

APPLICATION REQUIREMENTS

Please Circle When Complete (YES)

	Date Received	Letters to Applicant
Administrative Fee received	8-2-11	1.
Aff. Of Ownership received	5-18-11	2.
Certified Deed, plat or lease	5-18-11	3.
Date Published		4.
Which Paper		5.
County/State News ad recd	6-28-11	6.
Date Published	6-7-11	7.
Which Paper	P&C	8.

LETTER OF OBJECTIONS SUMMARY

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

VH [redacted] James R
Russell Laura Schaible, [redacted] address 10-12-11

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

~~Richard Hall~~ James

TECHNICAL SUMMARY OF REVIEW

TECHNICAL SUMMARY OF REVIEW

Permit Name: David Abdo

Decision:

Permit:	
Permit with Conditions:	X
Deny:	

I. Background Information: Database ID# 58688

Permit Number: OCRM-07-128-F (Amendment)

P/N Date: July 22, 2011 Date Received: May 18, 2011

Permit Type: OCRM Critical Area Minor Other Agency Permits: USACOE

County: Charleston

Location Description: [redacted], Charleston, [redacted], South Carolina.

II. Project Description and Stated Purpose:

The above referenced permit has been amended to authorize the work as proposed and shown on the attached plans consisting of constructing a dock. Specifically, the applicant seeks to construct a 4' x 560' walkway with handrails leading to a 15' x 20' covered pierhead with handrails and benches. Floodside of the pierhead, a 3' x 20' ramp will lead to an 8' x 34.5' floating dock. Ebbside a 12' x 14', four-pile boatlift is proposed. The work as described is for the applicant's private, recreational use.

Purpose: The work is for the applicant's private recreational use.

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

Federal or other State Agencies:

SCDNR: No objection.
SCSPA: No objection.

Local Agencies:

None.

Public Comment (Include all names from Public Hearing):

None.

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

Russell & Laura Schalble, [redacted], Charleston, S.C. [redacted] No comments received

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James & Myra Maull [redacted] Charleston, S.C [redacted] Objected to permit and requested the dock be positioned as originally permitted, stated the dock would obstruct his ability to navigate his vessel to tie up on the back side on his floating dock.

IV. Environmental Assessment:

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

This area is tidal river and Spartina alternaflora marsh.

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

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

Local area is old developed residential S/D.

2. Existing system conditions (i.e. shellfish closures, 303d, and shellfish lease name and #):

Shellfish harvesting Class P, Fecal Coliform.

3. Name and width of waterbody:

Wappoo Creek, 565'.

4. Any small tributary issue, width, change in grade:

None.

5. List total square footage requested and allowed:

744, 744.

6. Any geographic circumstances to consider or boat storage sq. ft considerations:

Yes. 12' x 14' four pile boatlift.

7. Any corridor or extended property line issues; is there a harm allowing a crossing of lines:

Yes. APO, Mr. Maull, objects to placement of dock near his property line. Application request 20.5' from extended line but Mr. Maull insist this does not leave enough room for him to navigate his large boat to the back side of his floating dock. Permit special conditioned to require the structure be 30.5' from the east side extended property line in an attempt to address Mr. Maull's concern.

8. If roof requested, any roofs in the area:

Yes. Other roofs in vicinity.

9. Property width and width of spacing at edge of creek/river:

77', 77'.

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

None.

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V. Policy Assessment:

A. Regulatory History:

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

Amendment to existing permit.

2) Previous Enforcements (Is project in compliance w/all previous permits, etc.):

None.

3) Dock Master Plan and was it required to be recorded:

None.

4) Shellfish lease area number:

None.

5) Marsh ownership claim:

None.

B. Applicable Regulations and Policies (list those that apply only):

1) CZMA:

48-39-150 (Consistent with the 10 General Conditions).

2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards):

R.30-11(B) & (C)
R.30-12-(A) (Consistent as it relates to private recreational use docks).

3) CZ Policies (Management Program Document):

Chapter III, Section VI.C.1), 2), & 3).

C. Does the project contravene any coastal zone regulations?

☐ YES X☐ NO

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

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

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

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

VII. Field assessment by: David J. Thompson

(Name) **(Date)**

VIII: Reviewed By:

P9

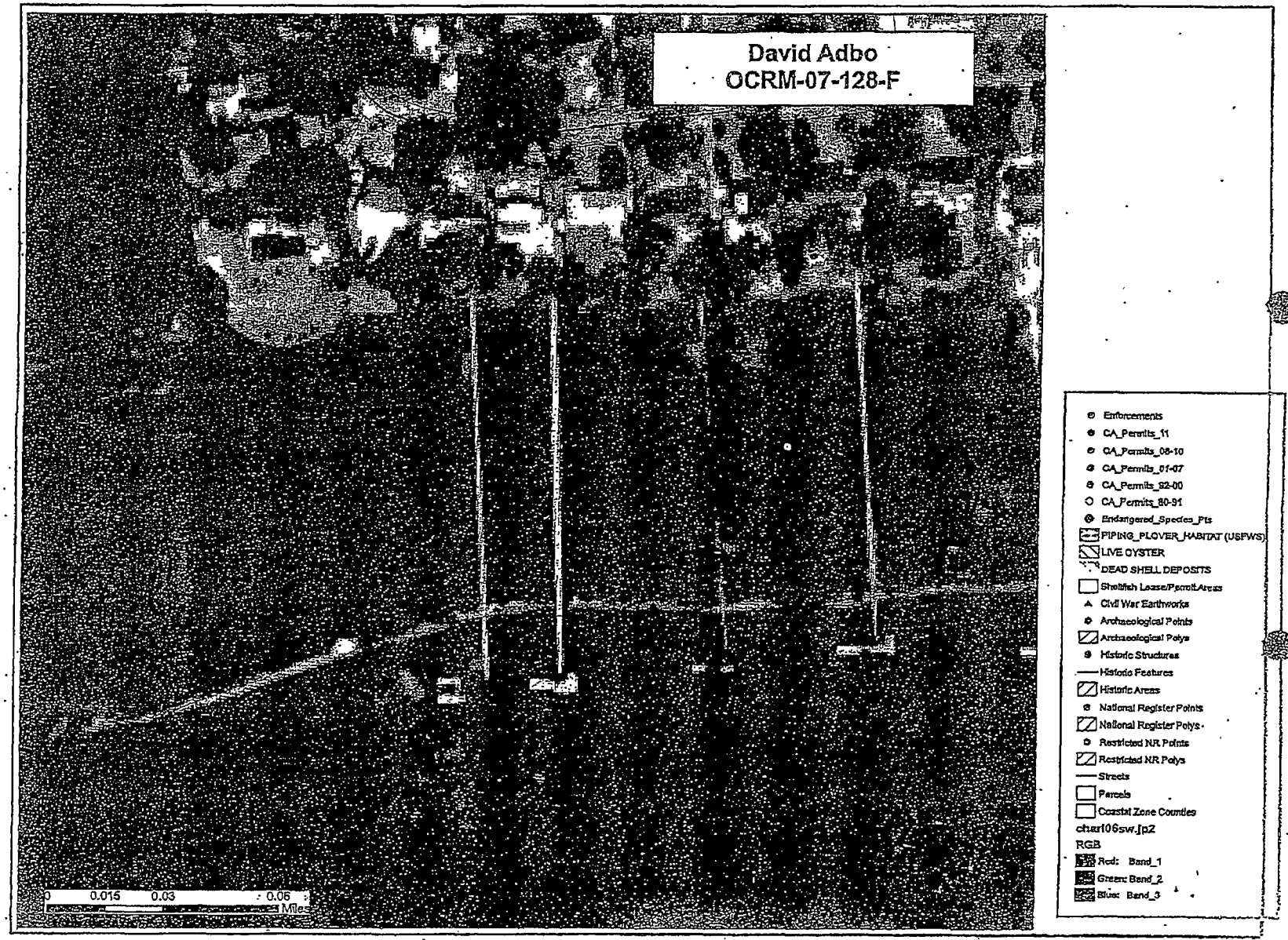
1. Project Manager: _____ 10/4/11
(Signature) (Date)

IX. Notes:

This project is consistent with all rules and regulations for permitting private recreational use docks in the critical areas of South Carolina. The structure must be moved 30.5' off the extended property line to the east of to minimize navigational concerns of the APO.

X. Attachments Required:

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


David Adbo
OCRM-07-128-F
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Miles
Enforcements
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CA_Permits_01-07
CA_Permits_92-00
CA_Permits_80-91
Endangered_Species_Pts
PIPING_PLOVER_HABITAT (USFWS)
LIVE OYSTER
DEAD SHELL DEPOSITS
Shellfish Lease/PermitAreas
Civil War Earthworks
Archaeological Points
Archaeological Polys
Historic Structures
Historic Features
Historic Areas
National Register Points
National Register Polys
Restricted NR Points
Restricted NR Polys
Streets
Parcels
Coastal Zone Counties
char106sw.jp2
RGB
Red: Band_1
Green: Band_2
Blue: Band_3

Exhibit C

BOARD:
Allen Amsler
Chairman

Mark S. Lutz
Vice Chairman

Steven G. Kisner
Secretary

D H E C
PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
R. Kenyon Wells

L. Clarence Batts, Jr.

Ann B. Kirol, DDS

John O. Hutto, Sr., MD

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

January 9, 2012

U.S. Mail – Certified and Electronic Mail

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David Abdo
[redacted]
Charleston, SC [redacted]
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Via Interagency Mail Delivery
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Charleston, SC 29405
chudarbd@dhec.sc.gov

***RE: Docket No. 11-RFR-56** – Decision dated October 16, 2011, to amend Permit No. OCRM-07-128-F for the construction of a walkway with handrails leading to a covered pierhead with handrails and benches and a ramp leading to a floating dock and the addition of four-pile boatlift for the applicant's personal recreational use.*

Dear Counsel of Record and Mr. Abdo:

Please find enclosed the Final Agency Decision in the above referenced matter.

Sincerely,

Lisa Lucas Longshore
Clerk

SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

FINAL AGENCY DECISION

In Re: Staff Decision dated October 16, 2011, to amend Permit No. OCRM-07-128-F for the construction of a walkway with handrails leading to a covered pierhead with handrails and benches and a ramp leading to a floating dock and the addition of a four-pile boatlift for the applicant's personal recreational use

Board Docket Number 11-RFR-56

Appearances:

Michael Molony, Esq. for Requestor James R. Maull

Leslie S. Riley, Esq. for Requestors Russell and Laura Schaible

David Abdo, pro se, Requestor/Permittee

Davis A. Whitfield-Cargile, Esq. for South Carolina Department of Health & Environmental Control

---

This matter comes before the South Carolina Board of Health and Environmental Control for final review pursuant to S.C. Code Ann. § 44-1-60. David Abdo submitted to the Department an application to amend Critical Area Permit No. OCRM-07-128-F. The applicant requested approval to make changes to an existing permit, which was originally issued to Mr. Charles Palmer and subsequently transferred to Mr. Abdo. After the public comment period ended, Department staff considered the application in conjunction with the comments submitted and the applicable laws. Department staff reviewed the location of the pierhead in relation to the shared extended property line of Mr. Abdo and James R. Maull.

On October 6, 2011, Department staff authorized the permit amendment sought by Mr. Abdo, but with a condition that the dock be situated 30.5 feet off the shared

extended property line of Mr. Maull and Mr. Abdo. Mr. Maull, Russell and Laura Schaible, and Mr. Abdo all filed timely requests for review. The Board conducted a final review conference on December 8, 2011. The sole issue raised by the requestors in this matter is the location of the dock in relation to the shared extended property line of Mr. Maull and Mr. Abdo ("extended property line"). As noted above, Department staff required that the dock be 30.5 feet off the extended property line. Mr. Abdo requested permission to construct the dock 20.5 feet off the extended property line. The Schaible also request that the dock be placed 20.5 feet off the extended property line. Mr. Maull requests that the dock be 40.5 feet off the extended property line.

Department staff explained that normally the regulations require docks to be a minimum distance of 20 feet off shared extended property lines. *23A S.C. Code Ann. Reg. 30-12(A)(1)(p)*[1]. Therefore, if both docks on either side of a shared property line are the minimum distance, then docks typically have forty feet of separation. When making the staff decision, Department staff understood Mr. Maull's dock to be 10 feet off the extended property line. To address Mr. Maull's navigation concerns, Department staff therefore imposed the condition on the staff decision that required Mr. Abdo to construct the dock 30.5 feet off the extended property line. The purpose of the condition imposed by Department's staff was to provide 40 feet of separation between Mr. Maull's dock and Mr. Abdo's dock.

In the Department staff's supplemental response to the request for final review and at the review conference, Department staff brought to the Board's attention that the staff's previous belief that Mr. Maull's dock was 10 feet off the extended property line

[1] As the regulation notes, DHEC has discretion to authorize docks to be closer to extended property lines, or to cross extended property lines, when there is no material harm to the policies of the Act. Department staff explained that navigation is the primary policy of concern with regard to extended property lines.

was incorrect, That conclusion was based on an inadvertent error in interpreting Mr. Maull's permit. Mr. Maull submitted a survey showing that his dock was, in fact, 18.5 feet off the extended property line. Department staff explained that had they known that Mr. Maull's dock was 18.5 feet away from the extended property line instead of 10 feet away, the condition would not have been included and Mr. Abdo's permit would have been amended as requested by Mr. Abdo. As a result, Department staff has no objection to issuance of Mr. Abdo's permit amendment as he requested. In addition, Mr. and Mrs. Schaible ask the Board for the same result—that the permit be amended to require the dock to be constructed 20.5 feet off the extended property line. Therefore, at the final review conference, the DHEC staff and requestors Mr. Abdo and Mr. and Mrs. Schaible were in agreement.

Mr. Maull requests that the dock be constructed 40.5 feet away from the shared extended property line. The Board concludes, however, that the permit requested by Mr. Abdo complies with the law and should therefore be issued as requested. As staff explained, when a property owner desires to construct a dock from his waterfront property, there will likely be a number of possible alignments, many of which may be permittable by the Department. Department staff has authority to condition permits to require the applicant to take "whatever measures the Department feels are necessary to protect the public interest." S.C. Code Ann.§ 48-39-150(B). The Department only exercises this authority when a condition is necessary to protect the public interest or to bring an activity into compliance with the regulations. If various alignments for a proposed structure do not violate the regulations and it is a merely matter of choice,

DHEC allows the applicant to weigh the competing options and construct the option he chooses, so long as that option complies with the law.

The Board has considered the arguments made by Mr. Maull in support of his request that the dock be constructed 40.5 feet off the extended property line. In his comment letter to Department staff during the public comment period, he explained that "in the event that both neighbors at [redacted] [Mr. Abdo and Mr. Maull] come to their dock at the same time, there will not be enough space for safe docking for either party." The Board, however, does not believe the permit amendment as requested by the permittee violates the public interest. While the Board is sympathetic to the concerns raised by Mr. Maull with regard to docking his 48-foot sport fishing boat on the landward side of his floating dock, Mr. Maull raises no objections that invoke the public interest or prohibit the permit amendment from being issued on the terms requested by the permittee. DHEC does not have an obligation to place conditions on neighbors' dock permits to ensure that all nearby docks have the ability to dock large boats on the landward side of their floating dock.

Having reviewed the administrative record and heard from the parties in this matter, the Board concludes that Mr. Abdo's application to amend his existing permit complies with the regulations and existing law and that no special conditions are necessary to protect the public interest. Accordingly, the Board modifies the staff decision and authorizes the amendment as requested by Mr. Abdo. The language "provided the structure is located 30.5' from the extended property line on the eastern side of the property" is to be deleted from the permit.

Allen Amsler
Chairman
Board of Health and Environmental Control
For the Board

January 6, 2012

Notice of Right to Request Contested Case Hearing Before Administrative Law Court

S.C. Code §44-1-60(F)(2) provides that within thirty days after the receipt of the Board's written final agency decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

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

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: http://www.scalc.net. If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the following address:

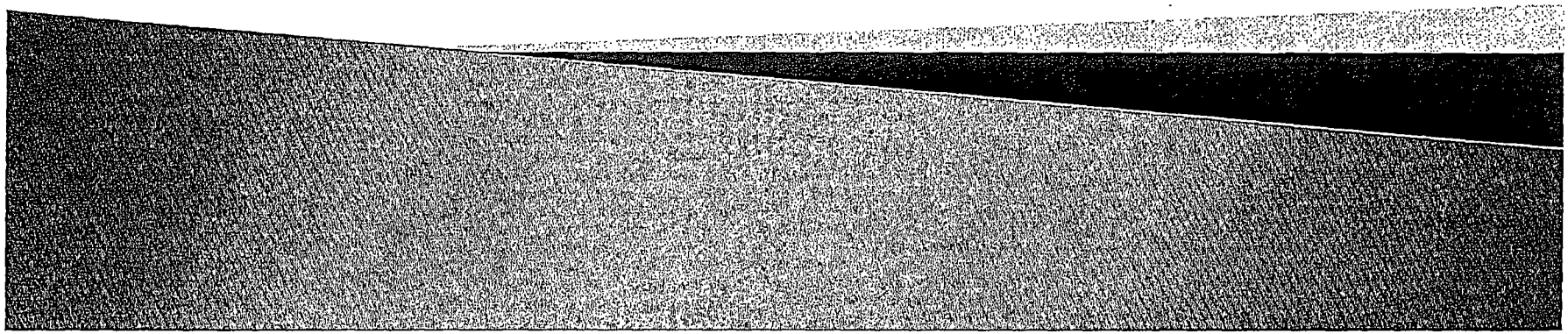
Lisa L. Longshore
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

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

Exhibit D

Requestor James Maull

[redacted]



[redacted]
© 2011 Google

Significant Chronology

- May, 2007 – Charles R. Palmer, predecessor in title to David Abdo, applied for a dock permit for [redacted]. **Record p. 142.**

- Permit drawings show flood-side section of dock located 21 feet from extended property line between Schaibles and Palmer (now Abdo). **Record p. 104.**

Chronology cont.

- Schaibles object because dock as shown on Palmer application is too close to their property line. **Record p. 142.**

- OCRM staff gives no weight to Schaibles' objection and concluded that if the dock were moved away from the shared property line extension between Palmer and Schaible, it would *"likely affect Maulls' ability to navigate a large boat to and from a "u" shaped slip on his dock."* **Record p. 145.**

Chronology cont.

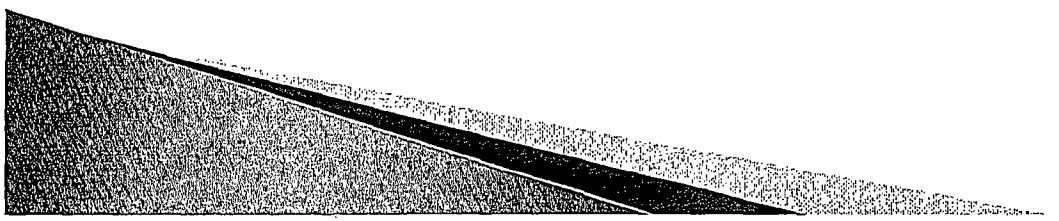
- 2007 permit authorized construction of a boatlift, pierhead, ramp and floating dock. The floating dock extended in front of the pierhead, in order to mitigate any navigational concerns. **Record p. 100, 129.**

- July, 2011, Abdo seeks to amend the Palmer permit. The proposal includes the same components permitted previously – float, pierhead, boat lift and ramp. **Record p. 41.**

Critical Distinctions Between Palmer Permit and Adbo Amendment

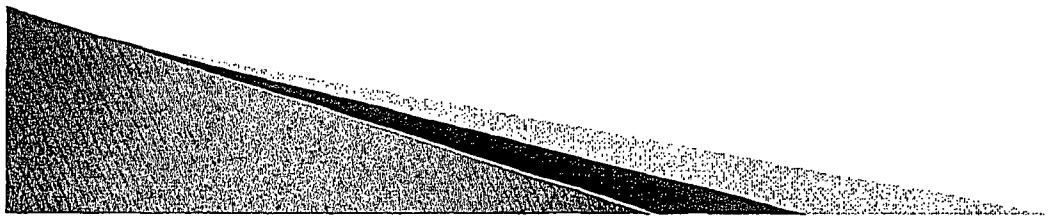
- Abdo Amendment includes a request for a longer floating dock. The Palmer floating dock was 20' in length. The Abdo floating dock is 34.5' in length.

- The Abdo Amendment requests that the floating dock be located floodside of the pierhead. The Palmer floating dock was channelward of the pierhead.



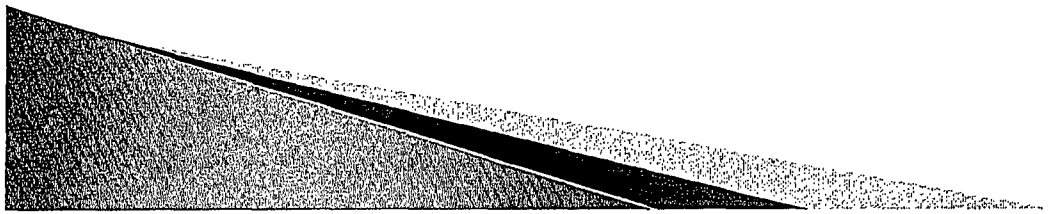
Critical Distinctions cont.

- Abdo amendment includes 88 linear feet of structure extending in front of critical line. Palmer permit only allowed 32.5 linear feet of structure extending in front of critical line.



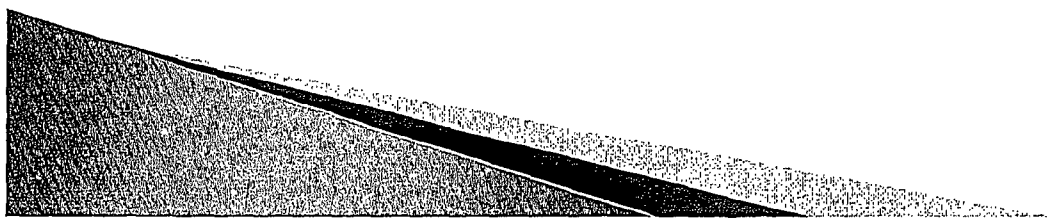
Critical Distinctions cont.

- The Palmer dock proposed 82.5 feet of separation from the Maull dock. The Abdo dock is permitted 30.5 feet from the Maull dock.



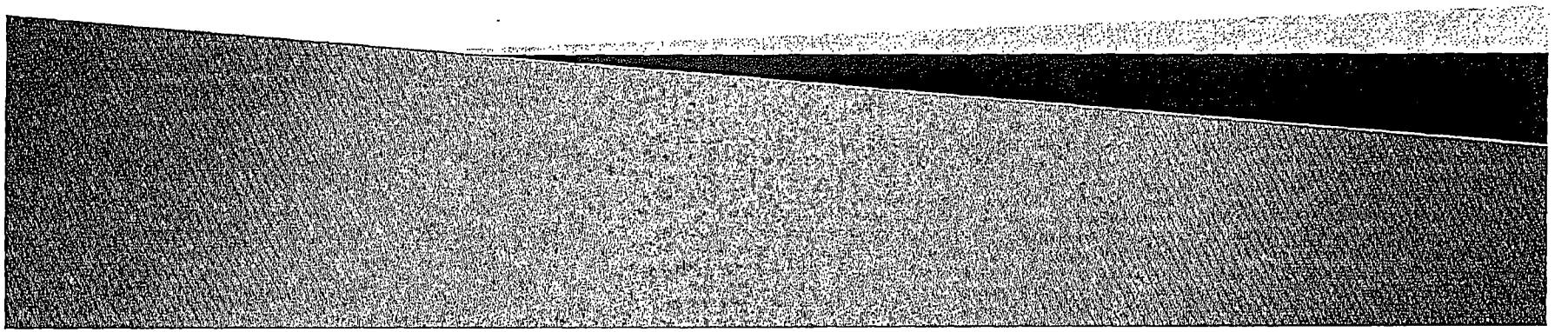
Critical Distinctions cont.

- The Palmer dock was 21' from the shared extended property line with Schaible. The Abdo dock is 40' from the shared extended property line with Schaible.



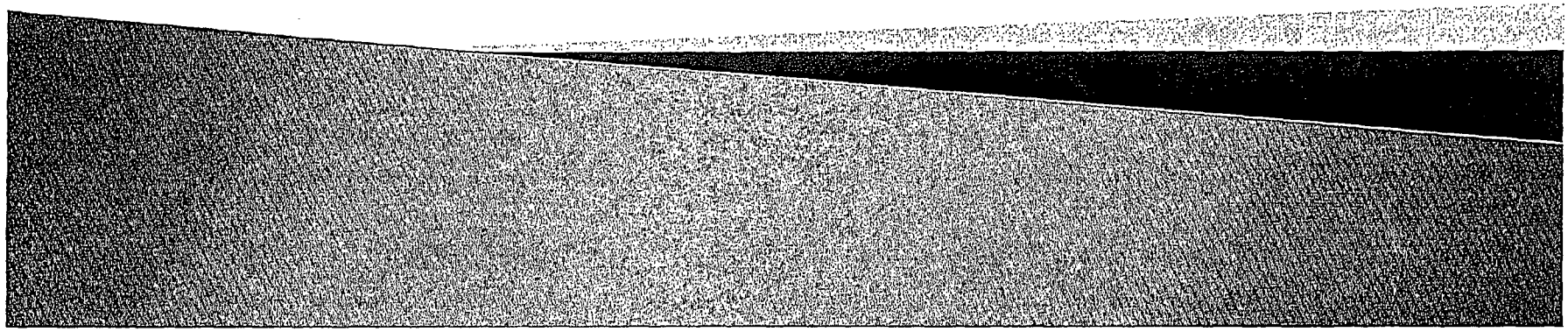
Question for Board

What has changed since 2007 when OCRM staff concluded that there was the potential for material harm to the policies of the coastal zone management act, by negatively impacting Maull's navigation to and from his dock? **Record p. 145**



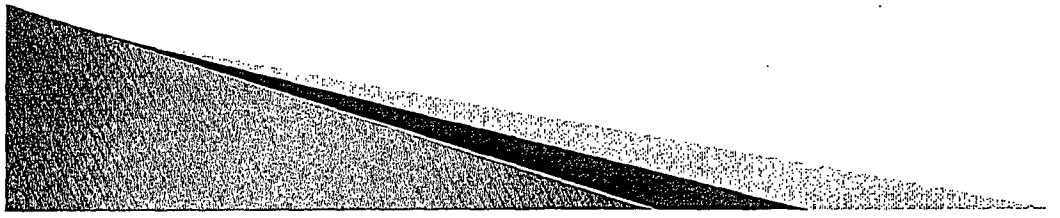
ANSWER

Nothing has changed. There is no justification for staff's abandonment of their earlier conclusion in 2007 that Maull's ability to navigate safely was threatened by movement of the dock away from the Schaibles.



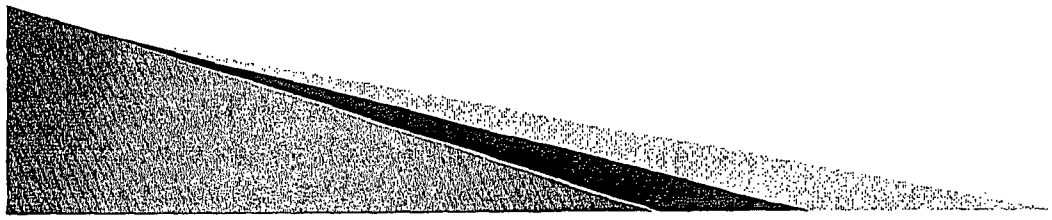
CONCLUSION

In 2007 the Schaibles asked the agency to include a condition on the Palmer permit that the dock be located farther away from the Schaibles and closer to the shared extended property line between Maull and Palmer. The agency's final administrative action was to conclude that Maull's navigation could be negatively impacted by this request, while there was no negative impact to the Schaibles. That decision was challenged, the Board declined review, and the decision was final. **Record p. 115.**



Conclusion cont.

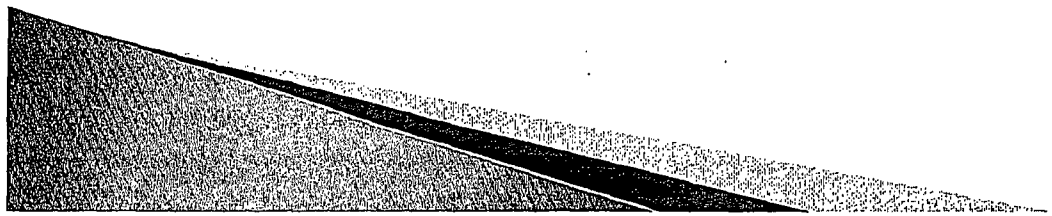
Significant consideration was given during the Palmer permit application review. Note that your staff sought to mediate between the disputing property owners, **Record p. 124**, and note Curtis Joyner's conclusion that the Palmer dock should be configured to place the floating dock channelward of the pierhead to further address Maull's concerns. **Record p. 129.**



Conclusion cont.

Absent a clear demonstration of a change in circumstances, the staff's refusal to adhere to its 2007 conclusions of potential harm to Maull, and to recognize administrative finality is:

1. Fundamentally unfair, and
2. Indefensible.



SOLUTION

- UNCONTROVERTED THAT THERE IS THE POTENTIAL FOR HARM TO MAULL. (STAFF'S CONCLUSIONS IN 2007.)

- MAULL HAS INDICATED, BY CORRESPONDENCE DATED OCTOBER 14, 2011, THAT HIS NAVIGATIONAL CONCERNS CAN BE ADDRESSED IF THE OFF-SET IS INCREASED FROM 30.5' TO 40.5'.

- **APPROPRIATE RESPONSE FROM BOARD - INCREASE OFF-SET TO 40.5'.**

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents.	**NOTICE OF ASSIGNMENT** **(Contested Case)** DOCKET NO. 12-ALJ-07-0050-CC

NOTICE IS GIVEN that a request for a contested case hearing was filed on February 8, 2012. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2011), the **Honorable Shirley C. Robinson,** Administrative Law Judge, has been assigned to preside in this matter. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, **www.scalc.net**.

A copy of any document or any other item filed with the Court shall be sent to all other parties at the time of filing. If a mailing address changes, or if an address is incorrect, the Court must be notified immediately of the correct address.

This the 22nd day of February, 2012.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED
FEB 22 2012
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

	)	DOCKET NO.: 12-ALJ-07- 0050 -CC
JAMES R. MAULL,	)	
Petitioner,	)	
vs.	)	**NOTICE OF MOTION AND MOTION FOR INTERVENTION**
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL and DAVID ABDO,	)	
Respondents.	)	
IN RE: *Intervention of Russell Schaible and Laura Schaible*	)	

TO: ALL PARTIES AND THEIR COUNSEL:

YOU WILL PLEASE TAKE NOTICE THAT Russell Schaible and Laura Schaible, will move before the Administrative Law Court, the Edgar Brown Building, Columbia, South Carolina, within ten (10) days after service hereof, for an Order allowing them to intervene in the above-captioned proceeding. This motion is filed pursuant to SCALC Rule 20(B). The grounds for this Motion are set forth below:

This Contested Case arises from the South Carolina Board of Health and Environmental Control's (Board) Final Agency Decision dated January 6, 2012. The Board's Final Agency Decision modified the decision of Respondent, South Carolina Department of Health and Environmental Control (DHEC), to issue a critical area permit amendment on October 16, 2011. The amendment to Permit No. OCRM-07-128-F authorized the construction of a walkway with handrails leading to a covered pierhead with handrails and benches and a ramp leading to a floating dock and the addition of a four-pile boatlift for Respondent Abdo's personal recreational

use at [redacted] Charleston, SC. Proposed Intervenors, Russell Schaible and Laura Schaible (Schaibles), requested a final review conference, along with the existing parties to this contested case.

Proposed Intervenors reside at [redacted], Charleston, SC, adjacent to Respondent. Petitioner James R. Maull is the adjacent property owner on the other side of Respondent Abdo's property.

Standard on Intervention

SCALC Rule 20(B) provides that a person may intervene in a proceeding where:

1. the movant will be aggrieved or adversely affected by the final order;

2. the interests of the movant are not being adequately represented by the parties, or that it is otherwise entitled to intervene;

3. that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

Courts consistently apply this rule in flexible manner. The South Carolina Supreme Court has held that "we must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a). Each case will be examined in the context of its unique facts and circumstances." Ex Parte: Horry County State Bank, Appellant. In Re: Ken's Cabana, LLC and Winner's World, Inc. both d/b/a Winner's World Tours, a joint venture v. Flemington Properties, LLC et al., 361 S.C. 503, 507, 604 S.E.2d 723, 725 (2004). This Court has complied with the Supreme Court's standard of flexible application of the rules of intervention, and has already allowed intervention by many citizen's groups who share identical interests, when intervention by just one of them would have adequately protected the interests of the others.

Petitioner contends the amendment places the dock too close to his existing dock structure and will interfere with his ability to utilize his dock. Respondent Abdo supports the decision of the Board to allow the dock to be constructed in the location depicted in his application. Proposed intervenors request that the permit amendment as approved by the Board is the only acceptable alignment. Should this Court reverse the agency and have the dock located farther away from Petitioner's dock, it will have a real and significant impact on the Proposed Intervenors by bringing it closer to their dock and will interfere with the value and enjoyment of their property. In order to protect their interests, Proposed Intervenors must be able to present their particular concerns about Petitioner's request for relief. Further, allowing intervention will not unduly prolong these proceedings.

As is discussed above, the Schaibles have a real and substantial interest in the Court's adjudication this Contested Case. The Schaibles would be aggrieved by a final decision in this case. Finally, the Schaibles do not intend to delay resolution of this case. The Schaibles will cooperate in scheduling this matter for hearing.

Dated: Charleston, SC

February 27, 2012

MCNAIR LAW FIRM, P.A.

By _____

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lriley@mcnair.net
Post Office Box 1431
Charleston, SC 29402
(843) 723-7831
(843) 722-3227
Attorneys for Intervenors, Russell Schaible and Laura Schaible

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

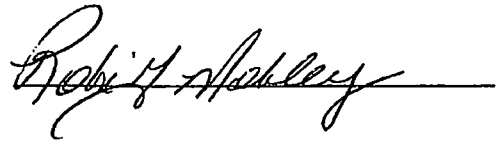
JAMES R. MAULL, Petitioner, vs. SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL and DAVID ABDO, Respondents. IN RE: *Intervention of Russell Schaible and Laura Schaible*	DOCKET NO.: 12-ALJ-07- 0050 -CC **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 28th day of February, 2012, that she served a copy of the foregoing **NOTICE OF MOTION AND MOTION FOR INTERVENTION** via U.S. Mail, postage pre-paid, on the following parties and counsel of record as listed below:

Michael A. Molony, Esq.
Young Clement Rivers, LLP
25 Calhoun Street
Charleston, SC 29401

David Abdo
[redacted]
Charleston, SC [redacted]

Bradley D. Churdar, Esq.
Davis Whitfield-Cargile, Esq.
SCDHEC-OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control, and David Abdo, Respondent, Russell and Laura Schaible, Intervenors.	Docket No.: 12-ALJ-07-0050-CC **PETITIONER'S PREHEARING STATEMENT**

The undersigned, on behalf of Petitioner James R. Maull ("**Maull**"), provides the following in response to the Court's March 14, 2012 Order for Prehearing Statements:

1. The nature of this proceeding

This contested case arises from the Final Agency Decision (the "**Decision**") issued by the South Carolina Board of Health and Environmental Control (the "**Board**") on January 9, 2012. Petitioner challenges the Board's granting an Amendment to Critical Area Permit No. OCRM-07-128 F (the "**Amendment**") to Respondent David Abdo ("**Abdo**") for his personal use at [redacted] in Charleston, South Carolina.

2. The statutory provision(s) conferring subject matter jurisdiction to the Court and other applicable statutes and regulations.

This Court has subject matter jurisdiction over this contested case in accordance with S. C. Code Ann. Sec. 44-1-10 et seq. and S. C. Code Ann. Sec. 1-23-600 et seq. The

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ROA 215 SC ADMIN. LAW COURT

Respondent South Carolina Department of Health and Environmental Control ("SCDHEC"), and its Board, have the authority to regulate the construction of docks within tidelands critical area under S.C. Code Ann. §§ 48-39-10, et seq. and 23A S.C. Code Ann. Reg. 30-12 (A). South Carolina's

3. The issue(s) to be raised for determination, including any claims or defenses expected to be raised.

A. Whether the Board has specific authority pertaining to a Final Review Conference held on December 8, 2011 which is the subject for the Final Agency Decision dated January 9, 2012.

B. Whether the Decision is appropriate, in that it does not contain separately stated Findings of Fact and Conclusions of Law as required by the South Carolina Administrative Procedures Act.

C. Whether the Amendment is appropriate, in that it would allow Abdo to improve his dock such that it would be too close to Maull's existing dock to ensure safe navigation of the waterway.

D. Whether, at a minimum, the Board's authority was limited to remanding the permit application to SCDHEC staff for further consideration rather than arbitrary modification of the staff's determination.

E. Whether Respondent SCDHEC is bound by principles of administrative estoppel, in the absence of any demonstration of changed circumstances, by its previous permitting actions relative to Petitioner Maull's dock, and Respondent Abdo's predecessor in title, Palmer's, permit application for a dock.

YCR 8 of 2

F. Whether SCDHEC and the Board are prohibited, under R. 30-11(B)(10), R. 30-11(C)(1), R. 30-12(A)(1)(a), and R. 30-12(A)(2)(c)(ix) from locating Respondent Abdo's dock closer to Petitioner's dock than was previously determined in review of Abod's predecessor in title, Palmer's, permit application.

G. Whether the Schaibles are bound by principles of equity and administrative estoppel from seeking resolution of the Abdo permit application that differs from the construction authorized to Palmer, when the Schaibles actively participated in the OCRM review of the Palmer application and didn't challenge the final agency decision of the Palmer permit application.

4. The action requested of the Court, if any.

Petitioner Maull respectfully asks the Administrative Law Court to issue its Order reversing the Decision, modifying the actions of the Board, and maintaining a 40.5' offset from the critical line.

5. A brief summary of the facts to be presented at the hearing.

Original Permit

In May of 2007 Charles R. Palmer ("**Palmer**"), predecessor in title to Abdo, applied for a dock permit for [redacted]. Application drawings show the flood-side section of the dock located 21 feet from extended property line between Russell and Laura Schaible (the "**Schaibles**") and Palmer (now Abdo). The Schaibles objected because they believed the proposed dock was too close to their property line. They asked the Board to include a condition that Palmer's dock be located farther away from the Schaibles and closer to the shared extended property line between Maull and Palmer.

YCR #3

The Office of Coastal Resource Management ("**OCRM**") concluded that there was no negative impact to the Schaibles, and if the dock were moved away from the shared property line extension between Palmer and Schaible, it would "likely affect Maull's ability to navigate a large boat to and from a "u" shaped slip on his dock." Significant consideration was given during the application review, and OCRM staff sought to mediate with the disputing property owners. It was Curtis Joyner's conclusion that the Palmer dock should be configured to place the floating dock channel ward of the pier head to further address Maull's concerns. Ultimately, Critical Area Permit No. OCRM-07-128 F (the "**Permit**") authorized the construction of a boatlift, pier head, ramp, and floating dock with a floating dock to extend in front of the pier head, in order to mitigate any navigational concerns of Maull. That decision was challenged, the Board declined review, and the decision was final.

Proposed Amendment

In July of 2011, Abdo sought to amend the Permit. Abdo's proposal includes the same components permitted previously – float, pier head, boat lift, and ramp with some modifications. However, the amendment submitted by Abdo also included a request for a longer floating dock. The Palmer floating dock as approved was 20' in length. The Abdo proposed floating dock is 34.5' in length and requests that the floating dock be located flood-side of the pier head. The Palmer floating dock was channel ward of the pier head. The Amendment includes 88 linear feet of structure extending in front of critical line, while the Permit only allowed 32.5 linear feet of structure extending in front of critical line. The Permit proposed 82.5 feet of separation from the Maull dock, while the Amendment reduced that to 30.5 feet. The Palmer dock was 21' from the shared

YCR #4

extended property line with Schaible, and the Abdo dock is 40' from the shared extended property line with Schaible, precisely the situation OCRM sought to avoid in granting the Permit in 2007.

The Decision

The Board held a Final Review Conference on December 8, 2011 to review the Amendment. The Board established no procedures for presentations, nor was any evidence submitted to the Board for consideration. No sworn testimony was taken. Maull was not afforded the opportunity to cross examine any witnesses presented by Requestor Abdo, Requestors Schaibles, and the South Carolina Department of Health and Environmental Control. The Board authorized construction of the requested walkway with handrails leading to a covered pier head with handrails and benches and ramp leading to a floating dock and the addition of a four-pile boat lift for the Respondent Abdo's personal use at [redacted], Charleston, South Carolina. OCRM's final administrative decision in 2007 was to conclude that Mr. Maull's navigation could be negatively impacted by a similar request. That decision was challenged, the Board declined review, and the decision was final. Absent a clear demonstration of a change in circumstances, the Board's refusal to adhere to OCRM's 2007 conclusions regarding potential harm to Maull, and to recognize administrative finality is fundamentally unfair, and indefensible.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion.

Petitioner Maull reserves the right to add additional grounds, witnesses and exhibits for this challenge once discovery commences in this contested case.

7. **A list of proposed witnesses and exhibits.**

A. Witnesses

- James R. Maull
- David Abdo
- Curtis Joyner
- Russell Schaible
- Laura Schaible
- Crayton Walters (expert)
- Faye Priester
- Bob Daniel

B. Exhibits

- The 2007 DHEC permit OCRM-07-128 F issued to Palmer.
- The amended permit OCRM-07-128 F issued to Abdo.
- The Final Agency Decision dated January 9, 2012.
- Maull's presentation for the Final Review Conference.
- Petitioner Maull reserves the right to add additional grounds, witnesses and exhibits for this challenge once discovery commences in this contested case.

YCR
#6

8. **A statement regarding the necessity of any discovery.**

Limited discovery may be necessary depending on the responses of the parties to this appeal.

9. **The estimated time required for the hearing, and any dates the parties, counsel, or key witnesses are specifically unavailable during the next three months; and**

Petitioner Maull requests 1 day for the hearing.

10. **An email address where you can be reached.**

mmolony@ycrlaw.com

Michael A. Molony
Attorney for Petitioner James R. Maull
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Charleston, SC 29401
Phone: (843) 724-6631
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mmolony@ycrlaw.com

Charleston, South Carolina
March 26, 2012

Charleston, South Carolina
Dated: March 26, 2012

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 26th day of March, 2012.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, Russell Schaible and Laura Schaible, Intervenors.	DOCKET NO. 12-ALJ-07-0050-CC **DEPARTMENT'S PREHEARING STATEMENT**

On behalf of Respondent South Carolina Department of Health and Environmental Control (the "Department"), the following information is submitted:

1. **Nature of the proceeding:**
This contested case arises as an appeal of the Department's issuance of an amendment to permit number OCRM-07-128-F to David Abdo.

2. **The statutory provision(s) conferring subject matter jurisdiction and other applicable statues and regulations:**
The Court's subject matter jurisdiction arises from S.C. Code Ann. §§ 48-39-10, *et seq.*

Other applicable statutory and regulatory provisions include:
S.C. Const. Art. 1, Sec. 3, S.C. Code Ann. §§ 48-39-10, *et seq.* and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Specifically, Regs. 30-11 and 30-12.

3. **Issues to be presented for determination:**
Whether the Department properly applied the Coastal Zone Management Act and Critical Area Regulations in issuing the amendment to permit number OCRM-07-128-F.

4. **Action of the Court, if any:**
The Department respectfully requests that Court affirm the Department's issuance of the amendment to the permit.

5. **A brief summary of the facts to be presented at the hearing:**
Petitioner, James R. Maull and Intervenors, Russell and Laura Schaible are neighboring property owners of Respondent David Abdo, located on an adjacent to the AIWW/Wapoo Cut at [redacted], Charleston, Charleston County, South Carolina. The dock authorized under

permit number OCRM-07-128-F is a private dock that consists of a 4' x 529' walkway, with handrails, leading to a 20' x 20' covered pierhead, also with handrails and benches. Channelward of the pierhead, a 3' x 20' ramp leading to a 10' x 20' floating dock and on the right side of the pierhead, a 12.5' x 12.5' boat lift.

On October 6, 2011, the Department issued an amendment to permit number OCRM-07-128-F to David Abdo authorizing the reconfiguration of the structure to be a 4' x 560' walkway, with handrails, leading to a covered 15' x 20' fixed pierhead. Floodside of the pierhead, would be an 8' x 34.5' floating dock that will be accessed by a 3' x 20' gangway. Ebbside of the pierhead, will be a 12' x 14' four pile boat lift. This amended permit contains a special contention that the structure was to be located 30.5' from the extended property line on the eastern side of the property.

On December 8, 2011 the Board conducted a final review conference. The issue on review pertained to the distance of the structure from the extended property line. The Board concluded Mr. Abdo's application to amend his existing permit complied with the regulations and existing law and no special conditions are necessary to protect the public interest. Accordingly, the special condition requiring the structure to be located 30.5' from the extended property line on the eastern side of the property was deleted from the permit.

Petitioner challenges the Department's issuance of the permit as amended.

6. **Summary of motions expected to be raised at the hearing and the appropriate authority underlying the motion:**

The Department does not anticipate the filing of any motions at this time. However, the Department reserves the right to amend this Prehearing Statement to reflect the filing of additional motions filed prior to the hearing in this matter.

7. **A list of proposed witnesses and exhibits is as follows:**

Witnesses: David J. Thompson, DHEC-OCRM
Blair Williams, DHEC-OCRM
Any witness named by any other party to this litigation.

Exhibits: The exhibits will consist of the Department's permitting file.

The Department reserves the right to supplement this list of witnesses and exhibits as discovery progresses and the issues in this case are more fully developed.

8. **Discovery is necessary and the parties are in the process of conducting discovery.**

9. **The estimated time required for the hearing:**

The hearing in this matter should last approximately one day.

Currently, Department's counsel has conflicts on April 2, 2012, April 4, 2012, April 9-13, 2012, April 17-30, 2012, May 9, 2012, May 23, 2012, June 14, 2012, June 25, 2012, and July 12, 2012.

10. churdabd@dhec.sc.gov
crawfomd@dhec.sc.gov

Respectfully Submitted,

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March 27, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, Russell Schaible and Laura Schaible, Intervenors.	DOCKET NO. 12-ALJ-07-0050-CC **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this day she has served all parties in the above-captioned action with a copy of ***Department's Prehearing Statement*** by mailing a copy of the same by **U.S. First Class Mail,** postage prepaid to the following addresses:

The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Michael A. Molony, Esquire
Young Clement Rivers, LLP
Post Office Box 993
Charleston, SC 29402

Leslie Riley, Esquire
McNair Law Firm
Post Office Box 1431
Charleston, SC 29402

David Abdo
[redacted]
Charleston, SC [redacted]

M. Denise Crawford

March 27, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, v. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, Russell Schaible and Laura Schaible, Intervenors.	Docket No.: 12-ALJ-07-0050-CC PREHEARING STATEMENT OF RESPONDENT DAVID ABDO

1. The Nature of this Proceeding

This is a contested case. Petitioner challenges the Department of Health and Environmental Control's ("Department") issuance of an amendment to permit number OCRM-07-128-F ("Permit") to Respondent David Abdo at [redacted], Charleston, SC ("Respondent Abdo").

2. The Statutory Provision(s) Conferring Subject Matter Jurisdiction to the Agency and other Applicable Statutes and Regulations

This Court has jurisdiction pursuant to S.C. Code Ann. §48-39-10, et seq., §44-1-60 and §1-23-310, et seq., as amended, and 23A S.C. Code Ann. Regs. R.30-1, et seq.

3. The Issues Presented for Determination

a. Whether DHEC properly concluded that Petitioner Maull did not raise any "objection that invoked public interest or [that] would prohibit the permit amendment from being issued in the terms requested by the permittee"?

b. Whether DHEC properly concluded that the Permit as requested and as issued meets all of the applicable guidelines and/or applicable statutory and regulatory provisions?

4. The Action Requested of the Court, if any

Respondent Abdo requests this Court affirm the Permit as issued.

5. A Brief Summary of the Facts to be Presented at the Hearing

Respondent Abdo purchased [redacted] from Charles Palmer as Executor of the Estate of Margaret Palmer. Charles Palmer is Petitioner's cousin and Margaret Palmer was Petitioner's aunt. The original permit was issued obtained by Charles Palmer and issued to the Estate. Respondent Abdo's plans or desires for the design and placement of the walkway, pierhead, boat lift and/or floater for the dock were not considered during the original permit process in 2007 nor were they reflected in the original permit when issued.

Respondent Abdo's home is located in the West Ashley area of Charleston on the Intercoastal Waterway. Standing in [redacted] facing the front of the properties, Petitioner's home is to the left of Respondent Abdo's, and the Intervenors Russ and Laura Schaible's ("Intervenors") home is to the right.

After purchasing the home, but before applying for the Permit, Respondent Abdo discussed the Permit with the Intervenors and Petitioner. Petitioner refused to consent to the Permit and stated he would contest it.

Thereafter, Petitioner modified his existing dock, boat lift, pierhead and/or floater ("Petitioner's Amendment"); however, he did so without providing notice to Respondent Abdo of such Petitioner's Amendment. Although Petitioner unequivocally knew his aunt's home had been sold to Respondent Abdo and that Respondent Abdo was living there, Petitioner nonetheless sent the required notice to Faye Palmer Priester, another cousin and the sister of the Estate's Executor, Charles Palmer.

Petitioner's Amendment moved his dock approximately 10 feet closer to the shared property line despite his knowledge of the existing, original permit and Respondent Abdo's intention to seek the Permit.

Petitioner's Amendment establishes that Respondent Abdo and Petitioner's docks will be greater than 40 feet apart and therefore, satisfy the general requirement of 40 feet between docks.

The Permit does not cause any material or substantial harm; does not impede the public's ability to navigate, use or access the waterway; does not violate the public interest; and has the least negative impact on Respondent Abdo's use and enjoyment of his property.

The Permit as issued is consistent with all applicable statutory and regulatory provisions, and with Department guidelines.

6. A Summary of any Motions Expected to be Raised at the Hearing and the Appropriate Authority Underlying the Motion

Respondent Abdo is unaware of any such motions at this time.

7. A List of Proposed Witnesses and Exhibits

Proposed witnesses:
James R. Maull
David Abdo
Russ Schaible
Laura Schaible
Department representative(s)

Proposed exhibits:
Department's permitting file for [redacted]
Department's permitting file for [redacted]/Petitioner Maull
Exhibits from the Final Review Conference held December 8, 2011
Exhibits and attachments to pleadings filed in the within action
Photographs of relevant docks and/or land, water and/or marsh areas

Respondent Abdo reserves the right to supplement or amend this list of witnesses and exhibits.

8. A Statement Regarding the Necessity of Discovery, if any

At this time, Respondent Abdo does not believe discovery is necessary.

9. The Estimated Length of the Hearing

Respondent Abdo believes the hearing will take a ½ day.

10. Any Dates in the Next Ninety (90) Days When You Will Not Be Available for a Hearing

As of this writing, Respondent Abdo is available for a hearing, except for the following dates:

April: 5, 6, 9
May:
June: Respondent Abdo is in the process of planning a family vacation for June but does not yet have confirmed dates. Respondent Abdo respectfully requests he be allowed to notify the Court and be protected for those dates as soon as he determines them.
July: 3-16, 31

11. An E-mail Address Where You Can Be Reached

dabdo2@gmail.com
istaylor99@gmail.com

Respondent David Abdo

Charleston, South Carolina
March 28, 2012

CERTIFICATE OF SERVICE

The undersigned certifies that on March 28, 2012, s/he served copies of the foregoing by placing copies in the U.S. Mail, postage pre-paid, addressed to the following counsel of record.

Michael A. Molony, Esquire
Young Clement Rivers, LLP
PO Box 993
Charleston, SC 29402
Attorneys for Petitioner

Leslie S. Riley, Esquire
McNair Law Firm
PO box 1431
Charleston SC 29402
Attorneys for Intervenors

Bradley Churdar, Esquire
SCDHEC-Office of General Counsel
1362 McMillan Avenue, Ste. 400
Charleston, SC 29405
Attorney for Respondent DHEC

David Abdo

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

JAMES R. MAULL, Petitioner, vs. SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL and DAVID ABDO, Respondents, And, RUSSELL SCHAIBLE AND LAURA SCHAIBLE, Intervenors.	) DOCKET NO.: 12-ALJ-07- 0050 -CC **PREHEARING STATEMENT OF INTERVENORS RUSSELL SCHAIBLE AND LAURA SCHAIBLE**

1. The Nature of this Proceeding

This is a contested case matter. Petitioner James R. Maull challenges the final agency decision of the Respondent, South Carolina Department of Health and Environmental Control's (DHEC) decision to authorize an amendment to critical area permit number OCRM-07-128-F for the construction of a private recreational dock to Respondent David Abdo.

2. The Statutory Provision(s) Conferring Subject Matter Jurisdiction to the Agency and other Applicable Statutes and Regulations

This Court has jurisdiction over this matter in accordance with S. C. Code Ann. §48-39-10 et seq., S.C. Code Ann. §44-1-60 and §1-23-310 et seq. Other applicable regulations include 23A S.C. Code Ann. Reg. 30-1 et seq.

3. The Issues Presented for Determination, Including any Claims or Defenses Expected to be Raised

a) Whether DHEC properly approved the construction of a private recreational dock in accordance with all applicable statutory and regulatory provisions?

b) Whether the relief sought by Petitioner would negatively impact the value and enjoyment of Respondents, Russell and Laura Schaible in violation of Reg. 30-11?

4. The Action Requested of the Court, if any

Intervenors Russell and Laura Schaible (Schaibles) request this Court affirm the final agency decision of DHEC.

5. A Brief Summary of the Facts to be Presented at the Hearing

The Schaibles own property on and adjacent to Wappoo Creek, and are adjoining property owners to Respondent David Abdo. On October 6, 2011, DHEC issued an amendment to dock permit OCRM-07-128-F. The dock permit amendment authorized the realignment of the permitted dock, but placed a condition on the amendment that required, "provided the structure is located 30.5' from the extended property line on the eastern side of the property." All three parties to this contested case requested a final review conference before the DHEC Board. On January 6, 2012, the DHEC Board issued its Final Agency Decision, in which the condition the *DHEC staff* placed on the amendment was removed. Petitioner filed this contested case following that decision.

The Schaibles contend the final agency decision comports with all applicable regulations. Petitioner's contention that the dock as authorized will impede navigation in violation of the regulations. This contention is without merit. If this Court grants the relief requested by the Petitioner, the result will be that the dock will be located directly in front of the Schaibles' home and their view corridor, which will devalue their property and interfere with their enjoyment of it.

6. A Summary of any Motions Expected to be Raised at the Hearing and the Appropriate Authority Underlying the Motion

No motions are anticipated at this time.

7. A List of Proposed Witnesses and Exhibits

Witnesses

Russell and Laura Schaible
James Maull
David Abdo
Jeff Thompson, DHEC-OCRM

Exhibits

The exhibits will consist of documents from the DHEC permitting files for David Abdo and James Maull, as well as photographs of the area.

Intervenors reserve the right to supplement/amend this list of witnesses and exhibits as the issues in this case are developed through discovery.

8. **A Statement Regarding the Necessity of Discovery, if any**

At this time, Intervenors do not anticipate discovery beyond what is authorized under the Rules of the Administrative Law Court.

9. **The Estimated Time Required for the Hearing, and any Dates the Parties, Counsel or Key Witnesses are Specifically Unavailable during the Next Three Months**

Petitioner anticipates that a hearing in this matter will take 1 day.

As of this writing, Intervenors' attorney is available for a hearing, except for the following dates:

April:

May: 22-25

June: 7,8

10. **An e-mail address where you can be reached**

lriley@mcnair.net

Respectfully submitted,

McNAIR LAW FIRM, P.A.

Leslie S. Riley, Esq.
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Attorneys for Intervenors,
Russell Schaible and Laura Schaible

Charleston, South Carolina
Dated: March 28, 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

JAMES R. MAULL, Petitioner, vs. SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL and DAVID ABDO, Respondents. And, RUSSELL SCHAIBLE and LAURA SCHAIBLE, Intervenors.	) DOCKET NO.: 12-ALJ-07- 0050 -CC **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 28th day of March, 2012, that she served a copy of the foregoing **PREHEARING STATEMENT OF INTERVENORS RUSSELL SCHAIBLE AND LAURA SCHAIBLE** via U.S. Mail, postage pre-paid, on the following parties and counsel of record as listed below:

Michael A. Molony, Esq.
Young Clement Rivers, LLP
Post Office Box 993
Charleston, SC 29402

David Abdo
[redacted]
Charleston, SC [redacted]

Bradley D. Churdar, Esq.
Davis Whitfield-Cargile, Esq.
SCDHEC-OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, and, Russell Schaible and Laura Schaible, Intervenors.	DOCKET NO. 12-ALJ-07-0050-CC **NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO: MICHAEL A. MOLONY, ESQUIRE, ATTORNEY FOR PEITIONER, LESLIE S. RILEY, ESQUIRE, ATTORNEY FOR INTERVENORS, AND DAVID ABDO, RESPONDENT:

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Respondent, the South Carolina and South Carolina Department of Health and Environmental Control, will move the Court before the Honorable Shirley C. Robinson, on the tenth (10) day after service hereof, or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order, pursuant to Rule 19 of the Administrative Law Court and Rule 56 of the South Carolina Rules of Civil Procedures, granting partial summary judgment. The grounds for summary judgment are more fully set forth in the Department of Health and Environmental Control's Motion For and Memorandum in Support of Partial Summary Judgment.

Respectfully submitted,

Bradley D. Churdar
Chief Counsel
South Carolina Department of Health and

Environmental Control
1362 McMillan Avenue, Suite 400
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July 24, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, and, Russell Schaible and Laura Schaible, Intervenors.	)	DOCKET NO. 12-ALJ-07-0050-CC **MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST PETITIONER JAMES R. MAULL**

Respondent, the South Carolina Department of Health and Environmental Control ("the Department" or "DHEC"), hereby moves this Honorable Court for partial summary judgment against Petitioner James R. Maull ("Maull") pursuant to Rule 19 of the Administrative Law Court and Rule 56 of the South Carolina Rules of Civil Procedures.

While discovery in this case is ongoing, Petitioner's arguments regarding the authority of the Board to hold a Final Review Conference and the application of the Administrative Procedures to this case are clear. As set forth below, there is no genuine issue of any material fact regarding the Department's authority and adherence to the procedures regarding a Final Review Conference and the Department is entitled to a judgment as a matter of law in regard to these claims raised by Petitioner.

SUMMARY OF NATURE OF CASE

This contested case arises from the Final Agency Decision issued by the South Carolina Board of Health and Environmental Control ("Board") on January 9, 2012. Petitioner challenges

the Board's granting of an amendment to critical area permit number OCRM-07-128-F (the "permit") to Respondent David Abdo ("Abdo") for his personal use at [redacted] in Charleston, South Carolina.

STATEMENT OF FACTS

The facts of this case are not in dispute. Charles R. Palmer ("Palmer"), predecessor in title to Abdo, applied for a dock permit at [redacted] in May of 2007. Application drawings showed the flood-side section of the dock was to be located 21 feet from the extended property line between Russell and Laura Schaible (the "Schaibles") and Palmer. The Schaibles objected to the permit because they believed the proposed dock would be too close to their property line, so they asked the Board to include a condition that Palmer's dock be located farther away from their property line and closer to the shared extended property line between Palmer and Petitioner James R. Maull ("Petitioner"). DHEC's Office of Ocean and Coastal Resource Management ("OCRM") concluded that there was no negative impact to the Schaibles, but that if the dock were moved closer to the shared property line between Palmer and Petitioner, it would likely affect Petitioner's ability to steer a large boat to and from his dock. In particular, Petitioner was concerned about docking his 48-foot sport fishing vessel on the landward side of his floating dock. OCRM staff ultimately authorized the permit to allow for the construction of a boatlift, pier head, ramp, and floating dock, with the floating dock extending in front of the pier head in order to mitigate Petitioner's concerns. The permitting decision was challenged but the Board declined review, making the staff decision on the permit the final agency decision.

Abdo, successor in title to Palmer, sought to amend the permit in July of 2011. While including the same components as previously permitted, the amendment submitted by Abdo also included a request for a longer floating dock. As approved, the Palmer floating dock was 20 feet

in length and was located channel-ward of the pier head; as requested, Abdo's proposed floating dock is 34.5 feet in length and is located flood-side of the pier head. While the permit only allowed 32.5 linear feet of structure extending in front of the critical line, Abdo's amendment includes 88 linear feet of structure extending in front of the critical line. The Palmer permit proposed 82.5 feet of separation from Petitioner's dock, while Abdo's amendment reduced the separation between the proposed dock and Petitioner's extended property line to 20.5 feet.

DHEC staff authorized the permit amendment on October 6, 2011, but with a condition that the dock be situated 30.5 feet off the shared extended property line of Abdo and Petitioner. All parties to this matter filed timely requests for review with the Board. The Board held a Final Review Conference on December 8, 2011 to review Abdo's amendment to the permit. Department staff explained during the Final Review Conference, they understood Mr. Maull's dock to be 10 feet off of the extended property line. Therefore, to address Mr. Maull's concerns, Department staff imposed the 30.5 foot condition with the purpose of providing 40 feet of separation between Mr. Maull's dock and Mr. Abdo's dock. During the Final Review Conference Department staff explained to the board the previous belief of Mr. Maull's dock being located 10 feet off the extended property line was erroneous and based upon an unintentional error while interpreting Mr. Maull's permit. Based upon Mr. Maull's submitted survey, it was determined his dock was 18.5 feet away from the extended property. Staff explained to the board if they had known Mr. Maull's dock was 18.5 feet off of the extend property line rather than 10 feet away, they would not have imposed the special condition and Mr. Abdo's permit would have been amended as requested.

The Board concluded in its Final Agency Decision, issued on January 9, 2012, that the amendment requested by Abdo complies with the law and should be issued as requested, but that

no special conditions to the permit are necessary to protect the public interest. The Board authorized construction of the requested walkway with handrails leading to a covered pier head with handrails and benches and ramp leading to a floating dock and the addition of a four-pile boat lift for Abdo's personal use, with the special condition that the structure be located 30.5 feet from the extended property line deleted from the permit. In response to this decision, Petitioner filed a Notice of Request for Contested Case with the South Carolina Administrative Law Court ("ALC") on February 8, 2012.

AUTHORITY FOR MOTION

Rule 19(A) of the South Carolina Rules of Procedure for the Administrative Law Court ("RPALC") provides for pre-hearing motions and requires such motions be in writing, state the grounds for relief and the relief sought, and be filed not later than ten (10) days before the hearing date, unless otherwise ordered by the administrative law judge. Rule 68, RPALC provides that the South Carolina Rules of Civil Procedure ("SCRCP") may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by the RPALC. Rule 71(D)(1), RPALC, specifically envisions motions for summary judgment by setting forth a filing fee for such motions. Rule 56(b), SCRCP, provides that a party against whom a claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof. Rule 56(c), SCRCP, provides that "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law."

STANDARD OF REVIEW

"Summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law." Brandt v. Gooding, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006); Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). "In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id. "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the absence of a genuine issue of material fact is established, the burden shifts to the nonmoving party to "set forth specific facts showing there is a genuine issue for trial." SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990).

ARGUMENT

This memorandum will show that the ALC should grant summary judgment in favor of DHEC on Petitioner's claims that the Board did not have specific authority to hold the Final Review Conference on December 8, 2011, that the Final Agency Decision issued by the Board was inappropriate because it did not contain separately stated Findings of Fact and Conclusions of Law as required by the South Carolina Administrative Procedures Act, and that the Board's authority was limited to remanding the permit application to DHEC staff rather than arbitrary modification of the staff's determination. As the Board fully complied with the applicable statutory provisions regarding the procedures for conducting a Final Review Conference and issuing a Final Agency Decision on Abdo's permit amendment, there exists no genuine dispute of material fact on these claims that would preclude summary judgment in favor of DHEC.

I. DHEC is Entitled to Summary Judgment Because the Board Fully Complied with the Statutory Procedures for Holding a Final Review Conference and Issuing a Final Agency Decision on this Matter

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); Charleston Cnty Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). The first inquiry in deciphering the legislature's intent should begin by determining whether the statute's meaning is clear on its face. Peake v. S.C. Dep't of Motor Vehicles, 375 S.C. 589, 597, 654 S.E.2d 284, 289 (Ct. App. 2007). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Hodges, 341 S.C. at 85; In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Id. (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)).

"As creatures of statute, regulatory bodies such as DHEC possess only those powers which are specifically delineated." Rock Hill v. S.C. Dep't of Health & Envtl. Control, 302 S.C. 161, 165, 394 S.E.2d 327, 328 (1990); Columbia v. S.C. Bd. of Heath & Envtl. Control, 292 S.C. 199, 355 S.E.2d 536 (1987). An office within a state agency such as DHEC must "act only within the authority granted to it by the legislature." DuRant v. S.C. Dep't of Health & Envtl. Control, 361 S.C. 416, 420-21, 604 S.E.2d 704, 707 (2004). "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dorman v. S.C. Dep't of Health & Envtl. Control, 350 S.C. 159, 167, 565 S.E.2d 119, 123 (Ct. App. 2002) (quoting Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002)).

A. DHEC is Entitled to Summary Judgment Because the Board had Specific Authority to Hold a Final Review Conference

Petitioner contends that the Board did not have specific authority pertaining to the Final Review Conference held on December 8, 2011, which was the subject for the Final Agency Decision on January 9, 2012. The Board's authority to hold a Final Review Conference derives from the provisions of Title 44, Chapter 1 of the South Carolina Code of Laws Annotated. S.C. Code Ann. § 44-1-50 grants the Board the authority to conduct administrative reviews as required by law and "as considered necessary by the board to render a final agency determination". (Supp. 2011). Applying the plain meaning rule to this language, the statute clearly provides that the Board has the authority to hold a Final Review Conference in order to render a Final Agency Decision.

Additionally, § 44-1-60 covers "Appeals from department decisions giving rise to contested case[s]" and outlines the proper procedure for such appeals. The statute specifically provides that the "[a]ll department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case shall be made using the procedures set forth in this section." S.C. Code Ann. § 44-1-60(A). Under the plain meaning rule, this language indicates that the legislature intended that any applicant who wishes to appeal a decision made by the Department must follow the procedures as outlined. The statute provides that the Department staff's decision on a permit, license, etc. becomes the final agency decision "unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person". S.C. Code Ann. § 44-1-60(E)(2). As both the Petitioner and Abdo filed timely requests for review following the Department staff's decision, the matter was properly put before the Board for review.

In his Prehearing Statement, Petitioner also contends that the Board established no procedures for presentations, that there was no evidence submitted to the Board for consideration, that no sworn testimony was taken, and that Petitioner was not afforded the opportunity to cross-examine any witnesses presented by Abdo. See Pet'r's Prehearing Statement 5, Mar. 26, 2012 (Attachment B). Relevant to this contention, § 44-1-60(F) outlines the manner in which the Board must hold a final review conference:

> "Final review conferences are open to the public; however, the officers conducting the conference may meet in closed session to deliberate on the evidence presented at the conference. The burden of proof in a conference is upon the moving party. During the course of the final review conference, the staff must explain the staff decision and the materials relied upon in the administrative record to support the staff decision. The applicant or affected party shall state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. The staff may rebut information and arguments presented by the applicant or affected party and the applicant or affected party may rebut information and arguments presented by the staff. Any final review conference officer may request additional information and may question the applicant or affected party, the staff, and anyone else providing information at the conference."

This provision covers the final review conference process in its entirety, as the immediately following provision concerns the Board's issuance of a final agency decision after the final review conference has been held. See S.C. Code Ann. § 44-1-60(F)(2). Applying the plain meaning rule to this language, it is clear that the legislature intended to limit the scope of final review conferences. There is no indication that the legislature intended for final review conferences to require the submission of evidence, sworn testimony, or opportunities to cross-examine witnesses. The statute provides only that an applicant or affected party "shall state the reasons for protesting the staff decision and *may provide* evidence to support amending, modifying, or rescinding the staff decision" (emphasis added). Petitioner's contention that there was no evidence submitted to the Board is not dispositive of this issue, as the statute provides that one may provide evidence but not that the submission of evidence is required. As indicated

in Petitioner's letter to the Board, dated January 4, 2012 (Attachment A), Petitioner's exhibits were presented to the Board on December 8, 2011 during the Final Review Conference.

Based on the clear and unambiguous language of the applicable statute, the Board was well within its authority to hold a Final Review Conference and issue a Final Agency Decision in regard to this matter. Additionally, the statute limits the scope of the Final Review Conference and does not require those procedures which Petitioner contends the Board did not follow. As the plain meaning of a statute is the best evidence of legislative intent, it appears that the legislature intended to provide the Board with the authority to issue the Decision at issue in this case. Thus, since the Board was well within its authority to issue their Decision, and since there is no genuine dispute of material fact here, summary judgment in favor of DHEC on this claim is appropriate.

B. DHEC is Entitled to Summary Judgment Because the Board was Not Required to Present Separately Stated Findings of Fact and Conclusions of Law in its Final Agency Decision

Petitioner contends that the Board's Decision was not appropriate because it did not contain separate Findings of Fact and Conclusions of Law as required by the South Carolina Administrative Procedures Act. See Pet'r's Prehearing Statement 2 (Attachment B). While S.C. Code Ann. § 44-1-60, which grants the Board authority to hold final review conferences, is titled "Appeals from department decisions giving rise to contested case", the Board is not the administrative body that hears contested cases. Rather, the statute provides that "[w]ithin thirty calendar days after the receipt of the decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision *may request a contested case hearing before the Administrative Law Court*, in accordance with the Administrative Procedures Act." S.C Code Ann. § 44-1-60(F)(2) (emphasis added). Applying the plain meaning of this language, it is clear

that the ALC and not the Board is the administrative body before which such contested cases arising from final agency decisions issued at final review conferences are heard. This is in keeping with S.C. Code Ann. § 44-1-50, which states that the Board:

> "may conduct such administrative reviews as may be required by law, as considered necessary to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department *which may give rise to a contested case* pursuant to Chapter 23 of Title 1" (emphasis added).

The language of this provision indicates that the Board has authority to render a final agency determination on a Department matter which ultimately may give rise to a contested case, but it does not mean that the administrative review in which such a final agency determination is made constitutes a contested case hearing.

While a contested case hearing in which a final order or decision may be rendered must be in accord with the provisions of the Administrative Procedures Act, the Act does not apply to Final Review Conferences held by the Board for the purposes of issuing Final Agency Decisions. Thus, as required by statute, a "Final decision or order in [a] contested case" must contain "findings of fact and conclusions of law, separately stated." S.C. Code Ann. § 1-23-350. However, such separately stated findings of fact and conclusions of law are not required by statute for a Final Agency Decision issued as a result of a Final Review Conference conducted by the Board. Therefore, as the Board was not required to present separately stated Findings of Fact and Conclusions of Law in its Decision on this matter, and there exists no genuine dispute of material fact here, summary judgment in favor of DHEC on this claim is appropriate.

C. DHEC is Entitled to Summary Judgment Because the Board's Authority was Not Limited To Remanding the Permit Application to DHEC Staff for Further Consideration

Considering the applicable statutory provisions regarding the Board's process for holding a Final Review Conference, found under S.C. Code Ann. § 44-1-60, there is no limitation on the

Board's authority to issue a decision that modifies a staff determination. In particular, § 44-1-60(F)(2) outlines the manner in which the Board must issue its decision following a final review conference:

> "After the final review conference, the board, its designee, or a committee of three members of the board appointed by the chair shall issue a written final agency decision based upon the evidence presented. The decision may be announced orally at the conclusion of the final review conference or it may be reserved for consideration. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court."

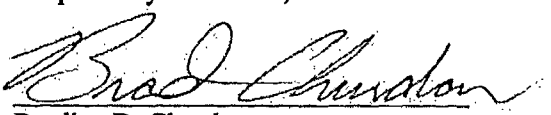
There is no specific language found in the statute that limits the scope of the Board's decision-making authority other than the fact that the Board must base its decision on the evidence presented to it. Furthermore, the statutory language does not provide the Board with any specific remand authority. The ALC has previously questioned the authority of the Board to remand back to DHEC staff in the case of South Carolina Department of Transportation v. South Carolina Department of Health & Environmental Control, 06-ALJ-07-0804-CC (April 12, 2008). In that case, DOT challenged the Board's authority to remand a permit back to staff "for the imposition of additional conditions following the conclusion of the Final Review Conference." Id. at 55. Considering the provisions of § 44-1-60(F), the ALC found that "[t]he language of the statute referring to the Board's hearing as a 'final review' does not suggest that DHEC will engage in further review of the matter by staff" and that "DHEC's authority to remand a permit to staff following the Final Review Conference is questionable." Id. Thus, while the ALC did not rule on the authority of the Board to remand a permit back to DHEC staff, it made it clear that such authority is not obviously provided for by statute. Therefore, as the Board's authority to remand has been found to be "questionable", it follows that the Board's authority is not limited to remanding a permit application back to DHEC staff for further consideration.

The Board, as an extension of DHEC, is a "creature of statute" and can "possess only those powers which are specifically delineated" by the applicable statutes. See Rock Hill, supra, 302 S.C. at 165. As the agency must "act only within the authority granted to it by the legislature," the Board cannot extend the limits of its authority to change the procedures by which it holds Final Review Conferences and issues Final Agency Decisions. See DuRant, supra, 361 S.C. at 420-21. Nevertheless, a reviewing court will respectfully defer to the Board's interpretation of the regulations it is charged with administering, unless a party adverse to the Board's interpretation can present "compelling reasons" for overruling such interpretation. See Dorman, supra, 350 S.C. at 167. In the case at hand, Petitioner has presented no compelling reasons for overruling the Board's interpretation of § 44-1-60(F)(2) as authorizing the issuance of its Decision modifying the staff decision and approving the permit amendment as requested by Abdo. Though the Board may have the "questionable" authority to interpret the language of § 44-1-60(F)(2) to provide for remanding the decision back to DHEC staff, that authority is not specifically provided for in the language of the statute. Applying the plain meaning rule, it is clear that the Board's authority in this case was not limited to remanding the permit application back to DHEC staff for further consideration, as Petitioner contends. Therefore, as the Board was well within its authority to modify the staff's decision and was not required to remand the permit application back to DHEC staff, and since there is no genuine dispute of material fact here, summary judgment in favor of DHEC on this claim is appropriate.

CONCLUSION

For the reasons stated above, the Department respectfully requests that the Court Grant its Motion for Summary Judgment on the above mentioned claims and dismiss those claims with prejudice.

Respectfully submitted,



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July 24, 2012
Charleston, South Carolina

ATTACHMENT A

YCRLAW
Young Clement Rivers, LLP

Michael A. Molony

Direct Dial: (843) 724-6631
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RECEIVED
JAN 05 2012
Office of OCRM
CHARLESTON OFFICE

January 4, 2012

South Carolina Board of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Amend Permit No. OCRM-07-128-F/Board Docket No. 11-RFR-56
YCR File: 2880-20110924

Dear Board:

Please be advised that we have received the Final Agency Decision in connection with the above referenced matter.

Reserving all rights with respect to any and all issues, procedural and substantive, in connection with the above referenced matter and any further proceedings, the Requestor ("Maull") would note that the Board does not have any specific authority pertaining to a Final Review Conference that is the subject of this order.

Additionally, there were no procedures established for presentation, nor was any evidence submitted at the Board. Since no sworn testimony was taken, Maull was not afforded the opportunity to cross examine any witnesses.

The proposed order does not contain separately stated Findings of Fact and Conclusions of Law as required by the South Carolina Administrative Procedures Act and, therefore, is not an appropriate Final Agency Decision.

Maull would respectfully request that the Board include his exhibits as presented on December 8, 2011, copies of which are attached to this letter.

Furthermore, Maull respectfully disagrees with the characterization that he raised "no objection that invoked public interest or would prohibit the permit amendment from being issued in terms requested by the permittee" in that this is the basis for his appeal which is clearly delineated in the OCRM Regulations.

Maull reiterates his objection to any inference that he consents to any provisions of this order and his response shall not in any way be deemed a waiver of any of his rights; rather, he responds solely at the request of the Board.

ATTACHMENT A

With kind regards, I am

Sincerely,

Young Clement Rivers, LLP

Michael A. Molony

MAM/jrh
Enclosure(s)
cc: Davis A. Whitfield-Cargile
David Abdo
Leslie S. Riley, Esquire

ATTACHMENT B

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull,

Petitioner,

vs.

South Carolina Department of Health and Environmental Control, and David Abdo,

Respondent,

Russell and Laura Schaible,

Intervenors.

Docket No.: 12-ALJ-07-0050-CC

PETITIONER'S PREHEARING STATEMENT

The undersigned, on behalf of Petitioner James R. Maull ("**Maull**"), provides the following in response to the Court's March 14, 2012 Order for Prehearing Statements:

1. The nature of this proceeding

This contested case arises from the Final Agency Decision (the "**Decision**") issued by the South Carolina Board of Health and Environmental Control (the "**Board**") on January 9, 2012. Petitioner challenges the Board's granting an Amendment to Critical Area Permit No. OCRM-07-128 F (the "**Amendment**") to Respondent David Abdo ("**Abdo**") for his personal use at [redacted] in Charleston, South Carolina.

2. The statutory provision(s) conferring subject matter jurisdiction to the Court and other applicable statutes and regulations.

This Court has subject matter jurisdiction over this contested case in accordance with S. C. Code Ann. Sec. 44-1-10 et seq. and S. C. Code Ann. Sec. 1-23-600 et seq. The

YCN #1

ATTACHMENT B

Respondent South Carolina Department of Health and Environmental Control ("SCDHEC"), and its Board, have the authority to regulate the construction of docks within tidelands critical area under S.C. Code Ann. §§ 48-39-10, et seq. and 23A S.C. Code Ann. Reg. 30-12 (A). South Carolina's

3. The issue(s) to be raised for determination, including any claims or defenses expected to be raised.

A. Whether the Board has specific authority pertaining to a Final Review Conference held on December 8, 2011 which is the subject for the Final Agency Decision dated January 9, 2012.

B. Whether the Decision is appropriate, in that it does not contain separately stated Findings of Fact and Conclusions of Law as required by the South Carolina Administrative Procedures Act.

C. Whether the Amendment is appropriate, in that it would allow Abdo to improve his dock such that it would be too close to Maull's existing dock to ensure safe navigation of the waterway.

D. Whether, at a minimum, the Board's authority was limited to remanding the permit application to SCDHEC staff for further consideration rather than arbitrary modification of the staff's determination.

E. Whether Respondent SCDHEC is bound by principles of administrative estoppel, in the absence of any demonstration of changed circumstances, by its previous permitting actions relative to Petitioner Maull's dock, and Respondent Abdo's predecessor in title, Palmer's, permit application for a dock.

YCR
AF 2

ATTACHMENT B

F. Whether SCDHEC and the Board are prohibited, under R. 30-11(B)(10), R. 30-11(C)(1), R. 30-12(A)(1)(a), and R. 30-12(A)(2)(c)(ix) from locating Respondent Abdo's dock closer to Petitioner's dock than was previously determined in review of Abod's predecessor in title, Palmer's, permit application.

G. Whether the Schaibles are bound by principles of equity and administrative estoppel from seeking resolution of the Abdo permit application that differs from the construction authorized to Palmer, when the Schaibles actively participated in the OCRM review of the Palmer application and didn't challenge the final agency decision of the Palmer permit application.

4. The action requested of the Court, if any.

Petitioner Maull respectfully asks the Administrative Law Court to issue its Order reversing the Decision, modifying the actions of the Board, and maintaining a 40.5' offset from the critical line.

5. A brief summary of the facts to be presented at the hearing.

Original Permit

In May of 2007 Charles R. Palmer ("**Palmer**"), predecessor in title to Abdo, applied for a dock permit for [redacted]. Application drawings show the flood-side section of the dock located 21 feet from extended property line between Russell and Laura Schaible (the "**Schaibles**") and Palmer (now Abdo). The Schaibles objected because they believed the proposed dock was too close to their property line. They asked the Board to include a condition that Palmer's dock be located farther away from the Schaibles and closer to the shared extended property line between Maull and Palmer.

ICR #3

ATTACHMENT B

The Office of Coastal Resource Management ("**OCRM**") concluded that there was no negative impact to the Schaibles, and if the dock were moved away from the shared property line extension between Palmer and Schaible, it would "likely affect Maull's ability to navigate a large boat to and from a "u" shaped slip on his dock." Significant consideration was given during the application review, and OCRM staff sought to mediate with the disputing property owners. It was Curtis Joyner's conclusion that the Palmer dock should be configured to place the floating dock channel ward of the pier head to further address Maull's concerns. Ultimately, Critical Area Permit No. OCRM-07-128 F (the "**Permit**") authorized the construction of a boatlift, pier head, ramp, and floating dock with a floating dock to extend in front of the pier head, in order to mitigate any navigational concerns of Maull. That decision was challenged, the Board declined review, and the decision was final.

Proposed Amendment

In July of 2011, Abdo sought to amend the Permit. Abdo's proposal includes the same components permitted previously – float, pier head, boat lift, and ramp with some modifications. However, the amendment submitted by Abdo also included a request for a longer floating dock. The Palmer floating dock as approved was 20' in length. The Abdo proposed floating dock is 34.5' in length and requests that the floating dock be located flood-side of the pier head. The Palmer floating dock was channel ward of the pier head. The Amendment includes 88 linear feet of structure extending in front of critical line, while the Permit only allowed 32.5 linear feet of structure extending in front of critical line. The Permit proposed 82.5 feet of separation from the Maull dock, while the Amendment reduced that to 30.5 feet. The Palmer dock was 21' from the shared

YCR #4

ATTACHMENT B

extended property line with Schaible, and the Abdo dock is 40' from the shared extended property line with Schaible, precisely the situation OCRM sought to avoid in granting the Permit in 2007.

The Decision

The Board held a Final Review Conference on December 8, 2011 to review the Amendment. The Board established no procedures for presentations, nor was any evidence submitted to the Board for consideration. No sworn testimony was taken. Maull was not afforded the opportunity to cross examine any witnesses presented by Requestor Abdo, Requestors Schaibles, and the South Carolina Department of Health and Environmental Control. The Board authorized construction of the requested walkway with handrails leading to a covered pier head with handrails and benches and ramp leading to a floating dock and the addition of a four-pile boat lift for the Respondent Abdo's personal use at [redacted] Charleston, South Carolina. OCRM's final administrative decision in 2007 was to conclude that Mr. Maull's navigation could be negatively impacted by a similar request. That decision was challenged, the Board declined review, and the decision was final. Absent a clear demonstration of a change in circumstances, the Board's refusal to adhere to OCRM's 2007 conclusions regarding potential harm to Maull, and to recognize administrative finality is fundamentally unfair, and indefensible.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion.

Petitioner Maull reserves the right to add additional grounds, witnesses and exhibits for this challenge once discovery commences in this contested case.

ATTACHMENT B

7. **A list of proposed witnesses and exhibits.**

A. Witnesses

- James R. Maull
- David Abdo
- Curtis Joyner
- Russell Schaible
- Laura Schaible
- Crayton Walters (expert)
- Faye Priester
- Bob Daniel

B. Exhibits

- The 2007 DHEC permit OCRM-07-128 F issued to Palmer.
- The amended permit OCRM-07-128 F issued to Abdo.
- The Final Agency Decision dated January 9, 2012.
- Maull's presentation for the Final Review Conference.
- Petitioner Maull reserves the right to add additional grounds, witnesses and exhibits for this challenge once discovery commences in this contested case.

YCR #6

ATTACHMENT B

8. **A statement regarding the necessity of any discovery.**

Limited discovery may be necessary depending on the responses of the parties to this appeal.

9. **The estimated time required for the hearing, and any dates the parties, counsel, or key witnesses are specifically unavailable during the next three months; and**

Petitioner Maull requests 1 day for the hearing.

10. **An email address where you can be reached.**

mmolony@ycrlaw.com

Michael A. Molony
Attorney for Petitioner James R. Maull
Young Clement Rivers, LLP
25 Calhoun Street
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Phone: (843) 724-6631
Fax: (843) 579-1356
mmolony@ycrlaw.com

Charleston, South Carolina
March 26, 2012

Charleston, South Carolina
Dated: March 26, 2012

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 26th day of March 2012.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, and, Russell Schaible and Laura Schaible, Intervenors.	DOCKET NO. 12-ALJ-07-0050-CC **NOTICE OF MOTION TO DISMISS**

TO: MICHAEL A. MOLONY, ESQUIRE, ATTORNEY FOR PEITIONER, LESLIE S. RILEY, ESQUIRE, ATTORNEY FOR INTERVENORS, AND DAVID ABDO, RESPONDENT:

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Respondent, the South Carolina and South Carolina Department of Health and Environmental Control, will move the Court before the Honorable Shirley C. Robinson, on the tenth (10) day after service hereof, or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, on the grounds that the complaint fails to allege facts sufficient to constitute a cause of action against the Department as is more fully set forth in the accompanying memorandum.

Respectfully submitted,

Bradley D. Churdar
Chief Counsel
South Carolina Department of Health and

Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405
(843) 953-0213
(843) 953-0201 (fax)
churdabd@dhec.sc.gov

July 24, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, and, Russell Schaible and Laura Schaible, Intervenors.	)	DOCKET NO. 12-ALJ-07-0050-CC **MOTION TO DISMISS OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

Respondent South Carolina Department of Health and Environmental Control ("DHEC" or "Department"), by and through the undersigned counsel, respectfully moves this Court to dismiss the above captioned case pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, on the grounds that the complaint fails to allege facts sufficient to constitute a cause of action against the Department.

While discovery in this case is ongoing, Petitioner's arguments regarding the safe navigation dispute are clear. As set forth below, Petitioner has made no claim on which relief may be granted regarding the Department's authority and procedures as they relate to a navigational dispute between adjacent property owners that does not involve protection of the public interest, and the Department is entitled to dismissal of this issue raised by Petitioner.

SUMMARY OF NATURE OF CASE

This contested case arises from the Final Agency Decision issued by the South Carolina Board of Health and Environmental Control ("Board") on January 9, 2012. Petitioner challenges the Board's granting of an amendment to critical area permit number OCRM-07-128-F (the "permit") to Respondent David Abdo ("Abdo") for his personal use at [redacted] in Charleston, South Carolina.

STATEMENT OF FACTS

The facts of this case are not in dispute. Charles R. Palmer ("Palmer"), predecessor in title to Abdo, applied for a dock permit at [redacted] in May of 2007. Application drawings showed the flood-side section of the dock was to be located 21 feet from the extended property line between Russell and Laura Schaible (the "Schaibles") and Palmer. The Schaibles objected to the permit because they believed the proposed dock would be too close to their property line, so they asked the Board to include a condition that Palmer's dock be located farther away from their property line and closer to the shared extended property line between Palmer and Petitioner James R. Maull ("Petitioner"). DHEC's Office of Ocean and Coastal Resource Management ("OCRM") concluded that there was no negative impact to the Schaibles, but that if the dock were moved closer to the shared property line between Palmer and Petitioner, it would likely affect Petitioner's ability to steer a large boat to and from his dock. In particular, Petitioner was concerned about docking his 48-foot sport fishing vessel on the landward side of his floating dock. OCRM staff ultimately authorized the permit to allow for the construction of a boatlift, pier head, ramp, and floating dock, with the floating dock extending in front of the pier head in order to mitigate Petitioner's concerns. The permitting decision was challenged but the Board declined review, making the staff decision on the permit the final agency decision.

Abdo, successor in title to Palmer, sought to amend the permit in July of 2011. While including the same components as previously permitted, the amendment submitted by Abdo also included a request for a longer floating dock. As approved, the Palmer floating dock was 20 feet in length and was located channel-ward of the pier head; as requested, Abdo's proposed floating dock is 34.5 feet in length and is located flood-side of the pier head. While the permit only allowed 32.5 linear feet of structure extending in front of the critical line, Abdo's amendment includes 88 linear feet of structure extending in front of the critical line. The Palmer permit proposed 82.5 feet of separation from Petitioner's dock, while Abdo's amendment reduced the separation between the proposed dock and Petitioner's extended property line to 20.5 feet.

DHEC staff authorized the permit amendment on October 6, 2011, but with a condition that the dock be situated 30.5 feet off the shared extended property line of Abdo and Petitioner. All parties to this matter filed timely requests for review with the Board. The Board held a Final Review Conference on December 8, 2011 to review Abdo's amendment to the permit. Department staff explained during the Final Review Conference, they understood Mr. Maull's dock to be 10 feet off of the extended property line. Therefore, to address Mr. Maull's concerns, Department staff imposed the 30.5 foot condition with the purpose of providing 40 feet of separation between Mr. Maull's dock and Mr. Abdo's dock. During the Final Review Conference Department staff explained to the board the previous belief of Mr. Maull's dock being located 10 feet off the extended property line was erroneous and based upon an unintentional error while interpreting Mr. Maull's permit. Based upon Mr. Maull's submitted survey, it was determined his dock was 18.5 feet away from the extended property. Staff explained to the board if they had known Mr. Maull's dock was 18.5 feet off of the extend

property line rather than 10 feet away, they would not have imposed the special condition and Mr. Abdo's permit would have been amended as requested.

The Board concluded in its Final Agency Decision, issued on January 9, 2012, that the amendment requested by Abdo complies with the law and should be issued as requested, but that no special conditions to the permit are necessary to protect the public interest. The Board authorized construction of the requested walkway with handrails leading to a covered pier head with handrails and benches and ramp leading to a floating dock and the addition of a four-pile boat lift for Abdo's personal use, with the special condition that the structure be located 30.5 feet from the extended property line deleted from the permit. In response to this decision, Petitioner filed a Notice of Request for Contested Case with the South Carolina Administrative Law Court ("ALC") on February 8, 2012.

AUTHORITY FOR MOTION

Rule 19(A) of the South Carolina Rules of Procedure for the Administrative Law Court ("RPALC") provides for pre-hearing motions and requires such motions be in writing, state the grounds for relief and the relief sought, and be filed not later than ten (10) days before the hearing date, unless otherwise ordered by the administrative law judge. Rule 68, RPALC provides that the South Carolina Rules of Civil Procedure ("SCRCP") may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by the RPALC. Rule 12(b)(6), SCRCP, provides that a party against whom a claim is asserted may, as a defense, move the court to dismiss the claim for failure to state facts sufficient to constitute a cause of action.

STANDARD OF REVIEW

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." Id.; Baird v. Charleston Cnty, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id. (quoting Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)).

ARGUMENT

This memorandum will show that the ALC should dismiss Petitioner's claim that the Board's approval of Abdo's permit amendment will create an issue of safe navigation of the waterway between Petitioner's dock and Abdo's proposed dock. The Board, as an extension of DHEC, has the authority to interpret the regulations it is charged with administering, and such interpretation must be accorded deference by a reviewing court. Since the Board interpreted the regulations concerning safe navigation as not encompassing disputes between adjacent property owners that do not involve matters of public interest, there is no basis on which Petitioner can state such a claim. Therefore, dismissal of this issue in favor of DHEC is appropriate.

I. DHEC is Entitled to Dismissal of This Issue Because There is No Requirement That DHEC Resolve a Navigational Dispute Between Adjacent Property Owners That Does Not Involve a Matter of Public Interest

"The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dorman V. S.C. Dep't of Health & Envtl. Control, 350 S.C. 159, 167, 565 S.E.2d 119, 123 (Ct. App. 2002) (quoting Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002)). Regulation 30-12.A of the South Carolina Code of Regulations covers the Specific Project Standards for Tidelands and Coastal Waters that relate to the construction of Docks and Piers. Relevant to this case, R.30-12.A(1) covers standards that are applicable for the construction of all docks and piers. In particular, R.30-12.A(1)(p) states:

> "No docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint-use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act." (Supp. 2008).

The language of this regulation specifically provides that the Department has the authority to allow construction of docks closer than 20 feet to a shared extended property line when there is no material harm to the policies of the Coastal Zone Management Act. Thus, DHEC must first determine whether their approval of a permit risks material harm to the policies of the Act. DHEC must also take into consideration Regulation 30-11.B(2), which requires DHEC to consider the "extent to which the activity would harmfully obstruct the natural flow of navigable water" when assessing the potential impact of a project in the critical area, and Regulation 30-12.A(1)(a), which states that docks and piers "shall not restrict the reasonable navigation or public use of State lands and waters." (Supp. 2008). Thus, in assessing whether a dock permitting decision causes material harm to the policies of the Act, DHEC must consider the impact such a decision has on these issues of navigation.

A. This Issue Involves a Private Dispute Between Adjacent Land Owners

An issue similar to the one the Petitioner raises in this case was addressed by the Court of Appeals in Dorman, supra. In that case, OCRM staff granted a critical area permit for a floating dock, but the neighbors on both sides of the property objected, stating that the proposed dock would be too close to their existing docks. Id. at 162-63. Upon appeal to the ALC, the Administrative Law Judge ("ALJ") reversed the OCRM staff decision and denied the permit on grounds including that it would obstruct navigation, would cross extended property lines without justification for an exception to the general rule, and would diminish the use and enjoyment of neighboring lots. Id. at 163. On appeal to the Coastal Zone Management Appellate Panel ("Panel") of DHEC, the Panel made its own findings of fact on which it based its legal conclusion that granting the permit would not undermine the purpose or policy of the Regulation. Id. The Panel then reversed the ALJ and reinstated the permit. Id. In particular, the Panel stated that "[i]t is the position of OCRM that any navigational issues between docks is [sic] a private property owner issue. It is not the policy of OCRM to police navigational disputes that should be dealt with among the adjacent property owners." Id. Respondent Dorman then appealed to the circuit court, which reversed the decision of the Panel and reinstated the judgment of the ALJ.

On appeal to the Court of Appeals, the Court stated that the Panel cannot make findings of fact in accord with its own view of the evidence, but can validly reverse the ALJ based on an error of law under the appellate standard of S.C. Code Ann. § 1-23-610(B)(d) or if his findings were not supported by substantial evidence. Id. at 165. The Court of Appeals found that the Administrative Law Judge Division ("ALJD"), while an independent entity, "still functions as an arm of the agency for purposes of according the agency deference in interpretation." Id. at 167. Quoting from Brown, supra, the Court found that the Panel, in interpreting the regulations it is

charged with administering, could reverse the ALJ and was entitled to deference on appeal. Id. Thus, the Court stated, "[t]he Panel, interpreting its own regulation, held that navigation, as contemplated in the regulation, did not encompass problems between neighbors or conflict with nearby docks but only applied to impediments to the general public's use of the waters." Id. As an agency's interpretation of its regulations is accorded deference, the Court adopted the Panel's interpretation of navigation and remanded the case back to the ALJD to determine whether the permit should be granted in light of the Panel's interpretation. Id. at 171-72.

The holding of Dorman in regard to the agency's interpretation of navigation as not encompassing problems "between neighbors or conflict with nearby docks" is in keeping with the Board's Decision in this case. The Board stated that the Department has authority under § 48-39-150(B) "to condition permits to require the applicant to take 'whatever measures the Department feels are necessary to protect the public interest'", and that the Department "only exercises this authority when a condition is necessary to protect the public interest or to bring an activity into compliance with the regulations." See Final Agency Decision, S.C. Bd. of Health & Envtl. Control, No. 11-RFR-56, at 3 (Jan. 6, 2012). The Board expressed sympathy for Petitioner's concerns about his ability to dock his large boat but found that he had raised no objections that "invoke the public interest or prohibit the permit amendment from being issued on the terms requested by the permitee." Id. at 4. More to the point, in its interpretation of the regulations, the Board found that "DHEC does not have an obligation to place conditions on neighbors' dock permits to ensure that all nearby docks have the ability to dock large boats on the landward side of their floating dock." Id. Much like Dorman, the controversy here involves a problem that exists between neighbors and does not rise to the level of a public interest protection issue or an impediment to the general public's use of the waters. As the Board

functions as "an arm of the agency", its interpretation of the Department's regulations must be accorded the proper deference by the reviewing court. Id. at 167. To allow a determination on this issue to be made at the ALC would only serve to undermine the authority of the agency to interpret its own regulations and would run contrary to established precedent. Thus, dismissal of this claim in favor of the Department is appropriate.

B. This Issue Does Not Involve Public Use or Navigation of the Waters

The present case is immediately distinguishable from White v. South Carolina Department of Health & Environmental Control, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011), another case which dealt with a problem existing between neighbors in regard to a dock permit. In White, the Respondent, George White, opposed the construction of neighboring property owner Coffin Point's private community dock because the completed dock crossed White's extended property line. Id. at 251. Coffin Point appealed to the Court of Appeals following the ALJ's issuance of a written order to rebuild the dock in accordance with the permit as it was originally issued, in which the proposed dock would be located 20 feet from the extended property line. Id. One of the issues raised by Coffin Point on appeal was whether the ALJ erred in interpreting the term "navigation" within the meaning of R.30-12(A)(1)(p) in concluding that the location of Coffin Point's dock "constitute[d] a significant navigational hazard and thus a 'material harm to the policies of the Act.'" Id. at 255. Coffin Point cited to Dorman as support for this contention, but the Court of Appeals was quick to distinguish the facts of the case before it from those in Dorman. Id. at 256. Unlike the navigational dispute claim at the center of Dorman, the dispute in White involved the disruption of a commercial enterprise and its customers, with the objection lodged by White "not involv[ing] merely a private dispute with Coffin Point, but also "concern[ing] the needs of White's customers, who themselves are

members of the public, and the local shrimping industry in general." Id. Thus, the Court concluded that the ALJ's determination that the location of the dock presented a significant navigational hazard did not "conflict with OCRM's policy of avoiding the regulation of private navigational disputes." Id. The Court agreed that there was substantial evidence that the location of the dock would cause an adverse impact on White's commercial dock and the shrimpers that use it, and that because White's customers are members of the public, "their navigation to and from White's commercial dock to conduct business constitutes 'reasonable public use of the waters' within the meaning of the Coastal Management Program". Id. at 257. In regard to the present case, the holding of White is inapplicable because this case does not involve a "reasonable public use of the waters" issue but rather a private navigational dispute that exists between adjacent property owners.

Taking into consideration the holdings of Dorman and White, it becomes apparent that the Board was well within its authority to interpret R.30-12(A)(1)(p) to allow for Abdo's dock to be constructed closer than 20 feet to the shared extended property line because there is no need to protect a public interest or bring an activity into compliance with the regulations here. Petitioner's claim that his ability to navigate his large boat will be negatively impacted by the construction of Abdo's dock is not an issue that the agency or any court reviewing Abdo's permit approval process needs to address. Petitioner's claim is in line with the private navigational dispute in Dorman, and is not like the impact on "reasonable public use of the waters" claim in White. In keeping with OCRM's policy of avoiding the regulation of private navigational disputes, a contested case hearing at the ALC is not the appropriate forum for Petitioner to bring such a claim. As the ALC should not interfere with the agency's interpretations of its own regulations but should accord them the proper deference on review, there is no factual basis

sufficient enough on which Petitioner may state a claim for relief. Thus, dismissal of this particular claim in favor of the Department is appropriate.

CONCLUSION

For the reasons stated above, the Department respectfully requests that the Court Grant Dismissal of the above mentioned claim in favor of the Department.

Respectfully submitted,

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July 24, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, vs. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, Russell Schaible and Laura Schaible, Intervenors.	DOCKET NO. 12-ALJ-07-0050-CC **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she has this day served copies of the ***Department's Notice of Motion and Motion for Partial Summary Judgment and Motion to Dismiss*** via U.S. Mail, postage pre-paid, on the following parties and counsel of record listed below:

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July 24, 2012
Charleston, South Carolina

FILED
AUG 02 2012
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

JAMES R. MAULL,

Petitioner,

vs.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND DAVID ABDO

Respondents,

AND
RUSSELL AND LAURA SCHAIBLE,

Intervenors.

Docket No.: 12-ALJ-07-0050-CC

PETITIONER RESPONSE TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MOTION TO DISMISS

TO: THE RESPONDENT SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND ITS ATTORNEY BRADLEY D. CHURDAR,

The Petitioner James R. Maull (hereinafter "Maull") hereby responds to Respondent South Carolina Department of Health and Environmental Control, (hereinafter the "Respondent") Motion for Partial Summary Judgment and Motion to Dismiss. It is the Petitioner's position that the Respondents' motion to dismiss should be denied.

SUMMARY OF NATURE OF CASE

This case contested case arises from the Final Agency Decision issued by the South Carolina Board of Health and Environmental Control on January 9, 2012. Petitioner challenges the Board's granting an Amendment to Critical Area Permit No. OCRM-07-128 F to Respondent David Abdo for his personal use at [redacted]

in Charleston, South Carolina.

SUMMARY OF THE FACTS

In May 2007, Charles R. Palmer ("Palmer"), predecessor in title to Abdo, applied for a dock permit for [redacted]. Based upon the application drawings, the floodside section of dock located 21 feet from the extended property line between Russell and Laura Schaible (the "Schaibles") and Palmer. The Schiables objected because they thought the proposed dock was too close to their property line. They asked the board to include a condition that Palmer's dock be moved away from their property and closer to the shared extended property line between Maull and Palmer.

The Office of Coastal Resource Management ("OCRM") decided the Schiables were not negatively impacted, and if the dock was moved away from the shared property line extension between Palmer and Schiable, it "would likely affect Maull's ability to navigate a large boat to and from a "u" shaped slip on his dock." OCRM staff sought to mediate with the disputing property owners. Eventually, Critical Area Permit No. OCRM-07-128F (the "Permit") authorized the construction of a boatlift, pier head, ramp, and floating dock with a floating dock to extend in front of the pierhead, in order to mitigate any navigational concerns. The decision was challenged, and the Board declined review. Therefore, the decision was final.

In 2011, Abdo applied to amend the Permit. His proposal included the same components permitted previously including, float, pierhead, boatlift and ramp. But his Amendment included a request for a longer floating dock. The Palmer floating dock was 20' in length, whereas the Abdo floating dock is 34.5' in length. The Palmer floating dock was channelward of the pierhead. In contrast, the Abdo amendment requested that

the floating dock be located on the floodside of the pierhead. The amendment includes 88 linear feet of structure extending in front of critical line, while the Permit only allowed 32.5 linear feet of structure extending in front of the critical line. The Permit proposed 82.5 feet of separation from the Maull dock, while the Amendment reduced that to 30.5 feet. The Palmer dock was 21' from the shared extended property line with Schaible, and the Abdo dock is 40' from the shared extended property line with Schaible, precisely the situation OCRM sought to avoid in granting the Permit in 2007.

The Board held a Final Review Conference on December 8, 2011 to review Abdo's requested amendment. The Board did not establish procedures for presentations, nor was any evidence submitted to the board for consideration. No sworn testimony was taken. Maull was not afforded the opportunity to cross examine any witnesses presented by Requester Abdo, Requestors Schaibles, and the South Carolina Department of Health and Environmental Control. The Board authorized construction of the requested walkway with handrails leading to a covered pier head with handrails and benches and ramp leading to a floating dock and the addition of a four-pile lift for the Respondent Abdo's personal use at [redacted] Charleston, South Carolina. OCRM's final administrative decision in 2007 was to conclude that Mr. Maull's navigation could be negatively impacted by a similar request. The 2007 decision was challenged, but the Board declined review. Therefore, Board's refusal to adhere to OCRM's 2007 conclusions regarding possible harm to Maull, and to recognize administrative finality is fundamentally unfair and indefensible.

STANDARD OF REVIEW

In considering whether to grant a motion to dismiss a complaint based on failure to state facts sufficient to constitute a cause of action, "the trial court must base its ruling solely on allegations set forth in the complaint." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); See also Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). Under Rule 12(b)(6), a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. If the facts and inferences drawn from the facts alleged in the complaint, viewed in light most favorable to the plaintiff, would entitle the plaintiff to relieve on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Brazell v. Windsor, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009).

ARGUMENT

This argument will show that the Administrative Law Court should deny the Respondent's motion to dismiss the Petitioner's complaint based upon failure to state facts sufficient to constitute a cause of action. The Board, in 2007, concluded that the Petitioner's navigation would be negatively impacted by granting the Respondent's request for an amendment to the permit at issue. The decision was challenged, but the Board determined the decision was final. The Board's subsequent 2011 decision exemplifies the staff's refusal to adhere to its 2007 conclusions of potential harm to the Petitioner and to recognize administrative finality.

I. THIS COURT SHOULD DENY DHEC'S MOTION TO DISMISS THIS CASE BECAUSE DHEC IS REQUIRED BY LAW TO RESOLVE DISPUTES BETWEEN RIPARIAN PROPERTY OWNERS OF SAFE USAGE OF A PUBLIC WATERWAY AND THE ISSUE CAN ONLY BE RESOLVED BY FACTUAL INQUIRY.

In a contested permitting case, the Administrative Law Court presides as the fact finder. Jones v. S.C. Dept. of Health Environmental Control, 384 S.C. 295, 303, 682 S.E.2d 282, 287 (Ct. App. 2009). South Carolina Code § 1-23-380(A)(6) provides that the court can reverse a decision of an administrative agency if the agency's findings or conclusions were: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted. Id. at 303-304, 682 S.E.2d at 297. Petitioners affirmatively asserting error in the Department's issuance of a permit amendment, bear the burden of proof in this matter. See Leventis v. S.C. Dep't of Health & Envt'l Control, 340 S.C. 118, 530 S.E.2d 643. Therefore, petitioners must demonstrate, by a preponderance of the evidence that the Department's issuance of the permit amendment was in error under the relevant statutory and regulatory criteria governing activities in the critical areas. Arthur L. and Martha Crosby, 2006 WL1640931 S.C.Admin.Law.Judge.Div. (May 17, 2006).

Permits for the construction of private docks in the coastal zone are governed by the South Carolina Coastal Zone Management Act, S.C. Code Ann. §§ 48-39-19 (West Supp. 2005). Those regulations govern the management, development, and protection of the critical areas and coastal zones of the state. DHEC's Office of Ocean and Coastal Resource Management (OCRM) has the duty of carrying out South Carolina's coastal zone policies and issuing permits for docks and piers in the critical areas of the coastal waters and tidelands. S.C. Code Ann. § 48-39-130 (West Supp. 2005). S.C. Code Reg.

30-12.A(2) requires that "docks and piers....shall not restrict the reasonable navigation or public use of State lands and waters." 23A S.C. Code Ann. Reg. § 30-12.A(2)(a) (West 2004). Therefore, this court must assess whether the amended dock permit restricts navigation or the public use of the lands and waters at issue in this case.

A. This case is not a private dispute between neighbors, instead, it is dispute between two riparian property owners over the safe usage of a public waterway.

Owners of riparian land possess rights relating to the water, its use, and the ownership of soil under the water. Horry Cnty. v. Tilghman, 283 S.C. 475, 480, 322 S.E.2d 831, 834 (Ct. App. 1984). A riparian owner is one whose land is traversed or bounded by a natural watercourse. Lowcountry Open Land Trust v. State, 347 S.C. 96, 107, 552 S.E.2d 778, 784 (Ct. App. 2011). The South Carolina Constitution provides that: All navigable waters shall forever remain public highways free to the citizens of the State and in the United States..." S.C. Const. Art. 16, § 4. See also S.C. Code Ann. § 49-1-10 (West 2011). While OCRM is not charged by statute with protecting navigation in this state, it is required to consider the extent to which a proposal may affect existing access to tidal and navigable waters. 23A S.C. Code Ann. Regs. 30-12 (A)(1)(a) & (b)(West Supp. 2004). The true test to be applied in determining whether a waterway is navigable is whether a stream inherently and by its nature has the capacity for valuable floatage, irrespective of the fact of actual use or the extent of such use. Arthur L. and Martha Crosby, WL 1640931 S.C.Admin.Law.Judge.Div. (May 17, 2006). Valuable floatage is defined broadly to include any legitimate and beneficial use, whether commercial or recreational. Brownlee v. S.C. Dept. of Health and Envtl. Control, 382 S.C. 129, 139, 676 S.E.2d 116, 121 (2009). Commercial use of the waterway is not

required for it to be navigable. Also, pleasure traffic is entitled to protection in using the waterway. Id. at 138, 676 S.E.2d 116, 121.

In Arthur L. and Martha Y. Crosby, South Carolina DHEC's OCRM Department amended a critical area private deck permit in favor of the Respondents to jointly use a dock. The Petitioners asserted that the amendment was improperly issued because the dock did not follow statutory requirements relative to creek width, the construction of the boat storage dock and boat lift impacted navigation and the construction is prohibited by the applicable regulations. In the case, the Administrative Court determined that the petitioner's contention that the small tributary at issue was navigable. Arthur L. and Martha Crosby, WL 1640931 S.C.Admin.Law.Judge.Div. at *1 (May 17, 2006). The court stated the petitioner only provided instances of navigation in small watercraft. To the contrary, the court stated the evidence established that a reasonable boater would take an ordinary watercraft into the tributary only at high tide. Also, the petitioners did not establish that the creek at issue has a defined channel or a history of navigation. Therefore, the placement of the single-pile boat lift would not infringe upon the requirements of Regulation 30-12(A). Id. at *6.

Similarly, in White v. S.C. Dept. of Health and Envtl. Control, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011) the Administrative Law court, issued an order requiring a property owner to rebuild a dock in according with a permit as originally issued prior to an amendment. In the case, the appellant sought review of an order of the Administrative Law Court requiring it to rebuild its private community dock in accordance with its permit as originally issued by the DHEC. The appellant argued that the Administrative Law Judge erred in concluding that the location of the dock

constitutes a material harm to the policies of the South Carolina Coastal Zone Management Act, S.C. Code Ann. 48-39-10 to -360 (2008 & Supp. 2010).

In White, the appellant cited the case of Dorman v. S.C. Dept. of Health and Envtl. Control, 392 S.C. 247 (2011) in support of its argument that policing disputes between neighboring dock owners is not included in the statute. White, 392 S.C. at 256, 708 S.E.2d at 816. Dorman involved objections to a proposed boat dock from neighbors on both sides of the applicant's property. The neighboring property owners objected on the grounds that the proposed dock would be too close to their existing docks and their views would be obstructed. Id. The Court of Appeals adopted OCRM's interpretation of Regulation 30-12, which was the position that any navigational issues between docks are a private property issue.

The court made a distinction between the facts of White and Dorman. In White, the respondent objected to the OCRM's amendment of a dock permit due to disruption of a commercial business and its customers. The dispute was not a private dispute, but also affected members of the general public and the local shrimping industry. Id., 708 S.E.2d at 816-817. The appellant also argued that in interpreting the term "navigation," the ALJ overlooked the public's ability to navigate the creek in general and instead focused too narrowly on the inability of the appellant's customers to navigate to and from his dock. The ALJ's amended order addresses this point by citing from Chapter III of Part II of the Coastal Management Program: "The policies of the Coastal Management Program include the [the policy that] 'docks and piers will not be approved where they interfere with navigation or reasonable public use of the waters.'" White, 392 S.C. at 257, 708 S.E.2d at 817. Because the appellant's customers are members of the public, their

navigation to and from White's commercial dock to conduct business constitutes "reasonable public use of the waters" within the meaning of the Coastal Management Program.

Similarly, in this case, the Adbo amendment affects the Petitioner's ability to navigate safely. Thus, it is irrelevant as the Respondent claims that this case pertains to neighbors and is a private dispute. The real issue in this case is the Petitioner's ability to navigate the public waterway to and from his dock located on the public waterway. In 2007, the OCRM determined that if the dock was amended to 34.5' from 20' in length, the Petitioner's ability to navigate a large boat to and from a "u" shaped slip on his dock would be affected.

Likewise, not only is his ability limited but also other boaters who may try to travel to his dock. The regulations pertaining to docks in South Carolina prohibit docks and piers that interfere with navigation or reasonable public use of the waters. It is irrelevant that the problem exists between people who are neighbors. The pertinent regulations also apply to neighboring owners, not just the boating public.

Therefore, based upon statutory requirements and the OCRM's failure to prove that the Petitioner will not potentially be harmed due to the decrease from 40.5' to 30.5', the Respondent's motion to dismiss should not be granted.

CONCLUSION

For the reasons stated above, the Petitioner respectfully requests that the court dismisses the Respondent's motion to dismiss this action.

Respectfully submitted,
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August 2, 2012
Charleston, South Carolina

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 2 day of August 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

JAMES R. MAULL,

Petitioner,

vs.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND DAVID ABDO

Respondents,

AND
RUSSELL AND LAURA SCHAIBLE,

Intervenors.

Docket No.: 12-ALJ-07-0050-CC

PETITIONER RESPONSE TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MOTION FOR PARTIAL SUMMARY JUDGMENT

TO: THE RESPONDENT SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND ITS ATTORNEY BRADLEY D. CHURDAR,

The Petitioner James R. Maull (hereinafter "Maull") hereby responds to Respondent South Carolina Department of Health and Environmental Control, (hereinafter the "Respondent") Motion for Partial Summary Judgment. It is the Petitioner's position that the Respondents' motion for partial summary should be denied.

SUMMARY OF NATURE OF CASE

This case contested case arises from the Final Agency Decision issued by the South Carolina Board of Health and Environmental Control on January 9, 2012. Petitioner challenges the Board's granting an Amendment to Critical Area Permit No. OCRM-07-128 F to Respondent David Abdo for his personal use at [redacted] in Charleston, South Carolina.

SUMMARY OF THE FACTS

In May 2007, Charles R. Palmer ("Palmer"), predecessor in title to Abdo, applied for a dock permit for [redacted] Based upon the application drawings, the floodside section of dock located 21 feet from the extended property line between Russell and Laura Schaible (the "Schaibles") and Palmer. The Schiables objected because they thought the proposed dock was too close to their property line. They asked the board to include a condition that Palmer's dock be moved away from their property and closer to the shared extended property line between Maull and Palmer.

The Office of Coastal Resource Management ("OCRM") decided the Schiables were not negatively impacted, and if the dock was moved away from the shared property line extension between Palmer and Schiable, it "would likely affect Maull's ability to navigate a large boat to and from a "u" shaped slip on his dock." OCRM staff sought to mediate with the disputing property owners. Eventually, Critical Area Permit No. OCRM-07-128F (the "Permit") authorized the construction of a boatlift, pier head, ramp, and floating dock with a floating dock to extend in front of the pierhead, in order to mitigate any navigational concerns. The decision was challenged, and the Board declined review. Therefore, the decision was final.

In 2011, Abdo applied to amend the Permit. His proposal included the same components permitted previously including, float, pierhead, boatlift and ramp. But his Amendment included a request for a longer floating dock. The Palmer floating dock was 20' in length, whereas the Abdo floating dock is 34.5' in length. The Palmer floating dock was channelward of the pierhead. In contrast, the Abdo Amendment requested that the floating dock be located on the floodside of the pierhead. The Amendment includes

88 linear feet of structure extending in front of critical line, while the Permit only allowed 32.5 linear feet of structure extending in front of the critical line. The Permit proposed 82.5 feet of separation from the Maull dock, while the Amendment reduced that to 30.5 feet. The Palmer dock was 21' from the shared extended property line with Schaible, and the Abdo dock is 40' from the shared extended property line with Schaible, precisely the situation OCRM sought to avoid in granting the Permit in 2007.

The Board held a Final Review Conference on December 8, 2011 to review Abdo's requested amendment. The Board did not establish procedures for presentations, nor was any evidence submitted to the board for consideration. No sworn testimony was taken. Maull was not afforded the opportunity to cross examine any witnesses presented by Requester Abdo, Requestors Schaibles, and the South Carolina Department of Health and Environmental Control. The Board authorized construction of the requested walkway with handrails leading to a covered pier head with handrails and benches and ramp leading to a floating dock and the addition of a four-pile lift for the Respondent Abdo's personal use at [redacted], Charleston, South Carolina. OCRM's final administrative decision in 2007 was to conclude that Mr. Maull's navigation could be negatively impacted by a similar request. The 2007 decision was challenged, but the Board declined review. Therefore, Board's refusal to adhere to OCRM's 2007 conclusions regarding possible harm to Maull, and to recognize administrative finality is fundamentally unfair and indefensible.

STANDARD OF REVIEW

Summary judgment is appropriate "where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

To determine whether any triable issues of fact exists, the evidence must be viewed in the light most favorable to the nonmoving party. Med. Univ. of S.C. v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004). If triable issues of fact do exist, those issues go before the jury. BPS, Inc. v. Worthy, 362 S.C. 319, 324 608 S.E.2d 155, 158 (2005). Summary judgment is not appropriate where inquiry into the facts of a particular case is necessary to clarify how the law should be applied. Id., 362 S.C. at 325, 608 S.E.2d at 159. But "when "plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Id., 362 S.C. at 326, 324 S.E.2d at 159.

ARGUMENT

I. DHEC Is Not Entitled to Partial Summary Judgment Because It Must Abide By The State Constitution, Which Requires Due Process Must Given To Parties That Come Before It.

Section 22 of the South Carolina State Constitution states:

> "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have the right to judicial review."

S.C. Const. art. 1, § 22.

The South Carolina Supreme Court has held that Article 1, Section 22 requires an administrative agency to give procedural due process to parties that come before it. Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432, 440, 511 S.E.2d 48, 52 (1999). According to the South Carolina Administrative Procedure Act (APA), an administrative agency "means each state board, commission, department, executive department or officer, other than the legislature or the courts, authorized by law to make regulations or to determine contested cases." S.C. Code Ann. § 1-23-10(1) (West 2005). While Administrative Law Judges cannot rule on facial challenges to the constitutionality of a regulation or statute, ALJs can rule on whether a law as applied violates constitutional rights have been violated. Dorman v. Dept. of Health and Envtl. Control, 350 S.C. 159, 171, 565 S.E.2d 119, 126 (Ct. App. 2002).

A. Even if DHEC had specific authority to hold a final review conference, it still was required to protect the Petitioner's due process rights.

According to South Carolina Code Section 44-1-50,

> "The board may conduct such administrative reviews as may be required by law, as considered necessary by the board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case pursuant to Chapter 23 of Title 1."

S.C. Code Ann. § 48-39-50 (West 2011).

A fair trial in a fair tribunal is a basic requirement of due process, and this applies to administrative agencies which adjudicate as well as to courts. Withrow v. Larkin, 421 U.S. 35, 46, 95 S.Ct. 1456, 43 L.Ed.2d 712, 723 (1975). Court generally discourages

agency staff and members from simultaneously acting as investigator, prosecutor and judge. "It is proper to have some blend of judicial and prosecutorial functions in an administrative proceeding, provided that the person performing the quasi-prosecutorial function is not a member of the decision-making body." Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432, 446, 511 S.E.2d 48, 55 (1998). Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. Jones v. S.C. Dept. of Health and Envtl. Control, 384 S.C. 295, 316, 682 S.E.2d 282, 293.

To prevail on a claim of denial of Due Process, there must be a showing of substantial prejudice. Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. Dep't of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).

In Olson v. S.C. Dep't of Health & Envtl. Control, 379 S.C. 57, 68-69, 663 S.E.2d 497, 503-503 (Ct. App. 2008), the Court of Appeals determined the adjoining landowner's due process rights were not violated when they failed to receive direct notice of a dock permit amendment application concerning by OCRM. The court also went on to say there was full a full hearing where the landowners were able to elicit testimony, present evidence and confront witnesses before the Administrative Law Court. Id.

Conversely, in Stono River Environmental Protection Ass'n v. S.C. Dept. of

Health and Environmental Control, 305 S.C. 90 406 S.E.2d 340 (1991), the Supreme Court of South Carolina determined the appellant's due process rights were violated. In the case, environmental organizations appealed from an order of DHEC by which the Board issued a water quality certification to a marina. The court ultimately determined that since the board did not allow the appellants to present evidence and cross-examine witnesses regarding the merits of the case. Id. at 94, 406 S.E.2d at 342.

The issue concerning due process in this case is similar to the issue decided in Stono River. The Board in Stono did not allow the appellant to present evidence or cross-examine witnesses. Like the appellants in Stono, the Petitioner did not have an opportunity to submit evidence or to cross-examine any witnesses presented by the Respondent. Therefore, this court should rule just as the court did in Stono that the Petitioner's due process rights were violated.

B. The Board's refusal to adhere to the OCRM's 2007 conclusions regarding potential harm to the Petition and to recognize administrative finality is unfair and indefensible.

The DHEC Board has authority under S.C. Code § 44-1-50 to:

> "conduct such administrative reviews as may be required by law, as considered necessary by the board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case...."

(West 2006).

The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. S.C. Code Ann. § 44-1-60(F)(2) (2010).

Here, the Board failed to inform the Petitioner of its rationale for abandoning the Staff's earlier conclusion in 2007 that the Petitioner's ability to navigate was threatened by movement of the dock away from his neighbor's property. In 2007, DHEC concluded that the Petitioner's navigation could be negatively impacted if the dock permit was amended. That decision was challenged, but the Board declined review and the decision was final. But four years later, the Board determined the permit should be amended to increase the length of the Abdo floating dock. The Board did not allow any additional evidence to be presented and it did not allow the Petitioner to conduct cross-examination. Therefore, the Board, in this case, failed to follow statutorily provided procedures in failing to inform the Petitioner as to why it did not abide by the Staff's original 2007 decision that was final. Also, it violated the Petitioner's due process rights guaranteed by the South Carolina Constitution.

CONCLUSION

In addition to failing to establish constitutionally mandated procedures, as is set forth above, the staff and Board's actions were fundamentally unfair, given the permitting history from 2007. Petitioner, having fully participated in and cooperated with a mediated solution, as facilitated by OCRM, should not be in the position only four years later of having these issues revisited. And, the Department should be estopped on principles of fundamental unfairness and reliance from taking a completely different position on this matter with no material change in circumstances.

Based upon the summary judgment standard, there are still issues of material fact that need to be resolved by this court concerning the Petitioner's due process claims that were violated by the Respondent. For the reasons stated above, the Petitioner

respectfully respects that the court dismisses the Respondent's motion for partial summary judgment.

Respectfully submitted,
Young Clement Rivers, LLP

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mmolony@ycrlaw.com
Attorney for Petitioner,
James R. Maull

August 2, 2012
Charleston, South Carolina

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 2 day of August 2012

Jaime Hiatt

FILED
AUG 02 2012
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

JAMES R. MAULL, Petitioner, vs. SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, AND DAVID ABDO Respondents, AND RUSSELL AND LAURA SCHAIBLE Intervenors.	Docket No.: 12-ALJ-07-0050-CC **MOTION TO DISMISS OF PETITIONER**

Petitioner James R. Maull (the "Petitioner"), by and through the undersigned counsel, respectfully moves this Court to dismiss the above captioned case pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, on the grounds that the Respondent David Abdo ("Abdo"), failed to get a proper assignment of the permit and the permit expired August 2, 2012.

SUMMARY OF NATURE OF CASE

This contested case arises from the Final Agency Decision issued by the South Carolina Board of Health and Environmental Control ("Board") on January 9, 2012. Petitioner challenges the Board's granting of an amendment to critical area permit number OCRM-07-128-F (the "permit") to Respondent Abdo for his personal use at [redacted] in Charleston, South Carolina.

FILED
AUG 10 2012
SC ADMIN. LAW COURT
ROA 292

STATEMENT OF FACTS

The facts of this case are not in dispute. Charles R. Palmer ("Palmer"), predecessor in title to Abdo, applied for a dock permit at [redacted] on May 2, 2007. Application drawings showed the flood-side section of the dock was to be located 21 feet from the extended property line between Russell and Laura Schaible (the "Schaibles") and Palmer. The Schaibles objected to the permit because they believed the proposed dock would be too close to their property line, so they asked the Board to include a condition that Palmer's dock be located farther away from their property line and closer to the shared extended property line between Palmer and Petitioner. DHEC's Office of Ocean and Coastal Resource Management ("OCRM") concluded that there was no negative impact to the Schaibles, but that if the dock were moved closer to the shared property line between Palmer and Petitioner, it would likely affect Petitioner's ability to steer a large boat to and from his dock. In particular, Petitioner was concerned about docking his 48-foot sport fishing vessel on the landward side of his floating dock. OCRM staff ultimately authorized the permit to allow for the construction of a boatlift, pier head, ramp, and floating dock, with the floating dock extending in front of the pier head in order to mitigate Petitioner's concerns. The permitting decision was challenged but the Board declined review, making the staff decision on the permit the final agency decision.

Abdo sought to amend the permit in July of 2011. At that time, and even until this day, the permit was in the name of Charles Palmer. While including the same components as previously permitted, the amendment submitted by Abdo also included a request for a longer floating dock. As approved, the Palmer floating dock was 20 feet in length and was located channel-ward of the pier head; as requested, the proposed floating dock is 34.5 feet in length and

YCR #2

is located flood-side of the pier head. While the permit only allowed 32.5 linear feet of structure extending in front of the critical line, Abdo's amendment includes 88 linear feet of structure extending in front of the critical line. The Palmer permit proposed 82.5 feet of separation from Petitioner's dock, while Abdo's amendment reduced the separation between the proposed dock and Petitioner's extended property line to 20.5 feet.

DHEC staff authorized the permit amendment on October 6, 2011, but with a condition that the dock be situated 30.5 feet off the shared extended property line of Abdo and Petitioner. All parties to this matter filed timely requests for review with the Board. The Board held a Final Review Conference on December 8, 2011 to review Abdo's amendment to the permit.

The Board concluded in its Final Agency Decision, issued January 9, 2012, that the amendment requested by Abdo complies with the law and should be issued as requested, but that no special conditions to the permit are necessary to protect the public interest. The Board authorized construction of the requested walkway with handrails leading to a covered pier head with handrails and benches and ramp leading to a floating dock and the addition of a four-pile boat lift for Abdo's personal use, with the special condition that the structure be located 30.5 feet from the extended property line deleted from the permit.

AUTHORITY FOR MOTION

Rule 19(A) of the South Carolina Rules of Procedure for the Administrative Law Court ("RPALC") provides for pre-hearing motions and requires such motions be in writing, state the grounds for relief and the relief sought, and be filed not later than ten (10) days before the hearing date, unless otherwise ordered by the administrative law judge. Rule 68, RPALC

provides that the South Carolina Rules of Civil Procedure ("SCRCP") may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by the RPALC.

ARGUMENT

Exhibit A to this motion is OCRM-07-128-F, the permit at issue in the amendment attempted by Abdo. It shows it was never transferred and is now expired[1].

The ALC should dismiss Abdo's claim on the grounds that Abdo did not obtain proper assignment of the permit, the permit was not fully executed and since the permit expired as of August 2, 2012 therefore the Palmer permit is void.

The requirement for assignment of a permit is specifically and explicitly set out in the OCRM regulations 30-9(C). It is not purely an administrative function. In fact, the OCRM website details the assignment process as follows:

> **Are dock permits transferable?**
> Yes, simply fill out the Assignment/Transfer Form (DHEC 3900). This form is available online or at your local DHEC-OCRM office. The new permit holder will be responsible for all conditions prescribed under the original permit. Both parties need to sign this form, so real estate closings are a good time to complete the form and have it witnessed. Once it is complete, simply mail it to the local DHEC-OCRM office with the appropriate fee. Please note that only active permits require a transfer.

In this case, not only is there no evidence of any executed assignment of the permit, but the permit itself is expired. It is axiomatic that an expired permit cannot be amended or altered in any way; therefore, any decision made by this Court regarding the merits of the matter would be moot.

[1] The letter at R.94 is not a proper DHEC Form and is unsupported by any evidence of the transfer by the Permittee, Charles Palmer.

This does not leave the Petitioner without a remedy. Specifically, the Petitioner would be entitled to apply for a dock in its own name, as property owner of record in this matter.[2]

CONCLUSION

For the reasons stated above, the Petitioner respectfully requests that the Court Grant Dismissal of the above mentioned claim in favor of the Petitioner.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____

Michael A. Molony
P.O. Box 993
Charleston, SC 29402
(843) 724-6631
E-mail: mmolony@ycrlaw.com
Attorney for the Petitioner

Charleston, South Carolina

Dated: 8/10/12

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 10th day of August, 2012.

Jaime Platt

[2] Petitioner is aware of the provisions of The Permit Extension Joint Resolution of 2010, H. 4445 (notice published in S.C. State Register, November 26, 2010, available at: http://www.scdhec.gov/administration/regs/h4445-20101126.htm) and believes they do not apply to the permit at issue.

D H E C

South Carolina Department of Health and Environmental Control

RECEIVED
JUN 29 2011
DHEC-OCRM
CHARLESTON OFFICE

ASSIGNMENT/TRANSFER FORM

PLEASE ENCLOSE THE FOLLOWING ADMINISTRATIVE FEE. ASSIGNMENT/TRANSFER REQUESTS WILL NOT BE PROCESSED UNITL THIS FEE IS RECEIVED:

$25.00 -Minor activities-i.e., private residential dock, general permits, etc.
$100.00 -Major activities-i.e. Commercial development, marina's, etc.

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

The undersigned, Charles R. Palmer (Permit Owner(s)), does hereby assign unto David Abdo (New Permit Owner(s)) that certain DHEC-Office of Ocean and Coastal Resource Management Permit Number OCRM-07128-F (Permit Number) With an issue date of Aug. 2 2007 (Permit Issue Date) and an expiration date of Aug 2 2012 (Expiration date) and authorized private dock (Work authorized by permit) on the lands of [redacted] in the County of Charleston (County), South Carolina.

By _____ (Permit Owner(s))

Attested by _____ (Witness to above signature)

Date _____

The undersigned, David Abdo (New Permit Owner), does hereby accept the foregoing Assignment/Transfer and does agree to be bound by all of the terms, conditions, and obligations existing with regards to said permit as were applicable to OCRM-07128-F (Permit Number), at the date of it's issuance and thereafter until the date of this Assignment/Transfer and hereby agree to discharge the undersigned, Charles R. Palmer (Former Permit Owner) from all such responsibilities and abide by such requirements as are imposed by the aforesaid permit.

By _____ (New Permit Owner(s))

Attested By _____ (Witness to above signature)

Date 6-29-11

IMPORTANT: A CURRENT MAILING ADDRESS [redacted] RN ASSIGNMENT/TRANSFER CONFIRMATION LE[redacted] PROVIDED. [redacted] charleston SC [redacted]

DHEC 3900 (3/2007)

FILED
AUG 10 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James R. Maull, Petitioner, v. South Carolina Department of Health and Environmental Control and David Abdo, Respondents, Russell Schaible and Laura Schaible, Intervenors.	Docket No.: 12-ALJ-07-0050-CC David Abdo's Reply to Motion to Dismiss of Petitioner

Respondent David Abdo ("Abdo") replies as follows to Petitioner's Motion to Dismiss.

Petitioner makes two arguments in his Motion.

First, Petitioner asserts that the OCRM permit for [redacted] expired August 2, 2012, and that Permit Extension Joint Resolution of 2010, H. 4445 ("Extension Resolution"), does not apply to the subject permit. Petitioner does not cite any law to support his position: he simply asserts his interpretation as a footnote in his motion.

The Extension Resolution was enacted: "to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources." Permit Extension Joint Resolution of 2010, H. 4445.

The Extension Resolution defines "development approval" as:

> approval issued by the State, an agency or subdivision of the State, or a unit of local government, regardless of the form of the approval, that is for the development of land or for the provision of water or wastewater services by a governmental entity, including: . . .
>
> (f) a critical area permit issued by the department's Office of Ocean and Coastal Resource Management; . . .

Permit Extension Joint Resolution of 2010, H. 4445, Sec. 2(3).

The Extension Resolution goes on to provide that

> This joint resolution is intended to apply retroactively. For development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2012, the running of the period of the development approval and any associated vested right is suspended during the period beginning January 1, 2008, and ending December 31, 2012.

Permit Extension Joint Resolution of 2010, H. 4445, Sec. 3.

The Permit Extension Joint Resolution of 2010, H. 4445, clearly applies to the subject permit. Therefore such permit is thereby tolled until the end of 2012, and will not expire until sometime in the spring of 2017.

Second, Petitioner claims the subject permit was not properly transferred, and relies on the DHEC Assignment/Transfer Form filed by Abdo in June 2011. As an initial matter, transfer of permits is addressed in 30-9 of the South Carolina Code of Regulations, Department of Health and Environmental Control-Coastal Division: "[p]ermits are issued in the name of the applicant and may not be assigned to another without written permission of the Department."

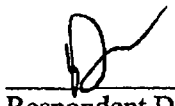
The Regulation is clear that the only permission needed to assign a permit comes from the Department. The Department accepted the assignment and gave its permission. The former owner's consent is not required.

Moreover, despite Petitioner's statement to the contrary, the DHEC Assignment/Transfer Form is purely administrative - it is to put the Department on notice of a new owner, and therefore, who the new permittee is. The DHEC Assignment/Transfer Form is not a legal mechanism that transfers any property rights between real property owners, and has no purpose or function outside of the internal housekeeping of the Department. Abdo's rights, title and interest in the subject permit were legally assigned and transferred by the deed he received upon his purchase of [redacted].

In responding to a request for a copy the purchase contract for [redacted] made August 20, 2012, by Petitioner, Abdo discovered within the packet provided after the closing a DHEC Assignment/Transfer Form executed by the former owner. A copy is attached as Exhibit A hereto.

Petitioner's Motion to Dismiss should be denied as a matter of law.

Respectfully submitted,



Respondent David Abdo

Charleston, South Carolina
August 21, 2012

CERTIFICATE OF SERVICE

The undersigned certifies that on August 21, 2012, s/he served copies of the foregoing by emailing copies addressed to the following counsel of record.

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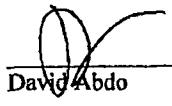
Attorney for Respondent DHEC



David Abdo

Exhibit A

D H E C

PROMOTE PROTECT PROSPER

South Carolina Department of Health and Environmental Control

ASSIGNMENT/TRANSFER FORM

PLEASE ENCLOSE THE FOLLOWING ADMINISTRATIVE FEE. ASSIGNMENT/TRANSFER REQUESTS W NOT BE PROCESSED UNITL THIS FEE IS RECEIVED:

$25.00 -Minor activities-i.e., private residential dock, general permits, etc.

$100.00 -Major activities-i.e. Commercial development, marina's, etc.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The **undersigned,** Charles R. Palmer, does hereby **assign unto**
(Permit Owner(s))

David W. Abdo that certain DHEC-Office of Ocean and Coastal Resource
(New Permit Owner(s))

Management **Permit Number** OCRM-07-128-F **With an issue date of** _____
(Permit Number) (Permit Issue Date)

and an expiration date of _____ **and authorized** dock construction **on the lands of**
(Expiration date) (Work authorized by permit)

[redacted], Charleston **in the County of** Charleston,
(Address/location of work) (County)

South Carolina.

By _____
(Permit Owner(s))

Attested by _____
(Witness to above signature)

Date Aug 27, 2007

The **undersigned,** _____, does hereby accept the foregoing
(New Permit Owner)

Assignment/Transfer and does agree to be bound by all of the terms, conditions, and obligations existing with regards to said permit as were **applicable to** _____, at the date of it's issuance and
(Permit Number)

thereafter until the date of this Assignment/Transfer and hereby agree to discharge the **undersigned,**

_____ from all such responsibilities and abide by such requirements as are imposed
(Former Permit Owner)

by the aforesaid permit.

By _____
(New Permit Owner(s))

Attested By _____
(Witness to above signature)

Date _____

IMPORTANT: A CURRENT MAILING ADDRESS TO RETURN ASSIGNMENT/TRANSFER CONFIRMATION LETTER MUST BE PROVIDED.

YCRLAW
Young Clement Rivers, LLP

Michael A. Molony

Direct Dial: (843) 724-6631
Direct Fax: (843) 579-1356
E-mail: mmolony@ycrlaw.com

August 21, 2012

Via U. S. Mail and Electronic Correspondence
Honorable Shirley C. Robinson
SC Administrative Law Judge
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: James R Maull v. SCDHEC and David Abdo
Docket No.: 12-ALJ-07-0050-CC
Dock Permit - P/N #OCRM-07-128-F for David Abdo
YCR File: 2880-20110924

Dear Honorable Shirley C. Robinson:

Please accept this letter as the Petitioner's James R. Maull's notice of withdrawal of his Motion to Dismiss filed with Administrative Law Court on August 10, 2012 in the above referenced case.

The Petitioners withdrawal is the result of information discovered during the deposition taken on August 20, 2012 of Respondent David Abdo and his response to a document production request which we received today.

By copy of this letter, I am serving all parties of record.

Thank you for your attention in this matter.

With kind regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Michael A. Molony

MAM/tro
Enclosure(s)
cc: James R. Maull, Sr.
Ilonka Sonja Taylor
David Abdo
Leslie S. Riley, Esquire
Bradley D. Churdar

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Docket No. 10-ALJ-07-0050-CC

James R. Maull,

Petitioner,

v.

South Carolina Department of Health and Environmental Control and David Abdo,

Respondents,

Russell Schaible and Laura Schaible,

Intervenors.

ADMINISTRATIVE HEARING
****
Tuesday, January 15, 2013
10:14 a.m. - 3:20 p.m.

The hearing before the Honorable Shirley Robinson was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 15th day of January, 2013 before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

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MR. HABER. . . . . .REDIRECT EXAMINATION 193

Certificate 197

EXHIBITS

Petitioner's Exhibit Number 1. 65
(Ltr/Dock Permit 2007 to Palmer)
Petitioner's Exhibit Number 2. 9
(Ltr. to Thompson from Maull 8/11)
Petitioner's Exhibit Number 3. 9
(Ltr. to Thompson from Maull 8/11)
Petitioner's Exhibit Number 4. 9
(Ltr. to DHEC from Maull 8/8/11)
Petitioner's Exhibit Number 5. 9
(Ltr. of Maull 10/14/11)
Petitioner's Exhibit Number 6. 9
(Transmittal ltr. of Permit - Schaible dock)
Petitioner's Exhibit Number 7. 9
(Handwritten notes of Mrs. Schaible)
Petitioner's Exhibit Number 8. 9
(Charleston, SC 2009 color photos)
Petitioner's Exhibit Number 9. 9
(Aerial View of Ashley, Wappoo & Stono River poster)
Petitioner's Exhibit Number 10 9
(Aerial View of [redacted])
Respondent DHEC's Exhibit Number 1 10
(Staff decision to Amend Permit OCRM-07-128-F)
Respondent DHEC's Exhibit Number 2 10
(Application to Amend Permit OCRM-07-128-F)
Respondent DHEC's Exhibit Number 3 10
(Public Notice Amendment Request)
Respondent DHEC's Exhibit Number 4 10
(Administrative Summary of Review)
Respondent DHEC's Exhibit Number 5 10
(Board Decision 1/9/12)
Respondent DHEC's Exhibit Number 6 10
(Initial Staff Response to Requests for Review)
Respondent DHEC's Exhibit Number 7 10
(Supplement to Staff's Response to Requests for Review 11/30/11)

Respondent DHEC's Exhibit Number 8 10
(Staff Decision to Amend Permit OCRM-07-3334 for Maull)
Respondent Abdo's Exhibit Number 1 11
(Aerial photo)
Respondent Abdo's Exhibit Number 2 11
(Aerial photo)
Respondent Abdo's Exhibit Number 3 11
(Permit Application)
Respondent Abdo's Exhibit Number 4 11
(9/24/92 ltr. to Maull)
Respondent Abdo's Exhibit Number 5 11
(Plat - Private Dock Modification Maull)
Respondent Abdo's Exhibit Number 6 11
(Plat - Figure 3)
Respondent Abdo's Exhibit Number 7 11
(Plat of Wappoo Creek)
Respondent Abdo's Exhibit Number 8 11
(As-is Built Drawing)
Respondent Abdo's Exhibit Number 9 11
(Technical Summary Review Abdo)
Intervenor Exhibit Number 1. 10
(Aerial Photo of Wappoo Creek)
Intervenor Exhibit Number 2. 10
(Maull Dock May 7, 2012)
Intervenor Exhibit Number 3. 10
(Photo of Schaible Dock)
Intervenor Exhibit Number 4. 10
(Critical Area Permit)
Intervenor Exhibit Number 5. 10
(Joint Federal and State Application Form)
Intervenor Exhibit Number 7. 10
(Critical Area Permit)

(The original exhibits were retained by the Court.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.

THE COURT: This is docket number 12-ALJ-07-0050 And the petitioner is James R. Maull vs. the South Carolina Health and Environmental Control and David Abdo. Is it Abdo or Abdo?

MR. ABDO: Abdo.

THE COURT: Abdo. And David Abdo, Respondents, Russell Schaible and Laura Schaible are intervenors in this case. We have representing the petitioner Michael Molony, and representing the Department is Bradley Churdar.

MR. HABER: Nathan Haber, Your Honor.

THE COURT: I'm sorry?

MR. HABER: Nathan Haber.

THE COURT: Nathan Haber?

MR. HABER: Yes, ma'am.

THE COURT: Oh okay. I'm sorry. And representing the Schaibles is Ms. Riley.

MS. RILEY: Good morning.

THE COURT: Good morning. The issue before the court is the petitioner's objection to a permit for an amendment to a critical area permit that was issued by the Department. The permit was issued to Mr. Abdo, and Mr. Maull is objecting to that, and I think the Schaibles have joined as intervenors in this case. They are in

support of the amended permit. Is that correct?

MS. RILEY: That's correct, Your Honor.

THE COURT: Okay. Very good. If everyone is ready we will begin with -- oh, I think there was something that needed to be addressed before we got started.

MR. MOLONY: Well, a couple things. But I think if it's okay with Your Honor and the other counsel, we would like to go ahead and put up our expert witness, Mr. Crayton Walters. His daughter had surgery yesterday, and he's also a harbor pilot and he has to be back this afternoon. So I've spoken with Leslie, I didn't speak to Nathan about it or Sonya, but I do think that we'd like to get him up, let him testify and then ask that you have him released. His testimony shouldn't take that long. But I kind of would like to do that so he could do that. Then maybe we'll have a couple of issues about some exhibits and so forth before we begin with the other witnesses.

THE COURT: Okay.

MR. MOLONY: But just for the court's information, I intend to put, you know, Mr. Walters up as well

as, you know, my client. And so it really shouldn't take too long for Mr. Walters, or my client for that matter.

THE COURT: Okay. And I understand you anticipate waiving the opening statements?

MR. MOLONY: Yeah. I'd like to waive the opening statement.

THE COURT: Okay. Ms. Riley are you waiving?

MS. RILEY: That's fine with me unless Your Honor would like them.

THE COURT: Okay. Mr. Haber?

MR. HABER: Yes, Your Honor. That's fine.

THE COURT: Okay. Mr. Molony.

MR. MOLONY: We'll be calling Mr. Crayton Walters as our first witness.

THE COURT: Mr. Walters, if you'll come forward.

MS. RILEY: And Your Honor, I don't want to mess anything up. But just in terms of the exhibits, Michael, if you're going to use any exhibits with Crayton, do we want to go ahead and talk about all of them, move them all in before, or --

MR. MOLONY: Well, I do have two aerial photographs of the area, and they're Exhibits 9 and 10, right? And so yeah, I guess we should go ahead

and talk about moving the exhibits in. I've looked at the exhibits of opposing counsel and I have no objection to those and to have those being moved in. And so I --

THE COURT: Are you talking about Ms. Riley's exhibits?

MR. MOLONY: Ms. Riley's and Mr. Abdo's.

THE COURT: As well as --

MS. RILEY: And, Your Honor, on behalf of the Schaibles, Mr. Molony has marked ten?

MR. MOLONY: Ten.

MS. RILEY: Ten exhibits. There's one exhibit I believe we have, in fact I think it's Petitioner's Exhibit Number 1 that has a little bit of an issue. There are a couple of emails included in there that I think we would object to. But aside from Exhibit 1, 2 through 10, no objection from us. And so we thought that if we could move in the ones that we didn't have objections to at the beginning that would speed things along.

THE COURT: Mr. Haber?

MR. HABER: Your Honor, the Department consents as well. The only issue we have is two emails within Exhibit 1, but 2 through 10 we'd be fine

with them with admission.
THE COURT: Okay. Well, why don't we go ahead and have those admitted, 2 through 10, and 1 we'll address as we go forward.
MR. MOLONY: Get to it.
(Petitioner's Exhibit Numbers 2 through 10 were admitted into evidence.)
MS. RILEY: And then, Your Honor, Schaibles have 1 through 7, Intervenor Schaibles' Exhibit 1 through 7. If there's no objection, we'd like to go ahead and move those in as well.
THE COURT: Have you reviewed them, Mr. Haber?
MR. HABER: Yes, Your Honor.
THE COURT: Okay.
MR. HABER: The Department consents to the admission as well.
THE COURT: Mr. Abdo, have you reviewed those exhibits? And you're okay with them?
MR. ABDO: Yes. Yes, Your Honor.
MR. MOLONY: Your Honor, I may have misspoken. There is an issue we have with one exhibit, Exhibit Number 6, Schaible Exhibit Number 6.
THE COURT: Okay.
MR. MOLONY: So I would ask that we withhold admission of that until we get to that point if

we ever do get to that point.
THE COURT: Okay. But no objections to 1, 2, 3, 4, 5, 6 -- no., 1, 2, 3, 4, 5 and Number 7?
MR. MOLONY: That's correct.
THE COURT: Okay. Well, we'll go ahead and have those admitted as well.
(Intervenor Exhibit Numbers 1 through 5 and 7 were admitted into evidence.)
MS. RILEY: Thank you.
MR. HABER: And, Your Honor, the Department has Exhibits 1 through 8. I would like to move to admit those as well if there's no objections.
MS. RILEY: I have no objection to those, Your Honor.
MR. MOLONY: No objection, Your Honor.
THE COURT: Okay.
MR. MOLONY: And Your Honor, there's copies of the originals up there for you as well.
THE COURT: Okay. Very good. One through 8 then of Department's exhibits are admitted.
(Respondent DHEC's Exhibit Numbers 1 through 8 were admitted into evidence.)
MR. HABER: Thank you, Your Honor.
THE COURT: Okay. Mr. Abdo, do you have any exhibits that you're admitting?

MR. ABDO: Yes, Your Honor.
THE COURT: Okay.
MR. ABDO: I believe it's 1 through 9.
MS. RILEY: I have no objection to those.
MR. HABER: I haven't seen them.
THE COURT: Oh, you haven't seen them?
MR. HABER: The Department doesn't have any objections to Mr. Abdo's exhibits.
MR. MOLONY: Okay. I think we're okay with those, Judge.
THE COURT: Okay. So 1 through 9, they're admitted with no objection.
(Respondent Abdo's Exhibit Numbers 1 through 9 were admitted into evidence.)
THE COURT: I think we're ready to begin, Mr. Molony. You can go ahead and call your witness.
MR. MOLONY: We would call Mr. Crayton Walters.
THE COURT: If you'll come forward to the witness box, and before you take your seat, face the court reporter, raise your right hand. She will swear you.
WILLIAM CRAYTON WALTERS, III, being duly sworn, testifies as follows:
MR. WALTERS - DIRECT EXAMINATION BY MR. MOLONY:

Q: Mr. Walters, would you give us your full, legal name and your home address?

A: My full name is William Crayton Walters, III, and I live at 302 King Street in Mount Pleasant, South Carolina.

Q: And how long have you lived there?

A: I've lived at that address for about 12 years.

Q: And in the Charleston area?

A: For close to 45, 50 years.

Q: And how old are you?

A: I'm 51.

Q: Now, tell us a little bit about your work experience prior to your going to work for the Harbor Pilots' Association?

A: I graduated from the Citadel in 1983, and immediately went to work for C&S National Bank in various forms of commercial banking in that area. Left and then went to work for the Charleston Pilots in 1988 after about four and a half years.

Q: Now, tell us what you did initially for the Charleston Pilots' Association?

A: When I left the bank I went down and started working on the pilot boats. You know, the pilots in Charleston have to get back and forth

in the ocean from ships, to and from shifts. So we went, the pilot boats, which are 55, 60, 75-foot boats, custom pilot boats, take those -- take the pilots back and forth. My job initially was to run the pilot boats to work as a captain on the boats transporting pilots back and forth from downtown Charleston to the ships which were anywhere from 15 to 17 miles off in the ocean.

Q: And how long did you do that?

A: I ran the pilot boat as a pilot boat captain for five months. And then I was taken in as an apprentice pilot with the Charleston Pilots, which was a training program to become a pilot. And, of course, I spent a lot of time running the pilot boats after that as well.

Q: I guess backing up for a second, tell us exactly what a harbor pilot does in the Port of Charleston.

A: In Charleston, like any other states in the United States that have port cities, the State of South Carolina licenses pilots and to bring ships, all ships in and out of the Port of Charleston. Our duty is to be the people on board that safely navigate ships from the

ocean, ten to 15 miles out in the ocean, to various terminals in the ports in Charleston, whether it's container ships, tankers, cruise ships. Any vessel that under the laws of South Carolina requires a pilot, that's what we do, which basically encompasses all, any shipping activity in Charleston. So the pilots ...

Q: After you finished your apprenticeship, what did you move up to next?

A: After you finish your apprenticeship, which is a three-year apprenticeship of riding ships every day with other pilots, three ships a day every day for three years, then you are issued a state license by the South Carolina, which is a limited license on the size of ships, and a United States Coast Guard license is a -- as a pilot for the Port of Charleston. And then for three years you're in a limited size ships. The number of ship, the size of ship you can bring in is limited. So in size, you take three years to graduate to handling the bigger ships that come in in and out of Charleston.

Q: And what year were you licensed as a master pilot?

A: I was licensed as a full branch pilot in 1991.

Q: And have you been employed as a full branch pilot since then?

A: I have.

Q: Now, can you tell us a little bit about the programs you've attended in addition to the training program that you have with the Pilots' Association?

A: You have your apprenticeship which I explained is very intensive for three years. And then it also entails simulator work. I've done simulator work in Mississippi with the Corps of Engineers. I've done manned model simulation work in England at the United Kingdom Maritime College over there in South Hampton. I've done simulator work with -- in three or four places in the east coast, Newport, Rhode Island, and Florida, as well as MITAGS, which is the national maritime college for the United States as far as merchant marine. Did simulator work there. As well as courses in radar and courses in bridge resources management, any number of courses that we -- continued education.

Q: So you've been doing this for approximately 20 years?

A: As -- well, I started my training, yes, a

little bit longer than that, but yes.
Q: When I say this, I mean being a harbor pilot?
A: Absolutely, yes.
Q: All right. And over the course of that period of timem how many ships would you estimate that you, you know, guided in and out of Charleston Harbor?
A: I would say it averages around over the past 20 years, around 300 ships a year. So over 5,000 easy.
Q: Could you describe for the judge the types of ships? I know you've touched on it earlier, that you drive?
A: Charleston is a -- is a busy commercial port. So everything that comes in, the majority of our work is container ships. We bring in 1,000, 1,200 foot are the largest container ships that we bring in drawing up to 48 feet of water in a 45-foot channel, 45-foot deep draft. We -- container ships, oil tankers, cruise ships. We bring in car ships. Any major ocean-going vessel that is of any size is required to have a pilot. So we handle -- the group itself handles over 5,000 ships a year in and out of Charleston.

Q: Now, have you ever been cited for any violation of a state, federal, or local regulation?

A: No, I have not.

Q: Now, in terms of the particular issue here, what types of recreational boating activities have you engaged in during the period of time you were a harbor pilot?

A: With growing up in Charleston, I grew up in small boat and currently own a few small boats. Recreational aspect, my entire life in around Charleston Harbor and every river, creek, cut between I would say from Rockville to Dewey's Inlet, which is just the whole Charleston area 20 miles around. I do a lot of racing, a lot of sailing. I've sailed around Charleston, around the world, many -- a lot of regattas, a lot of small boat handling, a lot of small boat work, and I've basically spent all my life on the water.

Q: Now, as part of your job as a harbor pilot as well as your recreational activities, are you familiar with the currents of the various rivers and tributaries around Charleston?

A: I'm very familiar with the currents in Charleston Harbor and the currents in the water

way south and north of Charleston, yes.
Q: And would the same hold true with tides?
A: Very much so.
Q: And wind factors in Charleston Harbor and associated tributaries?
A: Yes.
Q: Are those are all components of maneuverability of a vessel?
A: Every boat, ship I get on requires a certain amount of expertise, whether it's a 10-foot Jon boat to a 1,000 foot ship. Currents, winds, tides, everything works on the vessel you're driving, yes.
Q: All right. Now, you've given your deposition in this case; do you recall that?
A: I do.
Q: All right. And we asked you a number of questions about the area in question here, which I always call the Wappoo Creek and I believe you also agreed with that. Let me show you what we've marked as an exhibit, and I believe it's in evidence, Exhibit Number 9. And if you can see it from over there, can you just identify for the judge what that exhibit is?

A: Do you mind if I stand up?
MR. MOLONY: Can everybody see that okay?
A: This is Charleston Harbor here. This is the Ashley River. This of course is Wappoo Creek that comes in here. This is the new connector and the old James Island bridge. This is the Stono River down here. This is Elliott Cut (indicating). And as --
Q: What do you mean by Elliott Cut?
A: This is the -- this is the name of this cut right here (indicating). This is unnatural. This is a cut that was done when they were making the waterway. And I don't know the date. But when they were in the -- with the WPA, I think, when they were building the waterway, that was cut by cranes, dredges, you know, backhoes. This used to not -- this used to end up in here. This is Coburg Creek here. And this was the end of the creek when it came off Charleston Harbor. But to continue the waterway that they were building from Maine to Florida, it required a cut in here at some point. So this is unnatural. So this is Elliott's Cut which was built between this -- these two bodies of water and they dug this out

and created this part of the creek which now attaches the Stono, which continues to go on down to follow the waterway on down to the, you know, to the south.

Q: Now, we use this word a lot Intracoastal Waterway; exactly what does that mean?

A: Intracoastal Waterway again is a body -- is a river, the body of water behind that connects Maine to Florida that does not go into the ocean. It follows itself completely inside the east coast and goes -- and is originally built for commercial traffic to transit inside and not have to use the ocean, barges, Intracoastal Waterway traffic. And of course it's very active still obviously for commercial and pleasure craft.

Q: So this particular area that we're looking at on this exhibit is part of the Intracoastal Waterway and utilizes commercial traffic; is that true? Is that correct?

A: That is, yes.

Q: Okay. Now, can you explain to us your knowledge of -- well, first of all, let me back up. How many times would you estimate that you have been on the water in the Wappoo Creek in

your career?

A: Well, in my life I can tell you I started at about age 13 with a Jon boat. We were in this area, many friends with houses, we just grew up in this area. So lots of friends. I would say hundreds.

Q: And using all different types of vessels?

A: Yes.

Q: All right. Can you describe the smallest to the largest?

A: I would say that the smallest was a 10-foot Jon boat at one point when we were kids to I've been through there on 50, 60-foot yachts and everything in between. Mostly these days in 20-foot center console, just our own personal boat as well as a 44-foot trawler that I own with some people that we use for recreation.

Q: Before we get into the next series of questions, can you just identify on the map for the judge the three pieces of property in question, the Schaible property, the Abdo property and the Maull property. Approximately where are they?

A: Right where my pointer is, that is my -- right there. I'm moving it around kind of far away.

But right in that area (indicating).

Q: Okay. Now, can you describe the current in that particular area of the water, current in that area?

A: The water, it's a very strong current. This is a -- is again part of the waterway, so it's kept to a certain depth. But what happened when they built the cut, you've got Charleston Harbor and the Stono River. So you've got two -- the Stono River feeds all the way out to the ocean on the southern side of Charleston below. And then you've got Charleston Harbor on this side. So there's a tremendous amount of water that passes through here on the in -- you know, incoming tide and the outgoing tide, especially in the Elliott's Cut area and in this area. It has to go somewhere. And it's a very small -- it's just a, it's line a funnel. The water is rushing, a lot of water going to both ways, you know, twice a day from high tide to low tide. And the currents run in different areas. What I would tell you is my experience is the current likes to follow the follow the ebb tide bend. And when I say that, if the current is going out this way to Charleston Harbor, going

out, so the current comes around here (indicating). I'll move a little closer if I can. But as this current comes out, you see that turn, like any turn, the current likes to follow that bend and it follows, goes against that bend. It just doesn't come straight through. It winds. And as the current comes around this bend it heads for that bank, as well as and comes out. So it's a -- it's a -- it's fluid but it doesn't go in a straight line.

Q: Now, describe for us the -- let me ask this. Has commercial traffic increased say over the last decade in the Intracoastal Waterway which we would call the Wappoo Creek area?

A: I think it has. One of the -- and I know it has. One of the -- what we see and down south of Charleston is Young's Island and Stevens' Towing has a big operation down there. Colonial and Savannah has taken a big presence in Charleston bringing the oil barges to Charleston for ships, aviation, fuel, any number of reasons. You see these waterway cruise ships a lot. You see a lot of yacht traffic that doesn't want to use the ocean.

There are more boats and people are moving south. Just a lot of traffic in the area. And when all these tugs, barges, everything is moving back and forth in -- across and to south, this is the main conduit. This is where they -- then don't go in the ocean; they go right through here (indicating).

Q: In fact it's the only conduit, isn't it?

A: Right.

Q: Supplies for cruise ships, mechanical supplies and that sort of thing, you know, contained on the other side of the Stono River?

A: There is. There is two or three commercial operations in the Stono River, a dredging operation, there's a boat yard, as well as Youngs Island, I said. So what -- all these barges are servicing logistics in Charleston. So a lot of that commercial traffic is moving. And north of Charleston as well. Again, the waterway is built as a -- you have traffic from Norfolk to Florida. I mean it just -- it's a lot of traffic on the east coast, nnd not specifically for Charleston, but certainly concentrated in Charleston.

Q: Now, the barges that you're referring to, how

large are they?

A: I would say the average waterway barge is 100, 150 feet.

Q: And width?

A: Thirty feet.

Q: And those are being pushed by tug boat?

A: They are.

Q: All right. Have you ever done that?

A: No.

Q: Too dangerous?

A: I've got enough to do.

Q: Okay. Let me show you what we've marked as Petitioner's Exhibit Number 10. And first I'll ask you if you're familiar with, you know, that exhibit and that area in general?

A: I am.

Q: All right. Now, you know Rick Maull?

A: I do.

Q: And you've been out to this area personally to view the area itself, correct?

A: I have.

Q: Mr. Maull's dock is at [redacted]. Do you see his boat in that dock?

A: I do.

Q: All right. Now, did you go out and actually

take his boat out and maneuver his boat to determine the navigability in and out of his dock?

A: I did, yes.

Q: Tell us when you did that and what you observed.

A: I'll have to look at the exact date on the deposition, but it was this summer. And we went out in the boat, took it out. I let Mr. Maull take it out of his dock. It was not my boat, not my dock, and just I went out with them. He took it out. We maneuvered around in the -- in the waterway up and down, you know, a quarter of a mile around that dock, and I took it and attempted to dock it in his -- in his dock, went in once, came out, did it both ways. The current, you know, was moving. And then we maneuvered the boat around in the vicinity for close to an hour.

Q: When you say the current was moving, was it an ebb tide, a low tide, high tide, slack tide?

A: No, it wasn't slack. The current was moving. It was an hour I believe before slack water. So current was moving. Slack water happens twice a day. And I can explain that, but --

Q: Yeah. Go ahead and explain it.
A: The current, of course, we have high tide and low tide twice a day. And the tide is the -- is the water as it rises and falls. The current is the water as it's coming in and going out. So as the current comes in, the tide rises. As the current goes out, it falls, you know, the level of water. And in that six hour period, approximately six hours, the speed of the current is sometimes faster than it is at the beginning and the end at the slack water when everything is stopped. The water is all the way out, and it's all the way low and it just sits for 15, 20, 30 minutes, and then the water starts rising again as the current comes in. So we were about an hour off the slack water, so it was light current. It wasn't as strong as it could get.
Q: And what types of maneuvers did you engage in on his boat?
A: Docking and undocking and maneuvering around the river off the dock, establishing a plan, so to speak, as to how we would come into the dock, how to exit the dock.
Q: Now, are you familiar with the type of boat he

has, a 44-foot sport fisherman?

A: I am.

Q: All right. Have you driven those types of boats before?

A: As a -- I did. I ran -- I was a captain of a fishing boat, sports fishing boat that was the same size, same configuration.

MR. MOLONY: Your Honor, I haven't moved to qualify him as an expert witness, but I would do so at this time on maritime matters in and around the Charleston area. Matter of fact, before I do that.

Q: You were also licensed to operate vessels in Port Royal; is that correct?

A: Right. I'm licensed as a master as well as for anywhere. But I'm licensed as a pilot for Charleston and for Port Royal Sound, which is south of Charleston and Beaufort. That's correct.

Q: So --

A: The state of South Carolina and the federal government.

Q: All right.

MR. MOLONY: So before I ask him to render a couple of opinions, I want to make sure we're offering

him as an expert witness.

MS. RILEY: In maritime matters?

MR. MOLONY: In maritime matters, including matters he's previously testified to, currents in the creek area, navigability of boats, vessels. And he can give his opinion about what he thinks is an appropriate distance between two lots -- I mean two docks.

MS. RILEY: All right. No objection.

MR. ABDO: No.

Q: Okay. Mr. Walters --

MR. HABER: No objection from the Department, Your Honor.

MR. ABDO: No objection.

MR. MOLONY: I'm sorry. Excuse me.

Q: Now, in terms of your -- well, let me ask just one other question and I don't -- and I'm using your deposition. Is it your testimony and your belief that the currents in the Wappoo Creek are the most, I'm going to use the word, highest velocity currents in the Charleston area?

A: I think, yes. I think the Wappoo Creek area, that whole area is probably is the strongest currents that you'll see. There might be some

spots in some inlets, you know, north of Charleston. But because of the dynamics of creating the cut, when they cut it, you know, by man, it created a pretty, I would say, unique current situation.

Q: And just to jump back real quick to Exhibit Number 9. Focusing more specifically on the area where these docks are located, would the current be particularly strong in that area?

A: It is. If you see this to the, what I would say the north to the right east of the bridge, I can -- there's the bridge. There's just incredibly strong current coming through there.

Q: And why is that?

A: Just there's the creek, the river, the creek is very small. It's limited, you know, it narrows. So all that water is rushing, just coming in or out just continuously on one current, you know, there's slack water, which again is twice a day. And that water is just pushing through there as quickly as it can to get out or come in.

Q: And is there a bend in the creek --

A: As the creek bends here you'll see it, it hits there and then turns and goes that way. So the

current it doesn't just -- it doesn't follow the middle. It hits one side and goes to the other. And you can see this bend right here that as it comes off, it just goes straight for that bend over there and there's a strong current over there and you might -- it's very strong.

Q: And the bend you're pointing to is the area where the three docks?

A: Yes.

Q: Two existing docks and the proposed dock are located?

A: Yes.

Q: All right. Now, back to Exhibit Number 10. Tell us what your opinion is with respect to safe navigation of Mr. Maull's vessel in and out of his dock in terms of length and distance between docks?

A: You know, in my opinion, I mean that boat if you -- if you -- the 48-foot boat as it sits there, it's -- you know, anytime you come in and out of a dock you want to do it as safely and as efficiency as possible at any given time. And to do that, you want to have room to maneuver and have -- be able to adjust to

whatever -- whatever effects, whether it's the wind or the current are having on you. So any amount of room that you can put between this boat and the next dock is paramount. I mean, I've -- you know, to -- it just risks property, casualty, people and other vessels. The other issue is to get in and get out of there, again, you want to do it as safely and as efficiently as possible. And by getting in and out of that dock without mishap, without the effects of current, tides, docks, and other vessels. I mean you -- it could be a -- it is a challenging prospect.

Q: Can you give us an idea of what your testimony would be with respect to the appropriate distance between the two docks? How much length would you need between the two?

A: Well, as I -- for me, and I've said this before, when you approach that dock you want to be able to do it -- you want to be able to bring that boat to the dock easily and to set up for a dock and maneuvering. I like to -- we always trained and what we like to is to be setting up two boat lengths out from where you're going to land. For me, that's a 48-foot

boat, 100 feet out you should be able to approach the dock to maneuver to get in. You can't -- because the water and the wind and everything is moving at all times, you have to adjust. It isn't like a car where you stop it and pull in, pull out. You have to be able to maneuver the boat giving all forces on it.

Q: And maneuvering in this particular boat, you have two different ways to do that; is that right?

A: That's correct. Well, you have two engines and you have the rudders. So when you have to work the engines with the rudders, which can -- makes it ability to maneuver it say easier than the singles would, what I call single engine boat.

Q: Now, did you also attempt to maneuver the boat at the dock adjacent to that going west? It's not marked here. I guess it would be 25.

A: That one there? (indicating)

Q: Correct.

A: I have. I attempted to put that boat into that dock.

Q: Okay.

A: And I couldn't do it. I approached it from

straight out, the current was setting onto the dock. I approached it from this way. You can't -- you just cannot do it. It's physically impossible.

Q: Now, tell me what would your estimate be of the distance between the dock you just pointed to at [redacted] and Mr. Maull's dock?

A: I'm guess those are 45, 40 feet.

Q: Now, let's completely forget about Mr. Maull's boat, the 48-foot boat, and talk about the smaller vessels going in there. And let me ask you this. Is it your opinion that any type of boat going into this particular area there would be unique circumstances, safety circumstances because of the current and the location on the Wappoo Creek?

A: I think any vessel, you know, a kayak. I mean you've got all sorts and there's plenty of things. But if you build a dock that is that close to another dock and you're trying to get any boat out of the back side with a current that is either pushing you into the dock or pushing you into the marsh or the wind is pushing the marsh and you can't get out, you run the risk of damaging either the dock, the

person, or other vessels. There's so many -- so much traffic in there that when you go in and go out you want to be able to do it, again, as quickly, safely and as efficiently as possible. And if you can't do it the first time or the second time when you're in the river and there's barges or jet skis or any other traffic, then you run the risks of casualty. That's just a risk.

Q: Well, and would you consider that to be a hazard and danger to the public in general?

A: I would think that any -- any -- you put -- you put whether it's commercial traffic or other vessels, other people in jeopardy if you cannot get into that dock in an efficient manner on a regular basis. It just doesn't -- you leave yourself open for accidents.

Q: Now, have you taken you own personal vessels into any of these docks?

A: I have.

Q: Tell us about that.

A: I've taken my boat, again, to this dock right here (indicating). And this is the one that is just to the east of Mr. Maull's dock. And so and it's -- I've take it on the face, on the

outsidem which is on the current side, you know, on the river side of that dock, and you know, five or six times.

Q: And you've docked it there temporarily?

A: Oh, yeah, temporarily. You can't leave a -- in that area because there are so many boats, there's so much traffic, there's so many weights that any boat you leave on the face of the dock just opens it for -- there's risk of damage because of the banging. We go there as friends for -- with kids and that type of thing. It's temporary. And it's not easy to get on the face of the dock to be quite honest. Again, the current, depending on the current, it is a -- it is not an easy maneuver.

Q: So in, I guess in summary, is it your opinion that the dock that Mr. Maull has and the proposed dock that the Abdos put in, which has a 20-foot clearance on it, is it your opinion that that would be unsafe for the public in terms of navigability of the Wappoo Creek area?

A: I think it would pose a lot of -- I think it would be unsafe. I can't imagine it with a 20 -- 20 feet away that you would have a -- your safety factor is eliminated just for the fact

that you cannot get the boat in or out or any of the boat all times in a safe manner. It just doesn't make sense. And, you know, there's a boat landing just down the way. There's a lot of boats that unfortunately the people in the river don't have the experience that -- of running boats. And so the risk factor goes up even higher just because of the knowledge base of who's out there in boats most of the time.

Q: And the risk factor would be having a boat in the channel, so to speak, trying to maneuver it into the dock?

A: Exactly. You're trying to get the boat to the dock or out of the dock, again, safely and efficiently. And if you can't do that, it's unsafe. It's just not -- it's unsafe to anybody else who's out there.

Q: One other question that I didn't ask you about and I'm not sure that we need to spend a lot of time on this, but I want to make sure that we do get your testimony is silting, seven inch spoil or whatever you want to call it that's in that particular area, did you observing any silting or sediment or spoil building on the

dock area?
A: You know, you notice, I noticed the normal mud coming out of the marsh. And you look at that mostly because, again, at low tide you're with that you're more exposed. You're limited on where you can go. Your ability to get back to that dock from another angle is gone because there's no water there and there's mud there.
Q: And so if Mr. Maull wants to take his boat out, he has to wait for enough water to be available to do so; is that right?
A: Absolutely.
Q: Okay. And the same would hold true of Mr. Abdo?
A: It would hold true with any boats that are close enough to the marsh and the mud that the tide is not high enough and it cannot get out.
MR. MOLONY: Just one second, Your Honor. I think that's all the questions we have, Your Honor.
THE COURT: Okay. Thank you. Go ahead, Ms. Riley.
MS. RILEY: Thank you, Your Honor.
MR. WALTERS - CROSS-EXAMINATION BY MS. RILEY:
Q: Good morning, Mr. Walters. How are you?
A: Good morning.
Q: I just have a few questions for you. I think

we probably need to clear something up. It sounded like Mr. Molony or you were discussing a 20-foot clearance between docks. Is that what you said?

A: I didn't say 20 feet. I think -- I don't know what the distance -- if there's a 20-foot clearance between those docks, that is unsafe. Now, that's -- I don't know if --

Q: Okay. Are you aware that it's really more like 40 feet of clearance?

A: I think so, yeah.

Q: Okay. Let me just -- I'll show you DHEC's Exhibit Number 8 --

A: Right.

Q: -- which is in evidence. Have you seen this? This is an amendment to Mr. Maull's permit.

A: Right.

Q: And then this is a drawing that's attached.

A: Right.

Q: Have you seen drawing?

A: I have.

Q: Okay. And you see that there -- the distance between his new floating dock and extended property line is 19.5; is that correct?

A: Yes, I see it.

Q: Okay. And then Mr. Abdo's dock is proposed to go 20 feet off of --

A: That's right. I knew that.

Q: I just want to be clear for the record. So if there 40 feet of clearance between Mr. Abdo's dock and Mr. Maull's, that's not an unusual distance between docks to have, is it?

A: You know, I wouldn't say that -- I don't know what -- you know, unusual. I think it's close. I think that, you know, 40 feet depending on where you are in Charleston or where you are in any -- anywhere for that matter, that's -- I wouldn't -- it depends on where you are and what you're trying to accomplish. But I would say that that's close.

Q: Okay. And you -- I believe you testified in your deposition that you guesstimated at the distance between Mr. Maull's dock, and is this Mr. Davis?

A: Yes.

Q: The distance between those two is approximately 40 feet, 40 or 50?

A: Forty to -- yeah, that's my guess. Yeah.

Q: Okay. And you know Mr. Davis because you've parked your -- docked your boat there before?

A: I do. He's a good friend.
Q: And he, isn't it true he parks his vessel on the landward side of his dock?
A: He does. He has a 17-foot Whaler that he puts back there, that's correct.
Q: Okay. Has he ever told you that he has problems getting it in and out?
A: You know, he has. But that's --
Q: Does it prohibit him from taking it out?
A: No, I think he uses it regularly. But I think it's difficult on a strong current, yes.
Q: Okay. All right. This is what's in evidence as Schaible Intervenor Exhibit 1. Can you see that?
A: I can. I've got it right here as a matter of fact.
Q: Okay. That's just another aerial photograph of the area in question.
A: Right.
Q: Correct? Okay. And as you can see from the photograph there are a number of docks that are already in existence along Wappoo Creek on both sides of the creek, correct?
A: Absolutely, yeah.
Q: Okay. And quite a few of those docks are

fairly close together; isn't that right?

A: They are.

Q: Okay. So Mr. Abdo's dock isn't going to be that unusual in terms of the distance that he has?

A: I would say that it -- that is a -- based on the other docks in there, they're all very close.

Q: Okay. And just so I can be clear about your testimony. You've testified that based on your experience with navigating Mr. Maull's boat, it -- I think you said it would be impossible to moor it on the landward side of the dock between -- if Abdo's dock is located where it's been permitted; is that correct?

A: I would say it would be impossible to do it at any given time, yes. I think if -- there might be a time in the day in the window with no current and no winds, if it was 40-feet clearance or -- well, it's a 48-foot boat, I don't know how you get it in there to be honest with you.

Q: Okay. So if he, if Mr. Abdo's permit is sustained and it's constructed and there's 40 feet of space, Mr. Maull is probably going to

have to put his boat somewhere else?
A: Yeah. I don't think it would go there.
Q: Okay. So if the docks are 40 feet apart then he's probably not going to be struggling to get it in and out because he can't even really keep it there, right?
A: That's -- presumably yeah.
Q: Okay. And I believe you testified in your deposition you have a boat. What's the -- you have a couple of boats, but you have one that's a larger size?
A: We do, myself and three or four other people have a 44- foot little trawler yacht, similar to Mr. Maull's in it's twin engines, but not a fishing boat. More of a --
Q: Okay. And you keep that at a marina?
A: I do.
Q: And that's a wet slip?
A: Yes.
Q: Do y'all rent the wet slip?
A: We do.
Q: And how much per month is it; do you know that?
A: Five hundred dollars a month. I don't do the bills, so.
Q: Okay.

A: I just pay them. A friend of mine sends me the bill.
Q: But that would be total, not --
A: Total.
Q: Y'all aren't 500 per person?
A: No, no, no.
Q: Okay. I think that's all I have. Thank you.
MR. WALTERS - CROSS-EXAMINATION BY MR. HABER:
Q: Good morning, Mr. Walters.
A: Good morning.
Q: I just have a few questions for you.
A: Sure. Absolutely.
Q: You had spoken about physically impossible to dock the -- Mr. Maull's boat at the Davis' dock.
A: Physically impossible to get it behind the land -- on the landward side of the Davis' dock, that is correct.
Q: Okay. And you -- the Davises have a boat?
A: They do.
Q: One boat?
A: Two boats.
Q: Two boats. And one boat I think you mentioned was 17-foot whaler?
A: That's correct.

Q: And that's moored where?
A: When he's using it, he doesn't keep it in the water all the time, when he uses it, again in the summer, weekends, he keeps it at his dock.
Q: Okay. And then there's another boat?
A: He does. He has a 25-foot something on the center console.
Q: And where does he --
A: He keeps it in a boat lift.
Q: In a boat lift?
A: Yes.
Q: Okay. Assuming arguendo that Mr. Davis' dock is 40, 50 feet away from Mr. Maull's dock, what is the difference in the situations? Mr. Davis can get his boat on the landward side and the other boat he uses a boat lift. What would be the difference with Mr. Maull trying to get his boat back there?
A: Well, Mr. Maull's boat at 48 feet, you don't have the ability to maneuver that boat behind that dock. And Mr. Davis' floating dock is much smaller. His footprint, his dock itself is not as big as Mr. Maull's.
Q: But it's the same waterway and same traffic and --

A: Absolutely.
Q: Okay.
A: But the dock itself, the floating dock is a much smaller dock. If you look at the thing you can see his floating dock is not near the size as Mr. Maull's dock.
Q: But I believe when you were testifying earlier, correct me if I'm wrong, that when you had tried to approach that dock, it wasn't necessarily the size of the floating dock that made the difference, it was the distance between the docks?
A: That's correct.
Q: So there's a lot of traffic, commercial traffic, recreational traffic on this waterway. Do you know what the width of this waterway is?
A: I think that the channel, the width of the waterway as opposed to the channel width are two different things.
Q: Okay.
A: The width of the waterway is 500 feet.
Q: And what's the width of the channel?
A: The width of the channel is a normal 100-foot channel for any waterway I think. It depends on where you are I would say.

Q: Okay. You had mentioned barges go through there and said -- you testified, correct me if I'm wrong, that are very long and about 30 feet wide?

A: Right. And that's -- again, that's an average. Some are smaller; some are larger.

Q: Sure.

A: You know, there's not -- there's not a one size fits all in the barge category. But yeah, there -- exactly.

Q: You had spoken about attempting -- you had some some maneuvers out in the waterway and you had attempted to bring Mr. Maull's boat towards his dock.

A: Uh-huh (affirmative response).

Q: And I think you said you attempted to dock his boat. By attempting to dock his boat, where were you docking his boat?

A: Inside his floating dock.

Q: Okay. On the landward side?

A: Landward side.

Q: You had stated that you would want two boat lengths for a safe entering to approach -- to approach a dock?

A: Yes.

Q: Would that, those two boat lengths would be applied to maneuvering the boat to where it is moored at this point behind the floating dock, the landward side?

A: Yes.

Q: So mooring it on the front of the boat or a -- if you're putting a boat into a boat lift, you wouldn't need the 100 feet of distance?

A: Well, if I was maneuvering a 25-foot boat into a boat lift, I would like to approach from 50 feet, yes. I'm using the two boat lengths the size of the boat that I'm maneuvering.

Q: Sure. So if a boat lift is just to pull straight into --

A: Uh-huh (affirmative response).

Q: -- you would want 50 feet from that direction, correct?

A: I think it's a same assumption.

Q: Okay. So the 100 feet would be required for safety? For Mr. Maull to safely navigate his boat to the landward side of his floating dock, he would need 100 feet between the docks to have a safe distance to pull his boat in?

A: Yes, for me.

Q: One last question. It seems that the

difference between the situation with the Davises and Mr. Maull.

A: Right.

Q: One would be the boat length; is that correct?

A: Yeah. I think also if you want to look at -- the difference is also is if you look at the Davis' dock, it's set inside slightly of Mr. Maull's dock.

Q: Okay.

A: You see that?

Q: Uh-huh (affirmative response).

A: So if Mr. Davis' dock were extended say another 25 feet and was longer out in the river farther than say the Maull's dock, of course it could be, you know, your angles, your difference in the floating docks, the physical -- the fixed dock, I'm not trying to pick at you, but you see what I'm saying there?

Q: Sure.

A: It's all about the angle of being able to approach into the back of the dock.

Q: But another difference in that would be the configuration of the dock; is that correct?

A: Absolutely. Yes.

Q: Is there any way how you can see how Mr. Maull

could reconfigure his dock to address the issues that are posed? Is there any possible way to amend his dock?

A: Well, I don't know. I'd have -- I mean, that's a good -- I don't know how you would -- if you build the other dock 40 feet away to -- if Mr. Maull presumably went out another 100 feet, you know, or 50 feet and was able to get his farther out and get DHEC approval to move, you know, his boat in and out.

Q: How about outside of pulling it further out? Is there any reconfiguration that could be done with the floats, the boat lift? I mean anything that could be put in?

A: I mean his boat would not fit in the boat lift. They don't make -- I mean, for that 48 fishing boat I don't think you could put it in a boat lift. That -- that's a sizable boat. As far as the floating dock, I'm not a dock expert. I mean if you were to ... I could think about it I guess and put it on paper. But you would have to reconfigure the dock to allow an approach from either one side or the other to get the boat in. With 100 foot, my reconfigure would include having the ability to approach

the dock safely at 100 feet from either direction.

Q: But perhaps from a different direction --

A: Correct, yeah.

Q: -- if reconfigured could be straight on 100 feet or from the other direction?

A: Yeah.

MR. HABER: Thank you, Your Honor. Nothing further. Thank you Mr. Walters.

MR. WALTERS: Thank you.

THE COURT: Mr. Abdo, do you have any questions?

MR. ABDO: I have no questions at this point, Your Honor.

THE COURT: You have no questions?

MR. ABDO: That's correct.

THE COURT: Now you realize this witness is being excused?

MR. ABDO: Yes, I do.

THE COURT: Okay. Mr. Molony, do you have anything else?

MR. MOLONY: Briefly, Your Honor.

MR. WALTERS - REDIRECT EXAMINATION BY MR. MOLONY:

Q: Ms. Riley asked you some questions about the docks, all these docks.

A: Right.

Q: Have those docks -- in your experience over the years, are these relatively new docks?
A: Most of them. I mean since I've been in that creek since age 13 or 14. I mean they're -- when we started there was maybe one or two and they've been added over the years.
Q: And then we didn't talk about this, but on the other side of the creek there are a series of docks over here too, right?
A: There are.
Q: Matter of fact, do you know one of the dock owners over here?
A: I know two or three of them, yes.
Q: All right. And do you know Eddie Buck?
A: I do.
Q: Does Eddie Buch have a sport fishing boat?
A: He does.
Q: Okay.
A: A very large one.
Q: And if you look at the -- in addition to the narrowing of the cord here, if you look at the layout of the configuration of these boats, in your opinion would it be easier to get a boat in in an area like this? For example, you have not only clearance, but you also have, there's

some room to get in because this dock is shorter if you will.

A: All of those docks on the -- on the southern side of this picture are farther apart. There are a lot of sport fishing boats there. And you see the offset on the docks, it just -- it allows, again, all those big sports fishing boats, which a lot of those docks have, can get in and out because they can approach the docks much easier. You know, in my opinion, you don't see those size boats, other than Mr. Maull's I think, on the other side of the river. Most of those on the south side are much bigger and the docks are set up to accommodate them.

Q: And most of the questioning on cross-examination again related to Mr. Maull's boat specifically, is it your opinion that even smaller boats are going to be hazardous in terms of maneuvering in and out of the Maull dock and for that matter, the Davis' dock because of the --

A: Againm any maneuvering in and out of those docks is -- it takes a level of expertise and what I call situation awareness because of the

traffic, because of the current. And if you're -- it's unsafe. You know, that's the problem. You don't have a lot of leeway when it comes to getting in and out with the traffic as bad as it is.

Q: And I know this is hard to do visually, but this just happens to be the Schaible's dock, Ms. Riley's client.

A: Right.

Q: And there's a significant difference between this dock and the dock adjacent to it; you see that?

A: I do.

Q: That would be a much easier, if you will, dock to maneuver into, i.e., the Schaibles' dock, whether it's a 48-foot boat or 20-foot boat or 30-foot boat?

A: As you can see the offset like we were just talking about, the offset is just much better and you can approach either one of those docks from any distance.

Q: So just summing everything up based on the cross-examination that was made on my examination, it's your opinion then that the navigability and distance between these two

docks are important considerations for public safety?

A: Yes.

Q: All right.

MR. MOLONY: Nothing further, Your Honor.

MS. RILEY: Your Honor, I have a couple based on what he asked.

THE COURT: Okay, Ms. Riley.

MR. WALTERS - RECROSS-EXAMINATION BY MS. RILEY:

Q: Mr. Molony mentioned Eddie Buck's --

A: Right.

Q: -- dock, correct?

A: Uh-huh (affirmative response).

Q: You're familiar with his dock?

A: I am.

Q: And his dock, he has a pretty big boat; I don't know how big is it, do you?

A: Seventy, 65, 70 feet.

Q: Okay. But his dock has a float on the channelward side and on the landward side of his boat, correct?

A: That is correct.

Q: Okay. And you testified that it was unusual for a boat of Mr. Maull's size to be moored on the northern side of Wappoo Creek?

A: I don't know that it's unusual. I just know that I don't -- without having, I can't, you know, I didn't count it, but I don't see as many of the larger yachts over there that I see on this other side.

Q: Okay. Thank you.

MS. RILEY: That's it.

THE COURT: Okay. Thank you, Mr. Walters.

MR. WALTERS: Thank you for letting me go early.

THE COURT: Okay.

MR. WALTERS: I appreciate it. Thank y'all very much.

MR. MOLONY: Our next witness would be Mr. Maull. I'm not sure if we want to go ahead and move into that or talk about the exhibits now. It's really up to you. Or you want to just take them up as they come up.

THE COURT: Let's take them up --

MR. MOLONY: It may very well be that I may not offer some of the exhibits that they've objected to.

THE COURT: Let's take them up as we go along with the testimony.

JAMES R. MAULL, being duly sworn, testifies as follows:

MR. MAULL - DIRECT EXAMINATION BY MR. MOLONY:

Q: Okay. Sir, would you give us your full legal name and your current address?

A: My name is James R. Maull, called Rick, and I live at [redacted]. I've been here almost 30 years.

Q: Now, Mr. Maull, are you employed?

A: I'm semi-retired.

Q: And where did you retire from?

A: I retired from my contracting business, mechanical contracting air conditioning, 33 years.

Q: And how long have you lived at your current address, that is, [redacted]?

A: Well, I've been there right at 30 years.

Q: All right. And when you moved in, did you have a dock?

A: No. There was only one dock on that side of the river when I moved in and nobody in there had a dock except a little crab dock. There were no docks there.

Q: So when did you build your dock?

A: About 23, 24 years ago. I was the first pioneer that and put a dock in out there.

Q: Now, when you first had your first boat in the

dock, what type of boat was it?

A: Well, my first sport fishing boat was a 29.

Q: And how long did you have that?

A: Well, approximately three to four years.

Q: And you moved up over the years?

A: And then after I learned more about offshore fishing and enjoyed the beauty of the ocean and the fish out there, I began to fish better, I moved up to a 35.

Q: And you currently own a 48?

A: Yeah. As I went into retirement I bought the 48. It's a 1990 and I restored it.

Q: And how long have you been using that boat?

A: Five years.

Q: And how often do you take that boat out?

A: Usually offshore seven or eight times a years. But the last two years I haven't done much cruising because my wife's been real sick with cancer.

Q: Now, do you have any other boats that you use in that area?

A: Not at this time.

Q: Now, before I forget about this, the boat is moored inland. It's not moored on the outside or channelward side --

A: Right.
Q: -- is that right?
A: Right.
Q: And why is that?
A: Well, what we learned through the years is on the weekends and the people with the smaller boats put in at the landing, all they know is to go up and down the river wide open, and they put a lot of wake out. And so when you have the boat on the outside, which we did, it would beat the boat up against the dock and do damage, fiberglass, etcetera, and put a lot of wear and tear on the pier. So we finally learned to move the boat to the inside and put a lot of bumpers out there and tie it down good. And it works quite well, doesn't get any worse rock than it would in the ocean. But there's a lot of small boat traffic on the weekend which churns that river up like a washing machine.
Q: And have you had any issues with respect to boats coming close to your dock?
A: Yes. About seven or eight years ago a barge came through the bridge, which you can't quite see in this picture, and he had bottomed out

somewhere and he lost his rudder and he had no steering. And he came over and he he missed my boat, but he hit my dock and he knocked it over about 12 inches, the whole dock, the whole pier.

Q: Didn't you have an incident this past weekend?

A: Well, we had one instance this week where a dredge came through and a lot of small tugs and a lot of dredge pipes and all come through. They're more than 30 feet wide, looks like to me. But anyhow, they took up a good bit of the river, and I haven't had anybody -- didn't hit the dock, but they come pretty close.

Q: And now tell us a little bit about your experience in operating boats.

A: My background with boats is I grew up in Charleston, there all my life. I started out with a 10-foot aluminum boat that I bought through Eckerd's Drug Store and went home on top of my station wagon. And then I went to a 14 fiberglass boat so my kids could learn to shrimp and crab and fish in the creeks. And then my son got a little older, we went to a 19-foot boat so we could do a little skiing with the family and picnicking off the island

and things. And then I fell in love with sports fishing and I went to a 25 -- I mean, excuse me, a 29, and then I went to a 35, and now I'm in this 48.

Q: Now, I asked Mr. Walters how many times he'd been in and out of that creek. He's a little bit younger than you, but can you just give us an estimate of how many times you've been --

A: I've been out there probably several hundred times over the years.

Q: Now, in I believe it was around 2007, you made some renovations to your dock?

A: Yes.

Q: Tell us why you did that.

A: The boats coming through there on weekends have washed a lot of the marsh out. I would say 22 to 24 foot of marsh grass is gone and all that mud has come down around my dock. I had two floats in there which were like a horseshoe, and it got to a low tide, the tide changes twice low and twice high every 24 hours. It got to where at low tide, I only had a couple feet of water. So I couldn't keep my sports fish there, which I love to work on, I love to sit on, I like to tamper with. It's one of my

semi-retired hobbies. So about the time I sold my business in late 2006 to early 2007, I was applying for a permit to take the floats from a horseshoe to a straight float and move to the outside of the pier which would give me five or six feet of water at low tide. And there's a requirement you've got to be a certain distance off the channel. The Army Corps would not let you dredge the mud. Your hands are tied everywhere you turn. So I had a company I hired to get the permit for me to move the floats, and they give me same square footage I had before. And that's why my floats in the water are the size and the shape they are because the mud moved me and DHEC give me the same square footage.

Q: All right. Now, you hired somebody to handle that permit?

A: I hired somebody to handle that permit. And I hired Blue Tide to build a dock.

Q: And were you involved in any of the intricacies of --

A: Not all the details because I'd been through that headache of getting a permit before, and I just didn't want to -- I didn't want to mess

with it.

Q: In addition to notifying people that are adjacent to you, is there also a newspaper publication?

A: It's my understanding it's required to be in the newspaper and the current recorded property owner at the time would be notified on each side.

Q: Did anybody object to your --

A: Nobody object. We really weren't doing that much.

Q: Now, the Abdo property which is adjacent to yours was at one time owned by the Palmer family, correct?

A: Correct.

Q: All right. Now, tell us what the relationship you had is with the Palmer family?

A: Well, Charles and Rebecca Palmer and Ms. Palmer was my father's sister, and Charles, Dr. Charles Palmer owned several business schools. They were very good people. And they're both deceased now. And then my cousins -- well, I'm not very close with those cousins, but they inherited the property to sell it.

Q: Now, did you have any discussions or

involvement regarding that permit?

A: I had no discussions or involvement whatsoever with that permit until I received a letter from Ms. Amanda Flake. And that's how I got involved with looking at that dock when it was first permitted.

Q: All right. And Ms. Amanda Flake works for whom?

A: Works for DHEC. She sent me a letter. I have a copy of the letter.

Q: Now I'm going to show what we've marked as Exhibit Number 1. I believe this has already been agreed to be into evidence.

MR. HABER: It had some pieces in there.

MR. MOLONY: Oh, is that right? Your Honor, one page of this exhibit is an email from Curtis Joyner to Tommy Lober, who I believe was one of the engineers, if you will, involved from a private standpoint. And although I believe it is relevant and should be admitted, I'm just going to withdraw that piece so we don't have to worry with it and, you know, go with the exhibit as it is. So I'm just going to withdraw that. Do you have an objection to the exhibit without that?

MR. HABER: Oh, no. As long as that one doesn't have the other copy.

THE COURT: And, Ms. Riley, you had an objection to that Exhibit Number One; is that correct?

MR. MOLONY: Only this one page which, I've pulled out. Now, I don't believe he has any objection to it.

THE COURT: Okay. Ms. Riley?

MS. RILEY: No objection.

THE COURT: Okay. Mr. Abdo?

MR. ABDO: No.

(Petitioner's Exhibit Number 1 was admitted into evidence.)

MR. MOLONY: Judge, one second.

Q: All right. Mr. Maull, let me ask you if you could describe what Maull Exhibit Number 1 is?

A: Exhibit 1 is a dock permit that was issued by DHEC back in '07, and I believe it went to the Palmer, Charles Palmer. Yes.

Q: All right. And you mentioned that you had some involvement with this after you were contacted by Ms. Amanda Flake. Tell us what that involvement was.

A: All right. I received a letter and then I received a phone call trying to get the three

parties together, I think the Schaibles, the Palmers and myself to look at this dock permit. We went out to DHEC's office on the naval base, and I think Ms. Amanda Flake, which was the project manager, and Mr. Curtis Joyner, and maybe one other person from DHEC, Mr. Schaible was not there, but his attorney was, the Palmers --

Q: Who was his attorney?

A: I don't remember the name.

Q: Okay.

A: I don't remember the name.

Q: Was it Cotton Harness?

A: Pardon?

Q: Was it Cotton Harness?

A: That sounds like the correct name, yes.

Q: Okay.

A: Three of the four Palmer children were there because they were handling the estate and selling the property and myself. They showed me this dock drawing that they were working on to get approved.

Q: And that would be on page 2 of the exhibit?

A: It would be on page -- well page 2. Yes.

Q: Okay.

A: Okay. Mr. Schaible's attorney was objecting to the location of the dock. And they discussed and got some of that worked out. My input, thinking I was being a gentleman, was I really don't like the design of the dock. You've got a walkway, then the pier, then the boat lift and then the float in the water. I said, that's not fair to the new owner when they come along, they have all three of those items stacked together. Why don't you pull the boat lift out and put it on my side and then they'll have a dock and float and they'll have the boat lift on my side. That dock was going to be 82 feet away from my dock. I had no opposition. So Mr. Schaible's attorney asked them to go out into the marsh and put down some two and a half inch PVC pipes so everyone could see where the dock was going to go. That was done. They all looked at it, him and his --

Q: They being who?

A: They being the Palmers and they being the Schaibles' attorney. They looked at the location of the pipes. I assume Mr. Schaible looked at it too. I looked at it. I had no problem with it because I was concerned that I

needed a little room to get my boat out. I was the first dock out there 24 years ago. There weren't any docks built until 12 years after me and everybody was starting to close in on me. And I -- I can appreciate that. And everybody is entitled to have a dock. I've never been against a dock. I'm not against a dock today. But anyhow, the dock was approved and then Mr. Abdo's wife, Sonya Taylor I believe it is, sent me a thank you note that Mr. Charles Palmer had gotten the new drawing done and the permit was issued.

Q: Well, you're moving all around your testimony. Let me just back up for a second. You had no opposition to the Abdos building a dock?

A: No, I did not. I never had.

Q: Your concern and your opposition to their dock is the fact that it's too close to yours and poses some navigation and safety issues?

A: Yeah. My concern is it's too close to mine because he only has 77 feet of land at the beginning of the marsh, but with the DHEC critical lines he's got 157 of land on the plat down at the river. He's got plenty of room to put in his 80-foot float and still be a good

ways away from me, but for some reason he wants to jam me in.

Q: All right. Now tell me this, at the bottom of the first page we've highlighted it so we don't have to go back through and read all this, I assume is a copy of Schaible's opposition. Do you recall that being the basis of their opposition for the Palmer permit?

A: My only understanding from what I heard at the meeting is their opposition to the dock was being close to the property lines.

Q: To their property lines?

A: Their property line, yes, sir.

Q: Okay. Now, flipping over to page four, there's also a highlighted sentence there. Would you read that sentence that's highlighted about the proposed dock?

A: The proposed dock would likely affect Maull's ability to navigate a large boat to and from a U-shaped slip on his dock, and the Department should address this issue though a condition of -- through a conditional permit.

Q: All right. And did the Department put a condition on the permit?

A: They approved the final drawing for it going

out 500 plus feet and built as the drawing was shown.

Q: All right. And so the approved Palmer dock was something that was acceptable to you?

A: It was acceptable to me.

Q: And you didn't appeal that decision?

A: I didn't appeal it because I was getting ready to move my floats and I thought that was going to work out for all of us. We all had plenty of room. We all could use the river.

Q: And so how about the Schaibles? Do you know if the Schaibles appealed that decision?

A: They did not appeal and everything was agreed on and the permit was issued with that drawing in 2007.

Q: And do you recall having any discussions with their counsel?

A: I never met Mr. Schaible except one time at a community party at Christmas, that's the only time I've ever met him. I never had any discussions.

Q: How about with his counsel about this?

A: I never discussed anything with him other than at that meeting when they negotiated putting the pipes in the water so all parties could see

where the dock was going.

Q: Okay. Now, is it your understanding that this dock permit was a condition of the sale of the property to Mr. Abdo?

A: That was my understanding, that the buyer would not close unless they got a dock permit.

Q: All right.

A: And I don't think the Palmers would have ever built a dock.

Q: So your understanding is that, you know, the dock was done solely to -- as the result of the sale of the property?

A: That's what I had to -- had to believe. That's what I was told.

Q: All right. Now, the permit was issued when? It looks like July 30, 2007.

A: That sounds about correct, yes.

Q: Now, so the appeal that we now have is a result of an amendment to a permit that you previously were fine with?

A: Right. I was previously fine with the permit, everybody agreed. I think the house sold sometime late -- I don't remember the date, so I don't even know, I guess.

Q: Now, Mr. Maull, I'm going to show what we've

marked as Exhibit Number 2. And see if you can identify that for me?

MR. MOLONY: I'll get you a copy, Judge.

A: This is a copy of the letter that I wrote to Mr. Thompson with DHEC in August 2011.

Q: All right. And was this as a result of your review of the amendment to the permit submitted by Mr. Abdo?

A: Right. I thanked Mr. Thompson for meeting with my wife and I about this dock being moved and re-permitted at a location close to me, and I just wrote him back and thanked him for his time and asked him to notify me of any staff agency decision regarding the dock request as noted.

Q: Okay.

A: I also pointed out we'd been through all this in 2007.

Q: Okay. Now I'm going to show you what we've marked as Exhibit Number 3 and ask you to identify that for the Court.

A: This is a letter I wrote Mr. Thompson in August of 2011, and I explained to him the first dock permit, the meeting with DHEC. I explained that two and a half inch pipes were put in the

marsh and water for everybody to look at and agree on, which had happened and was done, and the drawing was reworked and the permit was issued. And I was just writing him to give him a sequence of what had transpired back in 2007.

Q: So you were trying to document exactly what happened in 2007?

A: I was documenting the track record in sequence to what had gone on and what was changing.

Q: Okay. And do you recall any discussions you may have had with Mr. Thompson about that particular letter?

A: No. Other than I visited him and I told him I would give him a letter in writing about the way I understood the situation.

MR. MOLONY: Just one second, Your Honor.

Q: All right. The next letter I have is dated October 14th and it's Exhibit Number 5. Can you identify that letter for us?

A: This is a letter I wrote on October 14, 2011. I just stated that my dock had been there for many years, over 20 years at that time. My dock was there before they even built the James Island Expressway. I had a beautiful view of the harbor. And I was appealing the decision

to relocate the dock and bring it so close to my property line.

Q: Okay. And again your concern at that time, as it is today, is navigation and safety?

A: There's no doubt about it. When you understand the current and the wind and the tides in the river, and there's so much traffic out there on the weekends, you've got a safety issue and you've got navigation concerns, which I never had years ago, but they're there now.

Q: Now, the pipes that you referred to earlier, are they still in the marsh?

A: They're still there. They've been there four and a half years, the full pipe showing where the dock was approved the first time and all parties agreed. They're still there.

Q: Now, Mr. Walters testified as to what he believed would be safe, you know, dockage length, if you will, between the two docks. You bring your boat in and out of there all the time. So what is your view of safety?

A: Well, my view is the current sometimes can be right down the middle of the river; sometimes it could be on our bank and going right through our docks. And I've learned through experience

of coming in and trying to dock and now other docks have moved in and surrounded me, I've learned that when it's gotten to be a tough tight condition, I'll pull the boat up on the outside, I'll put the bumpers out. We'll clean the boat, we'll clean the fish and we'll wait for the tide to get close to where you've got about a 12 to 15 minute period where it kind of gets still. You've only got a short period of time. And at that point we'll take the boat past the dock and we always back it down into the current so we can control it somewhat. We cannot get the boat in there with a lot of activity and the currents and the tide medium low or medium high. We have to hit it just right to put it in there. I can -- I can maneuver that boat and I'm comfortable 65 feet off the back, you know, from my dock to the next dock. I'm comfortable 65 and I can work it and get it in there. But never would I try to get the boat in there -- I've got 1,000 horsepower engines and two props, and that's how you work a big boat and that's how you walk it in there. And you learn that from hitting the dock a few times. And you learn not to

take it in with high winds and bad tide conditions. So I can do 60, 65 feet, I can get in there.

Q: Okay.

A: At the right tide.

Q: Before we do this, let me ask one question about dry docking this boat. Why is it that you want the boat on your dock?

A: Well, dry docking a boat of over 40,000 pounds is kind of not unheard of. Maybe in South Florida, but not here. And to me, after working 43 years in the mechanical trade and semi-retiring, I love getting up and looking at that boat down at the end of the dock in the mornings. I love tinkering with it. Being mechanical background, mechanical contractor, I like to work on it, keep up the engines, keep up the oil, check the boat out. I also have a captain that works with me part time to help me maintain the boat. And it's kind of like my main hobby. And I like sitting on my dock and sitting on my boat.

Q: Now, forgetting about your boat for a minute and the length of your boat, you owned smaller boats?

A: Yes, I have.
Q: All right. Now, is the condition of getting in and out of that, your dock the same with these smaller boats as it is for your larger boats?
A: Well, of course it's a little bit better with a smaller boat. You've got -- you've got less weight, not 40,000 pounds, and you've got a little maneuverability. However, the strong current and the wind will affect a small boat too. You've got to bring it into any dock with the bow and stern in the correct condition and hopefully into the wind and into the current is what you'd like to have. And you don't force it because it could be unsafe with so many boats out there. Big boats, small boats, you name it, they're everywhere. But you know a few years back we're down there on holiday time with fireworks being shot and a puppy dropped off the dock, and when he hit the water and came up he was 30 feet down. That's how strong the current is. And when he came up, he was 30 feet away from that dock.
Q: And with a smaller boat you generally have a single screw on the propeller?
A: You do.

Q: And does that affect he maneuverability of a boat?

A: Well, certainly it does. You don't have as good as control as you do with two engines. But you're like a kite on top of that water; the wind blows you.

Q: Would it be fair to say in some ways that having two engines on tge boat make it easier to maneuver in and out of the water?

A: I think it does.

MR. MOLONY: Just a second, Your Honor.

Q: Now, I'm going to ask this question to you sort of as a hypothetical. If you had known that you were going to have a dock this close to you, would you have built your dock the way you did it?

A: Well, I had the luck of the draw when I built my dock 23, 24 years ago, there were no boats around me at all. But when they permitted this dock in 2007, and I was wanting to move out to a bigger sports fishing boat, enjoy a little more time with fishing, I would not have spent the money I spent to move my floats into a single float if I knew the dock was coming that close to me. I had that option, but they had

permitted, they had all agreed and it was a done deal. And so I was moving my floats out to get more depth under the boat and be able to maintain that boat there and do the maintenance on it and the cleaning and the waxing and the fishing, and it would have been no problem if we didn't come into a second relocation.

Q: Mr. Walters testified about the traffic through the Intracoastal Waterway. Your having lived there for approximately 30 years, has the traffic increased substantially over the last 30 years?

A: I think in 30 years it's increased 40 percent at least.

Q: Did you have jet skis 30 years ago?

A: We didn't see many jet skis, but we've got all kind of boats. We've got crabbers that go up there and crab. We've got fisherman that take off early fishing. We've got big boats going north and south. We have barges with fuel. We have dredges, tug boats come through every day, several times a day. And so when you get that commercial mix and that transit traffic north and south and mix it up with smaller boats and a lot of people, it's just a situation where

you've got to be very safe with your navigation and very safe with going to and from any dock. And you need to look up and down the dock before you move because it's like pulling off the sidewalk on a busy street. You've got to be very cautious in that area, very cautious.

Q: So summing up, you don't object to the Abdo dock?

A: No, I do not.

Q: All right. You didn't object to the Palmer dock, which now really is the Abdo dock?

A: No, I did not.

Q: What you object to is the amendment made to the application that was already agreed on in 2007?

A: Exactly right. Exactly right. And when this that -- can I say one thing?

Q: Yes, sir.

A: When Mr. Abdo came to talk to me about relocating it, I said man, you're going to give me a problem with getting my boat out. And I never could get him to sit down. He kept walking around the table. And I said -- finally we got to the door, I said, Listen, why don't we go up to DHEC and talk to the project manager and see how we can work this out. And

his final words, No, it's going right there. So that's where it all started.

Q: All right. Would you answer any question that other counsel may have.

A: I'll be glad to.

MR. MAULL - CROSS-EXAMINATION BY MS. RILEY:

Q: Good morning, Mr. Maull.

A: Good morning, ma'am.

Q: I have just a couple, a few questions. When you applied for your reconfiguration, that was approximately 2007?

A: Yeah, that was not long after I sold my business.

Q: Okay. And when you applied was it -- it was signed September of 2007, I believe you signed an application. I'll show it to you.

A: Yeah.

Q: This is Schaible's Exhibit Number 5.

A: Yes, ma'am.

Q: I you turn to the second page. Look and see if that's your signature.

A: That's my signature.

Q: Okay. And you did not list the Abdos as adjacent property owners in that application, did you?

A: I don't think I did. Mr. -- the guy that did the permit for me, Mr. Roland, with a company called Waters Deep, he took care all of the paperwork and brought it to me to sign.

Q: Okay. But you testified in your deposition that he probably consulted with you about who the owners were?

A: Yeah. His name is on there, right. And he consulted with me about everything in this paperwork and submitting it to DHEC. And he'd been doing this for years, so certainly I had confidence in he knew what he was doing. Nobody was not trying to apply anything.

Q: But you were aware at the time you applied that the Abdos had purchased the property, correct, next to you?

A: Yes. Yes. It was all happening about the same time. I was in the process of dealing with Amanda Flake on my dock by the time all this came up.

Q: Okay. And when you obtained your permit, this is Schaible Exhibit Number 4. That's a copy of your permit from OCRM, correct?

A: It appears to be my -- yes, ma'am.

Q: And that was -- the date on that is May 14th,

2008. And your proposal that was approved in 2008 was to take out the floats that you had and put in longer floats, correct?

A: A straight float. From a horseshoe to a straight, yes, ma'am.

Q: Okay. And the float that you were approved for in 2008 is longer and it runs parallel to the creek?

A: Well, it's longer in length, but it's the same in square footage. And that's what DHEC made their decision on.

Q: Okay. Well, I'm not saying it doesn't -- I'm not saying it wasn't permitted correctly.

A: Right. Right.

Q: I'm just saying what you asked for was longer, meaning it's going to go closer to the Abdo property?

A: Well, rather than being 30 feet off the dock we ended up being something like close to 40 feet off the dock.

Q: Okay. So that's longer?

A: It's longer, yes. But it's the same square footage.

Q: Okay. And then you applied for an in-house amendment to do something else to the dock in

2000 --

A: Yes. That's no big deal to me. Being a contractor I've been to many jobs, made thousands of jobs, and to get in you have to change something. And what happened on this project once they got in there, the ramp that was going straight out toward my horseshoe dock in the new permit was going to be tight to pier head and going down on angle. And it ended up being -- it was taking up too much space for backing the boat in closer to the pier head, the main pier. And so we applied for a varian to take the ramp off the side of the dock and move it round to the front, which dropped it into the long straight float. It only made common sense. We honestly didn't see it until we go into the project. And --

Q: That was approved in 2009?

A: Yes, it was, by DHEC.

Q: All right. This is DHEC's Exhibit 8. And this is -- is this a copy of the amendment approval letter?

A: That appears to be, yes, ma'am.

Q: Okay. And then if you flip the page, this is the second page of Exhibit 8, that looks like

a plan view drawing of your dock.

A: It was right here on the side, ma'am, and we moved it around to the front, which made it all in line.

Q: Okay. And you see here in this drawing that you have a distance between the end of your permitted floating dock and the extended property lines being 19.5?

A: 19.8.

Q: Oh, thank you. Better than me. All right. Now, Mr. Maull, you -- there's been a foreclosure action --

A: Excuse me. I've got a cold. So I may be a little slow.

Q: No problem. There's been a foreclosure action filed against you?

A: That's being taken care of.

MR. MOLONY: Your Honor, I'm going to object --

A: That's being taken care of.

MR. MOLONY: Hold on a second. I'm going to object to this because we can go off on a real tangent with this. This is a matter that came up and Ms. Riley notified me about. I was out, but she notified me about it. I needed to call Mr. Maull. It has zero bearing on this case. It

was a misunderstanding between Mr. Maull's wife actually who writes the checks to the mortgage company. And a lis pendens was filed. It's going to be lifted. And I don't see where that has any bearing whatsoever on any issue that we're talking about here that's related to the dock permit as amended by Mr. Abdo, navigation. He is the owner of the property. This particular lis pendens that was filed -- now, I'm unsure why she's offering it other than maybe to look like Mr. Maull may have financial difficulties, which is certainly not the case. But it just has no relevancy whatsoever to anything in this particular proceeding. And as a matter of fact, we are working right now with Mr. Rogers and hopefully we can do that today. He's a lawyer here in Columbia to try to figure out how in the devil this happened. So --

MS. RILEY: Your Honor --

THE COURT: Ms. Riley, what's the relevance?

MS. RILEY: Well, first of all, Mr. Molony, I don't think he's a witness. So he's talked about what -- what the extenuating circumstances or anything, you know, surrounding this is not in evidence. And Mr. Maull certainly would be

very welcome to explain it. But what we have is a filed -- I have a certified copy, so I don't believe I need to, you know, provide any foundation. But we have a filed Summons and Complaint that is a foreclosure action and the defendant is James R. Maull, and it's listed his address. And if he is no longer going to be the owner of the property, then this whole case is moot. This case is about his objection and his personal boat. As I said, he certainly is willing, you know, welcome to explain, you know, what the deal is. But I think that who owns the property and who may own it in the future is absolutely relevant to this controversy.

THE COURT: Yeah, but at the current time Mr. Maull is the owner of the property; is that correct?

MS. RILEY: As far as I know. I mean this has been filed. I haven't -- I didn't see anything subsequently filed. It's just been a Summons and Complaint filed.

THE COURT: But there's not been any final resolution of the foreclosure action?

MS. RILEY: No, Your Honor, there hasn't.

THE COURT: Okay. I don't -- I'm sorry. It's not

relevant to this action.

MS. RILEY: Okay. All right. Thank you.

THE COURT: I'm not going to allow you to place that document or ask questions about it.

MS. RILEY: Okay.

Q: Mr. Maull, now your boat is 48 feet long?

A: That's correct.

Q: And I imagine that boat is pretty -- takes a fair amount of funds to maintain and you have to do a lot of maintenance on a boat that size, correct?

A: You have routine maintenance.

Q: Okay. And fuel on the boat, probably pretty expensive to take it offshore; isn't that correct?

A: Well, fuel is about the same price a gallon as it is in your car.

Q: Yeah. Okay. How many gallons does it hold?

A: I think it holds 2,000 gallons.

Q: All right. And you've testified that you'd rather not keep your boat at a marina because you like to mess around with it at your dock, and you like to sit on it; is that correct?

A: Well, that's my personal preference. I don't like a marina because things happen to your

boat at a marina. People climb on it and things like that. And I just never had good luck with a marina. That's my personal choice and that's what I want to do. And that's what I'm doing.

Q: Okay. So that would be your personal preference to leave it at your dock. But mooring it at a marina or renting a slip certainly wouldn't be cost prohibitive, would it?

A: Why would I spend money at a marina on a park and building my own dock and paying for my dock, and why pay for somebody else's?

Q: Well, I understand that you don't want to.

A: And I'm not going to.

Q: You would be able to -- you would be able to pay for it? Because how much --

A: Well, I certainly could pay for it, but I'm not going to.

Q: Okay. But if there's a dock constructed 40 feet away, you're not going to be able to moor it there, right?

A: Well, we're going to have a collision and we're going to have problems. So that's all I can figure.

Q: Okay. And when you -- when you began construction on your reconfiguration that brought your dock closer to the Abdos, when did you begin construction on that?

A: I think it was done in 2007. I don't have the date right on the tip of my tongue. 2008

Q: Okay. And the construction on that was done after you had a conversation with Mr. Abdo about his plans for his property?

A: No, no, no. This was done -- this was all in the makes and prior to talking with Mr. Abdo.

Q: You constructed your --

A: It wasn't finished. But it was in the process of going through DHEC, if you go back and check the dates.

Q: Okay. Well, I'm not talking about the permitting. I'm talking about the construction of the dock.

A: Yeah. The construction was done I think late that fall, that year, '07.

Q: Okay. So you constructed your dock and then in 2009, you applied for a permit to do something with the ramp?

A: No, no, no. I don't -- let me look at that date. It came about the time it was being

built, like within 30 days of construction starting the dock builder pointed it out to me that it was going to be a problem.

Q: Okay. All right. Well, I'll show you again so you can --

A: I have it --

Q: This is what I showed you, Exhibit 8.

A: Right.

Q: This amendment that deals with the ramp you were talking about is January 21st of 2009.

A: Okay.

Q: All right. So what I'm asking you, I'm trying to get you to nail down when you started construction. You just told me that you contractor brought this ramp issue to your attention and you got it dealt with sometime around when construction started. Is that right?

A: Well, near the end of construction.

Q: Okay. So it would have been late 2008 or early 2009 --

A: That sounds about right. I don't have the dates on the tip of my tongue.

Q: Okay. So you're saying you did not have any conversation with Mr. Abdo prior to starting

construction on your dock about his plans?

A: My plans were in my mind two years earlier as I approached semi-retirement. And buying this boat and bringing it home, I don't see where the date is that important. I don't remember the -- I don't remember all these dates like you've got. I don't have them in front of me. I've got them in some of my files over there. But after the permit was issued for my dock to be relocating the floats, and the floats were under construction, we realized we had a problem with the ramp. So it's just a three foot ramp taken from the side and put to the front.

Q: Uh-huh (affirmative response).

A: You know, nobody was trying to do anything but get the dock workable and useable.

Q: Okay. And so you said you're not willing to put your boat anywhere else; you're not willing to do any further reconfiguration to your dock to make it easier for you to moor it there?

A: There's nothing I can do. The Army Corps keeps a certain distance off the center of the channel, so I can't turn the floats towards the channel, and I can't dredge where I had my

horseshoe floats, and I loved them just the way they were, because the Army Corps would not let you dredge. So both of those agencies have got my hands tied. So I did what I -- what I had to do and that was move my floats to the front so that I could use my dock at my home.

Q: Have you spoken with anybody about a possible reconfiguration that would make it easier for you?

A: No. I'm not willing to put any more money out there.

Q: Okay. Let's review these real quick.

MS. RILEY: That's all I have. Thank you.

THE COURT: Thank you. Mr. Haber.

MR. HABER: Thank you, Your Honor.

MR. MAULL - CROSS-EXAMINATION BY MR. HABER:

Q: Hi, Mr. Maull. Good to see you again.

A: Good to see you, sir.

Q: Just a quick question. You had mentioned you had a captain part time that was working with you?

A: Does the maintenance and, you know, the bright work, the teak and all, there's a good bit of teak on the boat and the sun will dry it up.

Q: So more just maintenance?

A: Maintenance. Just maintenance, yeah.
Q: So not taking the boat out or anything?
A: No. I captain my own boat.
Q: Okay. Petitioner's Exhibit 1 that I believe Mr. Molony had handed up to you, it had a technical summary or review in the beginning.
A: This first one, sir?
Q: Yes, sir. Front cover. Highlighted in the bottom of that page, it said the Schaibles objected to this dock, and part of it was that it was too close to the property line?
A: Well, I think that's a good question and I certainly respect it. But here's the real -- here's the real situation. When I built my dock there were no docks on that river. You look at that river on the opposite side of that drawing, way down on the right, one gentleman had a little crabbing dock. There was no docks there 23, 24 years ago. When I built my dock, DHEC had to come in and draw all critical lines from the [redacted] side out to the river.
Q: Let me stop you there. That's critical area line?
A: Yeah. They drew all that at that time. And I was the one setting the precedent, and I was

the first one out there with a dock, and that's why the lines are where they are. And I'd also like to point out that's why you see those docks packed in tight like they are because they had a narrow corridor, what's called a corridor, coming out from land. Now when you get over to the Palmer's house, which became the Abdo's house, he's only got 77 feet of land out there, but they spread out his critical lines to like 157 feet, if my memory is right, at the water, which gives him a pretty wide area. He's got room to move up and down and everybody can live in peace and harmony. Unfortunate, when you look at Mr. Schaible's house, and you stand down there on my dock, his house is cocked on the lot looking straight at my boat. So he's probably got an illusion that I'm in front of him, but I'm not. That's the way the critical lines was drawn in the marsh.

Q: Let me repeat my question and maybe that might just help out a little bit. This technical summary review that you're looking at --

A: Yes, sir.

Q: -- is for Mr. Palmer's dock.

A: Okay.

Q: Okay. My question was did the Schaibles object to that dock because they said it was too close to the property line?

A: I knew nothing about the Schaibles' objection until I went to the DHEC meeting, and that's what it ... that's what it was.

Q: And I'm simply asking you to --

A: Right. They were objecting to the property line location, yes.

Q: The dock's location in relation to --

A: Not my dock.

Q: No, no, no. Absolutely. Mr. Palmer's dock?

A: Right. Right.

Q: And its relation to their extended property?

A: Right, right. And I don't think we all understood how those lines are drawn. They're drawn on angles.

Q: Sure. Now, as permitted, the Palmer dock was how far away from the extended property line of the Schaibles? It should be on that next page.

A: I think it's 20 feet.

Q: Okay.

A: From my memory.

Q: Twenty-one feet?

A: Twenty-one feet is what it says on the drawing.

Q: Okay. And that's what they complained about, the Schaibles, and that's how the permit was issued, 21 feet off their extended property line. So the Schaibles also complained when the Palmer's permit came --

A: I knew nothing about that.

Q: Okay. I'm just asking you for the departmental review. The comment came in, likely reviewed it, nothing changed from the application though?

A: Right.

Q: What did change was the configuration of their dock, the Palmer dock, correct?

A: Right.

Q: In Petitioner's Exhibit Number 3 is a letter dated August 5, 2011, that you wrote to the -- to the Department?

A: Is that in your packet here?

Q: It's your attorney second, Number 2.

A: I don't see no Number 2. I see Number 5, sir.

Q: It's fine. This is Petitioner's Exhibit Number 2. Could you look at that third paragraph on there, please?

THE COURT: Which exhibit is that?

MR. HABER: It's Petitioner's Exhibit Number 2.

It's a letter dated August 5th, 2011.

THE COURT: Okay.

MR. HABER: Written from Mr. Maull to the Department.

THE COURT: Okay. It's marked here Exhibit 3.

MR. HABER: Oh, I'm sorry Your Honor. It is Exhibit 3.

THE COURT: Okay.

MR. HABER: My apologies.

A: Paragraph three states just what I said earlier, the dock is designed by Palmer, who didn't know much about docks, had the walkway 500 feet, 525 feet. It had boat pier head. In front of the pier head was the boat lift, and in front of the boat lift was the float in the water. So when I saw the drawing for the first time at the meeting with DHEC and Mr. Schaible's attorney, I made the statement courteously saying why don't you pull the lift out towards me and my dock and bring it on the side and being he's coming straight in and straight out, he can lift his boat and he can enjoy his float in front of his pier head. I thought that was the gentleman thing to do.

Q: Sure.

A: Yes, and it would come closer to my dock, but I didn't object to that.
Q: Sure. And this is --
A: I was being a gentleman.
Q: Absolutely. All I'm getting at in this paragraph here, and there's a key sentence I'd like you to read. I don't have this one marked.
A: It's right up in here somewhere in this paragraph.
MR. HABER: Court's indulgence, Your Honor.
Q: Paragraph four, does it state that all parties, and I assume all parties included the applicant to this permit, agree on the reconfiguration?
A: Right. All parties that were involved in that DHEC meeting, which were adjacent property owners, which would have been the Schaibles and the Maulls.
Q: The reconfiguration wasn't a special condition on the permit, correct?
A: The reconfiguration wasn't?
Q: Wasn't a condition on the permit?
A: No, it wasn't a condition, but all parties saw the pipes in the water and they looked at where it was going and they all agreed.

Q: And the applicant agreed as well?
A: Right.
Q: Now, you said you owned a lot of boats. I think I've counted one, two, three, four, five, six boats ranging from ten feet to 48 feet?
A: That's right. You have to crawl before you walk.
Q: Sure. Absolutely. But owning a boat and the size of the boat one owns is not a constant?
A: No, not around here. Not around Charleston.
Q: Sure. Now, you've gone through getting your boat in and out of where it is moored now, there's some safety issues?
A: Always there's a river full of boats of all sizes there's a safety issue.
Q: Sure.
A: And as a captain, especially on a sizable boat, you're responsible for everybody on that boat and everybody you come close to with that boat.
Q: Absolutely. And I respect you for it.
A: And I'm very serious about it.
Q: Absolutely. But even now without the Abdo's dock present, there's still concerns?
A: Oh, yes. Oh, yes, because of the traffic.
Q: Sure. Traffic or because of the current or

wind?

A: The current and the wind. The current if you're going one way and the wind going the other and the boat ends up being like a kite.

Q: But pulling your boat to the front end of the dock there's not -- the safety issues aren't there?

A: Well, you know like I explained earlier, you may have heard me, if you bring the boat to the outside of the dock there's so much traffic on the weekends that it beats the boat against the dock, beats against the pier. One problem has repercussions over the next which causes a lot of damage and cost. So the boat is safer on the inside.

Q: And --

A: From damage, and from somebody running into it.

Q: Sure. But the issue of bumping against the dock, there's bumpers and whatnots that could be put --

A: Well, that takes the bumping off the boat, but that doesn't take the pressure off of the wood, and the float and the pilings.

Q: I understand. Now, I can understand you're frustrated with amendments that have occurred

in the permits.

A: I'm very frustrated with this latest amendment and this latest dock approval to come all the way from one side of 157 feet to get in front of me to maliciously block me off. Makes no sense. Why can't we all adjust with that kind of footage, 157 feet. Makes no sense.

Q: But from your testimony it sounded like you were upset with amendments happening in general. You felt like there was finality with the Palmer permit?

A: I didn't feel like anything with the Palmer permit. All the parties were informed. They agreed. Ms. Sonya sent me a letter saying thank you, and they got the permit. If that was the case, why didn't he get it adjusted at the time on the first round?

Q: But you're not testifying that one can't -- there isn't allowed to --

A: I have no problem with the dock being there whatsoever. I'm just saying why cut me off.

Q: Sure. The Palmer permit was requested to be 21 feet off the extended property line of the Schaibles, correct?

A: That's correct. And all parties agreed and

DHEC approved and the permit was put in place.
Q: And Mr. Abdo amended that permit. The permit was transferred into his name and he amended it; is that correct?
A: At a later date. But he went a long time before he ever got it put in his name. He went several years before he got that permit put in his name; did you know that? Well, he did.
Q: He had it transferred into his name, correct?
A: Way down the road, yes.
Q: Okay. And then to suit his needs he amended that permit a request -- submitted an application to amend the permit?
A: To the best of my knowledge that's what he did.
Q: And Mr. Abdo requested it to be 20.5 feet off the extended property line with you?
A: That's right.
Q: Okay. Thank you.
MR. HABER: Nothing further, Your Honor.
THE COURT: Mr. Abdo?
MR. ABDO: I have no questions.
THE COURT: Okay. Mr. Molony, let's take a -- while you ponder if you're going to ask him anything on redirect, let's take a ten-minute break.
MR. MOLONY: We can make it easier than that, I

don't have any other questions.

THE COURT: Oh, you have no questions for him. Okay. Thank you Mr. Maull. But we're still going to take a break.

(Break from 12:08 p.m. until 12:28 p.m.)

THE COURT: Okay. Mr. Molony.

MR. MOLONY: Your Honor, that's all we will present in our case, and obviously, I know we don't make directed verdict motions up here, but I just wanted to make sure that I stated on the record that that is, you know, our case in chief.

THE COURT: Thank you. Okay.

MR. HABER: Your Honor, if I may, I'd like to submit a rule 41(b) or under Rule 50 a motion for -- a motion for dismissal under involuntary dismissal under a non-suit. If you'll like, I can explain.

THE COURT: Okay.

MR. HABER: Rule 41, 41(b) allows a defendant without waiving its right to offer evidence if the motion is not granted to move for a motion on the ground that upon the facts of the law the plan showed no right to relief. I think this -- this case at hand points directly to

the Dorman case that was heard by the Court of Appeals. In Dorman the property owner applied for a critical area permit to build a boat dock with a roof and a floating dock. OCRM initially granted the permit, but the neighbors on both sides objected because the proposed dock would crowd too close to the existing docks and because a roof would impinge their view. One of the grounds the ALG -- ALJ reversed the staff decision and denied the permit was because the dock obstructed navigation and created problems with adjacent property owners' floating dock. On appeal, the coast zone appellate panel reversed the ALJ and reinstated the permit. The panel concluded the ALJ incorrectly interpreted navigation within the meanings of the regulations. The panel stated as a position of OCRM that any navigational issues between docks is a private property owner issue. It is not the policy of OCRM to police navigational disputes that should be dealt with among the adjacent property owners. The Circuit Court then reversed the panel and it was appealed to the Court of Appeals. The Court of Appeals

analyzed the interpretation as pertinent here under 30-12(a)(2). The court ruled that while the ALJ is an independent entity it still functions as an arm of the agency for purposes of recording the agency deference in interpretation. In citing Brown v. DHEC, Court of Appeals stated the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overturned absent valid reasons. The Court of Appeals then stated the ALJ denied the permit at least partially on the finding that the dock would obstruct navigation and created problems with the adjoining dock. The Court then stated the panel in interpreting its own regulations held that navigation is contemplated in the regulations, did not encompass problems between neighbors or conflicts with nearby property owners, but only applied to impediments in the general public's use of state waters. The Court of Appeals remanded the case to the ALC because the ALJ premised its denial on the confluence of factors this case -- stated this case must be remanded to the ALJ to reconsider

its findings based on OCRM's policy, OCRM's panel's interpretation and application of its own regulations. Furthermore, the Department, as a creature of statute, the regulatory body is possessed only of those powers that expressly conferred are necessarily implied for it to effectively fulfill its duties with which it is charged. Cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislating. Under the plain meaning rule where statute's -- where statute's language is plain and unambiguous it conveys a clear and definite meaning, the rules of statutory interpretation are not needed. What the legislator says in the text of the statute is considered the best evidence of the legislative intent or will. Looking at regulation 30-12(a)(1)(P) states that no docks, pier heads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks. Here Mr. Abdo applied for applied for 20 and a half feet off the extended property line. Further, 48-39-150(B) is plainly clear on its face and states, A permit may be

conditioned upon the applicant amending the proposal to take whatever measures the Department feels are necessary to protect the public interest. In the board's decision it stated the Department has the authority to condition permits to require the applicant to take whatever measures the Department feels are necessary to protect the public interest. The Department only exercises this authority when a condition is necessary to protect the public interest or to bring an activity into compliance with the regulations. The various alignments for a proposed structure do not violate the regulations and is merely a matter of choice. DHEC allows the applicant to weigh the competing interest and construct the option he chooses so long as that option complies with the law. The petitioners here failed to distinguish this case from Dorman. This is a private navigational dispute between docks and is a private property owner issue. Further, they failed to show why this permit is inconsistent with the Department's interpretations of its own statutes or regulations. Here, the regulations and

statutes were considered. They were evaluated and a permit, which was consistent with the Department's interpretation of the statutes and regulations were issued, we believe that this is -- the petitioner's burden has not been met, and we request -- respectfully request the Board or request the Judge to dismiss this action pursuant to 41(b).

THE COURT: Thank you. Mr. Molony.

MR. MOLONY: Well, Your Honor, that was a mouthful, but first of all, let me just say that, you know, any motion made at this juncture in the case, it has to be strictly construed against the party making the motion, and this is akin to a motion for summary judgement and I'd ask you to keep that in mind. Secondly, in the Dorman case, it involved an original permit. It didn't involve an amendment to a permit, which is what we have. But putting that aside for a minute, if you look at the various sections that Nathan was citing and read them completely, 48-39-150(10), for example, says you have to make a determination of whether or not the extent to which the proposed use could affect the value and enjoyment of the adjacent

owners. There's no question Mr. Maull testified extensively about how this is going to affect the enjoyment of his property and his dock and boat. Also, under 30-12(1)(A) there's a specific requirement that DHEC make a finding that it shall not restrict the reasonable navigation or public use of state lands and waters. And I can't imagine how many times Mr. Walters testified about the dangers to the public if this dock is placed too close to Mr. Maull's dock, not only from Mr. Maull's boat as it now exists but on any type of boat between the two. Also, if you look at Section 30-12, I believe it's P, it says that, you know, I believe Nathan cited this, but in the end of it it says, The Department may allow construction closer than 20 feet or over extended feet when there's no material harm to the policies of the Act. And you know, the Act's policies are stating that -- I don't have the actual full law here, but the intent of this is to allow orderly development of docks and access to public waterways of the state. And, I mean, it's our contention, and it's been our contention all along we don't object to the

dock. We don't object to the dock as originally permitted. What we object to is the fact that there's a squeezing in of that dock vis-a-vis our client's, or my client's property, and by doing that it imposes navigational issues which were already considered by DHEC and, you know, covered in the first permit. And that's the issue and that affects more than just Mr. Maull's property. It affects the rights of the people that are using Wappoo Creek. It affects commercial traffic. This is not like in the Dorman case. This is not a pond or a small stream. This is -- this is a super highway, if you will, between the Ashley River and the Stono River and it's really the only access way for the Intracoastal Waterway for commercial boats to get up and down the east coast, as Mr. Walters testified to, Florida all the way up to Maine. So this is a very, very important waterway. This particular dock configuration, as he testified to, doesn't in fact affect the public use and enjoyment of the waters when you have vessels that are trying to get in or out of closely -- docks that are in close proximity

to each other. And, you know, there's been a lot of talk about well, you've got all these other docks there. The fact that nobody opposed a dock is not necessarily something that we should be held to. In other words, and again, we never opposed this dock. We still don't oppose the construction of the dock. We just oppose where the dock is located and see no reason why it can't be located at a sufficient distance to allow us to be able to navigate in and out and to protect the members of the public that are out there on the Wappoo Creek. Now, I don't want to get off on a tangent with this, but I grew up in this area. I'm going to tell you something, it is a very, very busy creek, river, whatever you want to call it. I mean, I put in at South Windermere. You get out in Coburg Creek and come up in here on the weekends, it is incredibly busy. So the least amount of time that somebody spends maneuvering in and out of a boat, the safer it's going to be for all members of the public out in that waterway. So we would respectfully request you deny the motion at this point. Now, if Your Honor finds factually that we

don't make a case to you, I haven't made a case to you or, you know, that, you know, you want to rule differently, that's one thing. But to dismiss the case at this juncture, I think it's premature and inconsistent with what the rules require and also inconsistent with the regulations and the statute that governs DHEC's review of these permits and permit modifications.

MR. HABER: Thank you, Your Honor, briefly. I think partially I think Mr. Molony exemplified why this case is similar to the Dorman case in that they're not opposed a dock in general; they're simply opposed to the location of the dock. And why I think the interpretation is important in Dorman is that in looking at the regulatory structure and in looking at the statutory structure, the Department is in a position where their hands are very much bound. You have an applicant that came in with a request of 20 and a half feet off the extended property line which clearly fits within the regulations. It meets that minimum requirement of 20 feet off the extended property line. In order to special condition that permit, 48-39-150(B)

comes into play. The board evaluated Mr. Maull's complaints and determined that it was not within the public interest, so again, we are back to a private neighbor dispute where the Department is pitted between different neighbors and has to apply its regulations, which is precisely what was trying to be avoided in Dorman. 30-12(a) also -- Mr. Molony correctly stated that it states the reasonable navigation and public use. We heard testimony today from the petitioner's expert that it would require a 100 foot separation between the docks in order to allow Mr. Maull to get his 48-foot sport fishing boat to the landward side of the floating dock safely. Again, it's a private choice to have a boat that big. It's a private choice to park it behind the floating dock on the landward side. It's private choices, and this is where it comes into play between the neighbors. Further, 30-12(a) also takes into consideration that perhaps docks might pose navigational problems. People on the water buy these lots to have water access, to have docks, and in fact, 30-12 states docks and piers sometimes pose navigational problems.

It happens, but what I feel is that the Department's and the board's interpretation of 48-39-150(10) is it should be given deference that nothing -- nothing is -- the Department evaluated everything it should, and at the end of the day that the permit should stand as is, and frankly, I think that the dismissal of this case would be proper.

THE COURT: Thank you. And Mr. Haber, it may be at the end of the day that the permit may -- that I may rule that the permit should stand, but at this juncture I'm not going to dismiss the case and I'm denying your motion. And who is going to go first in presenting?

MR. HABER: Thank you for entertaining it, Your Honor.

THE COURT: Sure.

MS. RILEY: Your Honor, I believe the intervenors are going to put up their case and then, as part of my case, I'm going to call Mr. Abdo.

THE COURT: Okay.

MS. RILEY: Stand there for the swearing in.

THE COURT: Mr. Abdo, if you will face the court reporter she will swear you.

DAVID ABDO, being duly sworn, testifies as follows:

MR. ABDO - DIRECT EXAMINATION BY MS. RILEY:

Q: Okay. Mr. Abdo, state your full name for the record please.

A: David Whittington Abdo.

Q: Okay. And what's your residential address?

A: [redacted], Charleston, South Carolina [redacted].

Q: Okay. You're adjacent neighbors with Mr. Maull, the petitioner in this case?

A: That is correct.

Q: Okay. How long have you lived in Charleston?

A: I've lived in Charleston for 26 years.

Q: Okay. And then how long have you lived on [redacted]?

A: Five years.

Q: All right. Do you remember the date that you closed on the property on [redacted]?

A: I believe it was August of 2008.

Q: All right.

A: Excuse me. August of 2007.

Q: Okay. Who did you buy the property from?

A: The estate of the Palmers. I forget their first names.

Q: And do you -- is there a familial relationship between the Palmers and Mr. Maull; do you know?

A: My understanding is that Mr. Maull was the niece, or the nephew of the Palmers.

Q: Okay. And when you were under contract, was there a dock -- was there a dock in place at the property?

A: There was not a dock in place, and there was not a dock permit.

Q: Okay. Was there a dock permit applied for at that time?

A: One of the conditions of our contract to purchase was that they would obtain a dock permit.

Q: Okay. And who submitted an application for that permit?

A: That would be their son, the executor, Charles Palmer.

Q: Okay. Let me show you what's in evidence as Intervenor's Exhibit Number 7. I'll ask you if you recognize that?

A: This looks like the -- this looks like the permit, I guess, that was issued to Charles Palmer from DHEC for the dock.

Q: Okay.

A: A dock.

Q: So you said that Mr. Palmer or the estate of

Mrs. Palmer was responsible for the application. Did they consult with you at any point about the location of the dock that was permitted in 2007?

A: No.

Q: Okay. Did you -- were you aware of where they were proposing to put it?

A: Not at all.

Q: Okay. And so when you closed on the property then at some point that dock permit was issued?

A: That is correct.

Q: Okay. And did you take a chance to review the configuration of the dock that was permitted in 2007?

A: Yes.

Q: Okay. And what were your thoughts about that?

A: It didn't look like it really made any sense. It obviously was different than every other dock on the creek that it was adjoining and that it really didn't work. It had a pier head out in front or, excuse me, a floating dock out in front of the pier head and a boat lift next to that, and with that configuration, at low tide you would not be able to get your boat in and out of the boat lift.

Q: Let me put this up here and see if I can't -- okay. So this is -- this is Exhibit 7 that we -- you were just discussing and so you -- just say again what problems you had with it.

A: Well, you have a floating dock that is in front of the fixed pier head. You have a boat lift that is directly next to the pier head and at low tide that boat lift, you wouldn't be able to use it. It would be in the mud.

Q: Okay.

A: So if your boat was up on the lift you couldn't get it off the lift.

Q: Okay. And again, you weren't -- you weren't a party to this permit?

A: Not at all.

Q: Okay. And when did you move in to your property after you closed in 2007?

A: We closed, we did some renovation work and we moved in in February of 2008.

Q: Okay. And at that time, did you meet your neighbor, Mr. Maull?

A: I did.

Q: Okay. Did you have any discussions with him about his dock or your dock or any -- anything on that topic?

A: Well, I had met Mr. Maull and then I had given it a lot of consideration as to the configuration and had gone over to Mr. Maull's house, knocked on his door, and we had a brief discussion regarding myself modifying my dock.

Q: Okay. Well, tell me what -- tell me what was said. What did you tell him about your plans?

A: I explained to him that this configuration didn't work, that I would take the floating dock and move it to the side which would make it broader, and that he informed me that he was actually getting ready to modify his dock and that it wouldn't work for him having me coming closer to him.

Q: Okay. And so you weren't able to reach any sort of resolution of it?

A: No. He said he needed one and a half times the length of his boat to allow him the ability to navigate between, and that if I were going to be any closer to him than that, that he would block me.

Q: Okay. Did you -- did you ever get any notification or any opportunity to look at his proposed configuration before it was approved?

A: No.

Q: Okay. And so when did you first -- I guess you had a conversation, and then was there a time at which construction began?

A: The first -- I thought that he was still working on permitting and that we would get some sort of notice. I believe it may have been in September of 2008 that I saw construction and the pile driver and a barge out there, and that's when I first learned that he was going to modify.

Q: Okay.

A: Or was in the process of it.

Q: And did you contact anybody about that?

A: I went to DHEC and requested the permit and that -- that was the first time I saw what he was going to do.

Q: Okay. What were your -- what was your opinion about what he -- what he was doing to his dock?

A: The dock itself, I talked to Fred Mallett at the -- at DHEC and had explained to him the conversation I had with Mr. Maull and I -- I didn't object to it at that point in time because the conversation I had with him was that, provided I was within the regulations, his desire to be able to navigate in and out

from the back of his new floating dock would not impact my rights.

Q: Okay. But the permit had already been issued?

A: That is correct.

Q: Okay.

A: And I didn't have a -- I didn't have a problem with his dock provided it didn't impact my rights.

Q: Okay. And so -- let me do this. Maybe this is easier for everybody. This is DHEC's Exhibit Number 3. This is a drawing attached to the public notice. A little bit hard to see, but is that -- is that the proposed what you applied for in terms of the amendment to this dock permit?

A: This would be the amendment, correct.

Q: Okay. And if you could just explain and you -- I think you can -- I think you can touch your screen and point out where things are, but --

A: Oh, okay.

Q: Is this the configuration that you are seeking today; that you have the permit for today?

A: That is the configuration that has been permitted.

Q: Okay. And if you would just describe the

configuration that you applied for and that you ultimately got.

A: Okay.

Q: And you don't necessarily have to use that. I was just --

A: Well, okay. I was going to say -- that thing works out well.

Q: You can just verbally describe it.

A: To the right is the boat lift, kind of in the center and to the left of that is the fixed covered pier head which leads to a ramp. This is going from right to left, and then on the far left is the floating dock.

Q: Okay. All right. So this --

A: Boat lift.

Q: Boat lift?

A: Fixed covered pier head, a ramp, and then the floating dock.

Q: Okay. And how far off the extended -- share the extended property line with Mr. Maull was your -- is your configuration proposed there?

A: Twenty and a half feet.

Q: Okay. And I believe, did DHEC condition the issuance of your permit when it was first issued?

A: Initially they conditioned it to be 30 feet off of the extended property line. That was due to error where there's a drawing of Mr. Maull's current floating dock that had a ten foot number next to it that looked like it was ten feet from his floating dock to the extended property line. What that ten was actually noting was the depth of his floating dock, and he -- his permit is 18 feet or 19 feet from the extended property line.

Q: Okay. So --

A: We realized that at the hearing. I don't know what the date was here in Columbia, the board hearing.

Q: Okay. And so there was a condition to push the dock away from Mr. Maull originally?

A: My dock away, correct.

Q: Right. And okay, and then did you -- were you happy with that condition?

A: No.

Q: Okay. And so what did you do in response to that?

A: We objected to that because I felt like it was imposed by error, founded by error.

Q: Okay. And then you appealed it to the DHEC

board?
A: Correct.
Q: Okay. And what did the DHEC board do?
A: The board realized that it was a stipulation that was imposed by error and they reversed that and issued the permit as I initially requested.
Q: Okay.
A: And removed that stipulation.
Q: Okay. So as we sit here today, the permit that is approved, are you satisfied with the terms of that permit?
A: Yes.
Q: Okay. And why, Mr. Maull is -- you've been here during the court. Mr. Maull has raised some questions as to why you need to have it where you need to have it. What are the reasons why you feel like you need it where it is and why you feel like it's inappropriate to move it farther away from him?
A: Well, like I said, I've given this a lot of consideration, and this configuration works for me and my family now, but as time goes on things do change. I may buy a larger boat and need a floater that is longer, in which case I

could reconfigure, make it narrower. You are limited on square footage. I could make it narrower and longer and it would extend further towards the Schaibles if I end up with a larger vessel and need to have more length in my floating dock.

Q: So do you want to preserve as much space for future potential modifications to the dock?

A: Correct. That's why, you know, I've placed it where it is.

Q: Okay. Does view plan into the -- where you decided to place it?

A: No. It was really more boat -- boating, etcetera. The fixed pier head is a lot more difficult to move. A floating dock is fairly simple. So you want to get your pier head and your boat lift in a position that you think of as the long, long term, where a floating dock is a lot easier proposal of having a new one made and just floating it out there and anchoring it, attaching it to your pilings.

Q: Okay.

MS. RILEY: Your Honor, just one second.

THE COURT: Yes.

MS. RILEY: Your Honor, I don't believe I have any

other questions unless Mr. Abdo as a party wants to say anything further. Thank you.

THE COURT: Mr. Haber, do you have any questions for Mr. Abdo?

MR. HABER: I don't, Your Honor.

THE COURT: Okay.

MR. HABER: Thank you.

THE COURT: Mr. Abdo, you are a party to this action, and I'm going to give you an opportunity at this point before I submit you for cross-examination by Mr. Molony to tell me anything that you think that I need to know, other than what you've just testified to.

MR. ABDO: I was going to say I'm pretty much content with the permit that was issued. I don't really have anything further to --

THE COURT: Okay.

MR. ABDO: -- say at this point.

THE COURT: Thank you. Mr. Molony.

MR. MOLONY: That was going to be interesting to watch him ask himself a question and answer it.

MR. ABDO - CROSS-EXAMINATION BY MR. MOLONY:

Q: Mr. Abdo, just a couple of things. First of all, the acquisition of this property was contingent on your obtaining a permit, correct?

A: That is correct.
Q: And I couldn't quite decipher the date. You say in August 2007 you were living at [redacted].
A: No, August of 2007 we purchased the property.
Q: Okay. Now, when you purchased the property, again, the requirement being you had to have a permit, you knew that there was a dock permit in the closing papers, didn't you?
A: That is correct, right.
Q: As a matter of fact, when I asked you the question in the deposition, you know you said yes, and I believe I'm correct about this, didn't you tell me that in the future you would be -- words I think you used were probably be more specific in the future. Do you recall telling me that?
A: I don't recollect that, but I would think that that could be -- that could be the case.
Q: Right. Well, you're in the real --
A: I feel -- under --
Q: You're in the real estate business, aren't you?
A: That is correct.
Q: And you are familiar with real estate closings?
A: Yes, sir.

Q: In fact, your wife's a lawyer, right?
A: That is correct.
Q: Okay. You knew that the permit was in the file; in the closing file?
A: Yes.
Q: You had the opportunity to examine it, didn't you?
A: That is correct.
Q: All right. And so without going into detail, I mean, I can show you the deposition.
A: Yeah. No, that's fine.
Q: Isn't it true you told me that you would probably be more specific in the future?
A: I would say that that would be correct and that would be in reference to -- and I don't know -- I think it was maybe an implied reference that with a contract, when I had it under contract I would have probably in the future be more specific and have maybe more control over, instead of just a dock permit, I may have the ability to have some input as to what that permit would state.
Q: Okay.
A: So that we could avoid this.
Q: All right. Well, in any case, we move forward

in time from 2007 when you contracted to buy the property until May 2011, almost what, four and a half years later before you decide to make this amendment, correct?

A: Well, we're getting ready to build a dock, that is correct.

Q: Okay. You know, I don't want to go into this in great detail, but --

A: Sure.

Q: Let's just talk a little bit about the discussion you had with Mr. Maull. You were in the courtroom and he talked about your coming over and discussing the permit with him; do you recall that?

A: Yes.

Q: All right. Do you agree with his rendition of what happened at that time?

A: I don't recall any conversation of the two of us or his suggestion that we should go speak with DHEC. I don't remember that being said.

Q: Did he tell you at that time that he was concerned about the distance between the docks for navigational purposes?

A: Yes.

Q: And did you agree with him that there could be

an issue with that?
A: I explained that the configuration that was there with the original permit didn't make any sense for me and discussed the fact that the lift would be in the mud and reconfiguring.
Q: Well, it obviously must have made sense to the Schaibles because they were aware of it and didn't object to it, correct?
A: Object to what -- what is it?
Q: To the permit as issued to the Palmers.
A: Well, they wouldn't be the one using it so I don't think that -- I don't know what happened. I wasn't privy to that.
Q: Okay.
A: As far as whether they objected or what they did.
Q: But you could have been privy to that though, right, as a potential buyer; isn't that correct?
A: Potentially. I don't know how the contract read as far -- I don't know if it clearly stipulated anything as far as me having the ability to influence.
Q: And you know again, I -- this is just something I think we need to clear up on the record.

A: Yeah.
Q: In your deposition I asked you if you had ever been convicted of any criminal offenses and I think you told me that you were convicted of at least two that you could remember that you went to jail for; is that right?
A: I went to college and had some fun and things happened.
Q: Right. Now, also I think it was an insinuation that Mr. Maull and the Palmers being cousins sort of colluded, if you will, in terms of not providing you notice of the proposed amendments to his dock; is that correct?
A: I wouldn't necessarily say they colluded. I had met Mr. Maull; Mr. Maull knew I was living next door. The permit went to his cousin that didn't object to his modification.
Q: And you remember I asked you in your deposition if you subscribed to the newspaper and you told me you did?
A: That is correct.
Q: And you're aware of the fact that all these permits applications and so forth are provided in, you know, a notice is provided to the public?

A: I'm aware that's a requirement.
Q: Now, I think in your deposition I also asked you some questions about your use of the Wappoo Creek area, and I believe your testimony was that you had -- well, you owned a 32-foot Boston Whaler; is that right?
A: That is correct.
Q: And I think you told me that you lived up in Parkwood Estates which is kind of off the Coburg Creek and back up more inland than on Wappoo Creek; isn't that right?
A: Yeah. At that point in time before purchasing this property I lived on Wappoo --
Q: Right.
A: -- well, what's known as Coburg Creek which actually technically is Wappoo Creek.
Q: Right. And I think when I asked you some questions you indicated that you had very little experience in navigating in the Wappoo Creek area; isn't that right?
A: I don't recall that. I lived at my previous house for I believe eight years, and we used our boat quite often and came to and from Wappoo Creek every time.
Q: All right. Well, that was an inartfully worded

question. Docking boats in the Wappoo Creek area, you had very little experience, if any, frankly, with that?

A: That part would be correct.

Q: Right.

A: Well, I guess the Crab House is there and I docked several times at the Crab House --

Q: Okay.

A: -- which is a stone's throw away.

Q: Better watch the drunks there. All right. So, and you don't hold any licenses for any type of marine navigation or anything of that sort?

A: That is correct. I do not.

Q: And you also own a 14-foot McKee; is that right?

A: I did. I do not at this point.

Q: Okay. Now, it's not a very -- I'm sorry to do it this way, but I'm just not that good with that computer. This is your property right here; isn't that correct?

A: That's correct.

Q: And this large semi-circle here is the Schaibles' property, correct?

A: That's correct.

Q: All right. Now, your property, and actually

you can look at it up here. Since this is relatively small, it could angle out, and you've got a good bit of distance. It sort of fans out, if you will, to provide more access or more distance on the Wappoo Creek, doesn't it?

A: More than what?

Q: Well, I mean, more than Mr. Maull's?

A: I -- I'm not aware. I haven't taken the measurements.

Q: Okay. Well, I mean, I guess my question is what harm would there be to you to just move this over say 20 feet as originally conditioned in the permit?

A: Well, for one, it wasn't 20 feet, it was ten in the original permit.

Q: Okay.

A: It was an error.

Q: You're right. I stand corrected.

A: Right. But I think I just explained that in that I look -- when I do something I don't necessarily just look at a current use. I will look at a future use, and this would limit my ability in the future to possibly reconfigure for a later use.

Q: This meaning what now?
A: Moving it. It would then bring me closer to the Schaibles and if I want to reconfigure a floating dock, then I would be bumping up against the 20-foot setback from the property line on the side of the Schaibles.
Q: And do you know how much bumping up that would entail?
A: Well, looking at this it, and just kind of eyeballing it, looks like the -- and it may be on one of these drawings somewhere I'm not aware of, would be that the current configuration that's permitted would have my floating dock approximately 20 feet from the 20 foot offset from the extended property line. Does that make sense?
Q: No.
A: Do you want me to go over it again?
Q: Please.
A: Okay. The current permit which shows approximately 20 feet from my floating dock, the end of my floating dock that's on the Schaible's side.
Q: Right.
A: From the 20 foot offset from the extended line.

Q: Whose extended property line?
A: Between me and the Schaibles.
Q: Okay.
A: So you have a line between me and the Schaibles. You have DHEC regulation that you have to be 20 feet off. From that line or that 20 foot offset to the permitted floating dock looks to appear about 20 feet.
Q: Okay.
A: That would -- if we moved over 20 feet I would be right up against the line and I would have no other option, you know, in the future if I wanted to reconfigure and make a longer floating dock if I had a larger boat, I wouldn't be able to.
Q: Well, you could go in the other direction, couldn't you, towards the Maull's dock?
A: Well, my pier head -- not really, because I'm already out as far as -- as the Army Corps will allow, so I can't go in front of my fixed pier head.
Q: When we were talking about this in your deposition I asked you about why the dock is configured -- it had a particular value to it. Can you articulate exactly -- I believe you

told me that it has -- value has much to do with where we prefer the dock to be located, were your own words. What do you mean by that?

A: The configuration that was permitted to the Palmers would, in essence, have a boat lift that you could only use at certain tides, and spending the money that you spend to be on the Intracoastal Waterway, you don't want to be limited and say I have to wait two, three hours to be able to remove my boat from a boat lift. I feel that that would have a negative impact on the value of the property.

Q: Well, it's no different than what Mr. Maull testified to, is it?

A: I'm not sure.

Q: In terms of the time when he can use his boat?

A: No, he can use his boat 24 hours a day, seven days a week.

Q: I'm talking about tides and that sort of thing.

A: He has no problems whatsoever coming and going. I don't know what the depth is off of his floating dock, but I'm sure it's very deep.

Q: Now, I believe you also testified that you didn't see any navigation issue, or I'm sorry, I asked you and you said you don't see how

navigation would be an issue with respect to the location of your dock; do you recall saying that?

A: That is correct.

Q: All right. And I think you told me based that on your 20 years of boating experience, right?

A: Correct.

Q: All right. Have you ever pulled back in to the Maull dock or in the area that's in question like we're discussing here today?

A: I'd have no reason to pull in back of his dock.

Q: Well, that wasn't my question. Have you ever done it?

A: No.

Q: Okay. Just one second. I'm looking for a chart that I had I wanted to cover with you real quick and that will be the end of my questions for you. Let me just make sure that I'm clear on this, and you correct me if I'm wrong on some of the differences between, and I know that there are several, between the Palmer permit and what you're asking to be done. Now, the floating dock was 20 feet in length in the Palmer permit; is that correct?

A: That is correct, right.

Q: And your amendment now seeks a 34 and a half foot long floating dock?
A: I believe that's accurate.
Q: Okay. And the floating dock in the Palmer permit went channelward on the outside the pier head, but now you want the floating dock to be located on the flood side of the pier head; isn't that correct?
A: That is correct.
Q: There were 32.5 linear feet of structure extending in front of the critical line under the Palmer permit. Now there are 88 linear feet of structure extended from the critical line; is that --
A: That is correct.
Q: All right. And the original Palmer permit proposed for 82.5 feet of separation from the Maull dock, didn't it?
A: I believe so, but that may have been before he modified his dock. I'm not sure about that.
Q: All right. But in any event, now the amended permit is 30.5 feet from his dock?
A: I do not believe that to be accurate.
Q: Well, what is the exact amount, exact footage?
A: It would be I think what is the 18 -- he's 18

something built, and assuming that mine's exactly accurate, it would be 20 and a half, so that sounds like it would be 39.

Q: Okay. And I believe the Palmer permit was 21 feet from the shared extended property line at the Schaibles; is that correct?

A: That appears to be correct.

Q: And now you're 40 feet from the shared extended property line of the Schaibles?

A: Correct.

Q: All right. And the combination or the synergy of those things, would you characterize as I would characterize it being significant changes to the permit?

A: I think it's -- it's reconfiguring in a more traditional and sensible manner.

Q: And again, during all of the closing process you didn't ask to review the terms/conditions of the Palmer permit; there were conditions assailed to you of the property on [redacted]?

A: We didn't have the right to -- the condition of the contract was that there needed to be a permit. There was no stipulation as to the configuration of it.

Q: Uh-huh (affirmative response).
A: And I was well aware from living on the water before that permits can be amended.
Q: But I think I asked you in your deposition had you -- did you have the opportunity to review it and you said you did, correct?
A: Yeah, though we didn't have the ability to do anything about it, but yes, I did -- I had seen it I'm sure before we actually closed.
Q: Okay.
MR. MOLONY: That's all the questions I have, Your Honor.
THE COURT: Do you have any questions?
MS. RILEY: Nothing further.
MR. HABER: Nothing Your Honor. Thank you.
THE COURT: Okay. Mr. Abdo, thank you.
THE WITNESS: All right. Thank you.
THE COURT: Ms. Riley, how many additional witnesses do you have?
MS. RILEY: I have Mr. Russell Schaible and that's it, and I believe DHEC has one witness.
MR. HABER: The Department has one witness, Your Honor.
THE COURT: Has one witness? Let's take a break for lunch and 2:15; return at 2:15.

MS. RILEY: Thank you.

(Lunch break from 1:15 p.m. until 2:20 p.m.)

THE COURT: Okay, Ms. Riley.

MS. RILEY: Your Honor, at this time we would call Russell Schaible.

THE COURT: Okay. Mr. Schaible, if you will face the court reporter before you take your seat she will swear you.

RUSSELL SCHAIBLE, being duly sworn, testifies as follows:

MR. SCHAIBLE - DIRECT EXAMINATION BY MS. RILEY:

Q: Mr. Schaible, would you state your full name for the record, please?

A: Russell Anthony Schaible.

Q: And where is your permanent residence?

A: [redacted], Charleston, South Carolina.

Q: Okay. And you are an intervenor in this case, and is your wife as well?

A: Yes.

Q: And she's here in the courtroom today?

A: Uh-huh (affirmative response).

Q: Okay. When did you purchase your property on [redacted]?

A: I believe it was October 2005.

Q: Okay. Had y'all lived in Charleston before you

purchased the property?

A: Yeah, we were renting in the same communit, the Crescent on Jamestown Road for about a year before we found a house to purchase.

Q: Okay. And what drew you to this particular property?

A: Well, it's beautiful. It's nothing -- it's nothing else I've seen in Charleston is like it. We didn't even really know it was even part of the Crescent until it came on the market and a realtor notified -- notified us of being able to look at it.

Q: And what kind of views do you have from the back of your property?

A: We have a pretty beautiful view, wide view. It's one of the biggest, if not the biggest pieces of property in the Crescent. So we have a nice, beautiful southern view. And also what's kind of nice is that there's a lake that the community owns to the west and there's an earthen dam there, so if you kind of look at it, the next neighbor down is the Brockhouses. They built the dock a couple of years ago, but that wasn't there at the time, so especially when we bought it had a very extensive nice

beautiful view. But, you know, as more and more docks come it gets decreased a little bit.

Q: Okay. And so if your property -- you see the blue dot --

A: Yes.

Q: -- on the picture in the exhibit. This is Exhibit Number 1, Schaible. Is that your property behind that --

A: Yes.

Q: -- blue dot? Okay. And when you purchased your property, was there a dock on the property? I think you said no.

A: No. There was no dock and there was no permit either.

Q: Okay. About what time did you start contemplating constructing a dock?

A: Almost immediately after we closed.

Q: Okay. And were there some different scenarios that you considered, different configurations?

A: Yeah. First thing is we decided one proposal which we had drawn up was to go straight out from the front of the house, and we decided we didn't really like that option, that that would just interfere with our view a lot. So ultimately what we decided is what you see,

which is kind of where the blue dot is, we kind of -- we put -- we went basically as far over to the west as we could so that we would preserve as much of that view from the front of the house out to the Wappoo Creek.

Q: Okay. And so is the view from your house an important aspect of your enjoyment of your property?

A: Very much so.

Q: All right. This is a photograph of -- it's in evidence as Exhibit 3, Intervenor's Exhibit 3. Is that a view from your home?

A: That is a view from the front doors, yes, of our house.

Q: Okay. And you can see a dock structure on the right side of the photograph. Is that yours?

A: Yes. That's my dock and my boat.

Q: Okay. And then on the left side of the photograph, what is -- what is that?

A: You can see Mr. Maull's boat on the left side.

Q: Okay. And is your -- is your -- is your house configured in a way that gives you a view more in one direction or the other?

A: Well, yeah, I mean, it -- I think we had another example up before, maybe it was a

survey. I think it's probably our view looking out towards the water is probably a little bit more towards the left.

Q: Okay. Towards --

A: Towards Mr. Maull and Mr. -- and the Abdos' property.

Q: Okay.

A: Where the house is positioned if you're looking out of the house, looking out one of windows.

Q: Okay. All right. And so when did you become aware of there being a potential dock next door to you on what is now known as the Abdo property?

A: That would have probably been when the Woodfields, another family, were under contract to purchase the house, which was before the Abdos. I don't have the exact date. I think it was 2000, late 2006, and of course, like the Abdos, they wanted to have a dock for the property as well.

Q: And did you have the opportunity to review the proposals that they had out there?

A: Yes. Yes. I received both of those.

Q: And did you have concerns about those?

A: Yeah, the first one we didn't really have much

of a concern with. At that time, I really wasn't aware much about the rules and regulations or anything of that nature, and it was that dock which we didn't really, we just figured okay, there's going to be a dock there. We weren't real happy that there would be a dock but, you know, we kind of accepted it as something that's going to go with that piece of property. And then that dock application suddenly got pulled.

Q: And what -- was there -- there was another, I guess another permit that was applied for and obtained by Mr. Abdo's predecessor in title, Mr. Palmer?

A: Yes, well, there was a number of proposals over time, but yes, then there was, and it depends on which one you -- I think with the Woodfields I think there was three proposals, then they decided they were not going to pursue purchasing a house, the Abdos then went under contract, and then there was a couple of proposals there as well.

Q: Okay. All right. And then when Mr. Abdo bought the property, did you have discussions with him about his proposed dock and what he

wanted to do?
A: The only conversation I had is, again, you know, the dock that was eventually permitted, he told me one time he wasn't very happy with it and he had a new proposal, and he brought it by for me to take a look at and goes what do you think of this, and I thought it was an improvement for me over the previous one. It was better for our view, so I said we would be fine with it.
Q: Okay. All right. And so is the view from your house an important -- is it important to you?
A: It's vitally important, yeah.
Q: Okay.
A: Absolutely.
Q: Okay. Can you explain why it -- what uses do you make of your property and --
A: Well, we entertain a lot. We just, like Mr. Maull likes to just go out on his boat and relax, we like to relax and look at the water.
Q: Okay. And so as we sit here today, the permit that the agency approved, are you content with that?
A: Yes, we are.
Q: And so you're supporting Mr. Abdo's position

that it be affirmed?

A: Yes.

Q: Okay. And this is a little bit disjointed, but I just wanted to show you. This is Exhibit 2 of the intervenors. Did you take that photograph?

A: Yes, I did.

Q: Okay. And what is that photograph of?

A: That's a photograph of Mr. Maull's dock and boat.

Q: Okay. And does the boat sort of overshoot the length of the --

A: Yes.

Q: Of the floating dock?

A: By a few foot, that's correct, yeah.

Q: So you have a boat currently?

A: Yes, I do.

Q: Okay. How big is your boat?

A: Twenty-nine feet.

Q: And you -- do you have a boat lift?

A: Yes, I do.

Q: Okay. Have you looked into how much it would cost to rent a slip at a marina to moor any boot, not necessarily yours in particular?

A: Yes, I did.

Q: Okay. And what did you find?
A: Well, I found that for a 48-foot boot, and again, a lot of marinas, they charge I guess by the foot. Through the City Marina it would probably be a little over $7,000 for a year.
Q: Okay. All right. I think that's all I have.
A: Thank you.
Q: Please answer any other questions counsel may have.
MR. HABER: No questions from the Department, Your Honor.
THE COURT: Okay. Mr. Abdo.
MR. ABDO: I have no questions.
THE COURT: Mr. Molony.
MR. MOLONY: Thank you.
MR. SCHAIBLE - CROSS-EXAMINATION BY MR. MOLONY:
Q: Mr. Schaible, when you got your permit for your dock, Mr. Maull didn't object to that, did he?
A: No.
Q: All right. And as I recall from your deposition, you've clearly never discussed any of these dock permits with Mr. Maull directly, have you?
A: No, that's correct.
Q: Now, just following back up on that picture

that was taken a minute ago that I don't have in front of me, the snapshot of Mr. Maull's boat where you said it was extending out a little bit.

A: Right.

Q: Do you know if the boat was backed all the way in or not? You don't know, do you?

A: Well, that's the way it was tied up at the dock that day I took the picture.

Q: But you didn't look to see whether or not it was all the way back up in there snug up against the back of the --

A: I just took the picture of the way it was.

Q: Okay. Now, I want to show you what we've marked as Maull Exhibit Number 6. It's already into evidence, and I'll just ask you to quickly identify that for me if you would.

A: Okay.

Q: And what is that?

A: Well, I'd have to read the whole thing.

Q: Well, I'll just represent to you it's a copy of the transmittal letter of your permit --

A: Okay.

Q: -- for your dock.

A: Okay.

Q: All right. If you don't mind, I don't want to hover over you, but you --

A: No, that's fine.

Q: -- flip over a page?

A: Sure.

Q: One more page.

A: Okay.

Q: Now, and I'll just represent to you again that on page three are the restrictions that apply to your dock. Would you read for us restriction number five?

A: "Provided that the dock or any boat moored at this dock does not unduly restrict or impede navigation at any stage of the tide cycles."

Q: All right. You've obviously read this permit and you understood that that was one of the conditions that was placed on your own permit?

A: Correct, yes.

Q: All right. So would it be fair to say then that navigation has been a concern not only for your dock but also Mr. Maull's dock as well as Mr. Abdo's dock? Would you be willing to say that?

A: Not really, no.

Q: Why not?

A: Well, that's something that I -- that's not my statement, that's -- I don't know, that's DHEC's statement. I don't have really concern for navigation at my dock, no.

Q: Okay. Do you have any concern for placing your boat out into the waterway during a specific tide, say high tide, high current, high traffic during the weekends?

A: Not really, no.

Q: How often do you use your boat?

A: Probably once a month.

Q: Okay. And is that during the season?

A: Yeah, it depends. We travel. We're away for about a month and a half in the summer and the last few months I haven't used it much. We've been away. I actually just used it yesterday.

Q: Did you?

A: Yeah.

Q: Was it nice out?

A: Beautiful. I think it was the nicest day that we've had probably in the last week.

Q: Maybe we'll finish early today and I can go take a ride. Let me ask you a couple of questions about why it is that you oppose Mr. Maull's suggestion that the dock be moved over

say another 20 feet on the Abdo property. As I understood from your deposition, your main concern, as you testified today, is your loss of view; isn't that correct?

A: Yes.

Q: All right. Now, and also in your deposition, and again, I wish we'd put these pictures back up here. We talked about the fact that you -- it looks as though the Maull dock is right next door to yours the way it's configured --

A: Uh-huh (affirmative response).

Q: -- isn't that right?

A: That's correct.

Q: Right. So I mean in a perfect world, you'd rather not see any dock next to you to keep your view where it is; isn't that right?

A: In a perfect world, yes.

Q: Right. So no matter where that dock is going to go, the Abdo dock, it's going to have an impact on your view, isn't it?

A: That's correct.

Q: And you've not attempted to quantify what that loss of value may be, have you?

A: Not officially, no.

Q: Right. Now, I hate to get into all this with

neighbors and so forth, but when we went to the DHEC board meeting, I think you and your wife were both there, weren't you?

A: December of 2011?

Q: Correct.

A: Yes.

Q: Right. And we took your deposition and I believe you were on the telephone if I'm not mistaken; isn't that right?

A: Oh, that deposition, yes. That was I think it was August though.

Q: That's right.

A: Yeah.

Q: Well, I asked you some questions about some notes, and I'm going to show you what's marked as Exhibit Number 7.

A: Okay.

Q: And ask you if you can recognize those notes?

A: Yes, that's my wife's handwriting.

Q: All right. And you were with her when these notes were taken?

A: Yes.

Q: All right. And would it be fair to say that you've had some concerns about the manner in which OCRM has handled the permit application?

Let's start with Mr. Maull's application.
A: Mr. Maull? Yes, the fact that it didn't correctly list the names of either neighbor, not giving them an opportunity to comment, that was a concern, yes.
Q: Okay. And in this particular document there's a note down at the bottom and if -- I don't want to --
A: Okay.
Q: -- put words in your mouth, but it talks about Jeff Thompson --
A: Yeah.
Q: -- and I believe he's here in the courtroom, right?
A: Yeah.
Q: Now, who is Mr. Thompson?
A: I believe he's the gentleman sitting over here; is that correct?
Q: I think so, yeah.
A: Okay.
Q: The guy waving at us.
A: All right.
Q: All right. And it says he came in after Blair and was defensive about decisions. And then it mentions the word payoff, and I think we talked

about this in your deposition; do you recall that?

A: Yes.

Q: And as I remember, I asked you specifically were you suggesting that somebody might have been "paid off" as a result of the decision that was entered in the Abdo case; isn't that right?

A: Yes.

Q: And your suggestion was possibly. Your answer was possibly.

A: Yeah, possibly, yes.

Q: You went further and said you possibly thought Mr. Maull may have done that, right?

A: That's possible.

Q: Okay. I mean, do you really believe that the process could be that tainted that somebody might very well try to pay off a state regulator? Is that what you're believing?

A: Well, I guess you don't read the news much, because the governor of Illinois tried to sell our sitting president's seat, so yes, there can be correction in government.

Q: Well, and do you --

A: It does happen unfortunately.

Q: Right. And do you believe there's been corruption or some nefarious activity --

A: I don't know, and you know, you're -- what you're doing is you're kind of putting everything in a little micro-capsule here on that one instance. You would have to go all the way back to 2007 to get a bigger picture of this whole issue, which, quite frankly, I don't really understand the point because that's all water under the bridge.

Q: Well, that's true, and I don't understand why we're here because didn't you through your counsel, Cotton Harness, agree to the permit as issued to the Palmers? You had no problem with that permit, did you?

A: Well, I had a problem with it, but I wasn't particularly happy with it. I thought much more consideration was being given to Mr. Maull than was being given to the Schaibles, but it was basically that was the best deal we could work out as far as placement of the dock for our -- again, for our view, so yes, we ultimately accepted that.

Q: And you accepted that through the advice of your counsel, Cotton Harness?

A: That's correct.
Q: Right. And you heard Mr. Maull say that he wasn't happy with it either, but he went ahead and accepted the conditions of the Palmer permit, too. Didn't you hear him say that?
A: Okay.
Q: So neither one of y'all were happy, were you?
A: Possibly, yeah.
Q: Okay. And so here we are. We're back, now we've taken a permit that you've had full opportunity to review, i.e. the Palmer permit, your lawyer reviewed it, the matter was issued and ended, and everybody was in agreement with the terms of that permit; isn't that right?
A: Yes.
Q: Right. Now, if this line is -- if this property is -- or I'm sorry, the dock is moved over, let's just say 20 feet, other than the fact that you and your wife sitting on your porch may not very well be able to see Dr. Ellison's house as clearly as it is now or, you know, whomever across the way, what other impact is there going to be on you other than just the loss of that view?
A: Well -- well, loss of view which I guess you

would equate to quality of life, but I think there's also probably property value as well. It doesn't enhance our property value and the more it's moved to the west that means the more it decreases it.

Q: Okay. But when I asked you that question in your deposition you didn't say anything about the property value. You talked about, you know, your loss of --

A: Okay.

Q: -- use; isn't that right?

A: Yeah.

Q: Now you --

A: Well, I mean, I -- I don't really remember my deposition, but I don't -- I trust that that's probably what I said.

Q: Okay. Now --

MR. MOLONY: One second, Judge.

Q: Now, this is some sort of new information to me. You testified when Ms. Riley asked you did you -- have investigated boat slips in the Charleston area to be able to place boats?

A: Uh-huh (affirmative response).

Q: All right. And if I recall you said something about a 48-foot boat being placed at the marina

for $7,000 a year; is that correct?

A: Yeah, a little over seven, that's correct.

Q: Is that the City Marina?

A: That was through the City Marina, yes.

Q: Have you ever docked your boat in a marina?

A: No, I have not.

Q: All right. Do you know some of the issues that are -- marinas, for example, that it's open to the public? People get to walk on your boat in the middle of the night?

A: Sure.

Q: You'd have a concern about that if it was your boat, wouldn't you?

A: I suppose that would be a concern. I don't know if it's any more concern than having your boat at a dock where someone could come do that as well, but I guess it's --

Q: Your boat's pretty well protected because it's actually in the lift, isn't it?

A: It's on a lift so you can just pull from my floater. If you want to steal something from my boat, all you need is another boat to get to it.

Q: All right. Okay. I think that may be all the questions I have. Before I close out, Mr.

Schaible, and I'm going to ask you to make an assumption. You may not like the assumption and may not agree with it, but I'm just going to ask you to assume for a minute that the testimony that the expert witness presented this morning about the potential safety issues for the public as a result of these docks being located together is correct, okay? Now, would you say that those issues are not out of the way by your concern about losing view about where the dock is? In other words, what's more important to you, your loss of view or the safety of the public?

A: Well, the safety of the public, but I don't agree with his assessment of the dangers to the public.

Q: All right. And tell me what it is you don't agree about his assessment to the dangers to the public.

A: Well, if it's -- well, there's certain risks assumed anyway, and in Mr. Maull's own testimony, you know, he's banged up his boat and so forth. So accidents can happen, but I think that's part and parcel of just owning a boat and dock, and it's no different than

anyone else's boat and dock.

Q: Notwithstanding the fact that his testimony was the closer the docks are together the more difficult it's going to be to navigate in and out of the dock and the larger the potential hazards?

A: Well, I do -- I would agree to that, but that's only using his current configuration. I think there's a lot of other configurations that he could do to his dock that were never really investigated.

Q: All right. Well, now, were you aware of the amendments that were made to Mr. Maull's dock? I'm sorry, the amended permit and the modifications made to his dock?

A: Eventually, yes.

Q: All right. And did you ever express any concerns about those?

A: Not officially, no.

Q: And I asked Mr. Abdo, I mean, you read the newspaper, so there was an advertisement in the newspapers about the fact that he was going to make these modifications? You're smiling, but that's true, isn't it?

A: Yes, it's -- I guess it's true. I'm assuming

it was, but I usually -- actually, I don't read the newspapers much.

Q: Okay. I thought you said that you were here a good bit; is that not correct?

A: Yes.

Q: Okay. And this is your permanent home now, right?

A: That's correct.

Q: Okay. As a matter of fact, I was going to ask you about your permit. In addition to asking for a dock permit, you also asked for a permit to fill in the area that's a semi-circle behind your property with a -- with a retaining wall, it's called.

A: No, I asked to build a new retaining wall.

Q: Okay. All right. So there's one there. You just --

A: There was a retaining wall there. It was in poor condition and was starting to fall down, so we replaced that with a new retaining wall.

Q: Okay. Now, are you aware of any provisions in the regulations, the statutes that deal with protection of one's view of a particular area as a result of construction of a dock? Is that --

A: No, I'm not. I'm not aware of any.
MR. MOLONY: I think that's all the questions I have, Your Honor.
THE COURT: Okay. Thank you. Ms. Riley, do you have anything on your --
MR. HABER: Your Honor, if I may, I apologize. Just based on that accusation that was made against the Department, I just request that I ask maybe one or two questions.
THE COURT: Okay.
MR. HABER: Thank you.
MR. SCHAIBLE - CROSS-EXAMINATION BY MR. HABER:
Q: Thank you. Mr. Schaible, do you -- do you have any evidence whatsoever that Mr. Thompson or anyone in the Department was have bribed or paid off to accommodate anyone in this action?
A: No.
MR. HABER: Thank you, Your Honor.
THE COURT: Ms. Riley, anything on redirect?
MS. RILEY: Nothing, Your Honor.
THE COURT: Thank you.
THE COURT: Thank you, Mr. Schaible.
MS. RILEY: And that's our case, Your Honor. We don't have any more witnesses.
THE COURT: Okay. Mr. Haber, you've got a witness?

MR. HABER: Thank you, Your Honor. Yes, I do. The Department calls Jeff Thompson.

THE COURT: Mr. Thompson, I think you know the drill. If you'll face the court reporter and raise your right hand and she can swear you.

JEFF THOMPSON, being duly sworn, testifies as follows:

MR. THOMPSON - DIRECT EXAMINATION BY MR. HABER:

Q: Good afternoon, Mr. Thompson. How long have you been with the Department?

A: I've been with the Department a little over 25 years.

Q: And what is your current job with the Department?

A: I'm a senior wetland project manager. I deal with critical area permitting and certifications of other state and federal permits.

Q: And has that been your job consistently at the Department, or have you changed positions?

A: I spent two years as an enforcement officer in 1987; September 2nd, 1987, until January 1st of 1990, I think it was, and I spent about 15 years as a -- called a wetland coordinator dealing with certifications of predominately

federal permits, Section 404 and Section 10 permits, as well as some state permits, and approximately in the last seven years or so I've continued to do that and critical area permitting, as well as the delineation of critical area wetlands.

Q: And how long have you been -- while you've been with the Department, how long have you been involved in the permitting process, permitting decisions?

A: For direct critical area permits, approximately seven years, eight years.

Q: And how long dealing with permits in general, whether it's situations where you'd be applying the regulations?

A: Regulations, it's been seven or eight years.

Q: Okay.

A: Other than that, I guess the first two years in enforcement I was dealing, of course, with regulations, and then the period that I dealt with certifications I was dealing along the guidelines and policies.

Q: Okay. And just to understand how the process works, in making a critical area and issuing a critical area permit or making a determination

on an application, would those policies that you were evaluating at that time all come into play?

A: Yes, sir.

Q: Okay. How many dock applications do you think you've reviewed during your time with the Department?

A: Oh, gosh. About in excess of 100.

Q: Okay. And just to address an issue that was raised in previous testimony by Mr. Schaible, have you ever personally accepted any money by a permit applicant to accommodate that applicant?

A: I have neither accepted nor been offered.

Q: Okay. How often does a -- does a person amend a permit?

A: Permit amendments account for approximately, I guess about 20 percent of the permits that I process.

Q: Do a number of those happen when someone purchases a property that either has a permit, a valid permit application, a valid permit for a dock that's been issued or an already built dock? Does it happen when a subsequent purchaser comes in and purchases that property?

A: Sometimes it's a subsequent purchaser who desires to modify what was previously permitted. Sometimes an individual finds that their needs have changed and wish to amend the permit to change their design to accommodate some other needs that they have.

Q: I'm going to hand you a copy of the regulations. Just for ease of the Court, this is a copy of DHEC regulations.

MR. HABER: If I may approach the witness, Your Honor?

THE COURT: Yes.

MR. HABER: Thank you.

Q: Can you tell me what I just handed you, Mr. Thompson?

A: You handed me a current copy of the critical area permitting regulations for permitting of projects which impact critical areas in the state of South Carolina.

Q: And how do you utilize those regulations?

A: When we receive an application for a new permit or an amendment to a permit for a particular project, we will look at the type of project, use the appropriate section from the regulations to determine whether or not they're

consistent with those regulations.

Q: And by appropriate regulations, you mean that those regulations aren't just for docks?

A: That's correct. This could be for a boat ramp or a bulkhead erosion control device or other issues.

Q: Okay. If you could, turn to Regulation 30-4(H) please. I believe that's on page 16 in the regulations.

A: Yes, sir.

Q: There's been a lot of talk about this being an amendment to a permit. Can you explain to me what is required under that regulation?

A: Well, to, I guess to publish it, An amendment to a permit can be made without the restrictions of a new permit if the proposed change on the amendment does not significantly increase the size or change the use of the permitted project. Otherwise, the amendment proposal will require a fee, a newspaper notice, and will be placed on public notice by DHEC OCRM. What this means is that if there's some extremely minor change or modification to a dock, we can do that without going through the full process. If it is a significant

change in a dock structure, such as some additions, adding a roof, enlarging a floating dock, changing the configuration or location of a dock, then we would use that second part where it says, otherwise the amendment proposal will require a fee, a newspaper notice, and will be placed on public notice by DHEC OCRM.

Q: Thank you. And in applying this situation, applying that regulation to this situation, was it considered a minor change or was it considered a -- what's the language in there -- or a substantial change?

A: We considered it a substantial change, and we did require the fee, the public notice as well be placed.

Q: Okay. So this amendment wasn't treated much different in terms of the requirements than a regular permit that's coming through the Department's door; is that correct?

A: Very minor differences.

Q: Okay. Next, if you could, look at Regulation 30-11(B). That should be on page 23 of the regulations.

A: Yes, sir.

Q: In general, 30-11(B) provides you what?

A: It provides general considerations for reviewing different permit applications, and it gives me general guidance in how to review that proposal.

Q: And do you apply those regulations to -- did you apply those regulations to this permit?

A: Yes, sir. We apply them to all permits that we process.

Q: Looking specifically at subsection (B)(2), provides for you to evaluate the extent to which the activity would harmfully obstruct the natural flow of navigable water. Did you -- did you apply that regulation?

A: Yes, sir.

Q: And what was your conclusion?

A: That it would not obstruct the natural flow of navigable waters.

Q: Okay. And we -- a lot of talk has been regarding the traffic in this waterway and merchant traffic. In applying what this regulation provides, as permitted, does the Abdo dock extend any further out into the waterway than any of the other docks in the area?

A: No, sir.

Q: Okay. Did you consider the navigational concerns related to the navigability of the public in the Wappoo?

A: Yes, sir.

Q: Okay. 30-11(B)(10), if you could, just publish that and let me know what that means.

A: That's the extent to which the proposed use could affect the value and enjoyment of adjacent owners.

Q: And did you, did you evaluate that?

A: Yes, sir.

Q: And what was your conclusion?

A: That there was no significant impact to the value and enjoyment of adjacent owners.

Q: All right. Now, moving to 30-11(C), C as in cat, it's -- would be on the following page on page 24.

A: Yes, sir.

Q: What does 30-11, what are you required to do under that subsection, under that section?

A: Okay. Which one specifically?

Q: In general, 30-11 in general.

A: Well, these are general guidelines for all critical areas. They're general topics about, again, enjoyment of and value by adjacent

property owners, safeguards that can be taken to avoid any pollutants getting in the water, things which may affect public navigation of waterways, a lot of different issues that are in here.

Q: And you said that subsection B provides you general considerations. What does subsection C provide you under that?

A: It's the further guidelines.

Q: Okay. Did you evaluate 30-11(C)(1)?

A: (C)(1)?

Q: Yes, sir.

A: Yes, sir.

Q: And what was your conclusion regarding the -- this project within the general character of the area?

A: The general character of the area is mostly developed residential. A lot of the homes are fairly old. They've been there for quite a few years. They are mostly waterfront properties. Most of those areas by today's standards have -- a significant number of docks are located along that waterway, and another dock being located there was within the general character of the area.

Q: Okay. Let's flip over to the next regulation, 30-12 (A). It would be on page 27 in your regulations.

A: Yes, sir.

Q: Much of this case is focused I think predominantly on this section. If you could, I'm going to hand you Department's Exhibit Number 4.

MR. HABER: May I approach, Your Honor?

THE COURT: Yes.

Q: What is that exhibit I just handed you?

A: This was an administrative summary of review. It's completed by the agency for review of all the projects that we permit or deny, all of them that we process.

Q: Okay. And is this one you completed?

A: That is correct.

Q: Okay. On the -- four pages in under policy assessment.

A: Yes, sir.

Q: (B)(2) references 30-12(A). Can you tell me what that says?

A: 30-12(A) is a section from our critical area permitting regulations that applies to a specific project standards for tidelands and

coastal waters for docks and piers.

Q: Okay. And in your technical summary, it states that this permit is consistent as it relates to private recreational use docks; is that correct?

A: Yes, sir, that is correct.

Q: So you evaluated this section?

A: Yes, sir.

Q: Okay. You applied the regulations?

A: Yes, sir.

Q: Okay. In particular, let's look at (A)(1)(p), which would be on page 27, so it's 30-12(A)(1)(p).

A: Okay, sir.

Q: Could you please read that to me and let me know how you apply that?

A: Okay, sir. "No docks, pier heads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act." In this particular project, the

extended property lines as depicted in all of the information as provided to our agency show that the proposed dock would be 20.5 feet off that extended property line.

Q: And is that in accordance with that regulation?

A: Yes, sir.

Q: In your experience with the Department, where do people typically dock their boat?

A: Well, it's not really with the Department, but with my experience on the water I find that in most cases people dock their boats on the front of floating docks.

Q: Okay. As this permit stands now, is Mr. Abdo's permit consistent with the applicable statues and regulations?

A: Yes, sir.

MR. HABER: The Court's indulgence for one second, Your Honor.

THE COURT: Yes.

MR. HABER: Thank you. Nothing further, Your Honor. Thank you.

THE COURT: Ms. Riley, do you have anything?

MS. RILEY: I do just have a few.

MR. THOMPSON - CROSS-EXAMINATION BY MS. RILEY:

Q: Mr. Thompson, just for clarification purposes,

amendments to valid permits happen all the time, right?

A: That is correct.

Q: And as long as -- as long as you have a valid permit and your amendment request meets the regulations, there's no real restriction to applying for an amendment, is there?

A: No, ma'am.

Q: Okay. So if a property owner comes in and there's an existing permit he didn't have anything to do with, he is free to change the configuration and ask the agency to approve that?

A: Yes, ma'am.

Q: Okay. And I believe when -- well, the permit amendment that was issued and then slightly altered by the board gives Mr. Abdo and Mr. Maull approximately 40 feet of space between the two docks; is that correct?

A: Well, about 39 feet I believe.

Q: Okay. And the regulations are written in a way that allow that to be kind of a standard spacing, correct?

A: Yes, ma'am.

Q: Because you have to stay 20 feet off an

extended property line under most circumstances, right?

A: That's correct.

Q: So if you add 20 and 20 then you have 40?

A: Yes, ma'am.

Q: I think. I'm not good at math. And so a 40 foot separation is not an unusual amount of separation, is it?

A: In most newer developments that is pretty standard based on the alignments of waterfront properties and distances between docks, that's pretty close in most cases.

Q: Okay. And I know you're familiar with Wappoo Creek and the Wappoo Cut, this water body we've been talking about, because you've probably been in it a lot, correct?

A: A fair number of times, yes, ma'am.

Q: Okay. And you've heard testimony about it being pretty busy in terms of traffic, boat traffic?

A: Yeah, it's fairly busy in there.

Q: But, in fact, the Wappoo Cut's over -- well over 550 feet wide; isn't that right?

A: I'd say approximately 500 feet.

Q: Okay. And just so we can nail that down, I

think this is -- this is Mr. Abdo's Exhibit 9(A). I'm not sure if it should be A or not, but is that a copy of the technical summary of review for David Abdo's permit?

A: Yes, ma'am, that's correct.

Q: And you filled that out, correct?

A: That's correct.

Q: Okay. And you, I believe on this sheet you have to -- you have to name the water body and then cite to the width of it.

A: That is correct.

Q: All right. And you -- what did you put for Wappoo Creek?

A: About 565 feet.

Q: Okay. That's all I've got. Thank you.

THE COURT: Mr. Abdo, do you have any questions for --

MR. ABDO: I do not.

THE COURT: -- for this? Thank you.

THE COURT: Mr. Molony?

MR. MOLONY: Just a few.

MR. THOMPSON - CROSS-EXAMINATION BY MR. MOLONY:

Q: Mr. Thompson, I know you've done a number of permit applications over the years, but how many have you done in this particular area in

the Crescent?

A: I think there's been two or three. I've done a couple across from the other side of the creek and some back the other direction as well. Back towards the Stono.

Q: And were those new permit applications?

A: Some of them are new and some of them -- I did have one or two amendments I think, but most of them were new permits.

Q: All right. I was just interested in your comment about the 500 foot width of the Wappoo Creek. I mean, it may be 500 feet wide, but how wide is the channel where the actual large commercial vessels can get through?

A: I believe their navigation channel is about 180 feet.

Q: Okay. So substantially less?

A: I think that, but you know, but that's again, you know you have slopes, so 565 feet would be as measured from marsh vegetation to marsh vegetation on each side, which does not necessarily include the entire navigable channel at low water on different tidal stages.

Q: And there are a substantial number of docks on the north side, but there are also some on the

south side of the creek, too, correct?
A: Yes, sir.
Q: Okay. And I think Nathan was asking you some questions about the guidelines here. I was just looking at 30-11(B)(2) is what he asked you about.
A: On page 16?
Q: Yeah, I'm not sure of the pages, but that's the reference that I have, 30-11(B)(2).
A: 30-11(B)(2), yes, sir.
Q: Right. I mean, the first section there really doesn't deal with navigation of boats, does it?
A: Well, it did -- it does to a degree because it considers commercial navigation and shipping.
Q: Well, let's take the first sentence just for a second. And I don't want to split hairs with you, but really that sentence is more directed towards obstructing the flow of water, isn't it?
A: That is a portion of it, but if we read the entire thing it does also address commercial navigation and shipping and areas set aside for port development, you know, other issues and all mostly in commercial type shipping.

Q: Well, if you read it literally, I mean, this is a commercial shipping lane, isn't it, in this waterway?

A: Yes, sir, partly it is, yes, sir.

Q: I mean literally it says you've got to go to Ports Authority to get approval for it; isn't that right?

A: That's correct, sir.

Q: And you didn't do that here, did you?

A: We got a letter. We send notices to the South Carolina State Ports Authority and we get comments back from them whether or not they offer objections to it, and we do, I believe, have a comment letter from the State Ports Authority where they did not offer an objection to this particular permit.

Q: On this specific permit?

A: Yes, sir.

Q: Okay. Now, looking at, I guess it would be the comments that y'all presented to the DHEC board, and I want to read you, and I'm sorry I don't have the specific citation to it, but I want to read you a comment that was part of the summary presented to the board and it says, "the proposed dock would likely affect Maull's