

**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
VOLUME II**

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1 ability to navigate a large boat to and from a
2 U-shaped slip on his dock, and the Department
3 should address this issue through a conditional
4 permit. Therefore, the dock configuration will
5 be condensed by any movement towards the
6 Schaibles." Now, would you agree with this
7 statement by the agency that the proposed dock
8 would likely affect Mr. Maull's ability to
9 navigate a boat?

10 A: In our staff decision on the permit application
11 or the amendment application, we did put a
12 condition in there that the dock be constructed
13 30.5 feet from the extended property lines in
14 an effort to address Mr. Maull's concerns. On
15 presentation to the board, the board overturned
16 that.

17 Q: All right. But it was the staff's position
18 that that was a concern that needed to be
19 addressed, correct, i.e. a navigation concern?

20 A: It was a concern for private navigation to the
21 back side of Mr. Maull's floating dock, right.

22 Q: Well, you were here when Mr. Walter's
23 testified. Would you agree with his assessment
24 that the more difficult it is to navigate into
25 a dock, the more likely it is that you could

1 cause a safety hazard by being out into the
2 channel?

3 A: I wouldn't agree with the width of that channel
4 that the process of boating or trying to dock
5 a boat is going to represent a significant
6 navigation hazard in the federally maintained
7 channel.

8 Q: Uh-huh (affirmative response). And why --

9 A: Because I'm not going to be, you know, my boat
10 dock is, oh, God, I can't remember the exact
11 footage, but it's like nearly 100 feet back
12 from the edge of the navigation channel before
13 you can have a structure, and I'm not going to
14 be in the middle of the channel trying to turn
15 the boat around. I'm going to be close to the
16 dock trying to get the boat in. So I don't
17 think we'll be in the middle of the navigation
18 channel in order to attempt to dock the boat.

19 Q: And obviously you've never docked a boat at Mr.
20 Maull's dock, have you?

21 A: No, sir.

22 Q: And have you ever driven a sports fisherman
23 boat?

24 A: Not that big, no, sir.

25 Q: Okay. And you know Cotton Harness, right?

1 A: I knew --
2 Q: You and I have been around a long time.
3 A: -- Mr. Harness, yes, sir.
4 Q: He was a very good lawyer, wasn't he?
5 A: A very nice gentleman.
6 Q: And a good lawyer?
7 A: Yes, sir.
8 Q: Now, were you involved in the original Palmer
9 permit --
10 A: No, sir.
11 Q: -- application? Not at all?
12 A: No, sir.
13 Q: Okay. Have you discussed this particular case
14 with Curtis Joyner, who was involved in that
15 original permit?
16 A: No, sir.
17 Q: Okay. Now, tell me what harm, if any, you
18 would see in moving the dock back to where it
19 was that staff originally recommended before
20 the board overturned that decision? What harm
21 would there be to any of the parties here?
22 A: It would not violate any of our current
23 regulations. Either location, that either the
24 location 20.5 feet or 30.5 feet, he's still
25 within the 20 foot setbacks on every side, and

1 he would not violate our regulations.

2 Q: So if he was 20 feet away from the Schaibles'
3 line, it would be okay?

4 A: It would meet our regulations.

5 Q: Right. It would meet your regulations?

6 A: Yes, sir.

7 Q: And the same thing's true with the Maull line?

8 A: Yes, sir.

9 Q: Right. And if he was in the middle somewhere
10 that would meet your regulations, right?

11 A: Yes, sir.

12 Q: So you really don't have an opinion with
13 respect to the impact this might have if the
14 line were moved back where it was originally
15 suggested by the staff in terms of how it
16 affects the parties? Do you have any opinion
17 about that?

18 A: Maybe an opinion.

19 Q: Well, let's hear what it is.

20 A: If the line -- if the dock were moved back away
21 from Mr. Maull's dock, it would allow him more
22 space to try to bring his boat into the back
23 side of the dock.

24 Q: Okay.

25 A: You know, that's a substantial size boat, but

1 you know, it's -- obviously the more room he
2 has, the easier it would be for him to navigate
3 it.

4 Q: All right. And the safer it would be for the
5 public getting -- his coming in and out of the
6 dock?

7 A: I don't know if it would impact the public that
8 much, but you know, for his personal navigation
9 and the safety of his dock and the adjoining
10 dock and all it would reduce the potential
11 probably for some sort of impact.

12 Q: Right. Now, the stakes that are out there in
13 the marsh, did you have any role or hand in
14 putting those stakes out there?

15 A: No, sir.

16 Q: Have you seen those stakes?

17 A: Yes, sir.

18 Q: All right. And do you know what those stakes
19 represent?

20 A: Mr. Maull informed me when I met with him and
21 his wife and we walked out on their dock and
22 looked during the process of this amendment why
23 those pipes were placed there.

24 Q: All right. And what did they tell you?

25 A: Well, they told me that they were placed there

1 to show the location of the originally
2 permitted dock location.

3 Q: Okay. And you've not staked out the new dock
4 location I take it, correct?

5 A: No, sir.

6 Q: All right. And I think that you testified that
7 the changes suggested by Mr. Abdo, and I went
8 through each one of them, would be more
9 significant changes, correct?

10 A: They're significant enough to require us to run
11 a notice and go through our full amendment
12 process, yes, sir.

13 Q: So it was treated just almost as though a new
14 amendment, a new permit application?

15 A: Very, very similar. Very close, yes, sir.

16 Q: Now, I'm a little puzzled I guess by just what
17 a person needs to do. Let's just say for
18 example that I'm, you know, Mr. Abdo and I get
19 a permit and I don't like it, right, and I sit
20 on it for a couple of years and I come back in.
21 Am I free to just ask for anything that I want
22 to ask for or are determinations made by DHEC
23 and the previous permit, you know, of no
24 concern to the staff at that point? And let me
25 just focus specifically on navigation.

1 A: When we make a decision on a permit, that
2 decision is based on what they have submitted
3 an application for. When someone comes in for
4 an amendment, then we're going to apply these
5 regulations again to what they're asking for in
6 that amendment to see if their request is still
7 consistent with the regulations.

8 Q: All right.

9 A: And, you know, they -- you can ask for the
10 world. It's not to say that they're going to
11 get it. An example, a dock just down the
12 creek, a gentleman was asking for like 1,200
13 square feet of dock. Well, it's an amendment
14 request, but we can't give it to you because it
15 doesn't meet the regulations.

16 Q: Right.

17 A: It's exceeding the allowable square footage.
18 So they can ask for something that it may
19 exceed what the limits are in our regulations
20 or exceed possibly what a previous permit said
21 that they were permitted to do, but we're going
22 to process it and see if they meet the
23 regulations where we can actually issue it.

24 Q: Well, I'm not trying to sort of split hairs on
25 this, but when the staff makes a factual

1 determination that a proposed dock would affect
2 the likely ability of an adjoining property
3 owner to be able to navigate in and out of his
4 dock, are they free just to forget that, if you
5 will, if that permit is amended later on, or is
6 that going to be part of the consideration of
7 the staff in a later permit amendment?

8 A: Well, again, and I was not involved in a
9 determination back for the -- what was the
10 original, Mr. Abdo's original permit, you know,
11 that he got. I wasn't involved in that one.
12 I don't know if we reviewed it that there was
13 any determination that it was being placed
14 there just so that Mr. Maull could navigate or
15 that staff made a determination that he could
16 or could not navigate in our out from his dock
17 --

18 Q: Right.

19 A: -- with his boat at that time.

20 Q: But now you made the determination on the
21 particular application that was presented to
22 the board, correct?

23 A: Correct.

24 Q: Right. And you recommended in there that there
25 be additional, you know, footage away from his,

Jeff Thompson--Redirect Examination
by Mr. Haber Page 193

1 Mr. Maull's property lines because of
2 navigation concerns; isn't that right?

3 A: That is correct.

4 MR. MOLONY: All right. Thank you, Your Honor.
5 That's all I have.

6 THE COURT: Okay. Questions?

7 MR. HABER: Thank you, Your Honor, just very
8 briefly.

9 MR. THOMPSON - REDIRECT EXAMINATION BY MR. HABER:

10 Q: Let me show you the Intervenor's Exhibit Number
11 4. Can you tell me what that document is?

12 A: If I can read it, sir.

13 Q: How about I'll bring it to you first.

14 A: All right, sir. This is Mr. Maull's permit
15 from 2007.

16 Q: And specifically what is that page I'm going to
17 put on the overhead?

18 A: It shows alignments of Mr. Maull's dock, I
19 guess where he was eliminating the U-shape,
20 horseshoe shaped floating dock system,
21 installing a longer floating dock, and in
22 addition it shows the -- I think the location
23 of the dock on Mr. Abdo's property before the
24 amendment request.

25 Q: Okay. Thank you.

1 A: Yes, sir.

2 Q: When you were looking at this issue came up of
3 what was presented to the board, that 35. --
4 30.5 foot condition that was placed. This ten
5 here which is now determined to be the width of
6 that floating dock, does that reasonably look
7 like the distance between this floating dock
8 and the extended property line between Mr.
9 Abdo?

10 A: Yes, sir.

11 Q: Thirty plus ten equals 40?

12 A: Yes, sir.

13 MR. HABER: No further questions, Your Honor.

14 MS. RILEY: I don't have anything else.

15 MR. ABDO: I do not have any questions.

16 MR. HABER: That concludes the Department's
17 presentation, Your Honor.

18 THE COURT: Okay. Thank you, Mr. Thompson.

19 MR. MOLONY: Your Honor, I don't believe we have
20 anything else that we'd like to, you know,
21 offer other than what that we've heard, and I
22 would just suggest -- I'm happy to go ahead and
23 do, you know, a closing argument, but I would
24 suggest we do some proposed orders, but it's up
25 to the other parties if they want to go ahead

1 and do a closing argument today. But I think
2 that my experience in dealing with cases is
3 that the Court, it's always better to go ahead
4 and, you know, put our arguments together. We
5 have to do that anyway. I think you're going
6 to suggest or want either briefs or proposed
7 orders, so that would be my position. But I'm
8 happy to defer to another counsel, if they want
9 to make an argument, that's fine. I'm happy to
10 do it, too.

11 THE COURT: Okay. Any arguments?

12 MR. HABER: Yes, that would be fine doing proposed
13 orders.

14 MS. RILEY: That's fine with me, Your Honor.

15 THE COURT: Okay. Very good then. Okay. At this
16 point then I am going to conclude the hearing
17 in this matter and I am requiring the parties
18 to submit a brief in the form of a proposed
19 order with any arguments supporting your
20 position in this case, and also include any
21 case -- statutory case authority in your
22 proposed orders. And I'd like to have this --
23 I'm going to give you all 45 days to submit
24 these to me.

25 MS. RILEY: And if we want to get the transcript,

1 Your Honor, do we know -- do you know how long
2 it would take to get the transcript?

3 COURT REPORTER: No longer than two weeks.

4 THE COURT: No longer than two weeks to get it?

5 COURT REPORTER: Unless you need it quicker.

6 MS. RILEY: I think two weeks and then we'd have 30
7 days to write it.

8 THE COURT: Yes.

9 MS. RILEY: That's fine. That's fine, Your Honor,
10 thank you.

11 MR. MOLONY: So 30 days after the receipt of the
12 transcript, Your Honor; is that what we're
13 suggesting?

14 THE COURT: Well, I'm saying 45 days, which should
15 be inclusive of the time that it takes her to
16 get the transcripts to you. She's saying
17 around two weeks. It may be shorter than that,
18 but I'm giving you 45 days.

19 MR. MOLONY: That's fine, Your Honor. Thank you.

20 THE COURT: And if you would, also when you submit
21 the proposed orders, if you will email a copy
22 to my clerk, Ms. Henderson, also and as well as
23 just send us a hard copy by mail.

24 (There being nothing further, the hearing was
25 adjourned at 3:20 p.m.)

Maill 1

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):

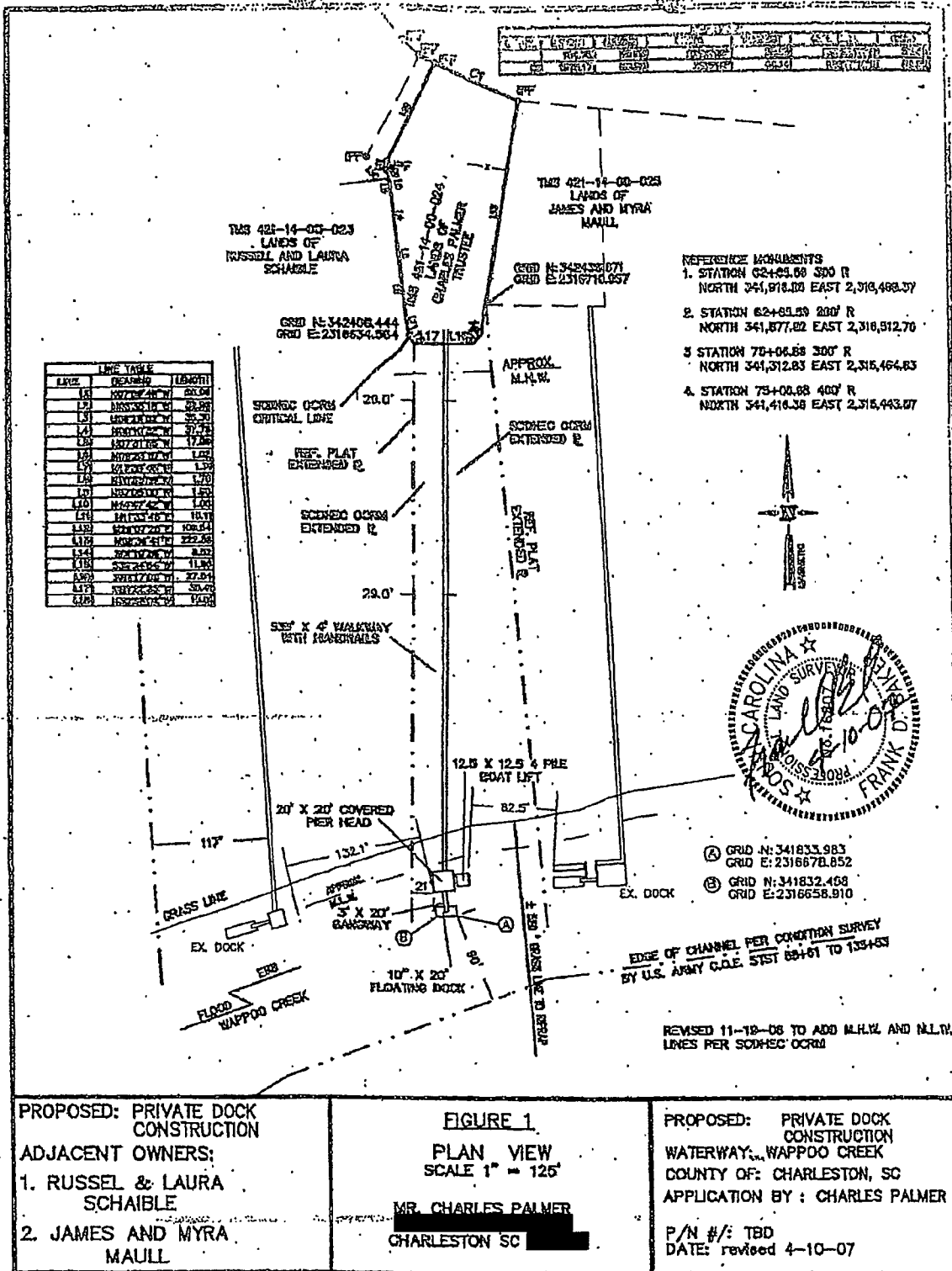
Adjoining Property Owners (Include all names of those who commented):

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 Schiabe, [REDACTED] Charleston, SC [REDACTED]

The Schiabe's oppose the dock because they 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.



0004-07-128-F

TECHNICAL SUMMARY OF REVIEW

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Permit with Conditions:
Deny:

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Other
Agency Permits

County: Charleston

Location

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Russell and Laura Schiabe, [REDACTED], Charleston, SC [REDACTED]

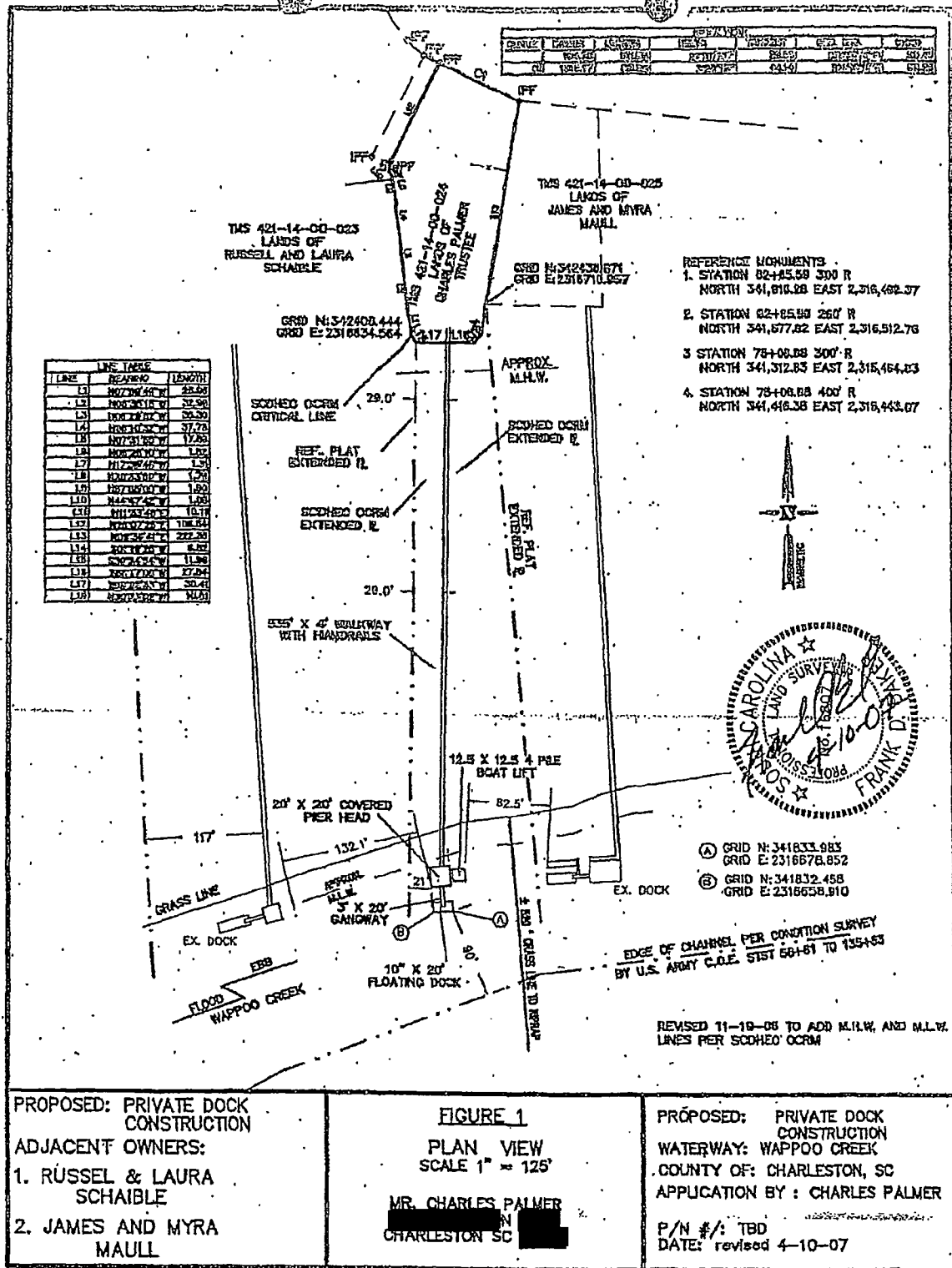
The Schiabeles oppose the dock because they say there is inconsistency in the extended property lines, the dock is too close to their property line, the proposed location ends up directly in front of their house.

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 lot 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 Schlabbe 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 is 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 Schlabbe. This act should present an agreeable solution to all parties.

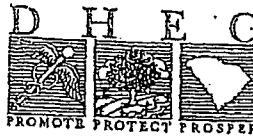
X. Attachments Required:

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



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0024-07-128 F



G. 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' x 14', 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

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Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Klsner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

Henry J. Smith, MD

M. David Mitchell, MD

Glean A. McCall

Coleman E. Buckhouse, MD

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

~~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. ~~07-RFR-95~~ 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



May 25, 2007

Russell Schiable
C/O C.C. Harness, III

Mt. Pleasant, SC

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 Maul 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
Critical Area Project Manager
SCDHEC/OCRM

Cc: Curtis Joyner
Barbara Neale
Van Whitehead

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

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P124

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 use 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 lot 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 Schiable 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 is 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 Schiable. This act should present an agreeable solution to all parties.

X. Attachments Required:

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

maull 2

RECEIVED

AUG 08 2011

DHEC-OCRM
CHARLESTON OFFICE

James R Maull

Charleston SC

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

Maull 13

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

August 5, 2011

RECEIVED

AUG 05 2011

DHEC-OCRM
CHARLESTON OFFICE

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 boat lift location, the floating dock location and the walkway location.

Four 2 1/2" grey electrical pvc pipes were placed in the marsh on the exact location of the 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

P58

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

RECEIVED

AUG 05 2011

DHEC-OCRM
CHARLESTON OFFICE

Maul/4

James R Maul
[REDACTED]
Charleston, SC [REDACTED]

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. Maul
James R Maul

RECEIVED

AUG 08 2011

DHEC-OCRM
CHARLESTON OFFICE

P72

ROA 511

Maull 5

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL

2011 OCT 17 PM 3:17

OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDHEC BOARD

JAMES R MAULL

CHARLESTON SC

October 14, 2011

CLERK OF THE BOARD
SC DHEC
2600 BULL STREET
COLUMBIA SC 29201

RE: P/N # OCRM-07-128-F amendment

Dear Sir:

My dock at [REDACTED] next to the proposed dock at [REDACTED] has been in place for over twenty years. When I built the dock, there were no docks on this side of the river from the Wappoo Bridge to the harbor except for one small crabbing dock. The James Island Expressway was not in existence then.

The floats on the west side of my pier were originally built in a horseshoe configuration. Thru the years, sediment from the marsh washout had filled in under the floats. Of course, the Army Corps would not allow the area to be cleaned or dredged. Four years ago I applied for and received a permit to move my horseshoe floats to the front river side of the pier in order to continue to keep my sport fish boat at the dock.

I am appealing the above amendment based on the grounds that this amendment places me in an unsafe boating environment. It also creates a greater liability for my boating activity. If you review page three of five of Mr George A Z Johnson, Jr's drawing, you will see the new proposed dock, float and boat lift directly in front of my float. The proposed location will hinder my sport fish boat from entering and exiting my floating dock safely. The current in this area is extremely strong and a collision would be highly likely even under good conditions. I am requesting that the pier and boat lift be placed at 40.5' rather than 20.5' in the interest of safety. The drawing shows the distance from the new float location at 138.6' from the western neighbor's dock which would leave adequate space to adjust the location. If you review the noted drawing, you will see a width of 142' at the marsh grass and a width of 150' at the river. There should be no difficulty in moving the complete dock, lift and float to the west toward the other side of the property line in the interest of safety. This would certainly make for a much safer water area and safer boat access to all docks involved.

Also, the proposed dock is further out toward the channel than adjacent docks which creates more problems with the closeness to my dock and accessibility. I have no problem with the neighbor building a dock, however, the dock creates an extreme safety issue if located as drawn. I am requesting that the distance on the eastern side be changed to 40.5. Your careful review of the drawing measurements is greatly appreciated.

Yours truly,

James R. Maull
James R Maull

man 11 6



C. Earl Hunter, Commissioner

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

June 22, 2006

Mr. Russell Schaible
C/O American Dock & Marine
[REDACTED]
Charleston, SC [REDACTED]

SEE SPECIAL
CONDITION(S)

Re: OCRM-06-089-L
Russell Schaible

Dear Mr. Schaible:

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 any special conditions that have been placed on the permit, as these conditions will modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. A copy of the permit, as issued, is enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE".

PLEASE READ CAREFULLY: You are required to return a signed copy of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance OR appealed, the Department reserves the right to cancel this permit.

Additionally, please carefully review the enclosed "Notice of Appeal Procedure."

After we have received your accepted/signed permit, a State official, designated to act for the Office of Coastal Resource Management, will validate the permit and the completed permit will be returned to you accompanied with 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 a copy of the entire permit accepted by you and you have received a copy signed by the permit Director or other authorized State official and a construction placard has been issued. 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

Ocean and Coastal Resource Management

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

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

ROA 514

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

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s): Russell Schaible
Permit Number(s): OCRM-06-089-L
Date of Issuance: June 22, 2006
Expiration Date: June 22, 2011
Location: On and adjacent to Wappoo Creek at [REDACTED], Charleston,
Charleston County, South Carolina

SEE SPECIAL
CONDITION(S)

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. 2003). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of \$5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The project as permitted and shown on the attached plans consists of constructing a private dock and replacing two bulkheads. Specifically, a 4' x 558' walkway will lead to a 16' x 16' covered fixed pierhead (both with handrails). A 10' x 32' floating dock will be located on the flood side of the pierhead and a 12' x 12', 4-pile boat lift is will be on the ebb side of the pierhead. In addition, two existing retaining walls (2.3' x 200' & 2.6' x 115') for erosion control will be replaced. The purpose of the proposed dock is for private recreational use and the retaining walls are for erosion control.

SPECIAL CONDITIONS

1. Provided that the proposed fixed pierhead and floating dock do not exceed a total of 600 square feet, therefore the floating dock is reduced to 10' by 32'.
2. Provided that the dock structure does not extend any further channelward than the existing, adjacent upstream structure.
3. The proposed pierhead roof may be constructed as a hip style roof. No part of the roof or attached structures including, but not limited to, dormers, copulas, may exceed 15' above MHW.

Page 10 of 10

ROA 515

4. Provided handrail height does not exceed 36" above the walkway and/or pierhead decking.
5. Provided that the dock or any boat moored at this dock does not unduly restrict or impede navigation at any stage of the tide cycle.
6. Provided that the dock should be located in a manner so as to minimize disturbance to shellfish resources or in an area void of shellfish resources. If this requires the relocation of this dock, notification to OCRM is required and written approval for the relocation must be received from OCRM prior to construction.
7. The applicant must implement best management practices during construction to minimize erosion and migration of sediments off site. These practices may include use of mulches, hay bales, silt fences, or other devices capable of preventing erosion and migration of sediments. All disturbed land surfaces must be stabilized upon project completion.
8. 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.
9. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

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

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

Permit Number: OCRM-06-089-L

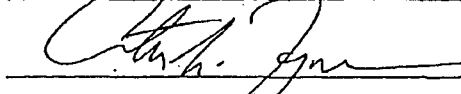
Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


Russell Schaible

(PERMITTEE(S))
Russell Schaible

 6/26/06
(DATE)

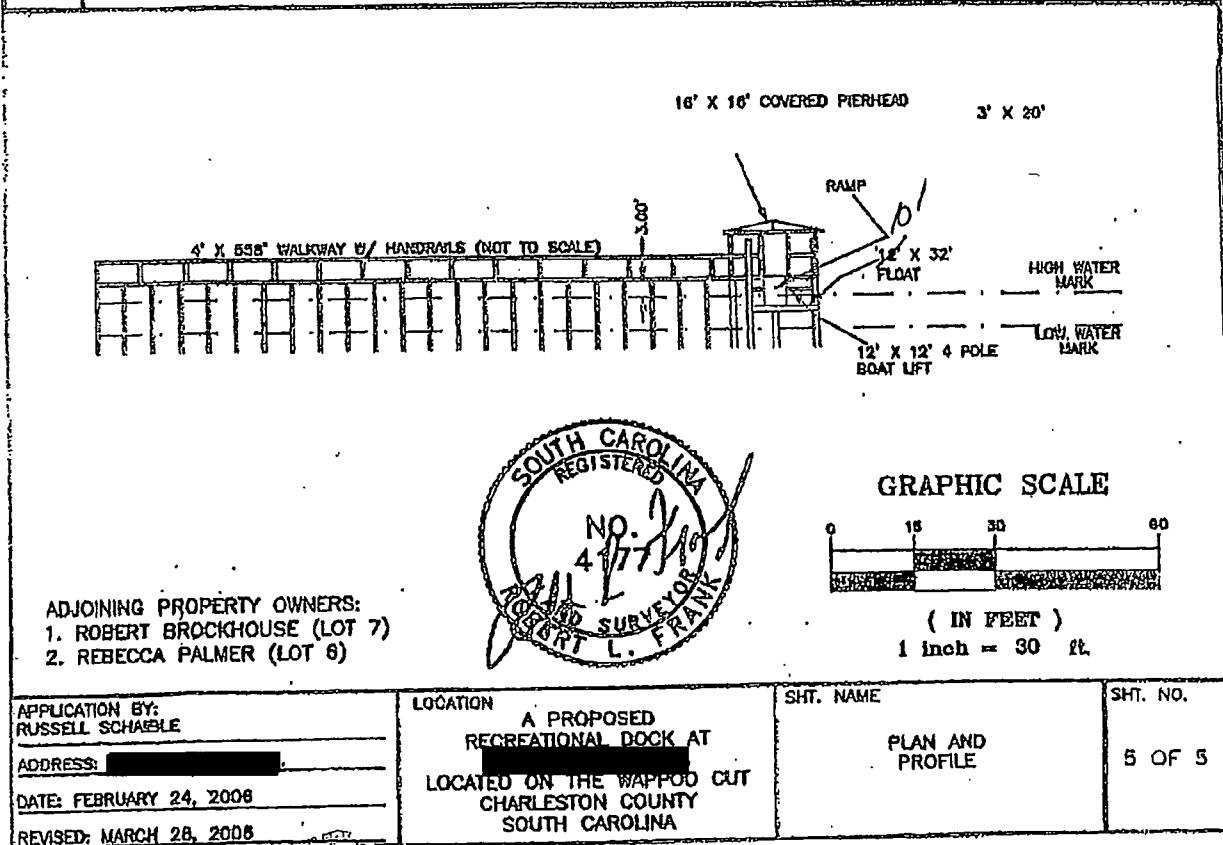
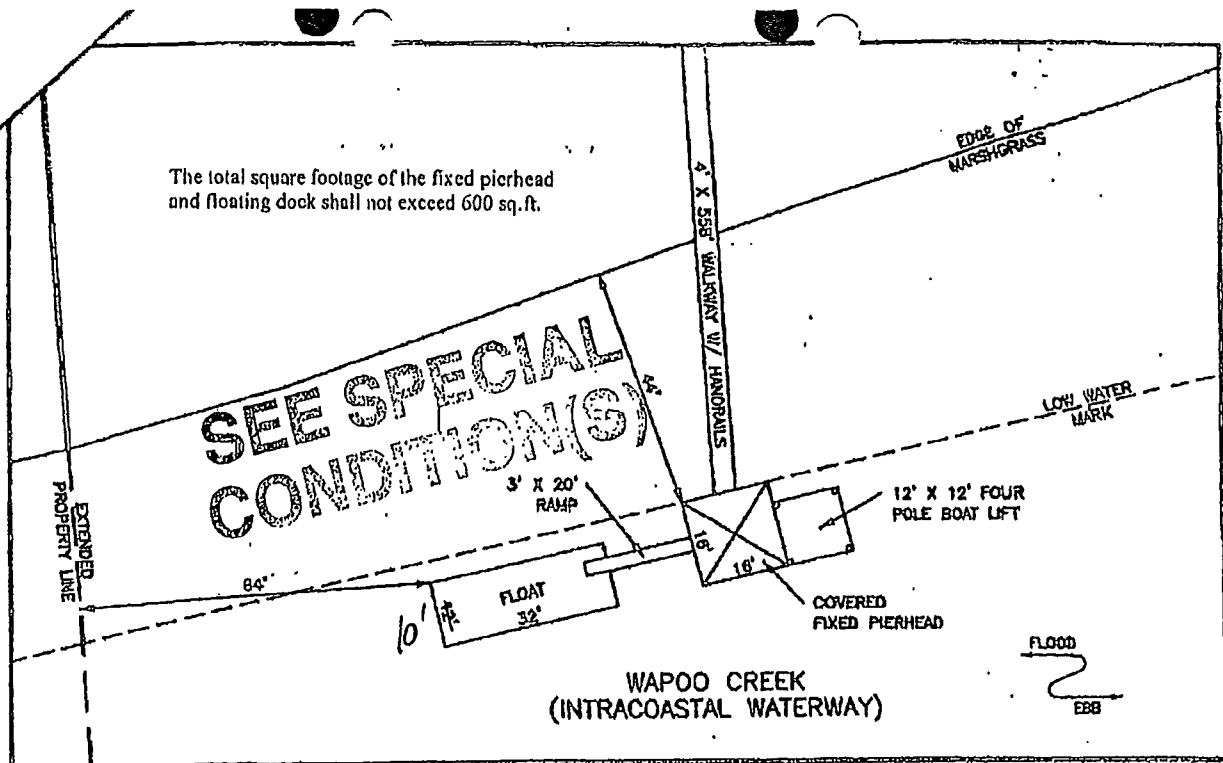
This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.



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

6/28/06

PLEASE SIGN AND RETURN



OCRM-06-089-L

Mau 11
7

Abdo Dock Appeal Notes LMS 12/8/2011

Board leaned on word of Reg, which Leslie Riley clarified: 20' from property line minimum.
Clarified "Navigation" discussion intended to relate to traffic on waterway, NOT disputes among neighbors.

Abdo's verbal assurance from ocd during

Mau's non-noticed dock renovations were given no weight.

Future 7 long hts

Arguments about view are given cursory consideration.
Argument about Mau deciding to renovate his dock, knowing Abdo wanted change, trying to land grab and grandfather himself was not given a lot of weight. Lead guy did ask Davis Cargill - Is Mau's dock in compliance? Yes.

1. Subpoena:

- Andrea Woodfield - Mau had been involved in Palmer dock appeal.
- Supposed Company he hired to file application - where would they get these two in correct addresses?

Jeff Thompson - came in after Blair - 1st 8.

Defensive about decisions to clearly accommodate Mau. Pay off 21?!

Davis Cargill then ignored J.T., went to another staff woman, who affirmed - if they knew Mau had 19.5/19.8 feet from line, they would NOT have amended Abdo to require 30' from property line.

Maull 8



Charleston County, South Carolina

Copyright 2004

Charleston County GIS

4045 Bridge View Drive

North Charleston, SC 29405-7464

Legend

☐ Selected Features

☐ Streets/Roads

☐ Parcels

☐ 2009 Color Photos



ROA 520

Mar 11 10

Aerial view of [REDACTED]

Charleston,



ROA 522



DHEC 1

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

October 06, 2011

David Abdo
[REDACTED]
[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,

David J. Thompson
Wetland Section Project Manager

Permittee

Date

Enclosure

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



DHEC 2
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

Charleston, SC

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 Schaible

James & Myra Maul

Charleston, SC

Charleston, SC

(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 is on the RIGHT. COUNTY: Charleston County

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

LOCAL GOVERNING BODY WITH JURISDICTION OVER SITE: Charleston County

NAME OF WATERWAY: Wappoo Creek

RECEIVED

MAY 18 2011

DHEC-OCRM
CHARLESTON OFFICE
Amendment
OCRM-07-128-F

Page 7

sjohnson@gazj.net

ROA 524



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 presented herein.

RECEIVED

MAY 18 2011



DHEC3

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' x 14', 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

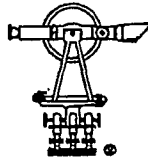
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Charleston Office • 1362 McMillan Ave, Suite 400 • Charleston, SC 29405-2047

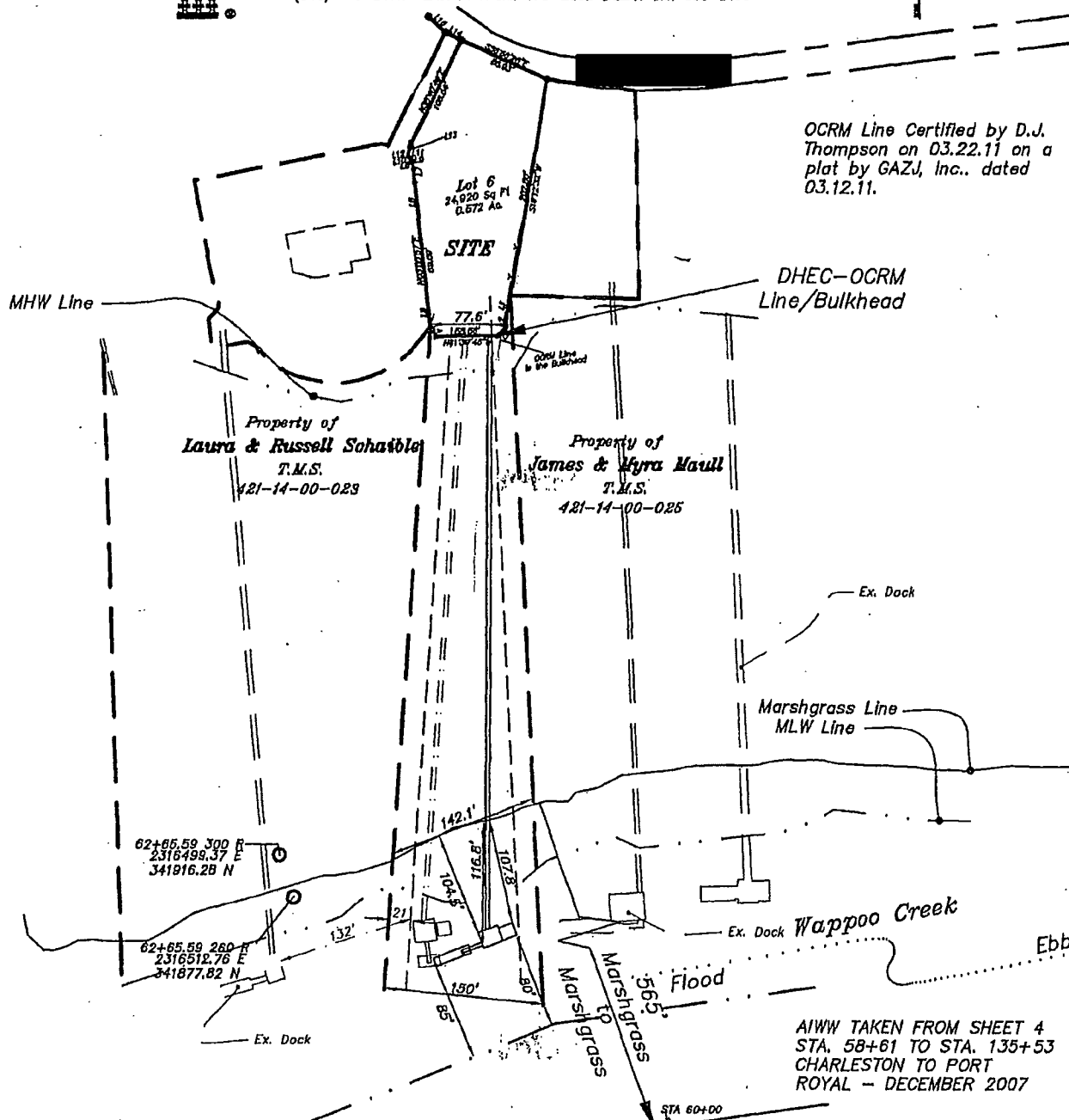
Phone: 843-953-0200 • Fax: 843-953-0201 • www.scdhec.gov

ROA 526



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

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



OCRM Line Certified by D.J. Thompson on 03.22.11 on a plat by GAZJ, Inc., dated 03.12.11.

AIWW TAKEN FROM SHEET 4
STA. 58+61 TO STA. 135+53
CHARLESTON TO PORT
ROYAL - DECEMBER 2007

Applicant: David Abdo

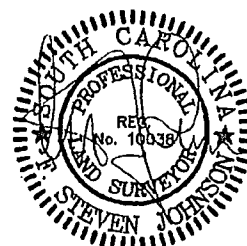
Charleston, SC
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

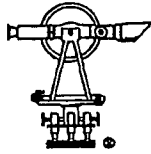
Amendment
P/N# OCRM-07-128-F

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



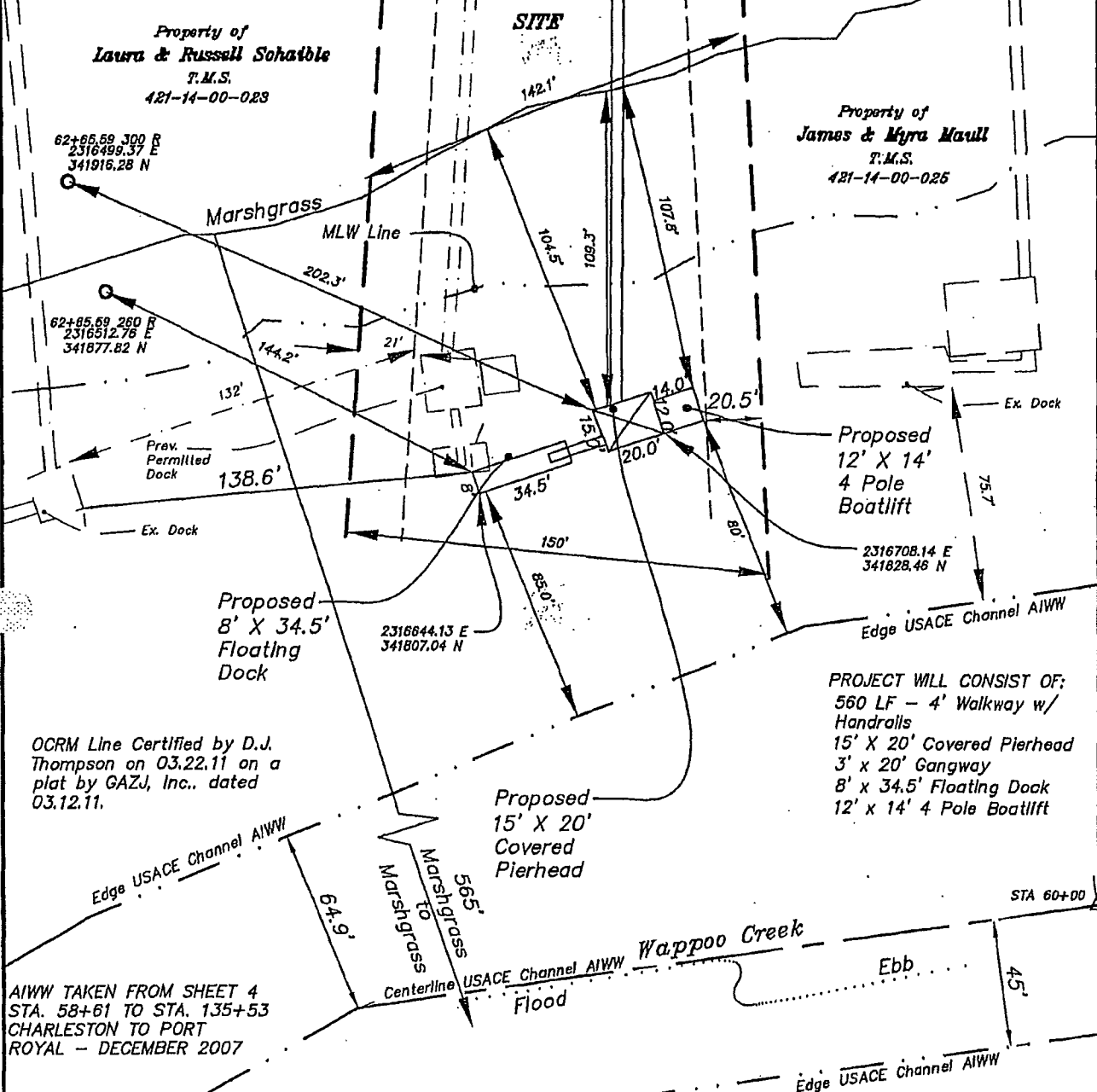


GEORGE A.Z. JOHNSON, JR., INC.
LAND SURVEYORS

8171 Savannah Highway
Ravenel, South Carolina 29470
(843) 888-1492 Charleston No. 722-3892 Edisto No. 888-1495

Property of
Laura & Russell Schatble
T.M.S.
421-14-00-023

Property of
James & Myra Maul
T.M.S.
421-14-00-025



Applicant: David Abdo

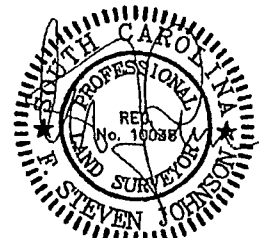
Charleston, SC
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

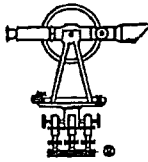
Amendment
P/N# OCRM-07-128-F

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



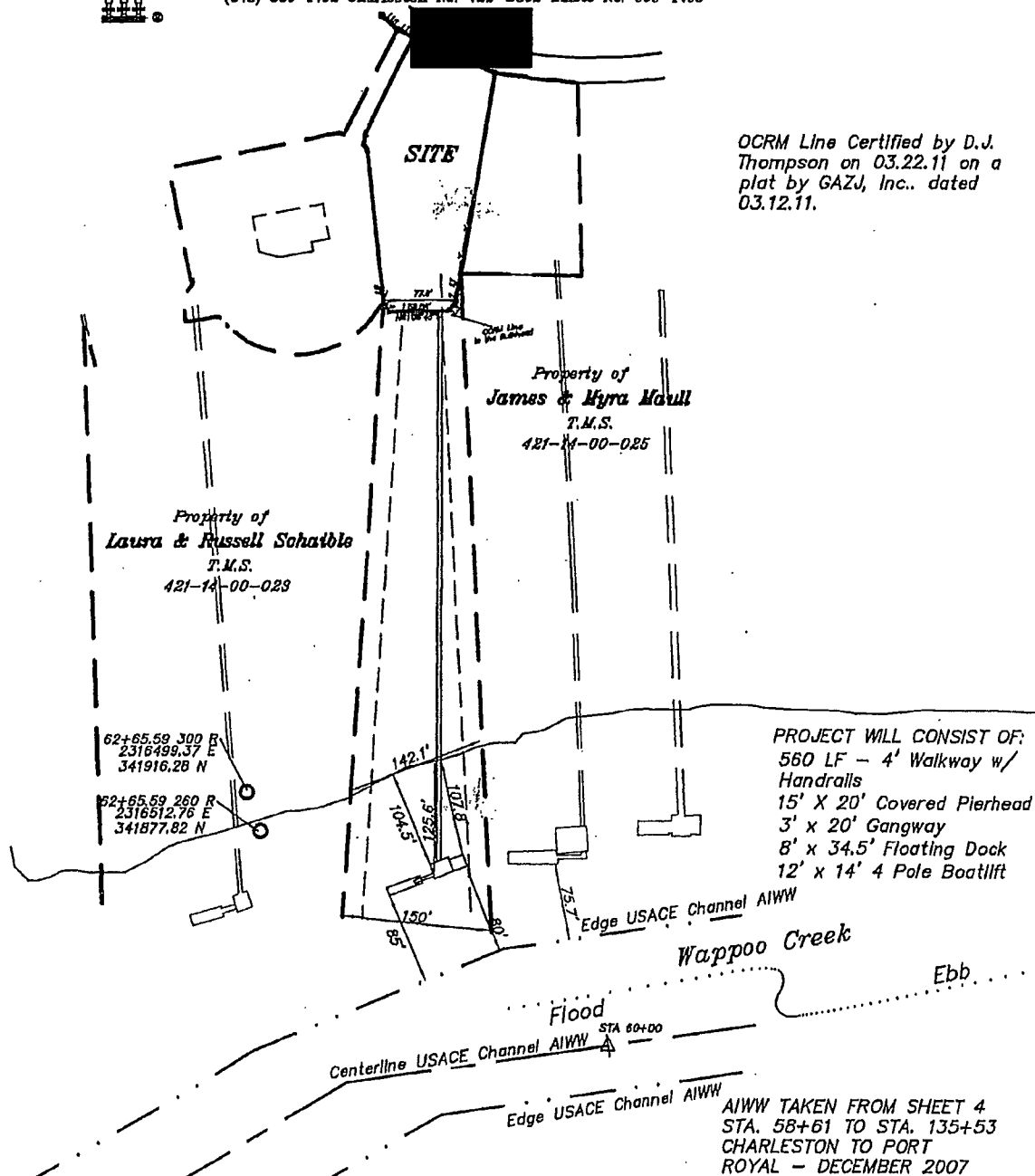


GEORGE A.Z. JOHNSON, JR., INC.

LAND SURVEYORS

6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 889-1492 Charleston No. 722-3882 Edisto No. 889-1495

N
↑



Applicant: David Abdo

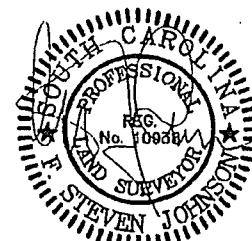
Charleston, SC
Charleston County
TMS No. 421-14-00-024
Wappoo Creek
GAZJ JOB # 21770

Amendment
P/N# OCRM-07-128-F

AIWW PLAN

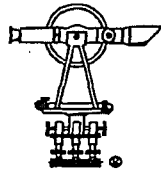
PROPOSED REVISION EX.
RECREATIONAL DOCK PERMIT
#OCRM-07-128-F
FOR TMS 421-14-00-024
REV DATE: JULY 27, 2011
DATE: JANUARY 14, 2011
SCALE 1" = 50'

Sheet 4 of 5



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

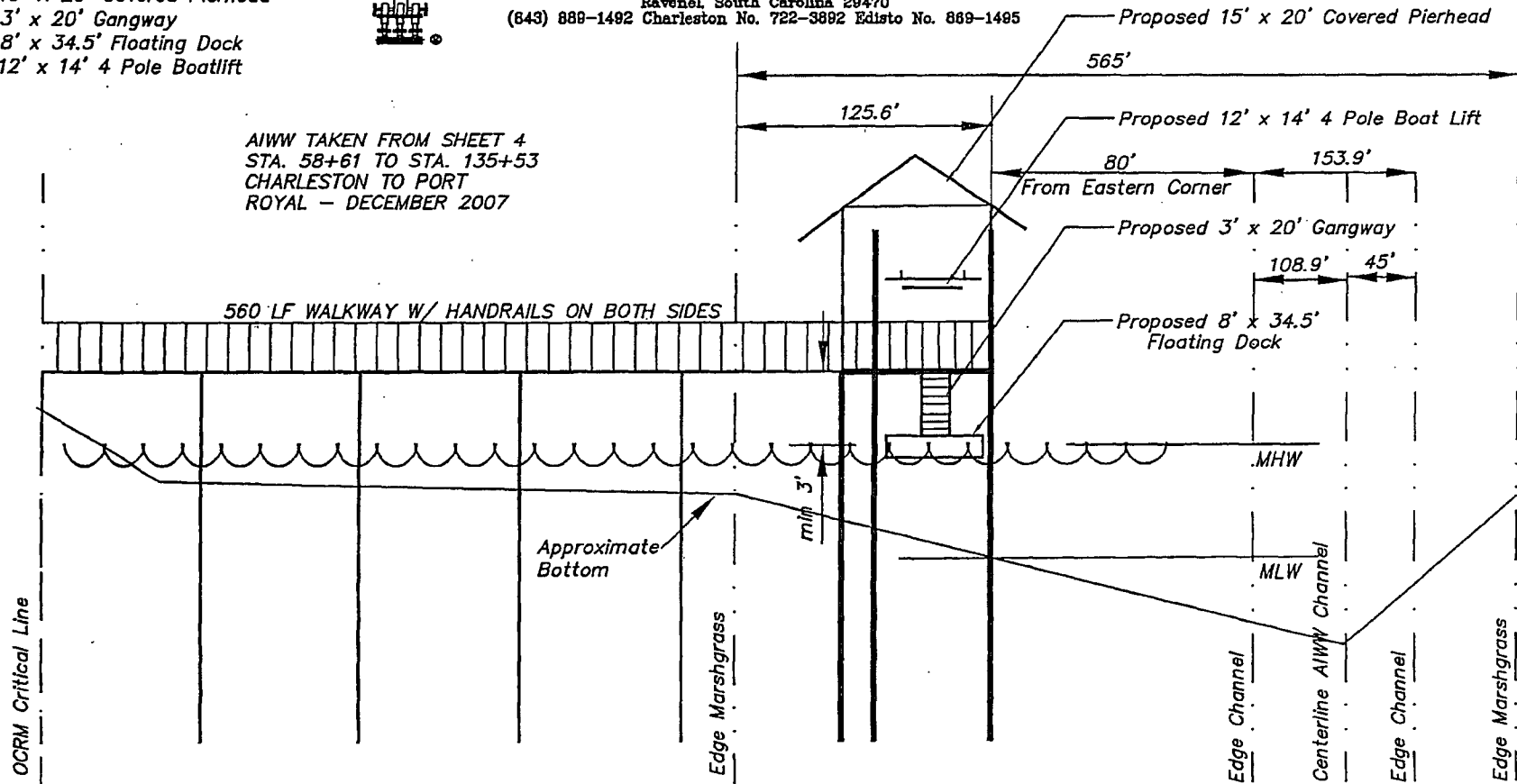


GEORGE A.Z. JOHNSON, JR., INC.

LAND SURVEYORS

6171 Savannah Highway
Ravenel, South Carolina 29470
(843) 888-1492 Charleston No. 722-3892 Edisto No. 889-1495

AIWW TAKEN FROM SHEET 4
STA. 58+61 TO STA. 135+53
CHARLESTON TO PORT
ROYAL - DECEMBER 2007



Applicant: David Abdo

Charleston, SC

Charleston County

TMS No. 421-14-00-024

Wappoo Creek

GAZJ JOB # 21770

Amendment

P/N#

OCRM-07-128-F

ROA 530

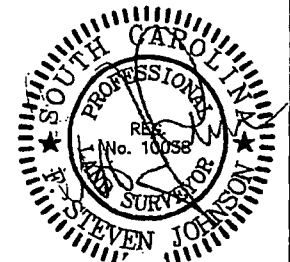
SIDE VIEW

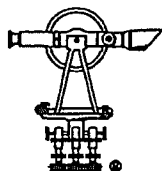
PROPOSED REVISION EX.
RECREATIONAL DOCK PERMIT
#OCRM-07-128-F
FOR TMS 421-14-00-024

DATE: JANUARY 14, 2011

SCALE "NTS"

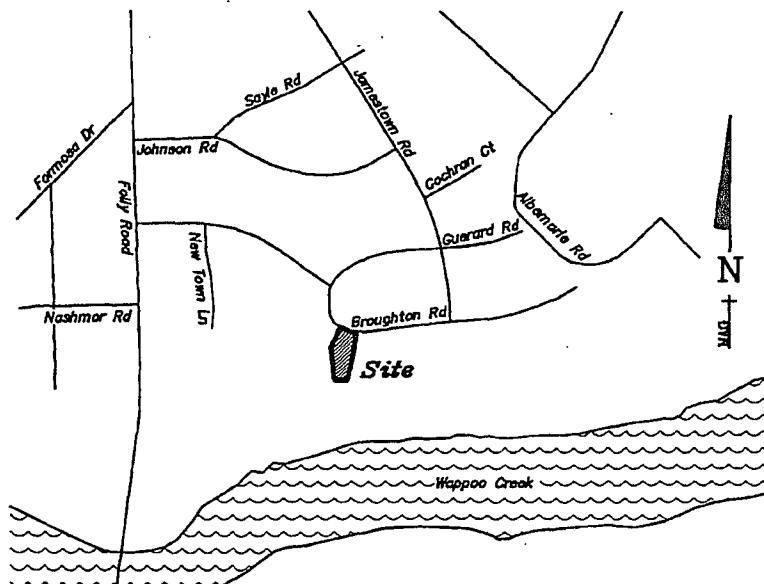
Sheet 5 of 5





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

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



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. Turn LEFT onto E [REDACTED] RD. 0.06 mi
9. [REDACTED]

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
SAZJ JOB # 21770

amendment

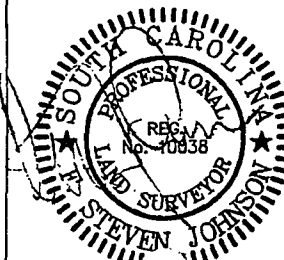
P/N#

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



- 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 WHICH 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 WRITTEN 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.

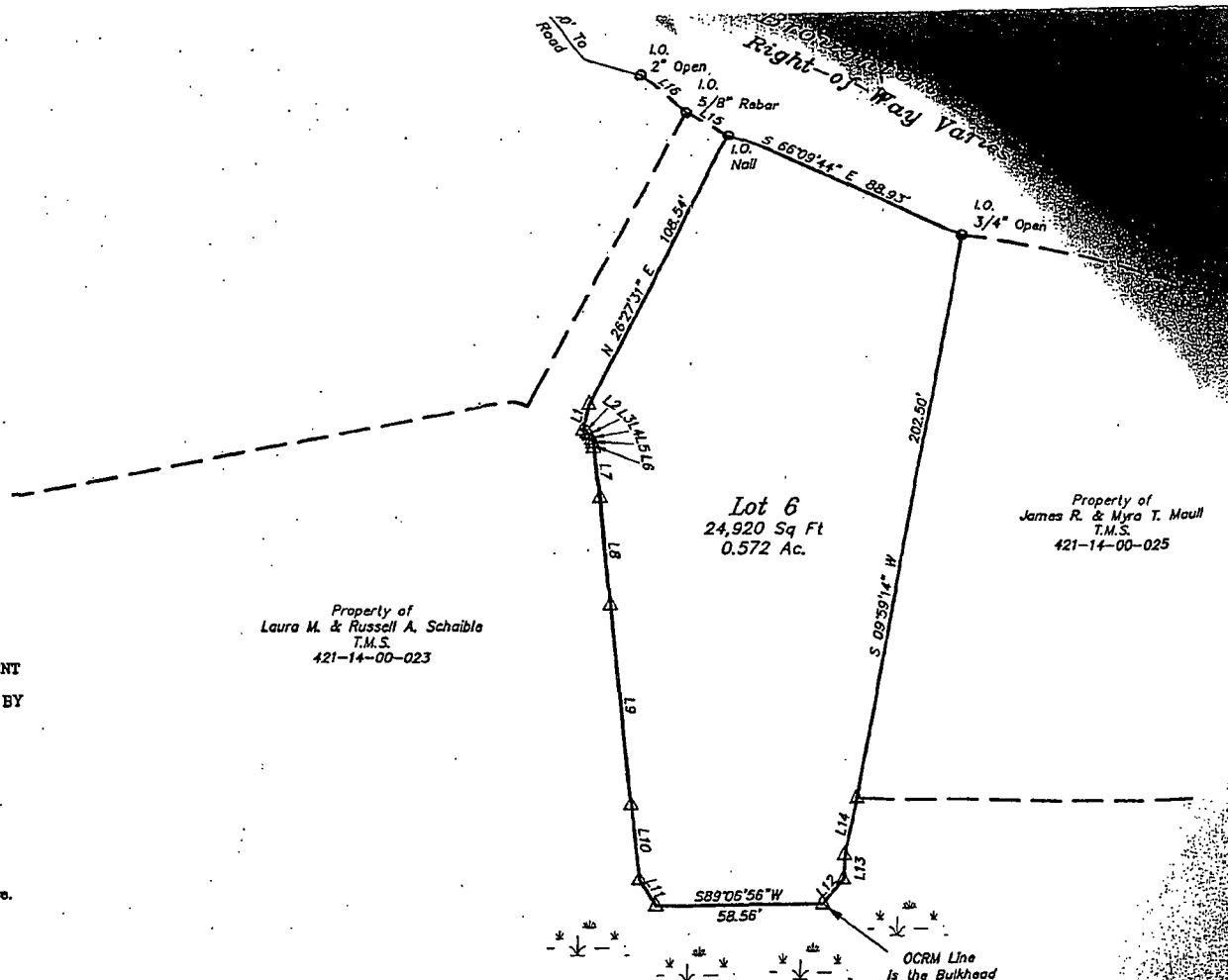
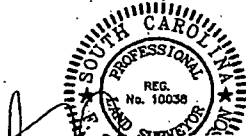
THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION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

F. Steven Johnson 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.



ABDO- Amendment
OCRM-07-128-F

DHEC 4

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: _____
 SPA: _____
 SCDAH: _____
 SCDA: _____
 Others: _____

See 1 of 1

George A2
Johnson
 Business Ph: 843-889-1490
 Fax Number: 843-889-1054

*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	<u>8-2-11</u>	1. _____
Aff. Of Ownership received	<u>5-18-11</u>	2. _____
Certified Deed, plat or lease	<u>5-18-11</u>	3. _____
Date Published	<u>(6-28-11)</u>	4. _____
Which Paper		5. _____
County/State News ad recd		6. _____
Date Published		7. _____
Which Paper	<u>P&C</u>	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
 10-6-11
 mailed James R. Maul II [redacted]
Russell & Laura Schaible [redacted] re mailed to correct 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 M. [redacted]

TECHNICAL SUMMARY OF REVIEW

TECHNICAL SUMMARY OF REVIEW

Permit Name: David Abdo

Decision:

Permit:
Permit with Conditions:
Deny:

X

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, Charleston County, 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 Schaible, [REDACTED] Charleston, S.C. [REDACTED] No comments received

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 alterniflora* 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.

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?

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

☐ YES ☒ NO

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

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

- 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:

1. Project Manager:

D. J. Thompson

(Signature)

10/4/11

(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

- Enforcements
- CA_Permits_11
- CA_Permits_08-10
- 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/Permit Areas
- ▲ 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
- charl06sw.jp2
- RGB
- Red: Band_1
- Green: Band_2
- Blue: Band_3

0 0.015 0.03 0.06 Miles

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



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. Kiroi, 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

91 7108 2133 3938 7370 5794

Michael A. Molony, Esq.
Young Clement Rivers, LLP
PO Box 993
Charleston, SC 29402
mmolony@ycrlaw.com

91 7108 2133 3938 7370 5800

Leslie S. Riley, Esq.
McNair Law Firm
PO Box 1431
Charleston, SC 29402
lriley@mcnair.com

91 7108 2133 3938 7370 5817

David Abdo
[Redacted]
Charleston, SC [Redacted]
istaylor99@gmail.com

Via Interagency Mail Delivery
Bradley Churdar, Esq.
SCDHEC – Office of General Counsel
1362 McMillan Avenue, Suite 400
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 DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

ROA 539

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.

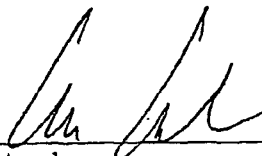
was incorrect. That conclusion was based on an inadvertent error in interpreting Mr. Maull's permit. Mr. Maull submitted a survey showing that his dock was, in fact, 18.5 feet off the extended property line. Department staff explained that had they known that Mr. Maull's dock was 18.5 feet away from 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 DHBC 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 permissible 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.

DHEC
6

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

Requestor: James R. Maull

Permittee: David Abdo

OCRM Permit Number P/N# OCRM-07-128-F

INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW

Submitted by: Davis A. Whitfield-Cargile, Staff Attorney

Date: October 19, 2011

Requestor challenges an OCRM staff decision on a critical area permit application submitted by David Abdo to amend Permit Number OCRM-07-128-F, which authorizes a dock at [REDACTED], Charleston, South Carolina. The Department reviewed the above referenced application under the applicable statutory provisions in S.C. Code Ann. § 48-39-10, et. seq., and the Department's Critical Area Regulations, S.C. Code Reg. § 30-1 et. seq. After following the required procedures set forth in Reg. 48-39-150 and Reg. 30-4, and considering comments and concerns raised in comment letters submitted on this project the Department issued the above referenced permit amendment on October 6, 2011, with certain special conditions.

Requestor is an adjacent property owner who also owns a dock, which was permitted by DHEC Permit # OCRM-07-333-7. Requestor challenges the location of the Permittee's dock in relation to his dock and the extended property line between Requestor and Permittee's properties (the "Shared Extended Property Line").

The application sought to construct the dock 20.5' away from the Shared Extended Property Line. The special condition on Permittee's dock requires the dock be constructed 30.5 feet away from the Shared Extended Property Line. Requestor constructed his dock 10' feet away from the Shared Extended Property Line and Requestor now asks that Permittee's dock be constructed 40.5' from the Shared Extended Property Line. The basis for requestor's objection is his concern over docking Requestor's 48' sport fishing boat on the landward side of Requestor's floating dock.

A couple of regulations are pertinent to the dispute at issue in this matter. Regulation 30-12(A)(1)(p) provides that "no docks, pierheads, or other associated structures will be permitted closer than 20 feet from extended property line," though DHEC is given discretion to allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act. Thus, there is a general requirement that docks be at least twenty feet off the extended property line. Permittee's application satisfies this requirement. Also pertinent to this dispute is DHEC's obligation to ensure that the dock does not unreasonably impede navigation. (See Regulation 30-12(A)(1)(a) and Regulation 30-11(B)(2)). When the 20 foot requirement in Regulation 30-12(A)(1)(p) is applied to both docks on either side of a shared property line, there will be 40' between docks. This reflects and supports a conclusion that 40 feet between docks will not unreasonably impede navigation or use of the docks. Even though the location of Requestor's dock ten feet off the shared property line is the reason the two docks are closer than 40 feet together, DHEC included a special

condition on the permit requiring the dock be 30.5 feet away from the Shared Extended Property Line rather than the normal minimum distance of 20 feet. Staff determined that 30.5 feet from the extended property line would result in a distance of 40.5 feet between the two docks, which allows for reasonable navigation. Though there is no requirement in the regulations that DHEC ensure enough space between two private docks to ensure the easy mooring of a 48 foot boat at each dock, OCRM staff addressed the Requestor's objections by requiring the dock be 30.5 feet away from the Shared Extended Property line, resulting in a 40.5 foot distance between the two docks.

Based on the foregoing, OCRM staff requests that the Board either decline to conduct a review conference, in which case the staff decision will become the final agency decision, or conduct a review conference and issue a written final agency decision affirming the staff decision to issue the permit amendment as conditioned.

FAXED
11/30/11

DHEC
7

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

Requestors: James R. Maull ("Maull")
David Abdo ("Abdo")
Russell and Laura Shaible ("Shaible")
Permittee: David Abdo
OCRM Permit Number P/N# OCRM-07-128-F

SUPPLEMENT TO STAFF'S RESPONSE TO REQUESTS FOR REVIEW

Submitted by: Davis A. Whitfield-Cargile, Staff Attorney
Date: November 30, 2011

This review conference involves three Requests for Review. The first request was filed by Maull. All of the requests challenge the location of the Abdo's dock. The Department included a special condition requiring that the dock be constructed 30.5 feet off the shared extended property line of Maull and Abdo (the "shared property line"), which was ten feet further from the shared extended property line than Abdo proposed in his application to amend the permit. Maull's request asks that the staff decision be amended to require that the dock be 40.5', presumably off the shared property line, though Maull's request does not specify that the distance of 40.5 feet should be off the shared property line. Abdo and Shaible ask that the staff decision be amended to only require the dock be 20.5' off the shared property line. Staff submitted an initial response to Maull's request for review in October. Subsequently Abdo and Shaible filed requests for review. Department Staff respectfully submits this supplement to the initial response.

Staff's intention was to require that the Maull dock and Abdo dock be 40 feet apart. As explained in the Initial Staff Response, ordinarily docks are required to be at least 20 feet off shared property lines, such that generally there is 40 feet between two docks. This distance is presumptively adequate to protect navigation to and from the individual docks. When making the staff decision in this case, Staff understood that Maull's dock was 10 feet off the shared extended property line. To address Maull's navigation concerns, staff included a special condition requiring the Abdo dock be 30.5 feet off the shared extended property line to ensure that there was 40 feet of space between the Abdo and Maull docks.

In preparing for the review conferences, it has come to staff's attention that there may be discrepancies in the location of the shared extended property line and that staff may have misinterpreted Maull's dock drawings. As mentioned above, staff understood that the Maull dock is 10 feet off the shared extended property line. Upon reviewing the file and additional information received by Maull, it is not clear that the dock is indeed ten feet away from the shared extended property line; it may be further from the shared extended property line. A January 21, 2009 Amendment to Maull's permit shows that the dock was to be 19.8' off the shared extended property line. However, on November 22, 2011, Staff received an "as built" survey of the Maull dock. This "as built" survey purports to show the Maull dock to be 18 feet away from the shared extended property line. It is not clear if the shared extended property line on this survey or the shared

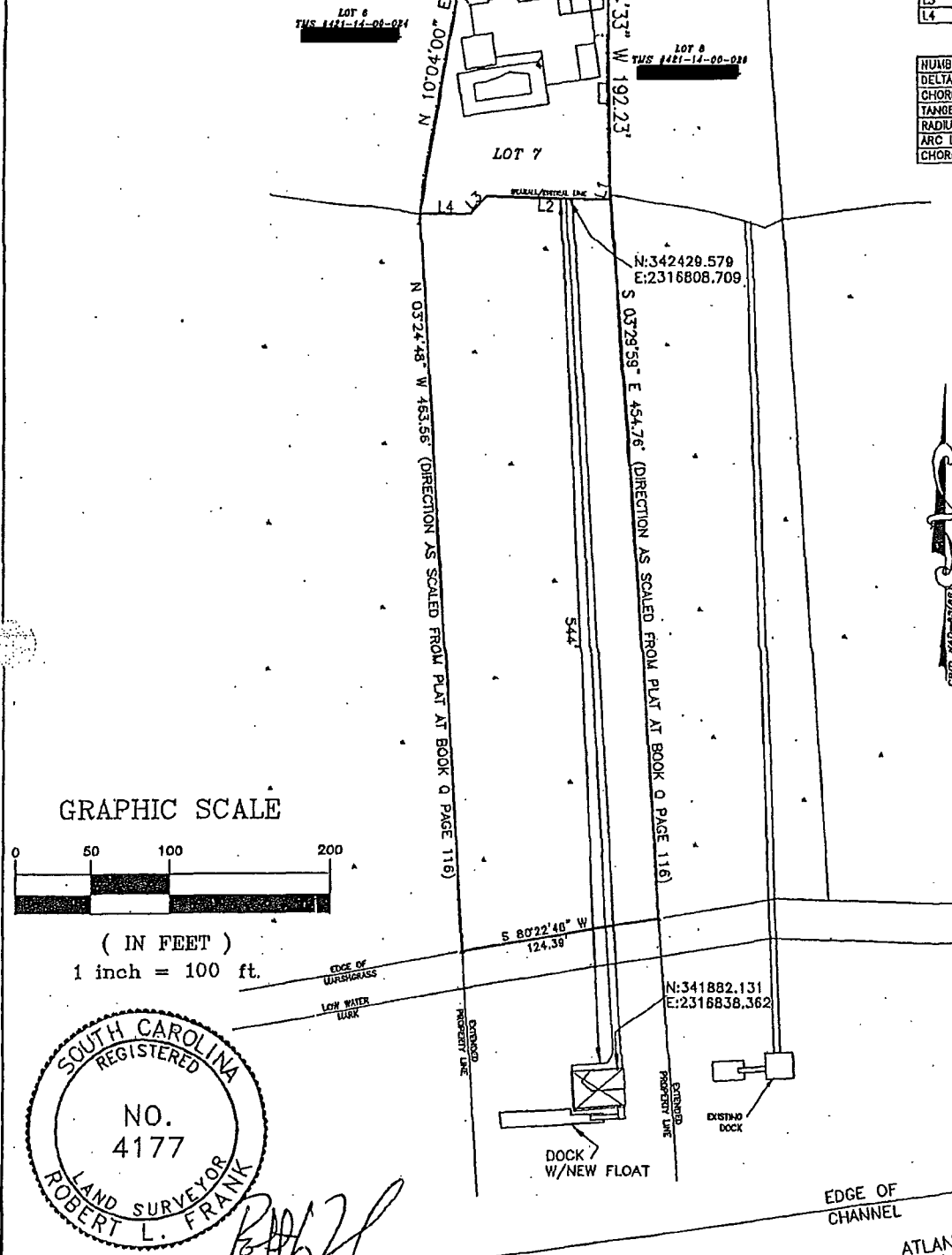
extended property line on the January 21, 2009 Amendment to Maull's permit are the same line shown on the Applicant's survey drawings. Extended Property Lines are a fictional line used as a regulatory tool by the Department under the Regulations to determine if property is waterfront, *see Regulations 30-1(D)(53) and Regulation 30-12(A)(1)(a)*; if waterfront property qualifies for a dock based on lot width requirements, *see Regulation 30-12(A)(1)(o)*; and to determine spacing of docks in relation to lot lines. *See Regulation 30-12(A)(1)(p)*. Staff's intent is to require that the Abdo dock be 40 feet away from the Maull dock as it is constructed and permitted today. This requirement addresses navigational concerns and would be consistent with Regulation 30-12(A)(1)(p).

Regarding the Shaibles' request for review, they allege that placing the Abdo dock ten feet closer to their shared extended property line than Abdo applied for in Abdo's application to amend the existing permit would interfere with the Shaibles' use and enjoyment of their adjacent property. On this point, Staff points out that Abdo is applying to amend an existing permit that is valid and active. The existing permit places the Abdo dock closer to the Shaibles' shared extended property line than the staff decision at issue here would. In other words, if Abdo did not seek to amend the permit and simply built the dock as it is currently permitted, then the Abdo dock would be closer to Shaibles' shared extended property line than it would be under the staff decision now challenged by the Shaibles. The Shaibles did not appeal the original dock permit for Abdo's property, though they had notice and opportunity to appeal it. This undermines the Shaibles' argument that their use and enjoyment is adversely affected by the staff decision.

ADJOINING PROPERTY OWNERS:
 1. SONYA TAYLOR AND DAVID ABDO
 2. DONALD AND ASHLEY DAVIS

NUMBER	DIRECTION	DISTANCE
L1	S 15°55'42" W	3.62'
L2	N 88°19'01" W	76.97'
L3	S 4°46'46" W	15.34'
L4	N 89°44'08" W	33.75'

NUMBER	C1
DELTA ANGLE	14°57'48"
CHORD DIRECTION	S 83°45'35" E
TANGENT	41.39
RADIUS	315.20
ARC LENGTH	82.32
CHORD LENGTH	82.08



PREPARED BY:
S. R. MAULL

ADDRESS: [REDACTED]

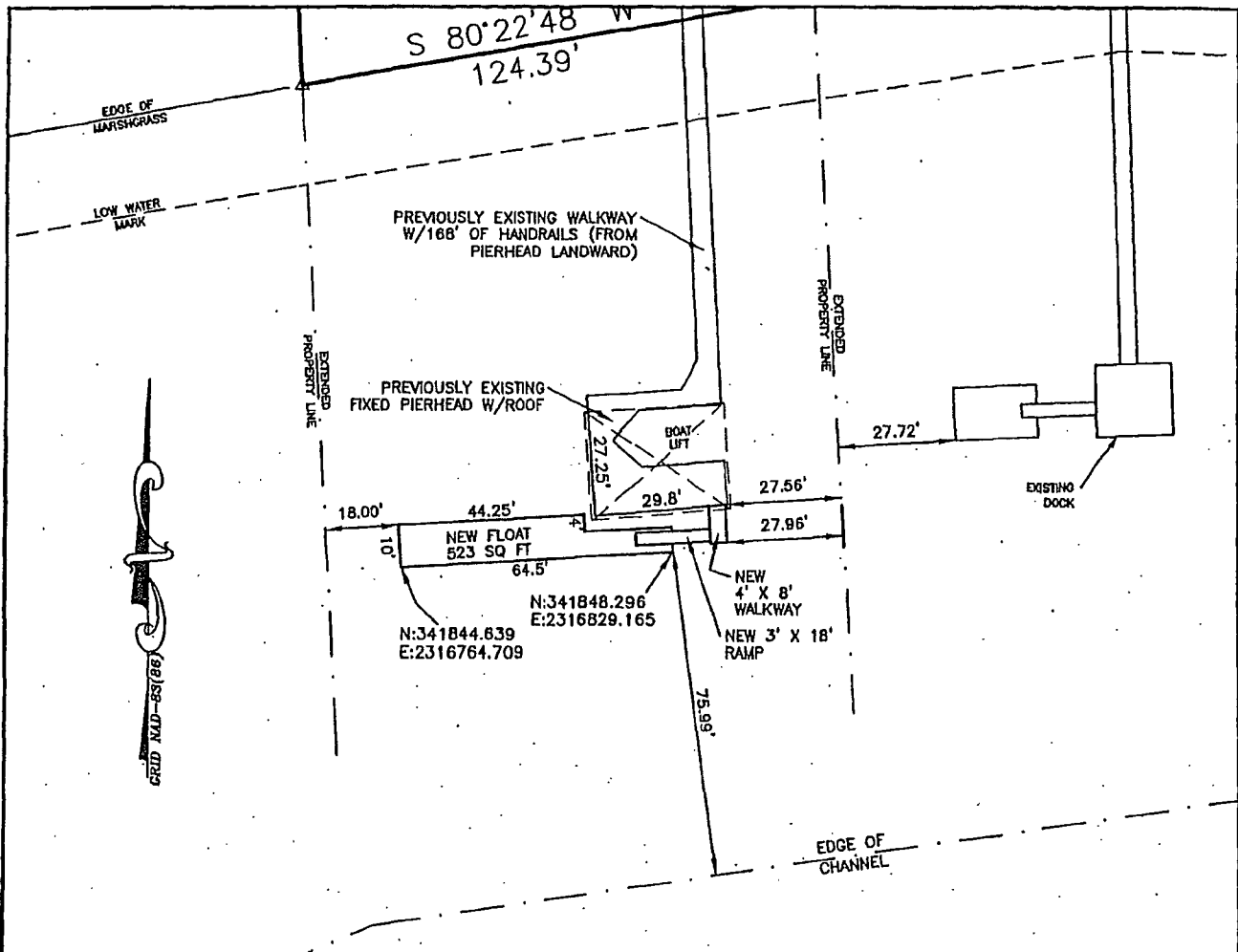
DATE: SEPTEMBER 14, 2009

REVISED:

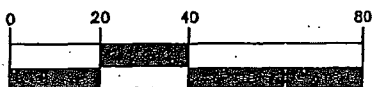
LOCATION
A DOCK AS BUILT
OF [REDACTED]
(OCRM-07-33-Y)
LOCATED ON WAPPDO CREEK
IN THE CITY OF CHARLESTON
CHARLESTON COUNTY
SOUTH CAROLINA

SHT. NAME
FULL PLAN
VIEW
TMS #421-14-00-025

SHT. NO.
1 OF 2



GRAPHIC SCALE



(IN FEET)
1 inch = 40 ft.



WAPPOO CREEK
ATLANTIC INTRACOASTAL WATERWAY

ADJOINING PROPERTY OWNERS:
1. SONYA TAYLOR AND DAVID ABDO
2. DONALD AND ASHLEY DAVIS

APPLICATION BY: JAMES R. MAULL	LOCATION A DOCK AS BUILT OF [REDACTED] (OCRM-07-33-Y) LOCATED ON WAPPOO CREEK IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA	SHT. NAME MAGNIFIED PLAN VIEW TMS #421-14-00-025	SHT. NO. 2 OF 2
ADDRESS: [REDACTED]			
DATE: SEPTEMBER 14, 2009			
REVISED:			



G. Earl Hunter, Commissioner

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

January 21, 2009

Mr. James R. Maull

Charleston, SC

DHEC
8

Re: P/N# OCRM-07-333-Y

Dear Mr. Maull:

The above referenced permit has been amended to allow the construction of a 4' by 8' walkway chanelward of the fixed pierhead, to support a relocated access ramp leading to two previously permitted floating docks, as requested and shown on the attached drawing.

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 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,

Fred Mallett
Wetland Section Project Manager

Enclosure

cc: Blair Williams, Acting Section Manager

Permittee
Date 1/21/09

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

ROA 552

NOTE:

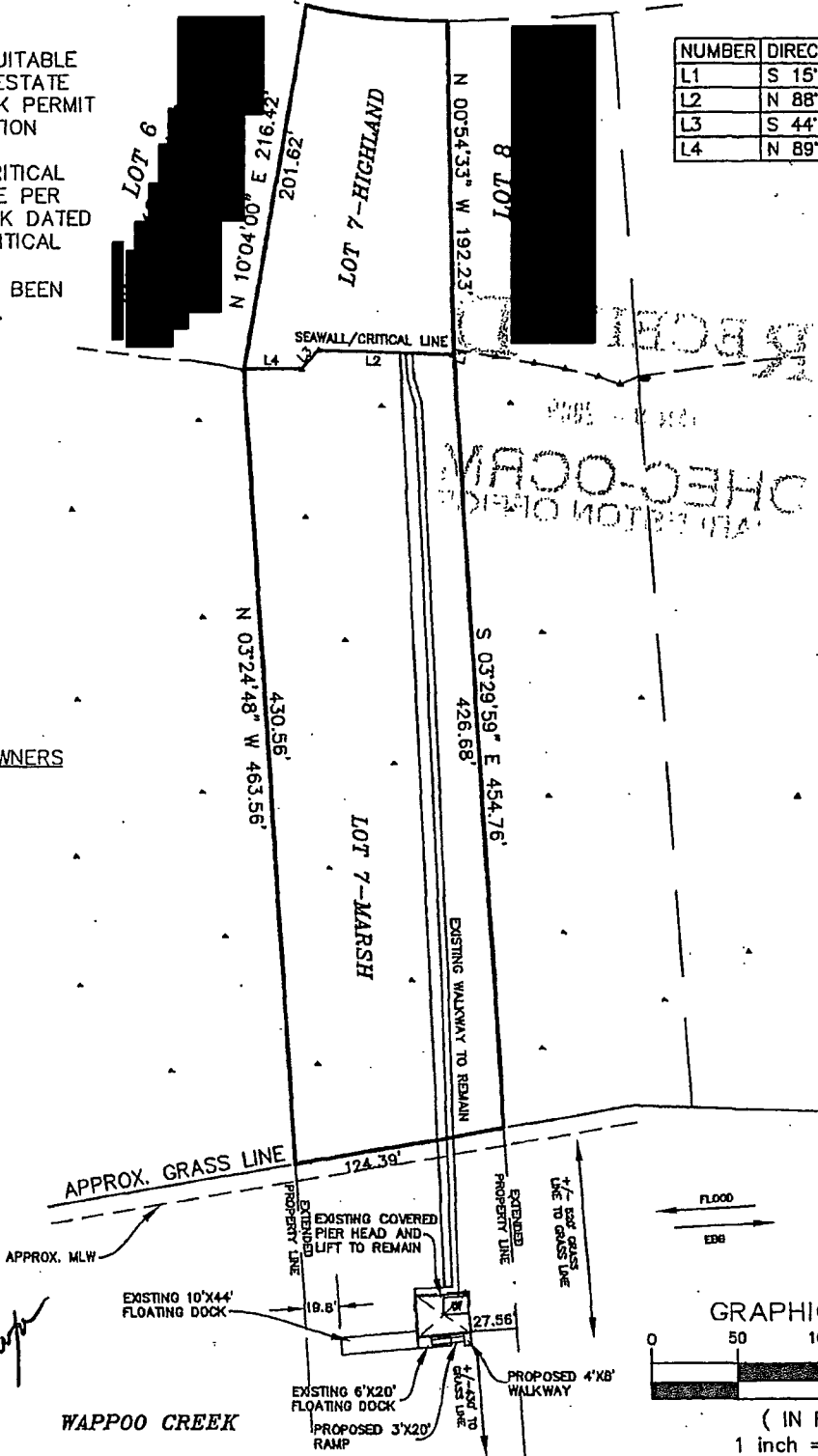
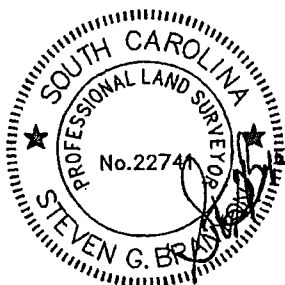
1. THIS IS NOT A PLAT SUITABLE FOR TRANSFER OF REAL ESTATE TITLE. INTENDED FOR DOCK PERMIT PURPOSES ONLY.
2. ALL PROPERTY AND CRITICAL LINES SHOWN HEREON ARE PER PLAT BY ROBERT L. FRANK DATED JUNE 28, 2007. OCRM CRITICAL LINE APPROVED 7/12/07.
3. NO SURVEY WORK HAS BEEN PERFORMED BY THIS FIRM.

NUMBER	DIRECTION	DISTANCE
L1	S 15°55'42" W	3.62'
L2	N 88°19'01" W	76.97'
L3	S 44°46'46" W	15.34'
L4	N 89°44'08" W	33.75'



ADJACENT PROPERTY OWNERS

1. DAVID ABDO
2. ASHLEY DAVIS



ACTIVITY	PRIVATE DOCK MODIFICATION	FIGURE 3 PLAN VIEW AT THE REQUEST OF JAMES MAULL SR. CHARLESTON, SC	PROPERTY DESIGNATION	LOT 7
WATERBODY	WAPPOO CREEK		TAX MAP #	421-14-00-025
LOCATION			DEED REFERENCE	
PERMIT #			PLAT REFERENCE	EK-960
DATE	12/1/08		COUNTY	CHARLESTON



C. Earl Hunter, Commissioner

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

Notice of Appeal Procedure

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

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

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

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

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

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

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

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

ROA 554

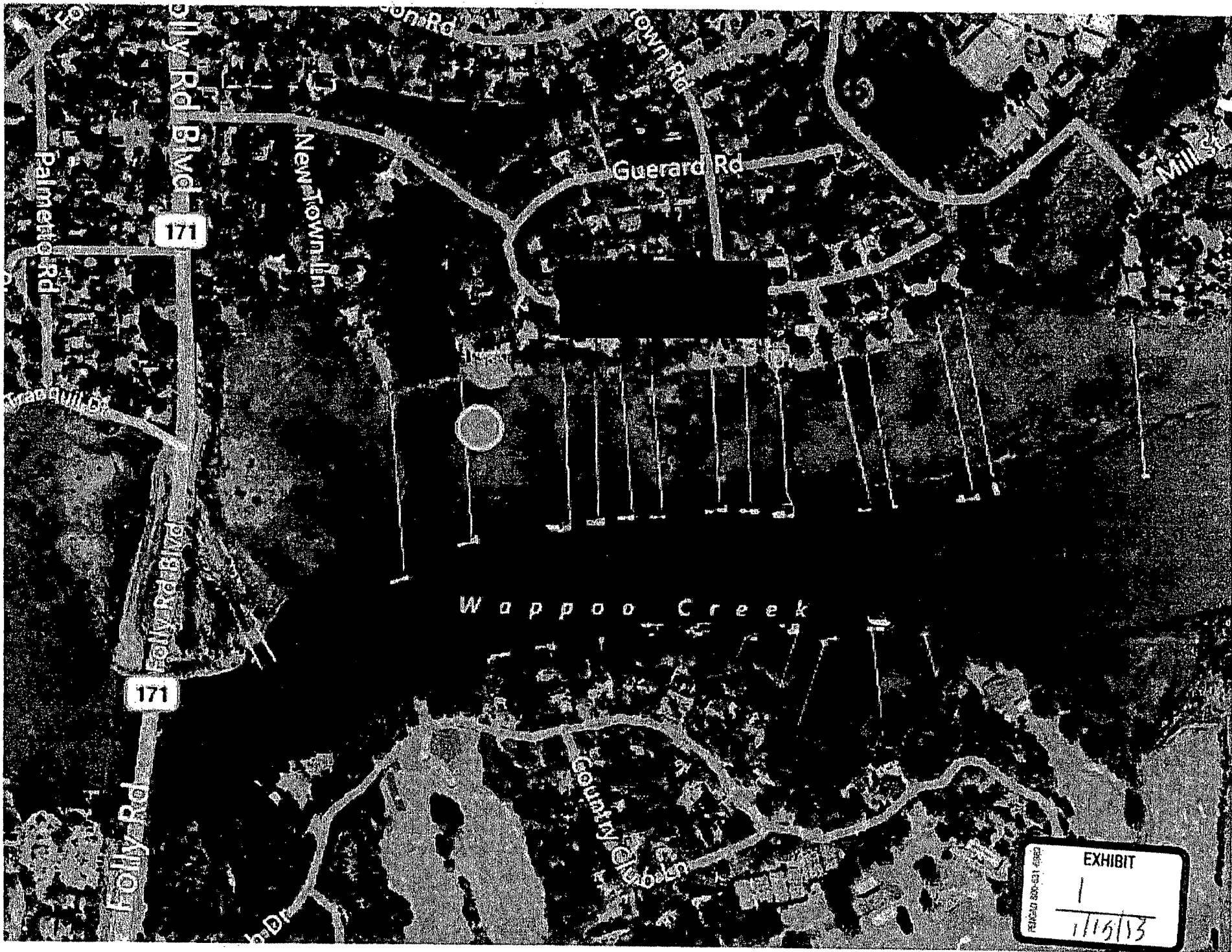
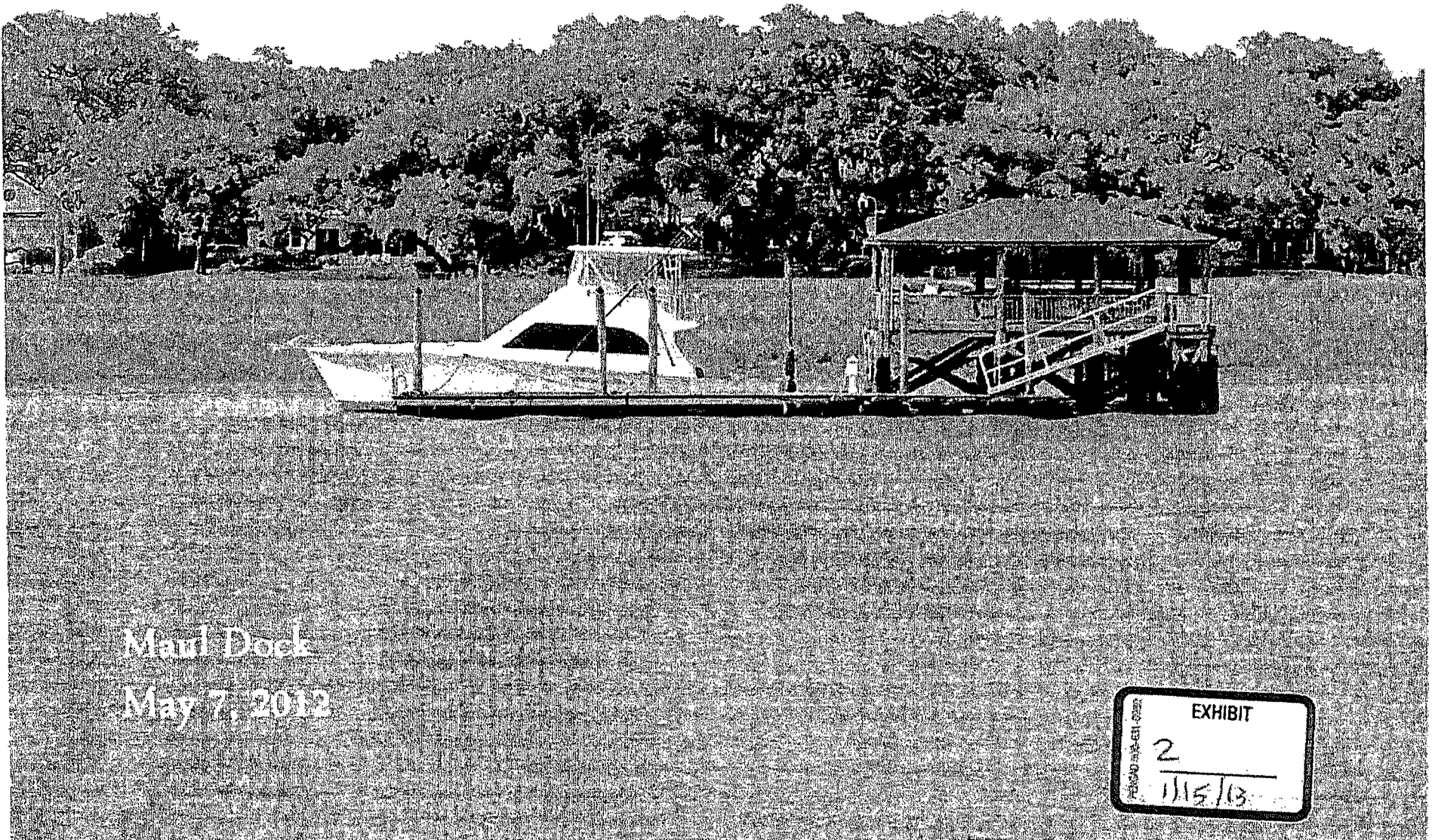
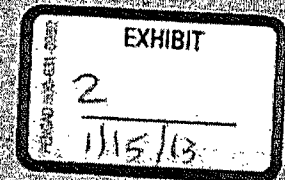


EXHIBIT
1
1/16/83
FBI/DOJ 800-431-4000

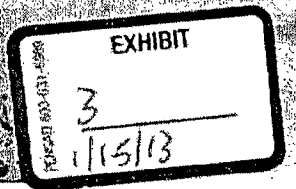
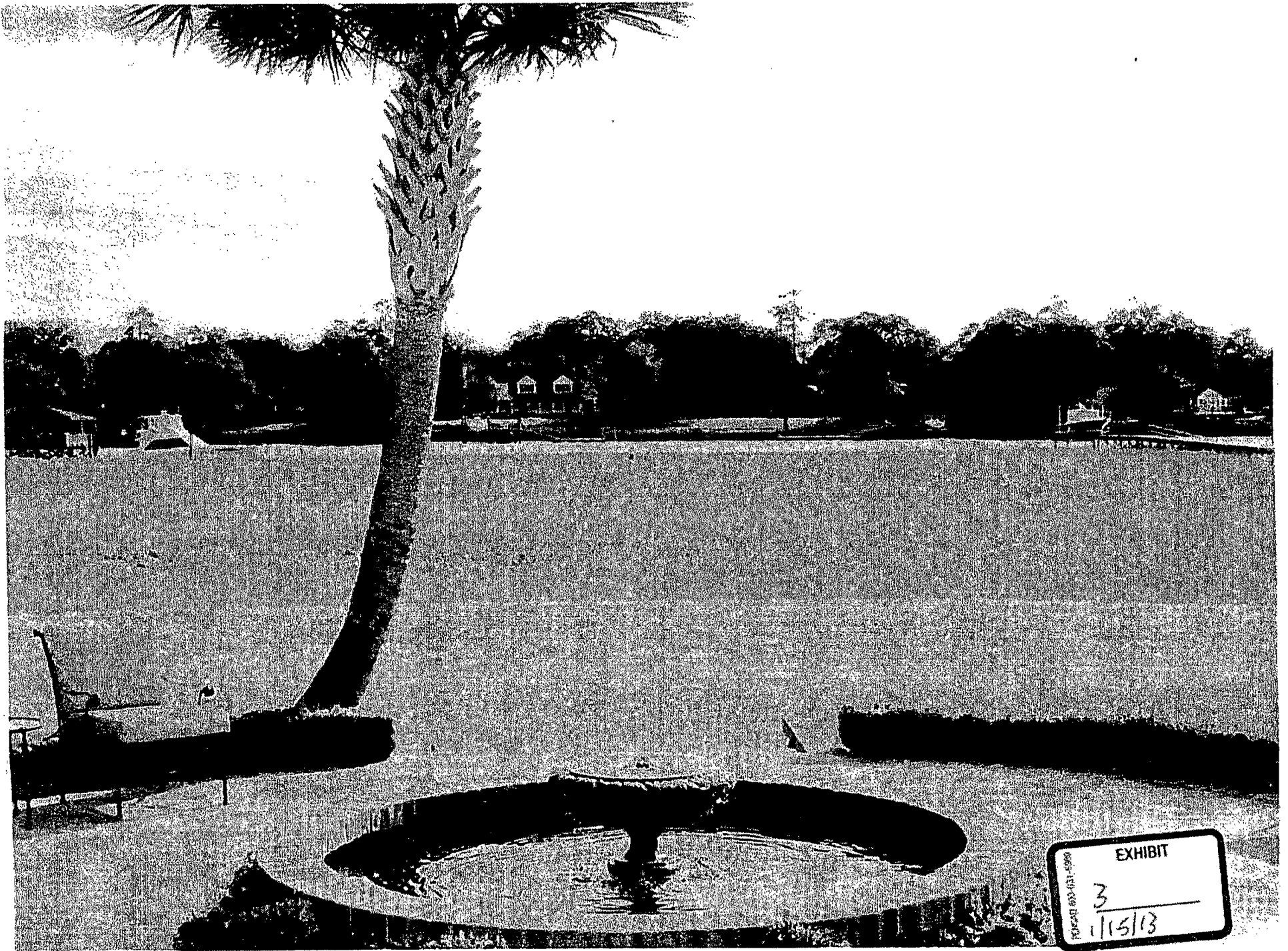
ROA 556



Maul Dock
May 7, 2012



ROA 557



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

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s): James R. Maull

Permit Number(s): OCRM-07-333-Y

Date of Issuance: May 14, 2008

Expiration Date: May 14, 2013

Location: On and adjacent to Wappoo Creek at [REDACTED]
[REDACTED] Charleston, Charleston County, South Carolina

**SEE SPECIAL
CONDITIONS(S)**

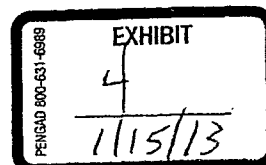
This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that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

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The work as permitted consists of modifying an existing dock. Specifically, the applicant may remove the existing 6' x 30' floating dock, a 5' x 16' floating dock, and a 10' x 30' floating dock. The applicant is authorized to install a 6' x 20' floating dock and a 10' x 44' floating dock to replace the removed floating docks. The applicant may also install a 4' x 6' walkway extension from the fixed pierhead. The purpose of the activity is for the applicant's private, recreational use.

SPECIAL CONDITIONS

1. Provided that the existing 6' x 30' floating dock, 5' x 16' floating dock, and 10' x 30' floating dock are removed from the critical area.
2. Provided that an as-built survey of the dock must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the dock, and must list the starting and ending coordinates of the dock walkway in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.



1/7

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

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

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

**SEE SPECIAL
CONDITIONS(S)**

Permit Number: OCRM-07-333-Y

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

James R. Maull
(PERMITTEE(S))
James R Maull

5/17/08
(DATE)

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

Curtis M. Joyner

5/19/08

(MANAGER, CRITICAL AREA PERMITTING) (DATE)

Curtis M. Joyner

Or his Designee

Other Authorized State Official

RECEIVED

MAY 21 2008

**DHEC-OCRM
CHARLESTON OFFICE**

2/7

GENERAL CONDITIONS:

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

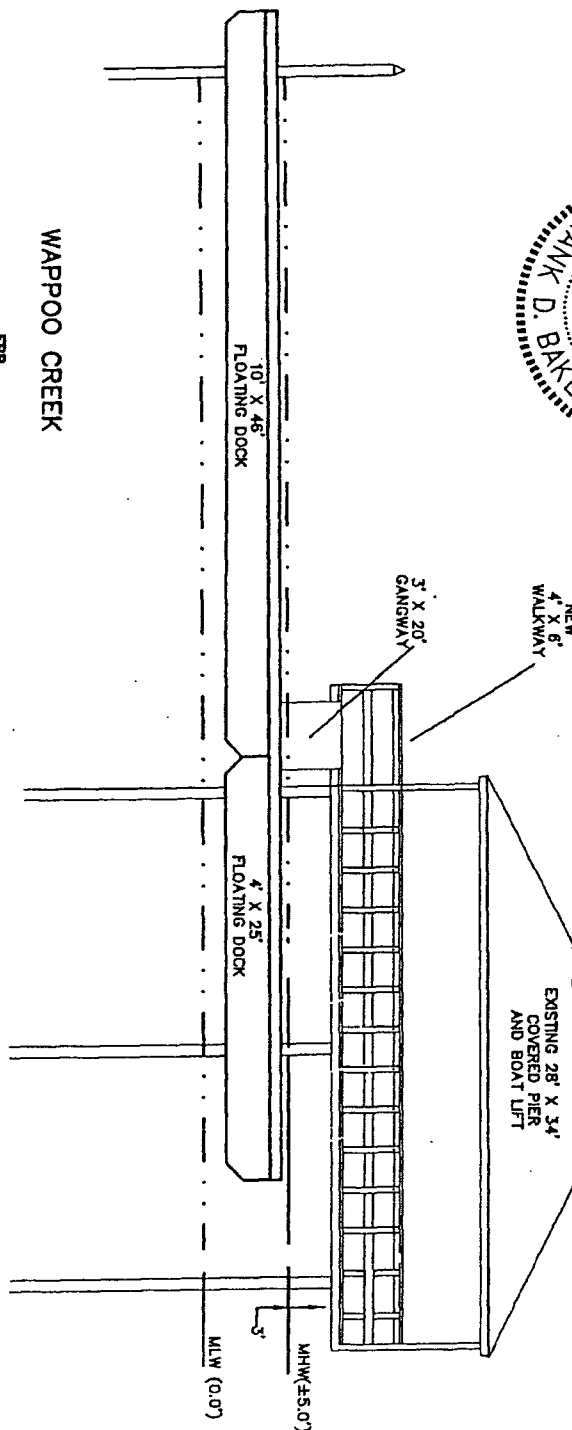
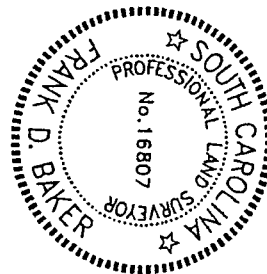
1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage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

4/7

Frank B. L.
3-18-08



WAPPOO CREEK



SEE SPECIAL
CONDITIONS(S)

PROPOSED: PRIVATE DOCK
MODIFICATION

ADJACENT OWNERS:

1. CHARLES PALMER

2. ASHLEY DAVIS
MAULL

FIGURE 2
DOCK FRONT VIEW
SCALE 1" = 10'

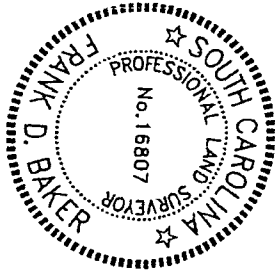
MR. JAMES MAULL SR.
CHARLESTON SC

PROPOSED: PRIVATE DOCK
MODIFICATION
WATERWAY: WAPPOO CREEK
COUNTY OF: CHARLESTON, SC
APPLICATION BY: JAMES MAULL SR.

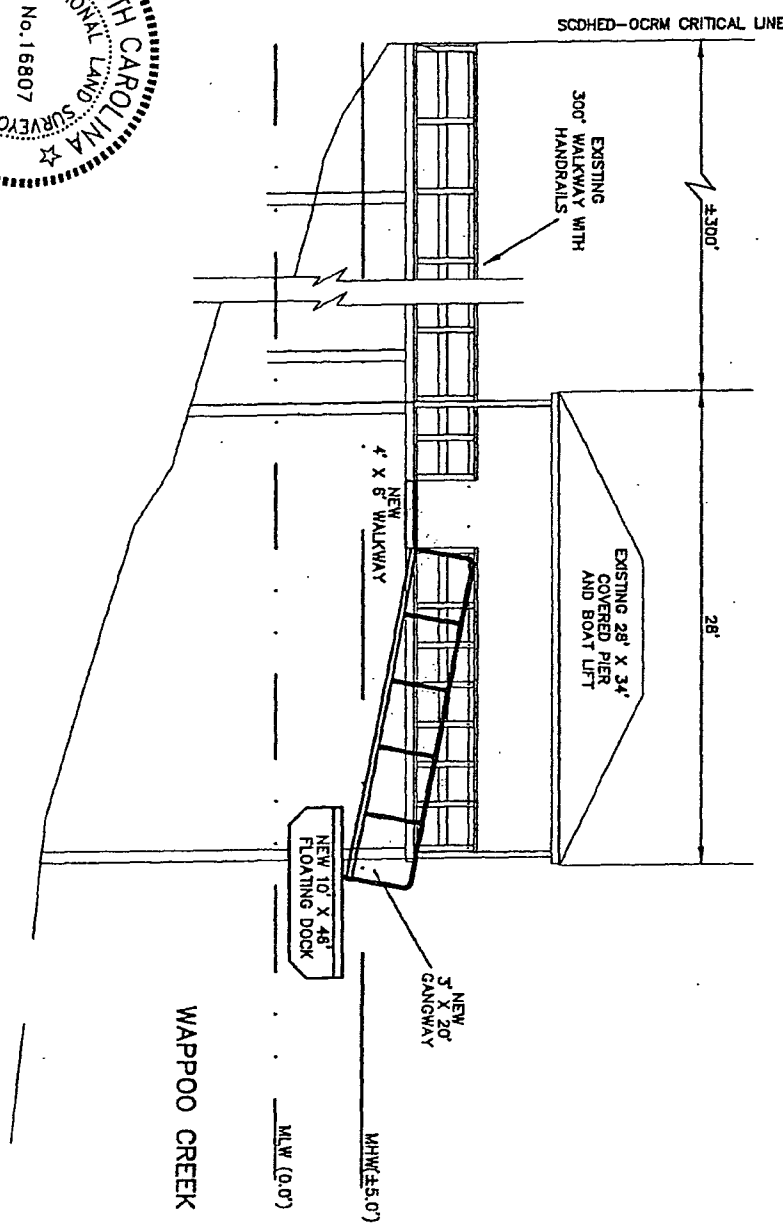
P/N #/: TBD
DATE: 11-5-07

P/N OCRM-07-333-4

5/7



James Maull Sr.
11-5-07



**SEE SPECIAL
CONDITIONS(S)**

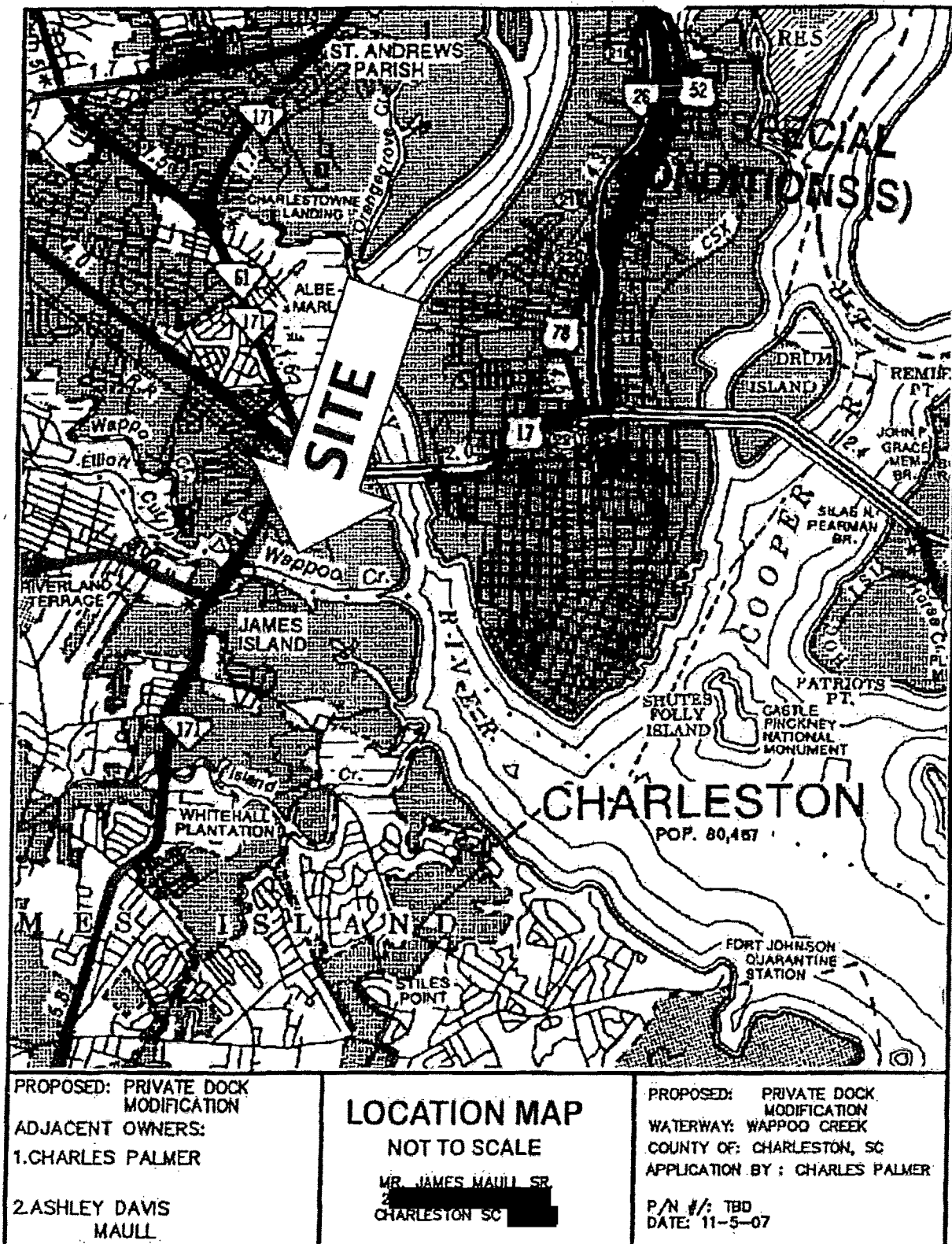
PROPOSED: PRIVATE DOCK
MODIFICATION
ADJACENT OWNERS:
1.CHARLES PALMER
2.ASHLEY DAVIS
MAULL

FIGURE 3
DOCK SIDE VIEW
SCALE 1" = 10'
MR. JAMES MAULL SR.
CHARLESTON SC

PROPOSED: PRIVATE DOCK
MODIFICATION
WATERWAY: WAPPPOO CREEK
COUNTY OF: CHARLESTON, SC
APPLICATION BY : JAMES MAULL SR.
P/N #/: TBD
DATE: 11-5-07

P/N OCRM-07-333-Y

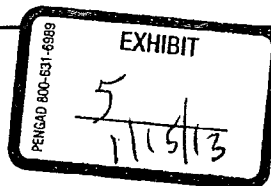
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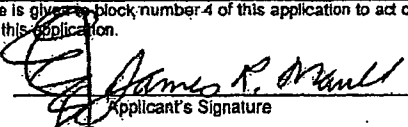
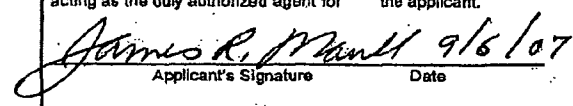
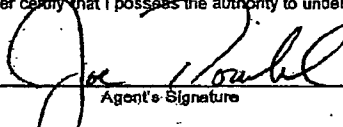
P/N OCRM-07-333-Y

7/7

Joint Federal and State Application Form For Activities Affecting Waters of the United States Or Critical Areas of the State of South Carolina	This Space for Official Use Only Application #: _____ Date Received: _____ Project Manager: _____
Authorities: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. Seq. of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s). Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.	
1. Applicant's Name: James R. Mauli, Sr.	4. Agent's Name (an agent is not required): WatersDeep, Inc. Joe Rowland Permitting Coordinator
2. Applicant's Address: [REDACTED] Charleston SC [REDACTED]	5. Agent's Address: P.O. Box 12880 Charleston, SC 29422
3. Applicant's Contact Number (include area code). Residence: N/A Business: (843) 200-6061 FAX: N/A	6. Agent's Contact Number (include area code). Residence: N/A Business: (843) 330-8505 FAX: (843) 763-6077
7. Project Title: Private dock	9. Project Location. Street Address: [REDACTED], Charleston County: Charleston, South Carolina Latitude: 32:46:14.57 N Longitude: 79:58:08.31 W
8. Nearest Waterbody to project site (if known): Wappoo Creek	
10. Directions to the Site (attach additional sheets if needed): From the Crosstown follow US-17 S to Folly Road go 0.6 miles. [REDACTED]	
11. Description of the Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed): The estimated filling (piles) for this project is 64.82 cubic yards. The applicant requests permission to replace the existing 6' x 30' floater (180 sqft), 5' x 16' floater (80 sqft), and 10' x 30' floater (300 sqft) – (Total existing square footage = 560 sqft) with a new 6' x 20' floater (120 sqft) and a 10' x 44' floater (440 sqft) – (Total replacement square footage = 560 sqft). The 3' x 20' gangway will be moved to the front of the pier and attached to a new 4' x 4' walkway. The work as described is for the applicant's private recreational use.	
12. Overall Project Purpose and the Basic Purpose of Each Activity in or Affecting U.S. Waters (attach additional sheets if needed): The purpose of the proposed dock is for private use.	



Revision May 2001

13. Type and Quantity of Materials To Be Discharged. Dirt or Topsoil: _____ cubic yards Clean Sand: _____ cubic yards Mud: _____ cubic yards Clay: _____ cubic yards Gravel, Rock, or Stone: _____ cubic yards Concrete: _____ cubic yards Other (describe): _____ cubic yards TOTAL: _____ cubic yards	14. Type and Quantity of Impacts to U. S. Waters (including wetlands). Filling: _____ ☐ acres ☐ sq.ft. <u>64.82</u> cubic yards Backfill & Bedding: _____ ☐ acres ☐ sq.ft. _____ cubic yards Land clearing: _____ ☐ acres ☐ sq.ft. _____ cubic yards Dredging or Excavation: _____ ☐ acres ☐ sq.ft. _____ cubic yards Flooding: _____ ☐ acres ☐ sq.ft. _____ cubic yards Drainage: _____ ☐ acres ☐ sq.ft. _____ cubic yards Shading: <u>560</u> ☐ acres ☒ sq.ft. _____ cubic yards TOTALS <u>560</u> ☐ acres ☒ sq.ft. <u>64.82</u> cubic yards			
15. Names and Addresses of All Adjoining Property Owners (attach additional sheets if needed): <u>Charles PALMER</u> [REDACTED] <u>Ashley DAVIS</u>, [REDACTED]				
16. Has any portion of the work already commenced? If yes, describe all work that has been done and the dates of the work. <u>N/A</u>				
17. List all Certifications, Approvals, and Denials received from Federal, State, or Local Agencies for work described in this application. <u>N/A</u>				
18. Authorization of Agent. I hereby authorize the agent whose name is given in block number 4 of this application to act on my behalf in the processing of this application and to furnish supplemental information in support of this application.  <u>9/6/07</u> Applicant's Signature Date				
19. Certification. Application is hereby made for a permit or permits to undertake the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant.  <u>9/6/07</u>  <u>9-8-2007</u> Applicant's Signature Date Agent's Signature Date				
The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 4 and 18 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both. Submit the completed application form with the required drawings and all supporting information as indicated below. <table style="width: 100%; font-size: small;"> <tr> <td style="width: 33%; vertical-align: top;"> Send all original application materials to: U.S. Army Corps of Engineers Charleston District, Regulatory Division 69A Hagood Avenue Charleston, South Carolina 29403-5107 (843) 329-8044 </td> <td style="width: 33%; vertical-align: top;"> Send one complete copy to: S.C. Dept of Health & Environmental Control Office of Ocean and Coastal Resource Management 1362 McMillan Avenue, Suite 400 Charleston, South Carolina 29405 (843) 744-5838 </td> <td style="width: 33%; vertical-align: top;"> Send one complete copy to: S.C. Dept. of Health & Environmental Control Office of Environmental Quality Control 2600 Bull Street Columbia, South Carolina 29201 (803) 898-4300 </td> </tr> </table>		Send all original application materials to: U.S. Army Corps of Engineers Charleston District, Regulatory Division 69A Hagood Avenue Charleston, South Carolina 29403-5107 (843) 329-8044	Send one complete copy to: S.C. Dept of Health & Environmental Control Office of Ocean and Coastal Resource Management 1362 McMillan Avenue, Suite 400 Charleston, South Carolina 29405 (843) 744-5838	Send one complete copy to: S.C. Dept. of Health & Environmental Control Office of Environmental Quality Control 2600 Bull Street Columbia, South Carolina 29201 (803) 898-4300
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PERMIT APPLICATION

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

Charleston

744-5838

744-5847 (fax)

Beaufort

846-9400

846-9810 (fax)

Myrtle Beach

626-7217

626-2381 (fax)

NAME AND MAINING ADDRESS OF APPLICANT:

Mr. James R. Maull, Sr.

Charleston SC

NAME AND MAILING ADDRESS OF AUTHORIZED AGENT:

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

WatersDeep, Inc.

Post Office Box 12880

Charleston, SC 29412

PHONE #: (Bus.) (843) 766-0591

(Home)

(Fax)

PHONE #: (Bus.) (843) 330-8505

(Home)

(Fax) (843) 763-6077

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

The applicant requests permission to replace the existing 6' x 30' floater (180 sqft), 5' x 16' floater (80 sqft), and 10' x 30' floater (300 sqft) – (Total existing square footage = 560 sqft) with a new 6' x 20' floater (120 sqft) and a 10' x 44' floater (440 sqft) – (Total replacement square footage = 560 sqft). The 3' x 20' gangway will be moved to the front of the pier and attached to a new 4' x 6' walkway. The work as described is for the applicant's private recreational use.

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

Charles Palmer

Ashley Davis

Ravenel SC

Charleston SC

(Attach additional sheet of paper if necessary.)

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

From the Crosstown follow US-17 S to Folly Road go 0.6 miles.

TAX MAP NUMBER (Required on all applications): 421-14-00-025

LOCAL GOVERNING BODY WITH JURISDICTION OVER Charleston County

NAME OF WATERWAY: Wappoo Creek

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(S)**

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.

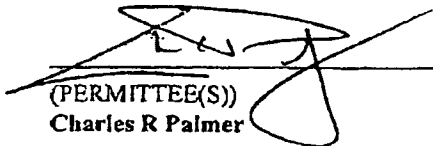
PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE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

2047

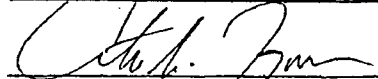
Permit Number: OCRM-07-128-F

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.



8/2/07
(DATE)

(MANAGER, CRITICAL AREA PERMITTING)

Curtis M. Joyner

Or his Designee

Other Authorized State Official

RECEIVED

AUG 08 2007

DHEC-OCRM
CHARLESTON OFFICE

304

Aug 07 07 01:54p

84365697096

PLANNING DIV

ROA 570

Dockmasters

Aug 07 07 01:54p

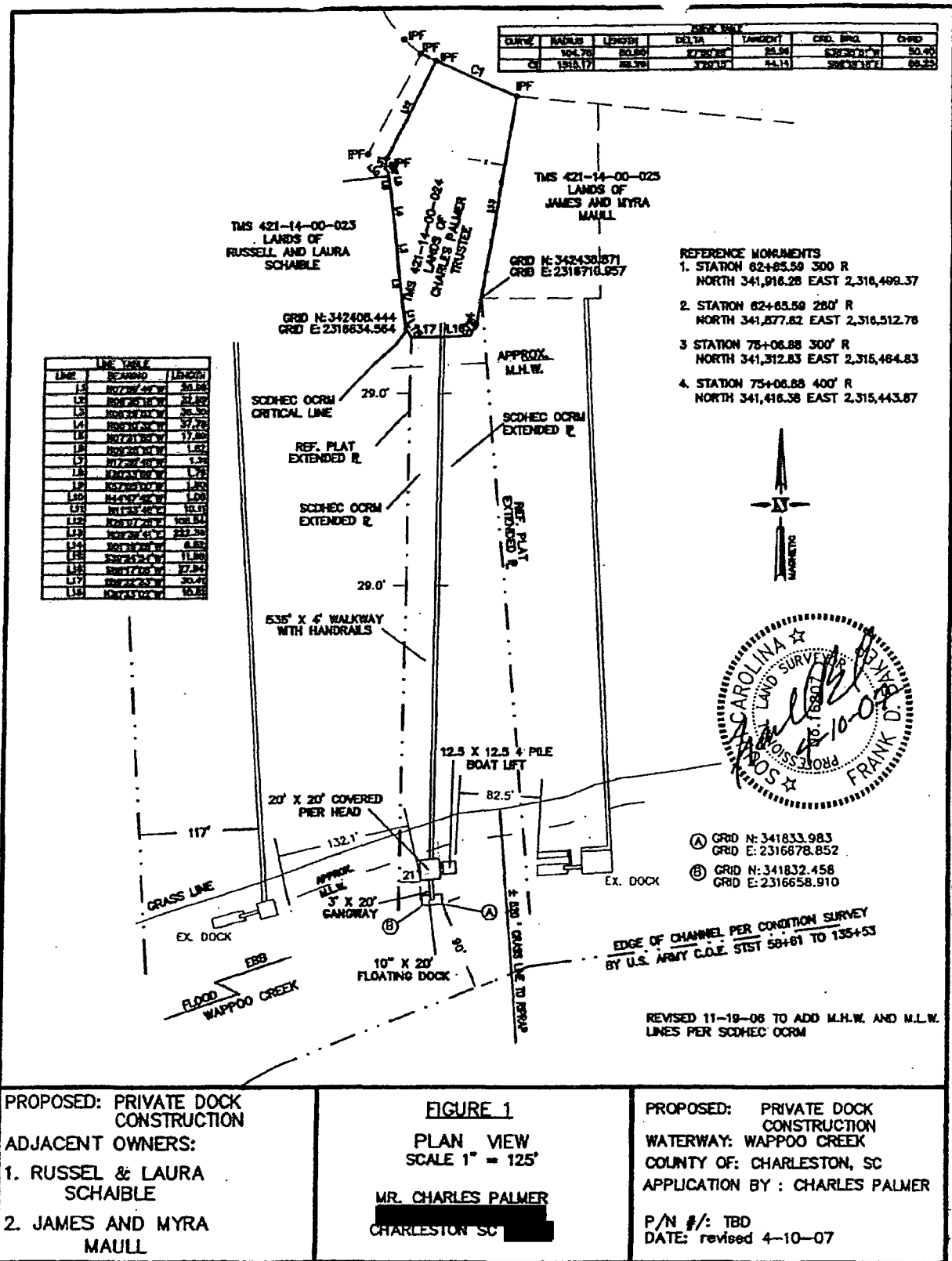
08/06/2007 14:40 FAX 84365697096

GENERAL CONDITIONS:

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

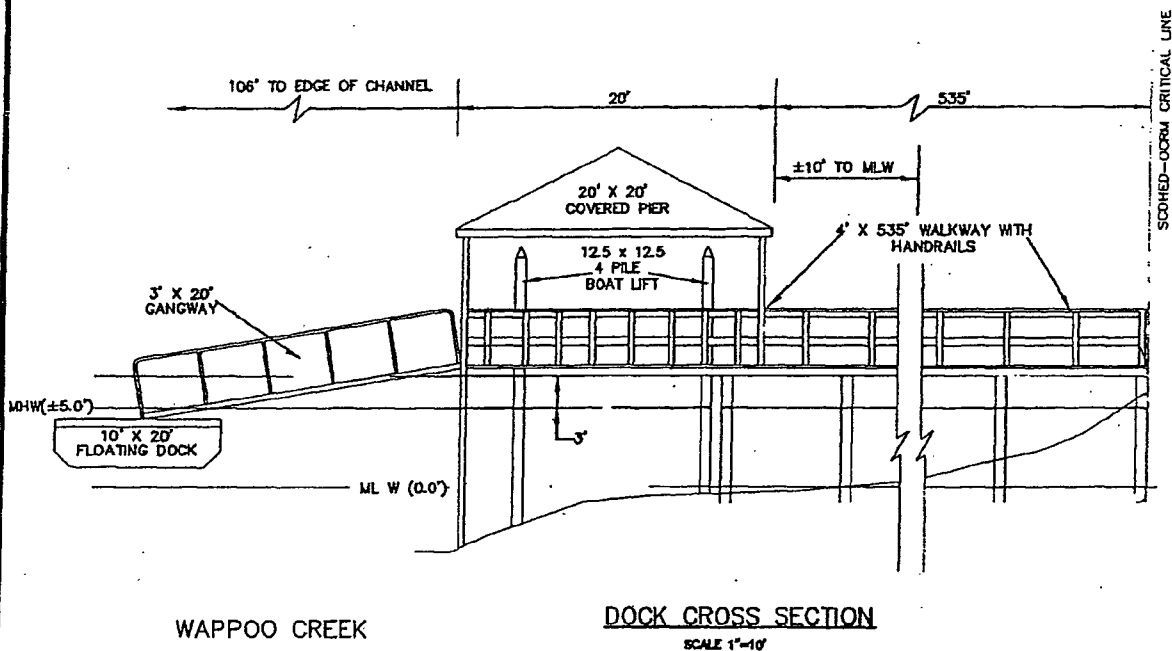
1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage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

4017



5 of 7

0024-07-128-F



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

6 of 7

DEM-07-128-F



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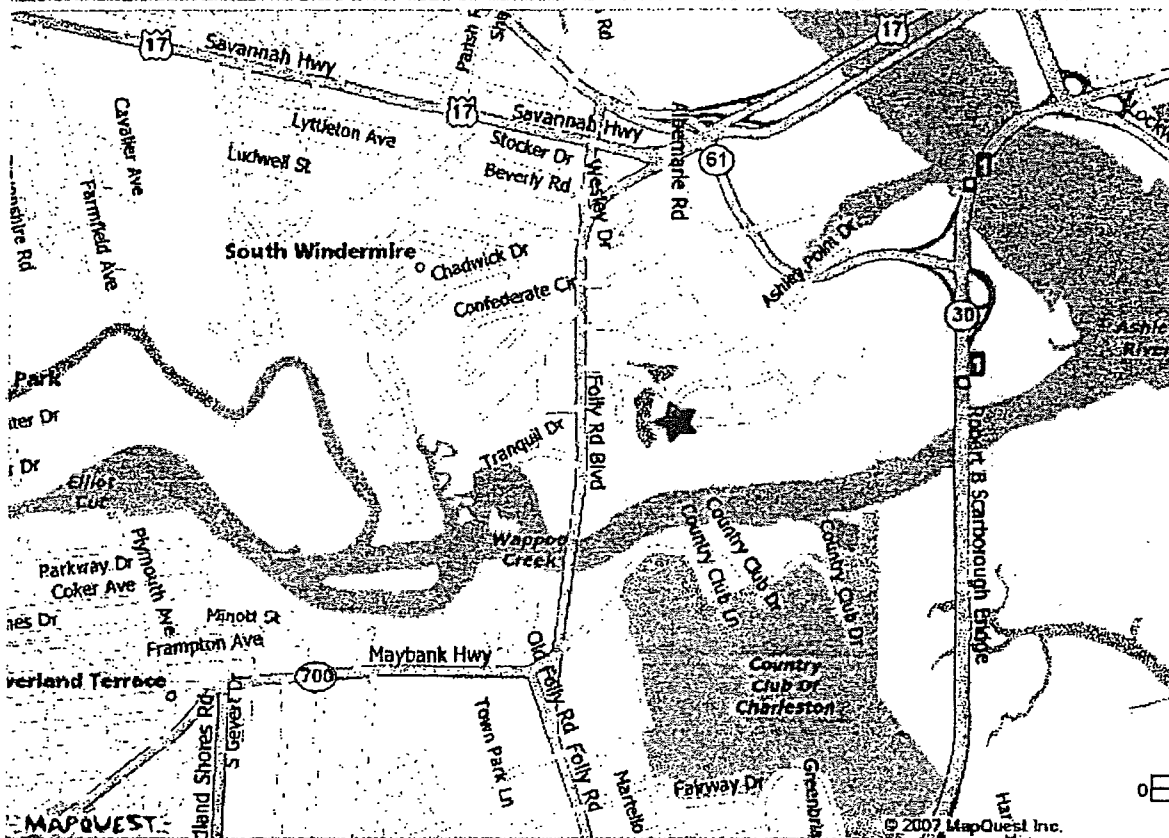
MAPQUEST



Charleston, SC, US



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.



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MAY 02 2007

DHEC-OCRM
CHARLESTON OFFICE

<http://www.mapquest.com/maps/map.adp?searchtype=address&country=US&addtohistory...> 4/30/2007

7 of 7

06M-07-128F

ROA 574

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

Requestor: James R. Maull

Permittee: David Abdo

OCRM Permit Number P/N# OCRM-07-128-F

INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW

Submitted by: Davis A. Whitfield-Cargile, Staff Attorney

Date: October 19, 2011

Requestor challenges an OCRM staff decision on a critical area permit application submitted by David Abdo to amend Permit Number OCRM-07-128-F, which authorizes a dock at [REDACTED], Charleston, South Carolina. The Department reviewed the above referenced application under the applicable statutory provisions in S.C. Code Ann. § 48-39-10, et. seq., and the Department's Critical Area Regulations, S.C. Code Reg. § 30-1 et. seq. After following the required procedures set forth in Reg. 48-39-150 and Reg. 30-4, and considering comments and concerns raised in comment letters submitted on this project the Department issued the above referenced permit amendment on October 6, 2011, with certain special conditions.

Requestor is an adjacent property owner who also owns a dock, which was permitted by DHEC Permit # OCRM-07-333-7. Requestor challenges the location of the Permittee's dock in relation to his dock and the extended property line between Requestor and Permittee's properties (the "Shared Extended Property Line").

The application sought to construct the dock 20.5' away from the Shared Extended Property Line. The special condition on Permittee's dock requires the dock be constructed 30.5 feet away from the Shared Extended Property Line. Requestor constructed his dock 10' feet away from the Shared Extended Property Line and Requestor now asks that Permittee's dock be constructed 40.5' from the Shared Extended Property Line. The basis for requestor's objection is his concern over docking Requestor's 48' sport fishing boat on the landward side of Requestor's floating dock.

A couple of regulations are pertinent to the dispute at issue in this matter. Regulation 30-12(A)(1)(p) provides that "no docks, pierheads, or other associated structures will be permitted closer than 20 feet from extended property line," though DHEC is given discretion to allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act. Thus, there is a general requirement that docks be at least twenty feet off the extended property line. Permittee's application satisfies this requirement. Also pertinent to this dispute is DHEC's obligation to ensure that the dock does not unreasonably impede navigation. (See Regulation 30-12(A)(1)(a) and Regulation 30-11(B)(2)). When the 20 foot requirement in Regulation 30-12(A)(1)(p) is applied to both docks on either side of a shared property line, there will be 40' between docks. This reflects and supports a conclusion that 40 feet between docks will not unreasonably impede navigation or use of the docks. Even though the location of Requestor's dock ten feet off the shared property line is the reason the two docks are closer than 40 feet together, DHEC included a special

condition on the permit requiring the dock be 30.5 feet away from the Shared Extended Property Line rather than the normal minimum distance of 20 feet. Staff determined that 30.5 feet from the extended property line would result in a distance of 40.5 feet between the two docks, which allows for reasonable navigation. Though there is no requirement in the regulations that DHEC ensure enough space between two private docks to ensure the easy mooring of a 48 foot boat at each dock, OCRM staff addressed the Requestor's objections by requiring the dock be 30.5 feet away from the Shared Extended Property line, resulting in a 40.5 foot distance between the two docks.

Based on the foregoing, OCRM staff requests that the Board either decline to conduct a review conference, in which case the staff decision will become the final agency decision, or conduct a review conference and issue a written final agency decision affirming the staff decision to issue the permit amendment as conditioned.

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CO

Abdo

Charleston SC

October 19, 2011

Via U.S. Mail and Fax 803-898-3393

Clerk of the Board

SC DHEC

2600 Bull Street

Columbia SC 29201

2011 NOV 21 AM 9:54
Rec'd via fax 10/21/2011
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SC DHEC BOARD

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

Dear Sir/Madam:

Please accept this letter as our appeal and written request for final review of the amendment to the above permit. Enclosed for your review, please find a copy of the Department's decision regarding the above permit. Also enclosed is my check in the amount of \$100 for the filing fee.

The above permit authorized and issued by the Department is different than what we submitted and requested in our application. Our application for amendment should have been granted as submitted, and we challenge the Department's decision on the following grounds:

1. Our application conforms and comports with South Carolina law, and the Department's regulations, guidelines and standards, and therefore, should have been issued exactly as we requested and should not have been altered by the Department.
2. Our application does not cause any harm, material or otherwise, to any neighbor, the waterway and/or boat traffic.

Significant issues and factors that should be considered in deciding whether to conduct a final review are:

1. The permit currently in place was obtained by the prior owner of [REDACTED], the Estate of Rebecca Palmer. Although we had the home under contract and were advised of the Estate's efforts to obtain a permit, the permit that was issued was the result of negotiations between the Estate, the Department, and both neighbors, the Schaibles and the Mauls. It was not a design or placement chosen or desired by us, and therefore we have requested the subject amendment.
2. We closed on the home in August 2007, began renovations, and moved in during February 2008. Knowing that the original permit negotiations were difficult and protracted, I came up with a proposed compromise solution to alter the permit that I believed would be agreed to by both neighbors. Sometime in the spring of 2008, I met with both neighbors regarding our desire to amend the original permit and showed them sketches of what I proposed.

My neighbors, the Schaibles, reluctantly consented; however, the other neighbors, the Mauls, refused outright and advised that they would object. Specifically, Mr. Maul advised that they were going to undertake work on their dock; that he needed space equal to one and a half times the length of his boat between his dock and ours in order for him to maneuver his boat; and that he would block any attempt by us to alter this distance.

Around October 8, 2008, we saw work being performed on the Maul's dock. Because we had received no notice of any work, I went to the Department to determine what changes the Mauls were making. During my visit to the Department, I was given the file to review, and during the course of my review saw that the Mauls failed to provide us notice. According to the Department's file, instead of sending the required notice to us, the Mauls instead sent our required notice to 'Charles Palmer' at his sister's, Faye Priester, address in Ravenel. (Charles Palmer and Faye Priester are Mr. Maul's cousins, and were the children of Rebecca Palmer, Mr. Maul's

aunt. We purchased our home from the Estate of Rebecca Palmer; Charles Palmer was the Executor and lived in Florida). A copy of that portion of the Department's file regarding notices sent by the Mauls is enclosed.

Mr. Maul sent the required notice of his application for a dock permit to his cousin, Charles Palmer, at an incorrect address despite the fact that he knew we purchased the house a year earlier, that we had been living there for months, and we had spoken a couple of times.

During this same visit to the Department, I met with Fred Mallett to discuss the failure of the Mauls to send us the required notice and the changes the Mauls were undertaking. Mr. Mallett asked me at that time if we objected to the Maul's application and/or permit. My response was: no, as long as my consent to his new permit will not later negatively affect my own application for an amendment to my permit. With regard to our proposed amendment and provided the amendment was within the Department's guidelines, Mr. Mallett assured me that the Department would not listen to an argument from the Mauls regarding the maneuverability or use of their boat. As a result, at that time, we did not raise any objections regarding the lack of notice and/or any other issues regarding the Mauls' new permit and changes.

3. Despite the Mauls' knowledge that we would be seeking to amend our permit, as noted above they later sought and received a permit to reconfigure their dock to bring their floater closer to us, and now complain that our amendment brings our dock too close to theirs.

4. With regard to the subject amendment, while our other neighbors, the Schaibles, consented to and agreed with our application and changes, they object to the dock being shifted any closer to their side as set forth in the permit issued by the Department, or as requested by the Mauls. It is our understanding that they are also appealing the permit.

5. In response to the Mauls' appeal of the above permit:

a. our amendment does not create an unsafe or dangerous boating environment or greater liability for the Mauls or any other user of the waterway;

b. while our dock may be further in the channel than some other docks, its length was approved, and more importantly, it is not as far into the channel as the Mauls' dock;

c. we do not agree with their assessment that our application, either as submitted or as permitted, will hinder the Mauls from docking their boat nor will it be hazardous. The Mauls prefer to dock their boat on the back of their floating dock - this is the basis for their claim of 'unsafe conditions'; however, a preference for docking your boat on the back side of your floater rather than the front is not a ground for an appeal or to object to an application for permit, and does not constitute harm. Further, a desire to have one and a half times the length of your boat in order to maneuver around your dock is unreasonable and also not a basis for objection or appeal, and also does not constitute harm.

We respectfully request that the Board review the Department's decision and issue the permit as submitted in our application.

With kind regards, I am

Sincerely yours,

David W. Abdo

Enclosures

Russell and Laura Schaible

Charleston, SC

(843) 556-3796

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL

2011 OCT 24 AM 10:37
Rec'd via fax on 10/21/2011
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDHEC BOARD

October 21, 2011

Sent via Fax to (803) 898-3393

Clerk of the Board

SC DHEC

2600 Bull Street

Columbia, SC 29201

To Whom it May Concern:

We would like to formally appeal the DHEC amendment proposal dated October 6, 2011 relating to our neighbor's proposed dock, P/N# OCRM-07-128-F. The Abdo's live at [REDACTED] in the Crescent, and we live next door at 31 Broughton.

We understand that James Maull, at [REDACTED], is also appealing this same proposal, as he would like the dock moved more west in our direction.

We purchased [REDACTED] in October 2005, filed for a dock permit, and subsequently built the dock we now have, as it currently stands.

In January of 2006, our neighbor Rebecca **Maull** Palmer died and her children began the process of selling her home at [REDACTED]. We learned at this time from her children that the Maull's of [REDACTED], and they, were related. The files should show that Mrs. Palmer's children were involved in negotiations over the rights to a dock permit of a proposed purchaser, the Woodfield family, with Mr. Maull involved in the process. The point here is that it is not "news" to Mr. Maull that the owners of [REDACTED] would WANT a dock, and that OCRM was accommodating to the idea of those rights.

Thereafter, Mr. Maull chose to reconfigure his dock. Instead of configuring the dock in a way suitable to all, he chose to rebuild in the same problematic configuration. He undertook an "interesting" permit process in December of 2007 (a few months AFTER, according to Charleston County records, the Abdo's bought [REDACTED], in August of 2007), listing a Charles Palmer as owner of neighboring [REDACTED] (See Attachment A), rather than the current owners of the home who actually had an interest in what was occurring. He now has his western floater clearly over what we view as the extended property line, based on existing surveying stakes. His large boat extends over, by more than half its length, that extended property line. Mr. Maull's plans submitted for his permit required that his floater be 19'8" INSIDE the extended property line. (See Attachment B, a survey dated December 1, 2008, from OCRM's "Maull file"). There seems to be a discrepancy between what was built vs. what was planned for in the file.

Points to be made :-

This is a zero sum game. To the extent Mr. Maull gets more footage and space, the Schaibles have a corresponding detracting to their view, and therefore a loss to the market value of their home and quality of life.

Abdo's dock proposal was to be 20 1/2' from Mr. Maull's marsh line. We are comfortable with this proposal.

OCRM's October 6th proposal was to make Abdo's dock 30 1/2' from Mr. Maull's marsh line. We don't believe this should be done since it doesn't satisfy the Maull's needs anyway. He wants MORE land, MORE marsh rights. Where does it end for him?

The fact that Mr. Maull owns a large boat is irrelevant. If he wins the lottery tomorrow and gets a 120' super yacht - do the Abdo's lose their rights all together? The argument that he wants more space due to size of his boat is unjustified.

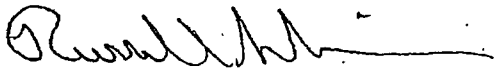
Mr. Maull chose to reconfigure his dock in 2008, utilizing an inaccurate notification process, and knowing full well Abdo's would be working on a dock shortly; he should not be rewarded for breaking the rules. "Grandfathering" should not come into play in the case of trickery. Mr. Maull could put his boat in FRONT of his own pier head tomorrow, and have plenty of space. We propose he do that. If he wants to keep it in the current spot we should not be penalized.

Summation :

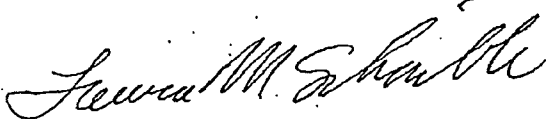
We request that you permit the Abdo's proposed dock configuration which was 20 1/2' off the Maull/Abdo extended property line. We would welcome the ability to present facts in a hearing if this is necessary to resolve the issue.

We sincerely have every desire to see our neighbors, the Abdo's, be able to enjoy their riparian rights as soon as possible, and greatly appreciate your consideration.

Sincerely,

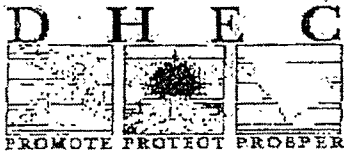
A handwritten signature in cursive script, appearing to read "Russell A. Schaible".

Russell A. Schaible

A handwritten signature in cursive script, appearing to read "Laura M. Schaible".

Laura M. Schaible

CC: J. Thompson, OCRM Charleston , via Fax to (843) 953-0201



PERMIT
APPLICATION

61664

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

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

NAME AND MAILING ADDRESS OF APPLICANT:

Mr. James R. Maull, Sr.

[REDACTED]

Charleston SC [REDACTED]

NAME AND MAILING ADDRESS OF AUTHORIZED AGENT:

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

Waters Deep, Inc.

Post Office Box 12880

Charleston, SC 29412

PHONE #: (Bus.) (843) 766-0591

(Home)

(Fax)

PHONE #: (Bus.) (843) 330-8505

(Home)

(Fax) (843) 763-6077

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

The applicant requests permission to replace the existing 6' x 30' floater (180 sqft), 5' x 16' floater (80 sqft), and 10' x 30' floater (300 sqft) - (Total existing square footage = 560 sqft) with a new 6' x 20' floater (120 sqft) and a 10' x 44' floater (440 sqft) - (Total replacement square footage = 560 sqft). The 3' x 20' gangway will be moved to the front of the pier and attached to a new 4' x 4' walkway. The work as described is for the applicant's private recreational use.

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

Charles Palmer

[REDACTED]

Ravenel SC [REDACTED]

(Attach additional sheet of paper if necessary.)

Ashley Davis

[REDACTED]

Charleston SC [REDACTED]

RECEIVED

DEC 13 2007

DHEC-OCRM
CHARLESTON OFFICE

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

From the Crosstown follow US-17 S to Folly Road go 0.6 miles. Turn left onto [REDACTED]

[REDACTED]

COUNTY: Charleston

TAX MAP NUMBER (Required on all applications): 421-14-00-025

LOCAL GOVERNING BODY WITH JURISDICTION OVER Charleston County

NAME OF WATERWAY: Wappoo Creek

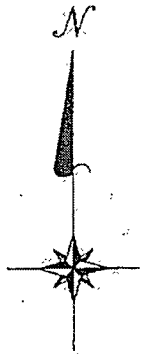
NOTE:

1. THIS IS NOT A PLAT SUITABLE FOR TRANSFER OF REAL ESTATE TITLE. INTENDED FOR DOCK PERMIT USE ONLY. FOR ILLUSTRATION PURPOSES ONLY.

2. ALL PROPERTY AND CRITICAL LINES SHOWN HEREON ARE PER PLAT BY ROBERT L. FRANK DATED JUNE 28, 2007. OCRM CRITICAL LINE APPROVED 7/12/07.

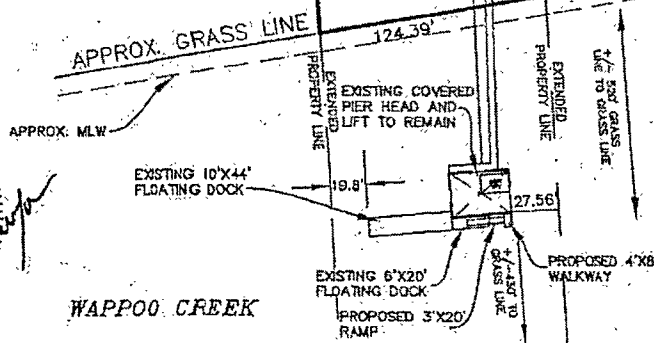
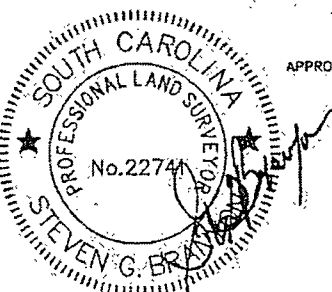
3. NO SURVEY WORK HAS BEEN PERFORMED BY THIS FIRM.

NUMBER	DIRECTION	DISTANCE
L1	S 15°55'42" W	3.62'
L2	N 88°19'01" W	76.97'
L3	S 44°46'46" W	15.34'
L4	N 89°44'08" W	33.75'



ADJACENT PROPERTY OWNERS:

1. DAVID ABDO
2. ASHLEY DAVIS



ACTIVITY	PRIVATE DOCK MODIFICATION
WATERBODY	WAPPOO CREEK
LOCATION	[REDACTED]
PERMIT #	[REDACTED]
DATE	12/1/08

FIGURE 3
PLAN VIEW
AT THE REQUEST OF
JAMES MAULL SR.
[REDACTED]
CHARLESTON, SC [REDACTED]

PROPERTY DESIGNATION	LOT 7
TAX MAP #	421-14-00-025
DEED REFERENCE	
PLAT REFERENCE	EK-960
COUNTY	CHARLESTON

Attachment "B"

hp LaserJet 3015



STAPLES 1583
8434020988
Oct-21-2011 1:42PM

Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
147	10/21/2011	1:39:26PM	Send	18038983393	2:51	6	OK

STAPLES copy&printcenter

Staples in South Westborough
78 Folly Road
Chatham, NC 27407
843-402-0988 Fax 843-402-0188

Complimentary Self-Serve Fax Cover Sheet

To: Cherk A the Board From: Leanne Ross, Ely, Va
Fax #: 494-3393 SC OHEC Phone #: (437) 556-3796
Date: 10/21 Reply Fax #: _____
Number of Pages (including Cover): 6 Urgent ☒ Confidential ☐ Confirm Receipt ☐

Appeal of PLN # OCRM-07-128-F

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from 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/Respondents,

v.

Russell Schaible and Laura Schaible

Intervenors/Respondents

NOTICE OF APPEAL

YOUNG CLEMENT RIVERS, LLP
Michael A. Molony
P.O. Box 993
Charleston, South Carolina 29402
(843) 724-6631
Attorney for the Appellant

RECEIVED

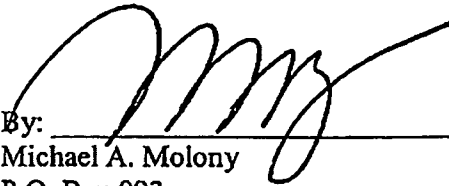
SEP 04 2013

SC Court of Appeals

The Appellant, James R. Maull, hereby appeals all appealable orders, judgments, decisions, and/or rulings adverse to him in this matter, to include specifically, all pre-trial and trial rulings adverse to him; and the Final Order and Decision rendered against him on August 1, 2013 by the Honorable Shirley G. Robinson, a copy which is attached hereto. The Appellant received Judge Robinson's Final Order and Decision on August 5, 2013.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

Michael A. Molony
P.O. Box 993
Charleston, South Carolina 29402
(843) 724-6631
Attorney for the Appellant

Charleston, South Carolina

Dated: 8/29/13

Other Counsel of Record:

Leslie S. Riley, Esquire
McNair Law Firm, P.A.
100 Calhoun Street
Suite 400
Charleston, SC 29401
(843) 723-7831

Attorney for the Respondent Russell Schaible and Laura Schaible

Nathan M. Haber, Esquire
South Carolina Department of Health and Environmental Control- OCRM
1362 McMillan Ave. - Suite 400
Charleston, SC 29405
(843) 953-0200

Attorney for the Respondent South Carolina Department of Health and Environmental Control

David Abdo

[REDACTED]
Charleston, SC [REDACTED]
(843) 813-3466

Pro Se Respondent

FILED

AUG 01 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

DOCKET NO.: 12-ALJ-07-0050-CC

James R. Maull,

Petitioner,

vs.

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

Respondents,

and

Russell and Laura Schaible,

Intervenors.

FINAL ORDER AND DECISION

RECEIVED
SEP 04 2013
SC Court of Appeals

APPEARANCES:

For the Petitioner:	Michael Molony, Esquire
For Respondent SCDHEC:	Nathan Haber, Esquire
For Respondent David Abdo:	<u>Pro Se</u>
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 Intervenor, 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 Intervenor 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.

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 Intervenor 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 Intervenor was 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 Intervenor.

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 Examiners 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 Intervenor 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.

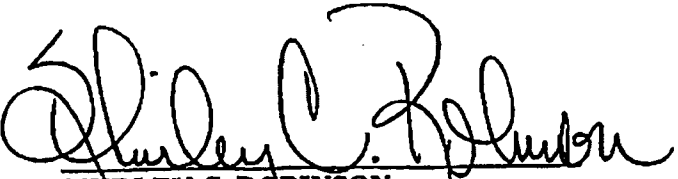
18. This controversy is personal to Petitioner. The evidence establishes Petitioner's dispute would not exist but for the length of Petitioner's boat and his desire to moor it landward rather than channelward.

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 in the Registry Mail Service addressed to the party(ies) or their attorney(s).

This 1 day of August 2013
By: Teena Henderson
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from 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/Respondents,

v.

Russell Schaible and Laura Schaible

Intervenors/Repsondents

PROOF OF SERVICE

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SEP 04 2013

SC Court of Appeals

I, Michael A. Molony, of Young Clement Rivers, LLP, counsel for the Appellant above named, do hereby certify that I have served the Appellant's Notice of Appeal on the above-named Respondents by depositing a copy of the same in the United States Mail, postage prepaid, on August 30, 2013, addressed as follows to the Respondent's counsels of record:

Leslie S. Riley, Esquire
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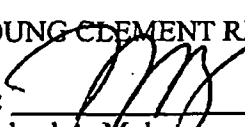
Nathan M. Haber, Esquire
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I further certify that I have provided Appellant's Notice of Appeal to the Clerk of the South Carolina Administrative Law Court by depositing a copy of the same in the United States Mail, postage prepaid, on August 30, 2013, addressed as follows:

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

YOUNG CLEMENT RIVERS, LLP

By: 

Michael A. Molony

Charleston, South Carolina

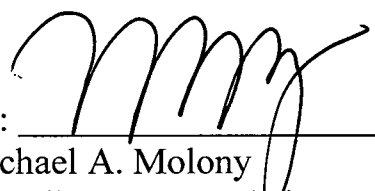
Dated: 8/29/13

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this *Record on Appeal* contains all material proposed to be included by any of the parties and not any other material. Additionally, the undersigned hereby certifies that this *Record on Appeal* complies with the Supreme Court order dated August 13, 2007.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____

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**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

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

Respondents,

and Russell and Laura Schaible,

Respondents.

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I, Tara O'Donnell, of Young Clement Rivers, LLP, legal assistant to counsel for the Appellant above named, do hereby certify that I have served the **RECORD ON APPEAL VOLUMES I and II** on the above-named Respondents by depositing a copy of the same in the United States Mail, postage prepaid, on April 23, 2014, addressed as follows to the Respondents or their counsel of record:

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Tara O'Donnell

Charleston, South Carolina

Dated: April 23, 2014