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STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

RECEIVED

Shirley C. Robinson, Administrative Law Judge

DEC 09 2015

Case No. 14-ALJ-07-0282-CC
Appellant Case No. 2015-000602

SC Court of Appeals

Dan Abel and Mary Abel

Appellants,

vs.

South Carolina Department of Health and Environmental Control and
Pawleys Island Community Church,

Respondents.

**RECORD ON APPEAL
VOLUME I OF II**

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ORDERS:

Order Granting Motion to Dismiss and Denying Motion to Consolidate, Motion to Enforce, and Motion for Summary Judgment, dated February 12, 2015	1
Order (granting withdrawal of William Mashburn), dated October 29, 2014	11
Scheduling Order, dated September 3, 2014	13
Order for Prehearing Statements, dated July 9, 2014	15

PLEADINGS:

Request for Final Review Conference dated April 16, 2014	17
Request for Contested Case Hearing dated June 13, 2014	35
Department's Prehearing Statement, dated July 29, 2014	65
Petitioner's Prehearing Statement, dated July 31, 2014	68
Pawleys Island Community Church's Prehearing Statement, dated August 5, 2014	73
Petitioners' Motion to Enforce Consent Order and to Consolidated, dated November 25, 2014	76
Memorandum in Support of Respondents Pawleys Island Community Church and South Carolina Department of Health and Environmental Control's Motion to Dismiss, dated December 12, 2014	110
Respondents' Reply to Motion to Enforce Consent Order and to Consolidate, dated December 12, 2014	135
Petitioners' Motion for Summary Judgment, dated December 15, 2015	156

Petitioners' Reply to Joint Response on Motion to Enforce Consent Order and to Consolidate, dated December 23, 2014	421
Department's Response in Opposition to Petitioners' Motion for Summary Judgment, dated December 30, 2014	434
Petitioners' Response to Joint Motion to Dismiss, dated January 6, 2015	468
Church's Response in Opposition to Petitioners' Motion for Summary Judgment, dated January 7, 2015	480
Petitioners' Reply on Motion for Summary Judgment, dated January 14, 2015	509
MISCELLANEOUS DOCUMENTS:	
DHEC's Board Denial Letter, May 14, 2014	521
CERTIFICATE OF COUNSEL	523

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Dan Abel and Mary Abel,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control and Pawleys Island
Community Church,

Respondents.

Docket No. 14-ALJ-07-0282-CC

**ORDER GRANTING
MOTION TO DISMISS
AND
DENYING MOTION TO CONSOLIDATE,
MOTION TO ENFORCE, AND
MOTION FOR SUMMARY JUDGMENT**

APPEARANCES:

For the Petitioners:

Jessie A. White, Esquire
Amy E. Armstrong, Esquire

For the Department:

Nathan M. Haber, Esquire

For the Respondent:

Daniel W. Stacy, Jr., Esquire

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court ("the ALC" or "the Court") as a result of Petitioners¹ Dan and Mary Abel filing a request for a contested case hearing with this Court challenging the Department's issuance of a stormwater permit (SCR10Q459) and a Coastal Zone Consistency Certification ("CZC") (CZC-12-0149) to Pawleys Island Community Church ("Respondent"). Thereafter, Petitioners filed a Motion to Enforce the Consent Order and to Consolidate. Respondents filed a Response to Petitioners' motion and filed a Motion to Dismiss. Petitioners filed a Response to Respondents' Motion to Dismiss and filed a Motion for Summary Judgment. Respondents then filed a Response in Opposition to Petitioners' Motion for Summary Judgment to which Petitioners filed a Reply. After reviewing the filings by the parties, the Court denies Petitioners' Motions and grants Respondent's Motion to Dismiss.

¹ On October 29, 2014, this Court granted William Mashburn's request to withdraw as a third Petitioner in this case.

BACKGROUND

In 2000, Pawleys Island Community Church ("the Church") sought to expand its facility by adding a new sanctuary and other improvements. Because the Church would be conducting land disturbing activity, the Church was required by law to apply to the South Carolina Department of Health and Environmental Control ("the Department") for a state stormwater permit and a related coastal zone consistency certification pursuant to federal National Pollution Discharge Elimination System ("NPDES") general permit requirements as administered by the state of South Carolina. See 33 U.S.C.A. § 1342 (West) (discussing NPDES permit implementation and administration). Additionally, because the Church's construction plans also included filling in jurisdictional wetlands, the Church obtained a permit from the United States Army Corps of Engineers and a related CZC. See 33 U.S.C.A. § 1344 (West) (requiring a permit from the U.S. Army Corps of Engineers to fill or dredge navigable waters); 33 U.S.C.A. § 1362(7) (West) (providing "'navigable waters' means the waters of the United States, including the territorial seas"); United States v. Riverside Bayview Homes, Inc., 474 U.S. 121, 139, (1985) (holding "waters of the United States" includes wetlands adjacent to navigable waters). The Army Corps of Engineers issued the Church a permit to fill wetlands on the Church's property, and the Department issued a CZC for the Corps permit and a state stormwater permit (collectively, "the 2000 permit and CZC"). Subsequently, Petitioners and David F. Mims² filed a request for a contested case hearing with the ALC, challenging the Department's decisions to issue the 2000 permit and CZC. The parties eventually agreed to a settlement memorialized in a consent order ("the Consent Order") issued by this Court on January 8, 2001.

The Consent Order stated the proceeding arose from Respondents' application for a stormwater permit and an accompanying CZC for "construction of a new sanctuary and other improvements of its property." It included the following restrictive clauses, among others:

1. The designs for the storm water pond and other improvements at the site shall be amended so that approximately one-half (50%) of the wetland area on the site shall be preserved.

3. The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.

² At the time the 2000 contested case, Petitioners and Mims owned property adjacent to the Church.

5. Within the area designated on Exhibit A as the '30 NOISE/VISUAL BUFFER," the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees and shrubs will be Leyland cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height with fifty percent (50%) of the trees at least ten (10) feet in height; provided however, that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state.

9. The Church and the Petitioners will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement and order.

It is further ordered that this matter shall be dismissed, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein.

The Church concluded the construction activities to which the 2000 permit and CZC pertained in the early 2000s.

On June 26, 2012, several years after the original construction project was complete, the Church applied for (1) a new state stormwater permit and accompanying CZC ("the 2012 permit and CZC"), and (2) a new Corps fill permit and accompanying CZC ("the Corps permit and CZC"), for a new and distinct construction project. For the new construction project, the Church planned to reconfigure an existing drive, add parking, construct a 4,000 square foot administrative building, expand and reconfigure the existing retention pond and outlet structure, and add an infiltration system. The construction project would impact 0.17 acres of wetlands on the Church's property. In October 2013, and in response to concerns by Mims, who was a party to the Consent Order, the Church motioned this Court to approve a modification of the Consent Order with Mims' approval. This Court dismissed the case for lack of jurisdiction because the Department had yet to render, for the purposes of administrative review, a final decision regarding the issuance of the state stormwater permit and its accompanying CZC. See Docket No. 13-ALJ-07-0547-CC (filed Jan. 7, 2014).

On March 31, 2014, and March 26, 2014, respectively, the Department granted the Church's request for the 2012 permit (SCR10Q459) and CZC (CZC-12-0149). On April 16, 2014, Petitioners Dan and Mary Abel³ filed a request for Final Review of the 2012 permit and

³ Sometime between the signing of the Consent Order and the initiation of this action, the Abels sold their property adjacent to the church and purchased a non-adjacent property a few blocks away.

CZC with the Department's Board. On May 14, 2014, the Board denied Petitioner's request for a Final Review, which rendered the Department's staff decision final.

On June 13, 2014, Petitioners filed a Request for Contested Case Hearing with this Court challenging the Department's decision to issue the 2012 permit and CZC. Petitioners did not challenge the Corps permit and CZC (CZC-12-0297). Subsequently, Petitioners also filed a Motion to Enforce the Consent Order and to Consolidate, in which Petitioners sought to enforce the Consent Order and consolidate this case with the 2001 ALC case. Respondents filed a Response in Opposition to Petitioners' Motion to Enforce and to Consolidate, and filed a Motion to Dismiss pursuant to ALC Rule 68 and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP"). Thereafter, Petitioners filed a Motion for Summary Judgment pursuant to ALC Rule 68 and Rule 56, SCRCP. Respondents then filed a Response in Opposition to Petitioners' Motion for Summary Judgment, to which Petitioners filed a Reply.

DISCUSSION

This Court has jurisdiction to hear this case pursuant to sections 1-23-310 et seq. of the South Carolina Code (Supp. 2014) and section 44-1-60 of the South Carolina Code (Supp. 2014) (providing "[a]n applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing" following a final decision by the Department).

Petitioners ask this Court to consolidate this case with the 2001 ALC case and to enforce the Consent Order because the actions authorized under the 2012 permit and CZC violate restrictions in the Consent Order. Specifically, they argue the 2012 permit and CZC violate the Consent Order because they allow the Church to (1) fill part of the remaining wetlands on its property, and (2) diminish the required buffer under the Consent Order. Petitioners also move for summary judgment to find the 2012 permit and CZC are inconsistent with the Consent Order.

Respondents oppose Petitioner's motion to consolidate and enforce the Consent Order, arguing the Consent Order does not apply to the 2012 permit and CZC, and Petitioners do not have standing to enforce the Consent Order. Respondents also oppose Petitioners' motion for summary judgment, arguing Petitioners failed to challenge the correct permit and CZC (the Corps permit and CZC), and also arguing the 2001 Consent Order does not apply to the current construction project and its associated 2012 permit and CZC. Further, Respondents' move this Court to dismiss this action on two grounds. First, Respondents argue Petitioners have failed to

state sufficient facts to constitute a cause of action under Rule 12(b)(6), SCRCP, because the 2001 Consent Order is not applicable to the 2012 Permit and CZC. Second, Respondents argue Petitioners do not have standing because Petitioners no longer own property neighboring the Church to show they receive a benefit from the Consent Order's restrictions.

After reviewing the filings by the parties, the Court denies Petitioners' Motion to Enforce and Consolidate and Motion for Summary Judgment. The Court grants Respondent's Motion to Dismiss.

A. Motion to Consolidate

Petitioners move to consolidate this case with the 2001 case. I deny Petitioners' motion. The 2001 case was dismissed with prejudice, and it is not necessary to reopen the 2001 case to resolve the issues presented in the current case. Whether the Consent Order is enforceable against, and consistent with, the 2012 permit and CZC is not affected by whether the cases are consolidated.

B. Motion to Enforce, Motion to Dismiss, and Motion for Summary Judgment

The Rules of Procedure for the Administrative Law Court provide "[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." ALC Rule 68. Rule 12(b)(6), SCRCP, provides a party may move to dismiss an action for "failure to state facts sufficient to constitute a cause of action." "In considering a motion to dismiss under Rule 12(b)(6), a court must base its ruling solely on the allegations set forth in the complaint." Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 74, 753 S.E.2d 846, 850 (2014). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal under Rule 12(b)(6) is improper." Id. at 74-74, 753 S.E.2d at 850.

Petitioners move to enforce the Consent Order to prevent the Church from taking actions authorized by the 2012 permit and CZC that are inconsistent with restrictions in the Consent Order. Petitioners also move this court to grant summary judgment to find the 2012 permit and CZC are inconsistent with the Consent Order. In contrast, Respondents move to dismiss this action on two grounds.⁴ First, Respondents argue Petitioners have failed to state sufficient facts

⁴ I note that in opposition to Petitioners' Motion for Summary Judgment, Respondents argued Petitioners contested the wrong permit and CZC; however, Respondents did not raise this as ground for dismissal.

to constitute a cause of action under Rule 12(b)(6), SCRCp, because the 2001 Consent Order is inapplicable to the Church's 2012 permit and CZC. Second, Respondents argue Petitioners do not have standing because Petitioners no longer own property neighboring the Church; therefore, Petitioners cannot show they benefit from the restrictions, if any, placed on the property.

First, I will address Petitioners' motion to enforce and Respondents' motion to dismiss. Petitioners' and Respondents' motions overlap because both motions require the interpretation of the temporal applicability of the Consent Order to be resolved, which is a question of law. See Pruitt v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (holding an action to construe a contract is an action at law). If the applicability of the Consent Order is not limited to the 2000 permit and CZC, then it is enforceable against the 2012 permit and CZC, and Petitioners' motion to should be granted. However, if the applicability of the Consent Order is limited to the 2000 permit and CZC, then it is inapplicable to the 2012 permit and CZC, and Respondents' motion to dismiss should be granted.

Initially, I note I agree with Petitioners' contention that the Consent Order is a valid and enforceable contract. See Leventis v. S.C. Dep't of Health & Envtl. Control, 340 S.C. 118, 133, 530 S.E.2d 643, 651 (Ct. App. 2000) (citing section 1-23-320(f) of the South Carolina Code (1986), which provides: "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default."); Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) ("In South Carolina jurisprudence, settlement agreements are viewed as contracts."). However, the parties disagree whether the Consent Order is enforceable in the current action. To determine whether the Consent Order is enforceable in the current action, I must determine the temporal scope of the Consent Order, which requires me to construe the contract.

"In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." Ecclesiastes Prod. Ministries v. Outparcel Associates, LLC, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). "The parties' intention must, in the first instance, be derived from the language of the contract." Id. Moreover, "[t]he parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof." Id. at 498, 649 S.E.2d at 502. "A contract is read as a whole document so that 'one may not, by pointing out a single sentence or clause, create an ambiguity.'" S. Atl. Fin. Servs., Inc. v. Middleton, 356 S.C. 444, 447, 590 S.E.2d 27, 29 (2003) (citation omitted). Similarly, "[w]hether

the language of a contract is ambiguous is a question of law for the court” and “must be determined from the entire contract and not from any isolated clause of the agreement.” Pee Dee Stores, 381 S.C. at 242, 672 S.E.2d at 803. “A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation.” Id.

In the context of the entire agreement, I find the intention of the parties in executing the Consent Order is clear and unambiguous, and the Consent Order’s applicability is limited to the 2001 construction project. Specifically, I find the intent of the parties was to assuage the concerns of neighboring property owners related to the construction activity authorized by the 2000 permit and CZC, and the Consent Order was not intended to apply to distinct, future construction projects. See Ecclesiastes Prod. Ministries, 374 S.C. at 497, 649 S.E.2d at 501 (“The parties’ intention must, in the first instance, be derived from the language of the contract.”); id. at 498, 649 S.E.2d at 502 (“The parties’ intention must be gathered from the contents of the entire agreement and not from any particular clause thereof.”).

Although one clause in the Consent Order, clause 3, is arguably ambiguous as to time, Petitioners may not use this one clause to create ambiguity in the entire document. S. Atl. Fin. Servs., Inc., 356 S.C. at 447, 590 S.E.2d at 29 (“A contract is read as a whole document so that ‘one may not, by pointing out a single sentence or clause, create an ambiguity.’” (citation omitted)). While one can read clause 3 as implying the wetlands are to be preserved indefinitely, the remaining eight clauses show the temporal applicability of the Consent Order was limited. For example, the opening paragraph of the Consent Order provides:

“[t]his proceeding arises out of the application of the Pawleys Island Baptist Church . . . for a state storm water permit *for the construction of a new sanctuary and other improvements of its property* In a related application, the church also requested a wetland fill permit from the U.S. Army Corps of Engineers which required a [CZC] by the [Department].”

(emphasis added). This language indicates the Consent Order was executed to address two *specific applications* (the 2000 Permit and CZC) related to a *specific construction project* to be undertaken by the Church in or around 2001. Next, clause 1 contains a restraint on the development of wetlands, but this is clearly within the context of the construction project: “The *designs for the storm water pond and other improvements at the site* shall be amended so that approximately one-half (50%) of the wetland area on the site shall be preserved.” (emphasis added). This language describes specific designs for the Church’s 2001 construction project for which the Church requested a specific stormwater permit and CZC. Clauses 2 and 4 similarly

reference specific “improvements” and “designs” associated with the 2001 construction project. Clauses 5, 6, and 7 incorporate restrictions specifically intended to shield neighboring properties from noise and visual obstructions through the use of buffers and setbacks. Finally, in clause 9, the word “amendments” is modified by the word “permit,” which refers to the 2000 permit issued to the Church. Therefore, I find this clause is limited to amendments to the 2000 permit that might have become necessary to complete the 2001 construction project, not future projects.

Petitioners submitted the affidavit of one of the Petitioners, Dan Abel, who attests he understood that because the Consent Order contained an absence of “time limitations,” the restrictions in the Consent Order would continue in perpetuity. In his affidavit, he claims he primarily entered into the Consent Order to preserve the wetlands indefinitely. Although it may have been Mr. Abel’s intent to at the time to have the restrictions last in perpetuity, “[i]nterpretation of a contract is governed by the objective manifestation of the parties’ assent at the time the contract was made, rather than the subjective, after-the-fact meaning one party assigns to it.” Laser Supply & Servs., Inc., 382 S.C. at 334, 676 S.E.2d at 143-44 (Ct. App. 2009).

Similarly, Petitioners submitted several Department documents showing that during the 2012 permit process, the Department vacillated as to whether the Consent Order prevented the activities authorized by the 2012 permit and CZC. Ultimately, the Department determined the Consent Order did not apply. Like Mr. Abel’s affidavit, this evidence has less weight than the intention of the parties as manifested in the document.

Accordingly, in the context of the entire agreement, I find the intention of the parties in executing the Consent Order was clear and unambiguous. In particular, the parties intent was to assuage the concerns of neighboring property owners related to the construction activities authorized by the 2000 permit and CZC, and the Consent Order was not intended to apply to distinct, future construction projects. See Ecclesiastes Prod. Ministries, 374 S.C. at 497, 649 S.E.2d at 501 (“In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties.”); id. at 498, 649 S.E.2d at 502 (“The parties’ intention must be gathered from the contents of the entire agreement and not from any particular clause thereof.”). The 2001 construction project for which the 2000 permit and CZC were issued was completed several years ago – approximately twelve years ago according to Respondents. The current case arises from a new permit and a new CZC application for a separate and distinct construction

project. Because the Consent Order only applies to construction activities undertaken under the 2000 permit and CZC, Petitioners cannot resurrect the Consent Order to challenge the Church's new construction under the 2012 permit and CZC. For all the reasons stated above, I deny Petitioners' Motion to Enforce the Consent Order.

Because I find the Consent Order is inapplicable to the 2012 permit and CZC, and Petitioners did not challenge the permit and CZC on any other grounds, I also find Petitioners have failed to state facts sufficient to constitute a cause of action; accordingly, I grant Respondents' Motion to Dismiss pursuant to Rule 12(b)(6), SCRCF.

Further, I deny Petitioners' Motion for Summary Judgment. Both Petitioners' Motion for Summary Judgment and Respondents' Motion to Dismiss are appropriate to address an issue of law. Here, I have chosen to grant Respondents' Motion to Dismiss, which effectively resolves the questions of law raised in this case. Moreover, Petitioners' motion asked this court to determine that the 2012 permit and CZC were inconsistent with the Consent Order; however, because I find the Consent Order is not enforceable against the 2012 permit and CZC, it is not necessary to determine whether the 2012 permit is consistent or inconsistent with the Consent Order.

Last, Respondents also move to dismiss this action because they claim Petitioners do not have standing to enforce the Consent Order. Specifically, Respondents contend Petitioners cannot enforce the Consent Order because they no longer own property adjacent to the Church. To support their argument, Respondents cite to real property law governing restrictive covenants, which states "the grantor lacks standing to enforce a covenant against a remote grantee when the grantor no longer owns real property which would benefit from the enforcement of that restrictive covenant." McLeod v. Baptise, 315 S.C. 246, 247, 433 S.E.2d 834, 835 (1993). The Consent Order does not constitute a restrictive covenant and, as such, principles of standing under restrictive covenant real property law do not apply in this case. Therefore, I find Respondents' challenge to Petitioners' standing on this ground is not an alternative ground for dismissal.

CONCLUSION

Based on the language of the Consent Order and the intention of the parties as gleaned from the entire document, I find the Consent Order only applies to the Church's 2001 construction project and its associated 2000 permit and CZC. See Ecclesiastes Prod. Ministries,

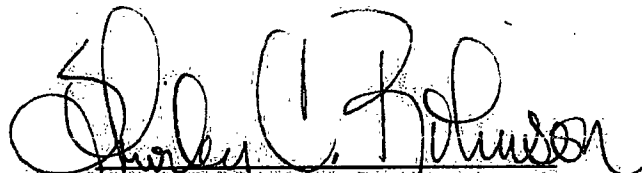
374 S.C. at 497, 649 S.E.2d at 501 ("In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties."); id. at 498, 649 S.E.2d at 502 ("The parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof."). Because the Consent Order only applies to construction activities undertaken under the 2000 permit and CZC, I find Petitioners cannot resurrect the Consent Order to enforce it against the Church's new and distinct construction project as authorized by the 2012 permit and CZC. Further, because I find the Consent Order is inapplicable to the 2012 permit and CZC, and Petitioners did not challenge the permit and CZC on any other grounds, I find Petitioners have failed to state facts sufficient to constitute a cause of action. Thus, I grant Respondents' Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP.

ORDER

IT IS HEREBY ORDERED that Petitioners' Motion to Consolidate and Enforce, and Petitioners' Motion for Summary Judgment are **DENIED**.

IT IS FURTHER ORDERED that Respondents' Motion to Dismiss is **GRANTED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

February 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has on a date served this order on the above entitled action upon all parties to this cause by depositing a copy thereof in the United States mail, postage paid, by the agency Mail Service addressed to the party(ies) or their attorney(s).
This 12 day of February 2015
By: Jeane M. Henderson
Judicial Law Clerk

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Dan Abel, Mary Abel and William
Mashburn,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Pawleys Island
Community Church,

Respondents.

Docket No.: 14-ALJ-07-0282-CC

ORDER

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a Request for Contested Case Hearing filed by Dan Abel, Mary Abel and William Mashburn ("Petitioners") on June 13, 2014. Petitioners challenge the final decision of the South Carolina Department of Health and Environmental Control ("Department" or "Respondent") granting Stormwater Permit Coverage and Coastal Zone Consistency Certification to Pawleys Island Community Church ("Respondent"). The Department's Agency Information Sheet was filed with the Court on July 1, 2014. On July 9, 2014, the Court issued an Order for Prehearing Statements. Following the filing of each party's Prehearing Statement, the parties filed a proposed scheduling order which was approved by the Court on September 3, 2014.

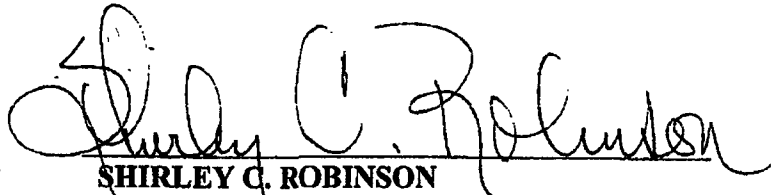
On October 22, 2014, Petitioner William Mashburn filed a Notice of Withdrawal informing the Court that Mr. Mashburn wishes to withdraw as a party in this contested case matter. No party has filed an objection to Mr. Mashburn's withdrawal.

Therefore, based upon the foregoing, **IT IS HEREBY ORDERED** that William Mashburn's request to withdraw as a party in the above-captioned case is granted, and his name shall be removed from the case caption.

FILED

OCT 29 2014

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

October 29, 2014
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 Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 29 day of October, 2014
By: Leekia Henderson
Deputy Law Clerk

Dan Abel, Mary Abel and William Mashburn,

Petitioners.

vs.

**South Carolina Department of Health and
Environmental Control and Pawleys Island
Community Church,**

Respondents.

SCHEDULING ORDER

THEREFORE, IT IS HEREBY ORDERED that:

- FILED**

013


SHIRLEY C. ROBINSON
Administrative Law Judge

September 3, 2014
Columbia, South Carolina

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

3 September 2014
Feeling Good

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

FILED

JUL 09 2014

SC ADMIN. LAW COURT

Dan Abel, Mary Abel and William
Mashburn,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Pawleys Island
Community Church,

Respondents.

Docket No.: 14-ALJ-07-0282-CC

**ORDER FOR PREHEARING
STATEMENTS**

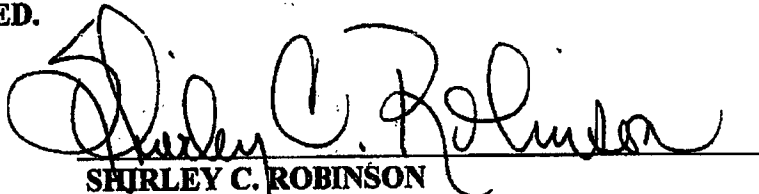
IT IS HEREBY ORDERED that each party who intends to appear at the hearing must file with the undersigned's office a Prehearing Statement stating to the best of the party's ability, the following:

1. The nature of this proceeding;
2. The statutory provision(s) conferring subject matter jurisdiction to the Court and other applicable statutes and regulations;
3. The issues to be presented for determination, including any claims or defenses expected to be raised;
4. The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations;
5. A brief summary of the facts to be presented at the hearing;
6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion;
7. A list of proposed witnesses and exhibits;
8. A statement regarding the necessity of discovery, if any;

9. The estimated time required for the hearing;
10. Any dates the parties, counsel or key witnesses are specifically unavailable during the next three months; and
11. An email address where you can be reached.

IT IS FURTHER ORDERED that the Prehearing Statement, and all subsequent pleadings, are to be **FILED DIRECTLY WITH MY OFFICE** at the address below and served on all parties within twenty (20) days of the date of this order. **It is NOT necessary to send a copy to the Clerk of the ALC, or to send the original to the Clerk with a copy to this office.** The parties have a continuing obligation to update the information provided in the Prehearing Statement, as necessary during the course of the proceeding, to render it true and accurate.

AND IT IS SO ORDERED.



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

July 11, 2014
Columbia, South Carolina

POSTAGE WILL BE PAID BY ADDRESSEE
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July 11, 2014
Shirley C. Robinson
ALC Law Clerk

STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF
THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Dan Abel, Mary Abel and William Mashburn

Petitioners,

vs.

Pawleys Island Community Church and the South Carolina Department of Health and Environmental Control,

Respondents.

RE: NPDES Coverage SCR10Q459; Coastal Zone Consistency CZC-12-0149

REQUEST FOR FINAL REVIEW CONFERENCE

Dan Abel, Mary Abel and William Mashburn hereby request that the Board of the Department of Health and Environmental Control conduct a Final Review Conference to review DHEC's decision to grant Stormwater Permit Coverage SCR10Q459 ("Stormwater Permit") and Coastal Zone Consistency Certification CZC-12-0149 ("Consistency Certification") to Pawleys Island Community Church ("the Church"). (Decisions attached as Exhibit 1). **The Stormwater Permit and Consistency Certification are in plain violation of a previous settlement agreement entered between the Abels, the Church, DHEC and OCRM.**

BACKGROUND: PREVIOUS LEGAL CHALLENGE AND SETTLEMENT

1. This is not the first time that the Church has sought a stormwater permit and coastal zone consistency certification for modifications to its property. Back in 2000, the Church sought the same approvals for construction activities. As a part of its construction project, the Church

intended to fill federal and state jurisdictional wetlands.

2. When DHEC/OCRM issued the stormwater permit and consistency certification for that project, Mary Abel, Dan Abel and David F. Mims, as neighboring property owners, challenged that decision by filing requests for a contested case hearing in the Administrative Law Court. The parties had numerous settlement discussions that eventually resulted in a Consent Order of Settlement and Dismissal issued by Administrative Law Judge Scott Dukes on January 8, 2001. (Consent Order attached as Exhibit 2).

3. According to the Consent Order: "The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order." (Consent Order, p. 1). The settlement was "made a part of th[e] final order of the Administrative Law Judge Division." (Consent Order, p. 2). In other words, the Abels agreed to dismiss their contested case in exchange for certain binding concessions from the Church. DHEC and OCRM were parties to the settlement and agreed to amend the stormwater permit and consistency certification in accordance with the agreement and Order. (Consent Order, p. 2).

4. The wetlands on the Church property were a key issue in the contested case and a key component of the Consent Order. Protection of the wetlands, which are adjacent to important salt marsh creek in Pawleys Island, was a primary motivator in the Abels' decision to file the contested case. Pursuant to the Consent Order, the Church's construction plan had to be "amended so that **approximately one-half (50%) of the wetland area on the site shall be preserved.**" (Consent Order, p. 1). Further, as to that area of preserved wetlands, the Church committed to the following: "**The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.**" (Consent Order, p. 1).

ANALYSIS: THE CHURCH'S NEWLY APPROVED PLANS

5. Under the valid, binding and enforceable Consent Order, the wetlands remaining on the Church's property today are to "remain in [their] natural state." Despite DHEC's agreement and commitment that the wetlands would remain unaltered, the DHEC staff issued a Stormwater Permit and Consistency Certification that authorizes just the opposite, allowing the Church to fill all remaining wetlands on its property as a part of its stormwater plan. The Stormwater Permit and Consistency Certification thereby violate both DHEC's and the Church's continuing obligations under the Consent Order.

6. Upon information and belief, the Church's plan, as approved by DHEC, also violates other provisions of the Consent Order, including those related to maintenance of a buffer between the Church property and surrounding properties.

7. Prior to issuance of the Stormwater Permit and the Consistency Certification, the Church and DHEC staff were aware that the Church's proposed plan violates the Consent Order. To wit, the Church unsuccessfully pursued an attempt to have that Consent Order modified and eviscerated by the ALC. (ALC Order of 1/7/14 attached as Exhibit 3). As stated by Judge Anderson: "The Church has now filed a request with this Court to modify its site plan and make further modifications to the Church property **not in compliance with the original Order.**" (Exhibit 3, p. 1). The ALJ rightfully denied the Church's request, which was opposed by Dan and Mary Abel.

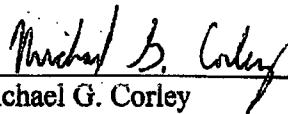
8. Having failed with the ALJ, the Church has now gained DHEC staff's complicity in ignoring the binding Consent Order. That Consent Order is enforceable in the Administrative Law Court, and the Abels will seek such enforcement if necessary. First, though, this Board has an opportunity to correct staff's failure to recognize and honor the Agency's prior binding

commitments. DHEC regularly attempts to resolve environmental disputes through negotiated settlement. If these efforts are to be accepted in good faith in the future, DHEC must be reliable in abiding by its agreed terms. To maintain credibility at the bargaining table, the Agency should abide by previous settlement agreements and orders.

9. Dan and Mary Abel are residents of Pawleys Island and seek the Board's review as parties to the previous legal dispute and the Consent Order. William Mashburn lives on his property adjacent to the Church property and seeks the Board's review out of concern for his own property value, aesthetic value and quality of life.

WHEREFORE, the Petitioners request that the Board conduct a final review proceeding and issue an order remanding the decision to grant the Stormwater Permit and Consistency Certification, instructing that staff uphold the binding Consent Order agreed to by the Agency and the Church.

Respectfully submitted,



Michael G. Corley
Amy E. Armstrong
SOUTH CAROLINA ENVIRONMENTAL LAW
PROJECT

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585
Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone (843) 527-0078
FAX (843) 527-0540

Attorneys for the Appellants

Georgetown, South Carolina
April 16, 2014

Exhibit 1



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

CERTIFIED MAIL

April 1, 2014

MIKE FIELDS (91 7199 9991 7030 0134 8071)
PAWLEYS ISLAND COMMUNITY CHURCH
10304 OCEAN HWY
PAWLEYS ISLAND SC 29585

RE: PAWLEYS ISLAND COMMUNITY CHURCH ADMINISTRATIVE BUILDING
Georgetown County
File Number: 22-00-06-03A
NPDES Coverage Number: SCR10Q459

Dear Mike Fields:

The Department of Health and Environmental Control (Department or DHEC) has approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on **March 31, 2014**. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Stormwater Discharges from Construction Activities SCR100000 (CGP), this project has been granted coverage under the CGP. This project's general permit coverage number is **SCR10Q459**. The total disturbed area for this site is **2.2 acres**.

See attached DHEC Office of Ocean and Coastal Resource Management (DHEC-OCRM) certification approved 03/26/2014 for additional conditions related to the Coastal Zone Consistency determination.

Because this project is part of a larger common plan for development or sale (LCP), all applications for future land-disturbing activities that are part of this LCP (phases, outparcels, etc.) should include the above-referenced file number (22-00-06-03A), NPDES coverage number (SCR10Q459), and project name PAWLEYS ISLAND BAPTIST CHURCH.

An as-built survey, signed and sealed by a S.C. Licensed Land Surveyor, should be submitted for the 2 structure(s) on this site. The survey(s) should show grades, contours, and depths for all structures and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/or analysis must be accepted by the Department before a Notice of Termination (NOT) can be submitted.

The CGP can be downloaded at the following website:

<http://www.scdhec.gov/environment/water/swater/docs/CGP-permit.pdf> or you may request a copy from us via email (stormwatercgp@dhec.sc.gov). You are responsible for ensuring your contractor(s) complies

with the approved SWPPP and the minimum requirements of the CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act), SC Pollution Control Act, and the Federal Clean Water Act (CWA). Failure to comply with the approved SWPPP or applicable statutes and regulations may result in enforcement actions.

You must notify this DHEC EQC Regional Office prior to starting any land-disturbing activity. The address and telephone number of the EQC office are as follows:

Myrtle Beach EQC Office
927 SHINE AVE
MYRTLE BEACH SC 29577
843-238-4378

Inspections of this site must be performed by qualified personnel as described in Section 4.2.E of the CGP.

You should be aware that this approval is only applicable for the SWPPP that was submitted for this project. Any additional construction or land disturbing activity beyond the scope of the approved plans is not authorized. Any future work for this project not shown on the stamped, approved plans will require that you submit another site plan for review and approval. All major modifications require review and approval by the Department. Minor modifications to the approved SWPPP may be made by the SWPPP preparer and do not require review and approval by the Department; these changes should be signed and dated by the SWPPP preparer. If you have a question about whether a modification is major or minor, contact the Coastal Stormwater Permitting Section at (843) 953-0200.

A copy of the stamped, approved SWPPP (including a copy the CGP, contractor certifications, inspection records, rainfall data, etc), NOI, and CGP coverage letter from DHEC must be retained and available at the construction site (or accessible within 30 minutes during normal business hours) from the date of commencement of construction activities to the date of final stabilization. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.

All contractors who will conduct land-disturbing activities at the site must complete a Contractor Certification Form. Annual Blanket Utility Providers must provide a copy of their annual blanket registration information. You are also responsible for listing all contractors in the SWPPP and for holding a pre-construction conference with each contractor before they can conduct land-disturbing activity at the site.

The Department may conduct periodic inspections of your site. Any violations found during these inspections may result in enforcement action.

This NPDES coverage should be terminated by the permittee when one of the conditions listed in Section 5.1 of the CGP has been met. You must submit a Notice of Termination (NOT) to cancel your NPDES coverage under the CGP. Please see section 5.1 of the CGP for additional information required to be submitted with the NOT.

You are responsible for obtaining any other federal, state, or local permit that may be required for this project. In particular, any permits through the U.S. Army Corps of Engineers for the placement of fill

material in Waters of the United States. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

If material excavated during construction activities leaves the site, a mine operating permit may be needed. You are responsible for contacting the Mining and Reclamation Section to determine if a mining permit is required for the site. The Mining and Reclamation Section can be reached at (803)896-4261 or via e-mail at AskMines@dhec.sc.gov.

Please see the enclosed "Notice of Appeal Procedure" document for information about the procedures for appealing this NPDES coverage.

If you have any questions or cannot access the referenced websites, please call me at 843-953-0238.

Sincerely,



Richard V Geer, Engineer Associate
EQC Bureau of Water, Coastal Stormwater Permitting Section
1362 McMillan Ave, Suite 400, Charleston SC 29405

cc: Thomas P Bevins—ETS (91 7199 9991 7030 0134 8095)
Michael Corley—The South Carolina Environmental Law Project (91 7199 9991 7030 0134 8088)



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Coastal Zone Consistency Certification

To: Richard Geer, Project Manager - BOW-Coastal, Stormwater Permitting
From: Christine Koczera, Project Manager - OCRM, Coastal Zone Consistency Section
Cc: Curtis Joyner, Section Manager - OCRM, Coastal Zone Consistency Section
Re: Pawley's Island Community Church Administrative Building
Site location: 10304 Ocean Highway, Pawley's Island, Georgetown County
Tax Map No: 04-0161-052-00-00, 04-0161-049-01-00
Date: March 26, 2014
CZC #: CZC-12-0149
PN#: SCR10Q459

The staff of the Office of Ocean and Coastal Resource Management (OCRM) has reviewed the above referenced Coastal Zone Consistency request for land disturbing activity, including the construction of a new administrative building, parking, and associated infrastructure, as well as, modifications to the access drive and existing stormwater management pond and certifies that the above referenced project is **Consistent** with the Public Services and Facilities (Public / Quasi Public Buildings) Policies, the Activities in Areas of Special Resource Significance (Wetlands) Policies and the Stormwater Management (Runoff) Guidelines contained in the S.C. Coastal Zone Management Program provided that:

- in the event that any historic or cultural resources and archaeological or paleontological remains are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Code of Laws. Historic or cultural resources consist of those sites named to the National Register and those sites that are eligible for the National Register and other areas of special historic significance. 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 and;
- demonstrate that storage of the first ½ inch of run-off from the entire site or storage of the first one (1) inch of run-off through retention, detention, or infiltration systems, from the built upon portion of the property, whichever is greater.

This Coastal Zone Consistency did not include a review and authorization for any direct or indirect wetland impacts to freshwater wetlands or critical area. Any impacts to Critical Areas as determined by SCDHEC-OCRM, and/or freshwater wetlands, as determined by the U. S. Army Corps of Engineers must be authorized by the appropriate agency.

This certification shall serve as the final DHEC OCRM Coastal Zone Consistency approval and does not alleviate the applicant's responsibility to obtain other required local, state or federal approvals.



NOTICE OF INTENT (NOI)
For Coverage(s) of Primary Permittees
Under South Carolina NPDES General Permit
For Stormwater Discharges From Construction Activities SCR100000
(Maintain As Part of On-Site SWPPP)

For Official Use Only

File Number: _____
Permit Number: SCR10
Submittal Package Complete: _____

Submission of this Notice of Intent constitutes notice that the Applicant identified in Section II intends to be authorized as a Primary Permittee in the state of South Carolina under NPDES General Permit SCR1000000. Fees required for review and NPDES coverage of each application type are as listed on page 2 of the Instructions.

SOUTH CAROLINA
DEPT OF HEALTH AND ENVIRONMENTAL CONTROL
ENVIRONMENTAL QUALITY CONTROL
STORMWATER PERMITTING SECTION
APPROVED FOR CONSTRUCTION ONLY

DHEC PERMIT #: SCR100459
FILE #: 22-00-06-03A
DATE ISSUED: 3/31/2014
BY: [Signature]

Date: 01/08/2014

Project/Site Name: Pawleys Island Community Church Administrative Building County: Georgetown

(Modification or Change of Information Only) Prior Approved NPDES Permit or File Number: _____

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

I. Notice of Intent (NOI) Application Type(s)

A. Project (Application/Review) Type(s) (Select ALL that apply):

- ☒ New Project (Initial Notification) Ongoing Project: ☐ Permitted or ☐ Un-Permitted
☐ Late Notification ☐ Low Impact Development (LID) or Project Design Above Regulatory Requirements
☐ New Owner/Operator or Company Name Change (see Instructions, attach Form A (Transfer of Ownership))
☐ Major Modification: (see Instructions, attach Form B (Major Modifications))
☐ MS4 Project Review
☐ Ocean and Coastal Resource Management (OCRM) Review
☐ Change of Information/Other (Specify): _____

B. If Applicable, identify the entity designated as MS4 Reviewer and MS4 Operator (i.e., Lexington County, City of Greer, etc.): MS4 Reviewer _____ MS4 Operator _____

II. Primary Permittee Information

☐ Person or ☒ Company If a Company, are you a ☐ Lending Institution or ☐ Government Entity?
Company EIN (if applicable): EIN: _____

A. Primary Permittee Name: Pawleys Island Community Church

Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 8432374449 Fax: _____ Email Address: mike-plca@sc.twcbs.com

B. Contact /ODSA Name (If different from above OR if owner is a company): Mike Fields

Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 8432374449 Fax: _____ Email Address: mike-plca@sc.twcbs.com

C. Property Owner Name (If different from above): _____

Mailing Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____ Email Address: _____

III. Comprehensive Stormwater Pollution Prevention Plan (C-SWPPP) Preparer Information ☐ Change of Information

A. C-SWPPP Preparer Name: Thomas P. Bevins

B. Registered Professional ☒ Engineer ☐ Landscape Architect ☐ Tier B Land Surveyor S. C. Registration #: 13899

C. Company/Firm Name: Engineering and Technical Services, Inc. S. C. COA #: 00439

Mailing Address: POBox 2040 City: Pawleys Island State: SC Zip: 29585
Phone: 8432373002 Fax: 8432372269 Email Address: tbevins@etsengineers.com

IV. Project/Site Information

A. Type of Construction Activity(ies) (Select ALL that apply):

- ☐ Commercial ☐ Industrial ☒ Institutional ☐ Mass Grading ☐ Linear ☐ Utility/Infrastructure
☐ Residential: Single-family ☐ Residential: Multi-family ☐ Multi-use (Commercial & Residential)
☐ Site Preparation (No New Impervious Area) ☐ Other (Specify) _____

B. Site Address/Location (street address, nearest intersection, etc.) 10304 Ocean Highway

City/Town (if in limits): Pawleys Island Zip Code: 29585

Latitude: 33° 26' 08" N Longitude: - 79° 07' 47" W (Source): ☐ GPS ☒ Web Site: Google Earth

Tax Map Number (s) (List all): 04-0161-052-00-00 & 04-0161-049-01-00

- C. Is this site located on Indian Land? ☐ Yes ☒ No
- D. Proposed Start Date: 04/01/2014 Proposed Completion Date: 09/01/2014
- E. Disturbed Area (nearest tenth of an acre): 2.2 Total Area (acres): 10.1
- F. Modification Only: (nearest tenth of an acre): Disturbed Area: Current (Approved) Area: _____
Disturbed Area Change (Increase Only): _____ Total Disturbed Area (After Change): _____
- G. Is this project part of a Larger Common Plan for Development or Sale (LCP)? ☒ Yes ☐ No
LCP/ Overall Development Name: Pawleys Island Community Church Check here if this is the First Phase. ☒
Previous State Permit/File Number: _____ Previous NPDES Coverage Number: SCR10
- H. Any Flooding Problems exist downstream of or adjacent to this site? ☐ Yes ☒ No (If yes, provide detailed description of flooding problems and applicable floodway/flood zone information in the C-SWPPP).
- I. Active S.C. DHEC Warning Notice, Notice to Comply or Notice of Violation for this site or LCP? ☐ Yes ☒ No
- J. List Relevant State and Federal Environmental Permits or Approvals applied for or obtained for this site (e.g., RCRA, USACOE, Nationwide, etc.). If None, list None.

K. Any Waiver(s)/Variances/Exceptions Requested for this Project? (If yes, identify below and include Waiver Request and Justifications in the C-SWPPP for each proposed request).

1. Small Construction Activity Waiver(s) From NPDES permitting (Section 1.4 & Appendix B)? ☐ Yes ☒ No
If yes, identify requested waiver: ☐ Rainfall Erosivity Waiver ☐ TMDL Waiver ☐ Equivalent Analysis Waiver

2. Detention Waiver (72-302(b))? ☐ Yes ☒ No 3. Other (Specify): _____

V. Waterbody Information (Attach additional sheet(s) as needed)

☐ Change of Information

A. Receiving Waterbody(s) (RWB) Information (List the nearest and next nearest receiving waterbodies to which the sites stormwater discharges will drain. If stormwater discharges drain to multiple waterbodies, list all such waterbodies).

1. Name of Receiving Waterbody (RWB)	2. Distance to RWB (feet)	3. Classification of RWB
a. Nearest: un-named tributary to Pawleys Island Creek	550	FW
b. Next Nearest: Pawleys Island Creek	610	SFH
c. Coastal Zone ONLY: Coastal Receiving Water (CRW): Pawleys Island Creek	1160	Not Applicable
d. Other Waterbodies: _____		

B. Waters of the U.S. / State Information (Attach additional sheet(s) as needed)

Waters of the U.S. / State	1. On the site?	2. Delineated/ Identified?	3. Impacts?	4. Amount of Impacts
a. Jurisdictional wetlands	☒ Yes ☐ No	☒ Yes ☐ No	☒ Yes ☐ No	0.17 Ac Fill
b. Non-jurisdictional wetlands	☐ Yes ☒ No	☐ Yes ☐ No	☐ Yes ☐ No	_____ Ac
c. Other Water(s): _____	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	_____ Ac _____ Feet
d. Coastal Zone ONLY: Direct Critical Area	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	_____ Ac _____ Feet

5. If yes for impacts in B.3, describe each impact and activity, and list all permits (e.g., USACOE Nationwide Permit, DHEC General Permit) and certifications that have been applied for or obtained for each impact.

C. S.C. Navigable Waters (SCNW) Information (Section 2.6.5) The Department will address any issues related to State Navigable Waters' Program under SC Regulation 19-450 during the review of the C-SWPPP for activities that will NOT require a 404 permit or a 401 certification. (Attach additional sheet(s) as needed).

1. Are S. C. Navigable Waters (SCNW) on the site: ☐ Yes ☒ No
a. If no, do not complete this question. Proceed to Section D (Impaired Waterbodies).
b. If yes, provide the name of S.C. Navigable Waters (SCNW) on the site: _____

2. If yes for C.1, will construction activities cross over or occur in, under, or thru the SCNW? ☐ Yes ☐ No
If yes, describe SCNW activities (e.g., road crossing, sub-aqueous utility line, temporary or permanent structures, etc.) and proceed to Section C.3:

3. Identify permits providing coverage of SCNW activities proposed for your site. If NONE, list none.

Permits/Certifications	Permit or Certification No.	Corresponding Covered SCNW Activity(ies)
a. DHEC General/ Other DHEC Permit	none	
b. USACOE 404 Permit or 401 Certification	none	
c. SCNW Permit If applied for or issued, identify Date applied for or issued:	none	☐ All Activities or ☐ Some Activities (Describe):

d. If a SCNW Permit has NOT been applied for provide an additional plan sheet that shows plan and profile views (drawn to scale) of the SCNW and associated activities. Include a description of all proposed activities on this plan.

D. Impaired Waterbodies Information (Attach additional sheet(s) as needed)

1. 303(d) Listed Impaired Waterbodies				
a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4 and the Name of the Corresponding Waterbody?	b. Is this WQMS(s) listed on the most current 303(d) list? If No, proceed to Section 2 of this table. If Yes, complete items c thru f.	c. List the pollutant(s) identified as "CAUSES" of the Impairment	d. Will any pollutants causing the impairment be present in your site's construction stormwater discharges?	e. If yes for d, list the "USE SUPPORT" Impairment(s) affected by the pollutant(s) identified in c.
Nearest DHEC WQMS(s)	Corresponding Waterbody			
04-11	Pawleys Island Creek	☐ Yes ☒ No	☐ Yes ☐ No	
		☐ Yes ☐ No	☐ Yes ☐ No	
		☐ Yes ☐ No	☐ Yes ☐ No	
f. If yes for d above, will use of the BMPs proposed for your project ensure the site's discharges will NOT contribute to or cause further WQS violations for the impairment(s) listed in c? ☐ Yes ☐ No				
(NOTE: If no for f, this site is NOT eligible for coverage under the CGP). See instructions.				
2. TMDL Impaired Waterbodies				
a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4?	b. Has a TMDL(s) been developed for this WQMS(s)? If No, identify as such below and proceed to Section VI. If Yes, complete items c thru f of this table.	c. If yes for b, what pollutants are listed as "CAUSES" or causing the Impairment?	d. If yes for b, has the standard been "ATTAINED" or "Fully Supported" for the Impairment(s)?	e. If no for d (Not Attained), will any pollutants causing the impairment be present in your site's construction stormwater discharges?
04-11	☒ Yes ☐ No	fecal coliform	☐ Yes ☒ No	☒ Yes ☐ No
	☐ Yes ☐ No		☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No		☐ Yes ☐ No	☐ Yes ☐ No
f. If yes for e above, are your discharges consistent with the assumptions and requirements of the TMDL(s)? ☒ Yes ☐ No				
(NOTE: If no for f, this site is NOT eligible for coverage under the CGP). See instructions.				

VI. Signatures and Certifications DO NOT SIGN IN BLACK INK! Read the Certifications below (in entirety). Provide date, printed name, and signatures below. If you are a New Owner/Operator, as Primary Permittee you must also sign and date the applicable Comprehensive SWPPP Acceptance & Compliance Agreement below.

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

Thomas P. Bevins

Printed Name of C-SWPPP Preparer

Signature of C-SWPPP Preparer

13899

S. C. Registration #

PRIMARY PERMITTEE: "I or I (on behalf of my company and its contractors and agents), as the case may be, certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I understand that DHEC enforcement actions may be taken if the terms and conditions of the C-SWPPP are not met and I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

"I or I (on behalf of my company and its contractors and agents), as the case may be, also hereby certify that all land-disturbing construction and associated activity pertaining to this site shall be accomplished pursuant to and in keeping with the terms and conditions of the approved plans and SCR100000. I also certify that a responsible person will be assigned to the project for day-to-day control. I hereby grant authorization to the to S. C. Department of Health and Environmental Control (DHEC) and/or the local implementing agency the right of access to the site at all times for the purpose of on site inspections during the course of construction and to perform maintenance inspections following the completion of the land-disturbing activity." (See Section 122.22 of S.C. Reg. 61-9 for signatory authority information.) Having understood the above information, I am signing this certification as Primary Permittee to the aforementioned NPDES general permit."

Mike Fields

Printed Name of Primary Permittee

Signature of Primary Permittee

General manager

Title/Position

Date Signed

2/26/14

2001 WL 130375 (S.C.Admin.Law.Judge.Div.)

Administrative Law Judge Division

State of South Carolina

MARY W. ABEL, DANIEL C. ABEL AND DAVID F. MIMS, PETITIONERS

vs.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, AND PAWLEYS ISLAND BAPTIST CHURCH, RESPONDENTS

Docket No. 00-ALJ-07-0626-CC

January 8, 2001

CONSENT ORDER OF SETTLEMENT AND DISMISSAL

*1 This proceeding arises out of the application of the Pawleys Island Baptist Church, a South Carolina Not-for Profit Corporation, [hereinafter the "Church"] for a state storm water permit for the construction of a new sanctuary and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the church also requested a wetland fill permit from the US Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC/OCRM). After DHEC/OCRM issued the storm water permit and consistency certification, requests for a contested case hearing were filed by Mary W. Abel, Daniel C. Abel and David F. Mims.

The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order. Specifically, the parties have agreed as follows:

1. The designs for the storm water pond and other improvements at the site shall be amended so that approximately one-half (50%) of the wetland area on the site shall be preserved. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A. The Church shall also amend its plans for the proposed structure shown on Exhibit A as "PROPOSED FUTURE BUILDING PHASE II" so that no portion of this structure will encroach upon the area of the wetland.

2. The Church agrees that it will instruct its engineers, architects, contractors and others working on the Church improvement project and storm water management project, to continue to explore additional design changes, where feasible from a time and cost perspective, which will allow possible additional expansion of the wetland area to be preserved.

3. The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.

4. In constructing the storm water system and church improvements, the Church shall instruct its engineers, architects, contractors and others working on its behalf to employ all available Best Management Practices to prevent harm to the wetland beyond that authorized by this agreement and by the permit and certification as hereby amended. In the event such additional harm to the wetland occurs despite best efforts, the church will restore or mitigate any such harm.

5. Within the area designated on Exhibit A as the "30' NOISE/VISUAL BUFFER," the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees

and shrubs will be leyland cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height with fifty percent (50%) of the trees at least ten (10) feet in height; provided however, that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state.

*2 6. The existing basketball and volleyball fields will be removed and will not be re-located any closer to the rear property line of the church property than the front of the new sanctuary.

7. All lighting on the church property will be placed so that it is shielded or directed away from the properties adjacent to the "30' NOISE/VISUAL BUFFER," shown on Exhibit A.

8. Upon execution of this Consent Order, the Church may immediately begin construction of the new sanctuary and other improvements not inconsistent with this agreement and order.

9. The Church and the Petitioners will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement and order.

After review of the agreement, I conclude that it should be accepted and made a part of this order. Accordingly, upon the joint motion and consent of the parties,

IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a part of this final order of the Administrative Law Judge Division.

IT IS FURTHER ORDERED that the DHEC/OCRM permit and certification shall be, and same hereby are, amended in accordance with this agreement and order.

IT IS FURTHER ORDERED that this matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein. AND IT IS SO ORDERED.

C. Dukes Scott
Administrative Law Judge

WE SO MOVE AND CONSENT:

PETITIONERS:

Mary W. Abel
Daniel C. Abel
David Mims
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, OFFICE OF OCEAN AND
COASTAL RESOURCE MANAGEMENT
By: Mary D. Shahid, its Attorney
PAWLEYS ISLAND BAPTIST CHURCH, a South Carolina Not-for Profit Corporation
By: Montgomery Watson
Trustee
By: George Hilliard

Trustee

By: Jack Wellman

Trustee

2001 WL 130375 (S.C.Admin.Law.Judge.Div.)

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STATE OF SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Mary W. Abel, Daniel C. Abel, and
David F. Mims,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control, and Pawleys
Island Baptist Church a/k/a Pawleys
Island Community Church,

Respondent.

Docket No.: 13-ALJ-07-0547-CC

ORDER ON REQUEST TO MODIFY A SETTLEMENT AND DISMISSAL

This case was originally before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing brought by Petitioners Mary W. Abel, Daniel C. Abel, and David F. Mims (Petitioners), who were neighboring property owners or adjoining property owners to the Pawleys Island Baptist Church aka Pawleys Island Community Church (Church). The case was given Docket No. 00-ALJ-07-0626-CC. The Church applied for a state stormwater permit for the construction of a new sanctuary and other improvements to its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the Church requested a wetland fill permit from the U.S. Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC). After this case was filed, the parties entered into a Consent Order resolving the dispute. That Consent Order was subsequently approved by the Honorable C. Dukes Scott, Administrative Law Judge on January 8, 2001 (Consent Order).

The Church has now filed a request with this Court to modify its site plan and make further modifications to the Church property not in compliance with the original Order. However, Daniel C. Abel objects to that modification. The Court nevertheless finds that a request to modify the Permits issued as a result of the previous Consent Order has been filed with DHEC and is still subject to DHEC review. This matter is therefore apparently properly before DHEC for its review as to whether the Church's permits should be modified. Therefore

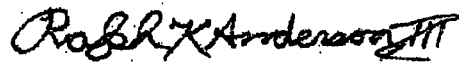
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January 7, 2014

SC ADMIN. LAW COURT

since DHEC has not made a final determination on the proposed modification, and no request for a contested case review of that determination has been filed with this Court, I find that any action by the Court at this time would be premature. *See, e.g., South Carolina Baptist Hosp. v. S.C. Dep't of Health and Envtl. Control*, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987) ("It would be premature for a court to decide the merits of a dispute when the agency responsible for making the decision has not yet had an opportunity to decide the merits of the case.").¹

IT IS THEREFORE ORDERED that this case be **DISMISSED WITHOUT PREJUDICE**, and that DHEC continue its review of the Church's permit application.
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

January 7, 2014
Columbia, South Carolina

¹ This Court also notes that the only objection received to this request to modify the Consent Order was made by Daniel C. Abel, who is no longer an adjoining landowner.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

January 7, 2014
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Dan Abel, Mary Abel and William Mashburn,

Petitioners,

vs.

Pawleys Island Community Church and the South
Carolina Department of Health and Environmental
Control,

Respondents.

Docket No. 14-ALC-_____-CC

**REQUEST FOR
CONTESTED
CASE HEARING**

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS

Dan Abel, Mary Abel and William Mashburn, pursuant to Administrative Law Court Rule 11, hereby request a contested case hearing to review the decision of the South Carolina Department of Health and Environmental Control Office of Coastal Resource Management ("DHEC/OCRM") to grant Stormwater Permit Coverage SCR10Q459 ("Stormwater Permit") and Coastal Zone Consistency Certification CZC-12-0149 ("Consistency Certification") to Pawleys Island Community Church ("PICC"). (Decisions attached as Exhibit 1). The Stormwater Permit and Consistency Certification are in plain violation of a previous settlement agreement entered between Dan and Mary Abel ("the Abels"), PICC and DHEC/ OCRM.

In support of its request, the Petitioners submit the following:

BACKGROUND

1. This is not the first time that PICC has sought a stormwater permit and coastal zone consistency certification for modifications to its property. Back in 2000, PICC sought the same approvals for construction activities. As a part of its construction project, PICC intended to fill

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federal and state jurisdictional wetlands.

2. When DHEC/OCRM issued the stormwater permit and consistency certification for that project, the Abels and David F. Mims, as neighboring property owners, challenged that decision by filing requests for a contested case hearing in the Administrative Law Court. The case was given Docket Number 00-ALJ-07-0626-CC. The parties had numerous settlement discussions that eventually resulted in a Consent Order of Settlement and Dismissal ("Consent Order") issued by Administrative Law Judge Dukes Scott on January 8, 2001. (Consent Order attached as Exhibit 2).

3. According to the Consent Order: "The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order." (Exhibit 2, p. 1). The settlement was "made a part of th[e] final order of the Administrative Law Judge Division[.]" which "FURTHER ORDERED that th[e] matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein." (Exhibit 2, p. 2) (emphasis added). In other words, the Abels agreed to dismiss their contested case in exchange for certain binding concessions from PICC. DHEC/OCRM was a party to the settlement agreement and agreed to amend the stormwater permit and consistency certification in accordance with the agreement and Consent Order. (Exhibit 2, p. 2).

4. The wetlands on PICC's property were a key issue in that contested case and a key component of the Consent Order. Protection of the wetlands, which are adjacent to important salt marsh creek in Pawleys Island, was a primary motivator in the Abels' decision to file the contested case and was specifically addressed in the Consent Order. Pursuant to the Consent Order, PICC's construction plan had to be "amended so that approximately one-half (50%) of the wetland area on the site shall be preserved." (Exhibit 2, p. 1) (emphasis added). Further, as to that area of

preserved wetlands, PICC committed to the following: **"The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state."** (Exhibit 2, p. 1) (emphasis added).

5. On June 7, 2012, PICC submitted its Notice of Intent to conduct additional construction activities on its property, which included filling and otherwise disturbing the wetland area that was agreed upon by all parties to the Consent Order to **"remain in its natural state."** (Notice of Intent attached as Exhibit 3).

6. Since the additional construction activities PICC desired to make on its property were not in compliance with the Consent Order, PICC submitted a proposed Modified Consent Order of Settlement and Dismissal ("Proposed Modification Order") dated October 1, 2013 to the Administrative Law Court in an attempt to replace the existing Consent Order. (Proposed Modification Order attached as Exhibit 4). The Proposed Modification Order was not agreed to or signed by all of the parties to the original Consent Order as the Abels neither consented to nor signed the Proposed Modification Order. (Exhibit 4, p. 3).

7. By Order dated January 7, 2014, the Administrative Law Court dismissed PICC's request to modify the Consent Order as premature stating that PICC's request to conduct additional construction activity was still subject to DHEC/OCRM review. (ALC Order of January 7, 2014 attached as Exhibit 5).

8. Notwithstanding the agreed upon terms of the settlement agreement and Consent Order, DHEC/OCRM approved PICC's request to conduct additional construction activities on the subject property and issued the Consistency Certification and the Stormwater Permit on March 26, 2014 and March 31, 2014, respectively. (See Exhibit 1).

ANALYSIS

9. Under the valid, binding and enforceable Consent Order, the wetlands remaining on the PICC's property today are to "remain in [their] natural state." Despite DHEC/OCRM's agreement and commitment that the wetlands would remain unaltered, the DHEC/OCRM staff issued a Stormwater Permit and Consistency Certification that authorizes just the opposite, allowing PICC to fill all remaining wetlands on its property as a part of its stormwater plan. The Stormwater Permit and Consistency Certification thereby violate both DHEC/OCRM's and PICC's continuing obligations under the Consent Order.

10. Upon information and belief, PICC's plan, as approved by DHEC/OCRM, also violates other provisions of the Consent Order, including those related to maintenance of a buffer between the PICC property and surrounding properties.

11. Prior to issuance of the Stormwater Permit and the Consistency Certification, PICC and DHEC staff were aware that PICC's proposed plan violates the Consent Order. To wit, PICC unsuccessfully pursued an attempt to have that Consent Order modified and eviscerated by the Administrative Law Court. (See Exhibit 5). As stated by Administrative Law Judge Anderson: "The Church has now filed a request with this Court to modify its site plan and make further modifications to the Church property **not in compliance with the original Order.**" (Exhibit 5, p. 1) (emphasis added). The ALJ rightfully denied PICC's request, which was opposed by the Abels.

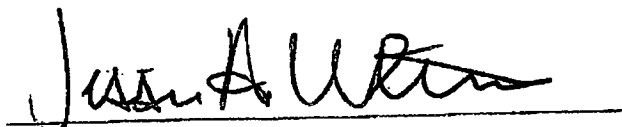
12. Having failed with the ALJ, PICC has now gained DHEC/OCRM's complicity in ignoring the terms of the Consent Order. That Consent Order is binding and enforceable by law. DHEC regularly resolves environmental disputes through negotiated settlement and consent orders of dismissal. If these efforts are to be accepted in good faith in the future, DHEC/OCRM must be reliable in abiding by the agreed upon terms, as well as Orders from this Court. To maintain

credibility at the bargaining table, the Agency should be held to the terms of the settlement agreements and orders to which it is a party.

13. The ALJ dismissed, without prejudice, PICC's request to modify the Consent Order pending a final determination by DHEC/OCRM and request for a contested case hearing. (Exhibit 5, p. 2). Accordingly, the ALC retained jurisdiction over this matter and is authorized to enforce the binding terms of the settlement agreement and Consent Order which are violated by the Consistency Certification and Stormwater Permit . S.C. Code Ann. § 1-23-600(A).

CONCLUSION

WHEREFORE, the Petitioners request that the Administrative Law Court conduct a contested case hearing and issue an order reversing DHEC/OCRM's decision to issue the Consistency Certification and Stormwater Permit to Pawleys Island Community Church.



Amy E. Armstrong

Michael Corley

Jessie A. White

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585

Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone (843) 527-0078

FAX (843) 527-0540

Attorneys for the Petitioners

Georgetown, South Carolina
June 13, 2014



Exhibit 1

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

CERTIFIED MAIL

April 1, 2014

MIKE FIELDS (91 7199 9991 7030 0134 8071)
PAWLEYS ISLAND COMMUNITY CHURCH
10304 OCEAN HWY
PAWLEYS ISLAND SC 29585

RE: PAWLEYS ISLAND COMMUNITY CHURCH ADMINISTRATIVE BUILDING
Georgetown County
File Number: 22-00-06-03A
NPDES Coverage Number: SCR10Q459

Dear Mike Fields:

The Department of Health and Environmental Control (Department or DHEC) has approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on March 31, 2014. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Stormwater Discharges from Construction Activities SCR100000 (CGP), this project has been granted coverage under the CGP. This project's general permit coverage number is SCR10Q459. The total disturbed area for this site is 2.2 acres.

See attached DHEC Office of Ocean and Coastal Resource Management (DHEC-OCRM) certification approved 03/26/2014 for additional conditions related to the Coastal Zone Consistency determination.

Because this project is part of a larger common plan for development or sale (LCP), all applications for future land-disturbing activities that are part of this LCP (phases, outparcels, etc.) should include the above-referenced file number (22-00-06-03A), NPDES coverage number (SCR10Q459), and project name PAWLEYS ISLAND BAPTIST CHURCH.

An as-built survey, signed and sealed by a S.C. Licensed Land Surveyor, should be submitted for the 2 structure(s) on this site. The survey(s) should show grades, contours, and depths for all structures and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/or analysis must be accepted by the Department before a Notice of Termination (NOT) can be submitted.

The CGP can be downloaded at the following website:

<http://www.scdhec.gov/environment/water/swater/docs/CGP-permit.pdf> or you may request a copy from us via email (stormwatercgp@dhec.sc.gov). You are responsible for ensuring your contractor(s) complies

with the approved SWPPP and the minimum requirements of the CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act), SC Pollution Control Act, and the Federal Clean Water Act (CWA). Failure to comply with the approved SWPPP or applicable statutes and regulations may result in enforcement actions.

You must notify this DHEC EQC Regional Office prior to starting any land-disturbing activity. The address and telephone number of the EQC office are as follows:

Myrtle Beach EQC Office
927 SHINE AVE
MYRTLE BEACH SC 29577
843-238-4378

Inspections of this site must be performed by qualified personnel as described in Section 4.2.E of the CGP.

You should be aware that this approval is only applicable for the SWPPP that was submitted for this project. Any additional construction or land disturbing activity beyond the scope of the approved plans is not authorized. Any future work for this project not shown on the stamped, approved plans will require that you submit another site plan for review and approval. All major modifications require review and approval by the Department. Minor modifications to the approved SWPPP may be made by the SWPPP preparer and do not require review and approval by the Department; these changes should be signed and dated by the SWPPP preparer. If you have a question about whether a modification is major or minor, contact the Coastal Stormwater Permitting Section at (843) 953-0200.

A copy of the stamped, approved SWPPP (including a copy the CGP, contractor certifications, inspection records, rainfall data, etc), NOI, and CGP coverage letter from DHEC must be retained and available at the construction site (or accessible within 30 minutes during normal business hours) from the date of commencement of construction activities to the date of final stabilization. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.

All contractors who will conduct land-disturbing activities at the site must complete a Contractor Certification Form. Annual Blanket Utility Providers must provide a copy of their annual blanket registration information. You are also responsible for listing all contractors in the SWPPP and for holding a pre-construction conference with each contractor before they can conduct land-disturbing activity at the site.

The Department may conduct periodic inspections of your site. Any violations found during these inspections may result in enforcement action.

This NPDES coverage should be terminated by the permittee when one of the conditions listed in Section 5.1 of the CGP has been met. You must submit a Notice of Termination (NOT) to cancel your NPDES coverage under the CGP. Please see section 5.1 of the CGP for additional information required to be submitted with the NOT.

You are responsible for obtaining any other federal, state, or local permit that may be required for this project. In particular, any permits through the U.S. Army Corps of Engineers for the placement of fill

material in Waters of the United States. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

If material excavated during construction activities leaves the site, a mine operating permit may be needed. You are responsible for contacting the Mining and Reclamation Section to determine if a mining permit is required for the site. The Mining and Reclamation Section can be reached at (803)896-4261 or via e-mail at AskMines@dhec.sc.gov.

Please see the enclosed "Notice of Appeal Procedure" document for information about the procedures for appealing this NPDES coverage.

If you have any questions or cannot access the referenced websites, please call me at 843-953-0238.

Sincerely,



Richard V Geer, Engineer Associate
EQC Bureau of Water, Coastal Stormwater Permitting Section
1362 McMillan Ave, Suite 400, Charleston SC 29405

cc: Thomas P Bevins—ETS (91 7199 9991 7030 0134 8095)
Michael Corley—The South Carolina Environmental Law Project (91 7199 9991 7030 0134 8088)



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

South Carolina Board of Health and Environmental Control
Guide to Board Review
Pursuant to S.C. Code Ann. § 44-1-60
Effective April 1, 2013

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's 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 within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested; and
 - a copy of the decision for which review is requested.
3. RFRs should be filed in person or by mail at the following address:

South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).

4. The filing fee may be paid by cash, certified check or credit card. If a RFR is filed by facsimile or electronic mail, the filing fee may be mailed to the Clerk of the Board and the envelope must be postmarked within the time allowed for filing a RFR.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor.
7. The Clerk will email the RFR to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. A copy of the Notice of Appeal Procedure will be included with the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

8. If the RFR is to be considered by the RFR Committee, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response to the RFR should be provided by Department staff to the Clerk within eight (8) working days after the RFR is forwarded.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

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



NOTICE OF INTENT (NOI)
For Coverage(s) of Primary Permittees
Under South Carolina NPDES General Permit
For Stormwater Discharges From Construction Activities SCR100000
(Maintain As Part of On-Site SWPPP)

For Official Use Only

File Number: _____
Permit Number: SCR10
Submission Package Complete: _____

Submission of this Notice of Intent constitutes notice that the Applicant identified in Section II intends to be authorized as a Primary Permittee in the state of South Carolina under NPDES General Permit SCR1000000. Fees required for review and NPDES coverage of each application type are as listed on page 2 of the instructions.

SOUTH CAROLINA
DEPT OF HEALTH AND ENVIRONMENTAL CONTROL
ENVIRONMENTAL QUALITY CONTROL
STORMWATER PERMITTING SECTION
APPROVED FOR CONSTRUCTION ONLY

DHEC PERMIT #: SCR100459
FILE #: 22-00-06-034
DATE ISSUED: 3/21/2014
BY: [Signature]

Date: 01/08/2014
Project/Site Name: Pawleys Island Community Church Administrative Building County: Georgetown
(Modification or Change of Information Only) Prior Approved NPDES Permit or File Number: _____

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

I. Notice of Intent (NOI) Application Type(s)

- A. Project (Application/Review) Type(s) (Select ALL that apply):
☒ New Project (Initial Notification) Ongoing Project: ☐ Permitted or ☐ Un-Permitted
☐ Late Notification ☐ Low Impact Development (LID) or Project Design Above Regulatory Requirements
☐ New Owner/Operator or Company Name Change (see Instructions, attach Form A (Transfer of Ownership))
☐ Major Modification: (see Instructions, attach Form B (Major Modifications))
☐ MS4 Project Review
☐ Ocean and Coastal Resource Management (OCRM) Review
☐ Change of Information/Other (Specify): _____

- B. If Applicable, identify the entity designated as MS4 Reviewer and MS4 Operator (i.e., Lexington County, City of Greer, etc.): MS4 Reviewer: _____ MS4 Operator: _____

II. Primary Permittee Information

☐ Person or ☒ Company If a Company, are you a ☐ Lending Institution or ☐ Government Entity?
Company EIN (if applicable): EIN: _____

- A. Primary Permittee Name: Pawleys Island Community Church
Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 8432374449 Fax: _____ Email Address: mike-plco@sc.twbcc.com
B. Contact /ODSA Name (if different from above OR if owner is a company): Mike Fields
Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 8432374449 Fax: _____ Email Address: mike-plco@sc.twbcc.com
C. Property Owner Name (if different from above): _____
Mailing Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____ Email Address: _____

III. Comprehensive Stormwater Pollution Prevention Plan (C-SWPPP) Preparer Information ☐ Change of Information

- A. C-SWPPP Preparer Name: Thomas P. Bevins
B. Registered Professional: ☒ Engineer ☐ Landscape Architect ☐ Tier B Land Surveyor S. C. Registration #: 13899
C. Company/Firm Name: Engineering and Technical Services, Inc. S. C. COA #: 00439
Mailing Address: PO Box 2040 City: Pawleys Island State: SC Zip: 29585
Phone: 8432373002 Fax: 8432372269 Email Address: tbevins@etseengineering.com

IV. Project/Site Information

- A. Type of Construction Activity(ies) (Select ALL that apply):
☐ Commercial ☐ Industrial ☒ Institutional ☐ Mass Grading ☐ Linear ☐ Utility/Infrastructure
☐ Residential: Single-family ☐ Residential: Multi-family ☐ Multi-use (Commercial & Residential)
☐ Site Preparation (No New Impervious Area) ☐ Other (Specify) _____
B. Site Address/Location (street address, nearest intersection, etc.): 10304 Ocean Highway
City/Town (if in limits): Pawleys Island Zip Code: 29585
Latitude: 33° 26' 08" N Longitude: - 79° 07' 47" W (Source): ☐ GPS ☒ Web Site: Google Earth
Tax Map Number (s) (List all): 04-0161-052-00-00 & 04-0161-049-01-00

- C. Is this site located on Indian Land? ☐ Yes ☒ No
- D. Proposed Start Date: 04/01/2014 Proposed Completion Date: 08/01/2014
- E. Disturbed Area (nearest tenth of an acre): 2.2 Total Area (acres): 10.1
- F. Modification Only: (nearest tenth of an acre): Disturbed Area: Current (Approved) Area: _____
Disturbed Area Change (Increase Only): _____ Total Disturbed Area (After Change): _____
- G. Is this project part of a Larger Common Plan for Development or Sale (LCP)? ☒ Yes ☐ No
LCP/ Overall Development Name: Pawleys Island Community Church Check here if this is the First Phase: ☒

Previous State Permit/File Number: _____ Previous NPDES Coverage Number: SCR10

- H. Any Flooding Problems exist downstream of or adjacent to this site? ☐ Yes ☒ No (If yes, provide detailed description of flooding problems and applicable floodway/flood zone information in the C-SWPPP).
- I. Active S.C. DHEC Warning Notice, Notice to Comply or Notice of Violation for this site or LCP? ☐ Yes ☒ No
- J. List Relevant State and Federal Environmental Permits or Approvals applied for or obtained for this site (e.g., RCRA, USACOE, Nationwide, etc.). If None, list None.

- K. Any Waiver(s)/Variances/Exceptions Requested for this Project? (If yes, identify below and include Waiver Request and Justifications in the C-SWPPP for each proposed request).

1. Small Construction Activity Waiver(s) From NPDES permitting (Section 14 & Appendix B)? ☐ Yes ☒ No
If yes, identify requested waiver: ☐ Rainfall Erosivity Waiver ☐ TMDL Waiver ☐ Equivalent Analysis Waiver

2. Detention Waiver (72-302(B))? ☐ Yes ☒ No 3. Other (Specify): _____

V. Waterbody Information (Attach additional sheet(s) as needed) ☐ Change of Information

- A. Receiving Waterbody(s) (RWB) Information (List the nearest and next nearest receiving waterbodies to which the sites stormwater discharges will drain. If stormwater discharges drain to multiple waterbodies, list all such waterbodies).

1. Name of receiving waterbody (RWB)	2. Elevation (ft.)	3. Classification of RWB
a. Nearest: <u>un-named tributary to Pawleys Island Creek</u>	<u>550</u>	<u>FW</u>
b. Next Nearest: <u>Pawleys Island Creek</u>	<u>610</u>	<u>SPH</u>
c. Coastal Zone ONLY: Coastal Receiving Water (CRW): <u>Pawleys Island Creek</u>	<u>1160</u>	<u>Not Applicable</u>
d. Other Waterbodies: _____		

B. Waters of the U.S. / State Information (Attach additional sheet(s) as needed)

Waters of the U.S. / State	1. On the site?	2. Delineated/ Identified?	3. Impacts?	4. Amount of Impacts
a. Jurisdictional wetlands	☒ Yes ☐ No	☒ Yes ☐ No	☒ Yes ☐ No	<u>0.17</u> Ac/Ft
b. Non-jurisdictional wetlands	☐ Yes ☒ No	☐ Yes ☐ No	☐ Yes ☐ No	<u> </u> Ac
c. Other Water(s): _____	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	<u> </u> Ac <u> </u> Feet
d. Coastal Zone ONLY: Direct Critical Area	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	<u> </u> Ac <u> </u> Feet

5. If yes for impacts in B.3, describe each impact and activity, and list all permits (e.g., USACOE Nationwide Permit, DHEC General Permit) and certifications that have been applied for or obtained for each impact.

C. S.C. Navigable Waters (SCNW) Information (Section 2.6.5) The Department will address any issues related to State Navigable Waters' Program under SC Regulation 19-450 during the review of the C-SWPPP for activities that will NOT require a 404 permit or a 401 certification. (Attach additional sheet(s) as needed).

1. Are S. C. Navigable Waters (SCNW) on the site? ☐ Yes ☒ No

a. If no, do not complete this question. Proceed to Section D (Impaired Waterbodies).

b. If yes, provide the name of S.C. Navigable Waters (SCNW) on the site: Aggregates Processing Division

2. If yes for C.1, will construction activities cross over or occur in, under, or thru the SCNW? ☐ Yes ☒ No
If yes, describe SCNW activities (e.g., road crossing, sub-aqueous utility line, temporary or permanent structures, etc.) and proceed to Section C.3:

3. Identify permits providing coverage of SCNW activities proposed for your site. If NONE, list none.

Permits/Certifications	Permit or Certification No.	Corresponding Covered SCNW Activity(ies)
a. DHEC General/ Other DHEC Permit	<u>none</u>	
b. USACOE 404 Permit or 401 Certification	<u>none</u>	
c. SCNW Permit If applied for or issued, identify Date applied for or issued:	<u>none</u>	☐ All Activities or ☐ Some Activities (Describe):

d. If a SCNW Permit has NOT been applied for provide an additional plan sheet that shows plan and profile views (drawn to scale) of the SCNW and associated activities. Include a description of all proposed activities on this plan.

D. Impaired Waterbodies Information (Attach additional sheet(s) as needed)

1. 303(d) Listed Impaired Waterbody		b. Is this WQMS(s) listed on the most current 303(d) list? If No, proceed to Section 2 of this table. If Yes, complete items c thru f.		c. List the pollutant(s) identified as "CAUSES" of the Impairment	d. Will any pollutants causing the impairment be present in your site's construction stormwater discharges?	e. If yes for d, list the "USE SUPPORT" Impairment(s) affected by the pollutant(s) identified in c.
a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4 and the Name of the Corresponding Waterbody?	Nearest DHEC WQMS(s)	Corresponding Waterbody				
04-11	Pawleys Island Creek	☐ Yes ☒ No			☐ Yes ☐ No	
		☐ Yes ☐ No			☐ Yes ☐ No	
		☐ Yes ☐ No			☐ Yes ☐ No	

f. If yes for d above, will use of the BMPs proposed for your project ensure the site's discharges will **NOT** contribute to or cause further WQS violations for the Impairment(s) listed in c? ☐ Yes ☐ No
 (NOTE: If no for f, this site is NOT eligible for coverage under the CGP). See instructions.

2. TMDL Impaired Waterbodies		b. Has a TMDL(s) been developed for this WQMS(s)? If No, identify as such below and proceed to Section VI. If Yes, complete items c thru f of this table.		c. If yes for b, what pollutant(s) are listed as "CAUSES" or causing the Impairment?	d. If yes for b, has the standard been "ATTAINED" or "Fully Supported" for the Impairment(s)?	e. If no for d (Not Attained), will any pollutants causing the impairment be present in your site's construction stormwater discharges?
a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4?						
04-11		☒ Yes ☐ No	fecal coliform	☐ Yes ☒ No	☒ Yes ☐ No	
		☐ Yes ☐ No		☐ Yes ☐ No	☐ Yes ☐ No	
		☐ Yes ☐ No		☐ Yes ☐ No	☐ Yes ☐ No	

f. If yes for e above, are your discharges consistent with the assumptions and requirements of the TMDL(s)? ☒ Yes ☐ No
 (NOTE: If no for f, this site is NOT eligible for coverage under the CGP). See instructions.

VI. Signatures and Certifications **DO NOT SIGN IN BLACK INK!** Read the Certifications below (in entirety). Provide date, printed name, and signatures below. If you are a New Owner/Operator, as Primary Permittee you must also sign and date the applicable Comprehensive SWPPP Acceptance & Compliance Agreement below.

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

Thomas P. Bevins

Printed Name of C-SWPPP Preparer

Signature of C-SWPPP Preparer

13899

S. C. Registration #

PRIMARY PERMITTEE: "I or I (on behalf of my company and its contractors and agents), as the case may be, certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I understand that DHEC enforcement actions may be taken if the terms and conditions of the C-SWPPP are not met and I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

"I or I (on behalf of my company and its contractors and agents), as the case may be, also hereby certify that all land-disturbing construction and associated activity pertaining to this site shall be accomplished pursuant to and in keeping with the terms and conditions of the approved plans and SCR100000. I also certify that a responsible person will be assigned to the project for day-to-day control. I hereby grant authorization to the S. C. Department of Health and Environmental Control (DHEC) and/or the local implementing agency the right of access to the site at all times for the purpose of on site inspections during the course of construction and to perform maintenance inspections following the completion of the land-disturbing activity." (See Section 122.22 of S.C. Reg. 61-9 for signatory authority information.) Having understood the above information, I am signing this certification as Primary Permittee to the aforementioned NPDES general permit."

Mike Fields

Printed Name of Primary Permittee

Signature of Primary Permittee

General manager

Title/Position

Date Signed 2/26/14



Catherine R. Templeton, Director

Promoting and protecting the health of the public and the environment

Coastal Zone Consistency Certification

To: Richard Geer, Project Manager - BOW-Coastal, Stormwater Permitting
From: Christine Koczera, Project Manager - OCRM, Coastal Zone Consistency Section
Cc: Curtis Joyner, Section Manager - OCRM, Coastal Zone Consistency Section
Re: Pawley's Island Community Church Administrative Building
Site location: 10304 Ocean Highway, Pawley's Island, Georgetown County
Tax Map No: 04-0161-052-00-00, 04-0161-049-01-00
Date: March 26, 2014
CZC #: CZC-12-0149
PN#: SCR10Q459

The staff of the Office of Ocean and Coastal Resource Management (OCRM) has reviewed the above referenced Coastal Zone Consistency request for land disturbing activity, including the construction of a new administrative building, parking, and associated infrastructure, as well as, modifications to the access drive and existing stormwater management pond and certifies that the above referenced project is Consistent with the Public Services and Facilities (Public / Quasi Public Buildings) Policies, the Activities in Areas of Special Resource Significance (Wetlands) Policies and the Stormwater Management (Runoff) Guidelines contained in the S.C. Coastal Zone Management Program provided that:

- in the event that any historic or cultural resources and archaeological or paleontological remains are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Code of Laws. Historic or cultural resources consist of those sites named to the National Register and those sites that are eligible for the National Register and other areas of special historic significance. 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 and;
- demonstrate that storage of the first ½ inch of run-off from the entire site or storage of the first one (1) inch of run-off through retention, detention, or infiltration systems, from the built upon portion of the property, whichever is greater.

This Coastal Zone Consistency did not include a review and authorization for any direct or indirect wetland impacts to freshwater wetlands or critical area. Any impacts to Critical Areas as determined by SCDHEC-OCRM, and/or freshwater wetlands, as determined by the U. S. Army Corps of Engineers must be authorized by the appropriate agency.

This certification shall serve as the final DHEC OCRM Coastal Zone Consistency approval and does not alleviate the applicant's responsibility to obtain other required local, state or federal approvals.

Exhibit 2

2001 WL 130375 (S.C.Admin.Law.Judge.Div.)

Administrative Law Judge Division

State of South Carolina

MARY W. ABEL, DANIEL C. ABEL AND DAVID F. MIMS, PETITIONERS

vs.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, AND PAWLEYS ISLAND BAPTIST CHURCH, RESPONDENTS

Docket No. 00-ALJ-07-0626-CC

January 8, 2001

CONSENT ORDER OF SETTLEMENT AND DISMISSAL

*1 This proceeding arises out of the application of the Pawleys Island Baptist Church, a South Carolina Not-for Profit Corporation, [hereinafter the "Church"] for a state storm water permit for the construction of a new sanctuary and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the church also requested a wetland fill permit from the US Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC/OCRM). After DHEC/OCRM issued the storm water permit and consistency certification, requests for a contested case hearing were filed by Mary W. Abel, Daniel C. Abel and David F. Mims.

The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order. Specifically, the parties have agreed as follows:

1. The designs for the storm water pond and other improvements at the site shall be amended so that approximately one-half (50%) of the wetland area on the site shall be preserved. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A. The Church shall also amend its plans for the proposed structure shown on Exhibit A as "PROPOSED FUTURE BUILDING PHASE II" so that no portion of this structure will encroach upon the area of the wetland.

2. The Church agrees that it will instruct its engineers, architects, contractors and others working on the Church improvement project and storm water management project, to continue to explore additional design changes, where feasible from a time and cost perspective, which will allow possible additional expansion of the wetland area to be preserved.

3. The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.

4. In constructing the storm water system and church improvements, the Church shall instruct its engineers, architects, contractors and others working on its behalf to employ all available Best Management Practices to prevent harm to the wetland beyond that authorized by this agreement and by the permit and certification as hereby amended. In the event such additional harm to the wetland occurs despite best efforts, the church will restore or mitigate any such harm.

5. Within the area designated on Exhibit A as the "30' NOISE/VISUAL BUFFER," the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees

and shrubs will be leyland cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height with fifty percent (50%) of the trees at least ten (10) feet in height; provided however, that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state.

*2 6. The existing basketball and volleyball fields will be removed and will not be re-located any closer to the rear property line of the church property than the front of the new sanctuary.

7. All lighting on the church property will be placed so that it is shielded or directed away from the properties adjacent to the "30' NOISE/VISUAL BUFFER," shown on Exhibit A.

8. Upon execution of this Consent Order, the Church may immediately begin construction of the new sanctuary and other improvements not inconsistent with this agreement and order.

9. The Church and the Petitioners will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement and order.

After review of the agreement, I conclude that it should be accepted and made a part of this order. Accordingly, upon the joint motion and consent of the parties,

IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a part of this final order of the Administrative Law Judge Division.

IT IS FURTHER ORDERED that the DHEC/OCRM permit and certification shall be, and same hereby are, amended in accordance with this agreement and order.

IT IS FURTHER ORDERED that this matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein. AND IT IS SO ORDERED.

C. Dukes Scott
Administrative Law Judge

WE SO MOVE AND CONSENT:

PETITIONERS:

Mary W. Abel
Daniel C. Abel
David Mims

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

By: Mary D. Shahid, its Attorney
PAWLEYS ISLAND BAPTIST CHURCH, a South Carolina Not-for Profit Corporation

By: Montgomery Watson
Trustee

By: George Hilliard

Trustee
By: Jack Wellman
Trustee

2001 WL 130375 (S.C. Admin. Law Judge Div.)

End of Document

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Exhibit 3

 D H E C PROMOTE PROTECT PREPARE	Notice of Intent (NOI) for Stormwater Discharges from Large and Small Construction Activities. NPDES General Permit SCR100000 CZC-12-0149																						
For official use only File number: <u>22</u> Permit number: SCR10 <u>Q 459</u> Submittal package complete: _____ Public Notice Start Date (OCRM only): _____	For official use only																						
Submission of an NOI constitutes notice that the entity identified in Section I intends to be authorized under SCR100000. Instructions on page 5. Date: <u>08/07/2012</u> Project/ Site Name: <u>Pawleys Island Community Church Administrative Building</u> County: <u>Georgetown</u> Do you want this project to be considered for the Expedited Review Program (ERP)? ☐ Yes ☒ No (See Instructions.) If yes, is the design of this project above regulatory requirements or Low Impact Development? ☐ Yes ☒ No																							
I. Project Information Project Owner/ Operator (Company or person): <u>Pawleys Island Community Church</u> Company EIN: <u>57-0756928</u> Phone: <u>843-237-4449</u> Fax: _____ Mailing Address: <u>10304 Ocean Highway</u> City: <u>Pawleys Island</u> State: <u>SC</u> Zip: <u>29585</u> Permit Contact (if owner is company): <u>Mike Fields</u> Phone: <u>843-237-4449</u> Mailing Address: <u>10304 Ocean Highway</u> City: <u>Pawleys Island</u> State: <u>SC</u> Zip: <u>29585</u> Email address (optional): <u>mike-plcc@sc.rr.com</u>																							
II. Property Information A. Site Location (street address, nearest intersection, etc.): <u>East side of Hwy 17 approx. 300 ft south of True Blue Dr.</u> City/ Town (if in limits): <u>Pawleys Island</u> Latitude: <u>33° 28' 8" N</u> Longitude: <u>79° 7' 47" W</u> Tax map # (list all): <u>04-0161-052-00-00 & 04-0161-049-01-00</u> B. Property Owner: <u>Pawleys Island Community Church</u> Phone: <u>843-237-4449</u> Mailing Address: <u>10304 Ocean Highway</u> City: <u>Pawleys Island</u> State: <u>SC</u> Zip: <u>29585</u>																							
III. Site Information A. Disturbed area (to the nearest tenth of an acre): <u>2.2 acres</u> Total area: <u>10.1 acres</u> B. Is this project part of a Larger Common Plan for Development or Sale (LCP)? ☒ Yes ☐ No LCP/ Overall Development Name: <u>Pawleys Island Community Church</u> Check here if this is the first phase. ☒ Previous state permit/ file number: _____ Previous NPDES coverage number: SCR10 ☐ ☐ ☐ ☐ C. Start Date (MM/DD/YYYY): <u>08/01/2012</u> Completion Date: <u>02/01/2013</u> D. Is this site located on Indian Lands? ☐ Yes ☒ No If yes, name of reservation: _____ E. Type of Activity (check one): <table style="width: 100%;"> <tr> <td>☐ Institutional</td> <td>☐ Residential: Single-family</td> <td>☐ Commercial</td> <td>☐ Industrial</td> </tr> <tr> <td>☐ Linear</td> <td>☐ Residential: Multi-family</td> <td>☐ Multi-use (Commercial & Residential)</td> <td>☐ Other:</td> </tr> <tr> <td colspan="2">☐ Site Preparation (No new impervious)</td> <td colspan="2"></td> </tr> </table> F. Are there any flooding problems downstream of or adjacent to this site? ☐ Yes ☒ No G. Has S.C. DHEC issued a Notice to Comply or Notice of Violation for this site or LCP? ☐ Yes ☒ No H. Is any part of the property located inside an MS4 or urbanized area? ☐ Yes ☒ No If yes, list the MS4 operator or urbanized area name: _____ I. List all state and federal environmental permits or approvals applied for or obtained for this site (e.g., RCRA).				☐ Institutional	☐ Residential: Single-family	☐ Commercial	☐ Industrial	☐ Linear	☐ Residential: Multi-family	☐ Multi-use (Commercial & Residential)	☐ Other:	☐ Site Preparation (No new impervious)											
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☐ Site Preparation (No new impervious)																							
IV. Waterbody Information A. Nearest receiving waterbody(s) [RWB]: <u>Pawleys Island Creek</u> Distance to nearest RWB (feet): <u>1,300</u> Classification of nearest RWB: <u>SFH</u> Next/Nearest named RWB: <u>Midway Inlet</u>																							
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">B. 1. Waters of the U.S./ State</th> <th style="width: 10%;">On the site?</th> <th style="width: 10%;">Delineated/ Identified?</th> <th style="width: 10%;">Impacts?</th> <th style="width: 30%;">Amount of Impacts</th> </tr> </thead> <tbody> <tr> <td>a. Jurisdictional wetlands</td> <td>☒ Yes ☐ No</td> <td>☒ Yes ☐ No</td> <td>☐ Yes ☒ No</td> <td>Ac</td> </tr> <tr> <td>b. Non-jurisdictional wetlands</td> <td>☐ Yes ☒ No</td> <td>☐ Yes ☒ No</td> <td>☐ Yes ☒ No</td> <td>Ac</td> </tr> <tr> <td>c. Other Water(s) List:</td> <td>☐ Yes ☒ No</td> <td>☐ Yes ☒ No</td> <td>☐ Yes ☒ No</td> <td>Ac Feet</td> </tr> </tbody> </table>				B. 1. Waters of the U.S./ State	On the site?	Delineated/ Identified?	Impacts?	Amount of Impacts	a. Jurisdictional wetlands	☒ Yes ☐ No	☒ Yes ☐ No	☐ Yes ☒ No	Ac	b. Non-jurisdictional wetlands	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No	Ac	c. Other Water(s) List:	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No	Ac Feet
B. 1. Waters of the U.S./ State	On the site?	Delineated/ Identified?	Impacts?	Amount of Impacts																			
a. Jurisdictional wetlands	☒ Yes ☐ No	☒ Yes ☐ No	☐ Yes ☒ No	Ac																			
b. Non-jurisdictional wetlands	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No	Ac																			
c. Other Water(s) List:	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No	Ac Feet																			
2. If yes for Impacts in B.1, describe each impact and activity, and list all permits (e.g., USACE Nationwide permit, DHEC General Permit) and certifications that have been applied for or obtained for each impact.																							

RECEIVED

JUN 26 7/17

C. Impaired Waterbodies (See Instructions.)

List the nearest DHEC water quality monitoring station(s) [WQMS(s)] to which construction stormwater (SW) discharges will drain and the corresponding waterbody(s). 04-11 Waterbody(s): Pawleys Island Creek

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

D. 1. Are S.C. Navigable Waters (SCNW) on the site? ☐ Yes ☒ No

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

V. Operator Information

- A. SWPPP Preparer: Thomas P. Bevins S.C. Registration #: 113899
Company/ Firm: Engineering & Technical Services, Inc. S.C. COA #: 0104139
Mailing Address: PO Box 2040 City: Pawleys Island State: SC Zip: 29555
Phone: (Day) 843-237-3002 (Mobile) 843-385-8882 (Fax) 843-237-2289
Email address (optional): tbbevins@etsengineers.com
- B. Operator of Day-to-Day Site Activities (ODSA) (Company or person): Mike Fields
Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29555
Phone: 843-237-4449 Fax: _____ Phone: _____
Site Contact (if ODSA is company): _____

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

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

Thomas P. Bevins
Printed name of SWPPP Preparer

Thomas P. Bevins
Signature of SWPPP Preparer

113899
S.C. Registration #

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

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

Mike Fields
Printed name of Project Owner/Operator

Mike Fields
Signature of Project Owner/Operator

6/7/12
Date

Exhibit 4

OXNER & STACY, P.A.
ATTORNEYS AND COUNSELORS AT LAW
90 WALL STREET - UNIT D
PAWLEYS ISLAND, SC 29583
TEL: (843) 235-6747 • FAX: (843) 233-6630

HARRY A. OXNER
DANIEL W. STACY, JR.

GEORGETOWN OFFICE:
235 CHURCH STREET
POST OFFICE BOX 481
GEORGETOWN, SC 29442-0481
TEL: (843) 527-8220
FAX: (843) 485-4121

REPLY TO:
PAWLEYS ISLAND OFFICE

October 10, 2013

Via Federal Express

Jana B. Shealy, Clerk
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Pawleys Island Community Church
O.S. File #12-1370

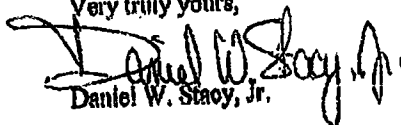
Dear Ms. Shealy:

It has been some time since we discussed this issue, but if you recall we had discussed the modification of a Consent Order being undertaken by the Church with the consent and agreement of the parties to the original Consent Order. I have provided herewith a Modified Consent Order executed by the parties. Please confirm what the filing fee will be and whether or not this can be executed by the appropriate Administrative Law Court Judge. We will be glad to discuss these issues with the Judge via telephone or in person, but would prefer not to have to undertake another hearing, if at all possible. The Modified Consent Order is self-explanatory, but I will be glad to go through the matter in detail with you at your request.

I look forward to hearing from you.

With kindest regards, I remain

Very truly yours,


Daniel W. Stacy, Jr.

DWS/scp
Enclosure

cc: Pawleys Island Community Church

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

MARY W. ABEL, DANIEL C. ABEL
AND DAVID F. MIMS,

PETITIONERS,

V.

SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL
CONTROL AND PAWLEYS ISLAND
BAPTIST CHURCH N/K/A PAWLEYS
ISLAND BAPTIST CHURCH,

DEFENDANTS.

ADMINISTRATIVE LAW COURT
DOCKET NO.: 00-ALJ-07-0526-CC

MODIFIED CONSENT ORDER OF
SETTLEMENT AND DISMISSAL

WHEREAS pursuant to Administrative Law Court Consent Order signed by the Honorable C. Dukes Scott, Administrative Law Judge on January 8, 2001 (the "Order"), the parties above agreed to resolve the subject dispute before the Administrative Law Court pursuant to said Order;

WHEREAS Pawleys Island Baptist Church (the "Church" also known as "Pawleys Island Community Church") desires to modify its site plan and making further modifications to the Church property not in compliance with the original Order; and

WHEREAS the initial petition was brought by petitioners who were neighboring property owners or adjoining property owners to the Church; and

WHEREAS said parties have either moved away from and no longer own said adjoining properties, or now consent to the modifications requested by the Church; and

WHEREAS all necessary parties have consented to this Modified Consent Order of Settlement and Dismissal (the "Modified Order") as evidenced by their signatures attached hereto; and

WHEREAS, documents are referenced in this Modified Consent Order of Settlement and Dismissal and are attached hereto and is labeled as follows:

"Exhibit A" - Amended Site Plan

"Exhibit B" - Amendment Agreement (Mims and Pawleys Island Community Church)

DFM
JAM

WHEREAS, a new permit/application (the "Permit") is being made by the Church to undertake improvements to the Church property and said Permit cannot be reviewed by the South Carolina Department of Health and Environmental Control ("Department") without applying the heightened restrictions required under the Order until this Modified Consent Order of Settlement and Dismissal is approved by the Court;

WHEREAS, the adjoining landowners who were parties to the original action and still own the adjacent property have consented to this Amendment as set forth in the attached Exhibit B which is incorporated herein by reference; and

WHEREAS, the signatory parties to Exhibit B understand and acknowledge they have no additional rights under any applicable statutes and regulations by creation of this agreement; and

WHEREAS, the signatory parties to Exhibit B understand and acknowledge this agreement does not exempt the parties from any applicable statutory and regulatory requirements; and

NOW THEREFORE, the Administrative Law Court hereby executes this Modified Consent Order of Settlement and Dismissal as set forth herein; and

IT IS HEREBY ORDERED that the original Exhibit A from the January 8, 2001 Consent Order is hereby replaced with the Exhibit A attached hereto.

This proceeding arises out of the application of the Church for a state storm water permit for the construction of a new sanctuary and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the church also requested a wetland fill permit from the U.S. Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHBC/OCRM). After DHBC/OCRM issued the storm water permit and consistency certification, requests for a contested case hearing were filed by Mary W. Abel, Daniel C. Abel and David F. Milns.

The parties met, discussed, negotiated, and resolved their differences, and reached a settlement which was incorporated into the Order. Now, the parties desire to modify the Order dated January 8, 2001 as follows:

1. All parties hereto agree that the original "30' Noise/Visual Buffer" on the original Exhibit A shall be replaced with those buffers set forth on the Exhibit A attached hereto, all other heightened restrictions set forth in the Order are hereby deleted and only the restrictions set forth in Exhibit A shall apply to the site other than any existing basketball and volleyball courts will not be relocated any closer to the rear property line of the church property than the front of the new sanctuary.

2. The Department, by execution hereof, merely consents to this Modified Consent Order as it was an original party to the Order, but by its execution hereof specifically reserves the right to

DFM
JAM

approve or disapprove any permits applied for by the Church based solely on applicable statutory and regulatory criteria for such permits set forth by the Department and affiliated agencies.

After review of the agreement, I conclude that it should be accepted and made a part of this order. Accordingly, upon the joint motion and consent of the parties,

IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a part of this final order of the Administrative Law Judge Division.

IT IS FURTHER ORDERED that matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein.

AND IT IS SO ORDERED.

Honorable C. Dukes Scott
Administrative Law Judge
Columbia, South Carolina

02-OCT, 2013

WE CONSENT:

Tina Mims
Tina Mims

David Mims
David Mims

Pawleys Island Community Church

By: Mike Fields

Its: Administrative Law Judge

South Carolina Department of Health
And Environmental Control
Office of Coastal Resource Management

By: [Signature]

Its: Attorney

David Mims *David E. Mims*

Tina Mims *Tina Mims*

Don Williams *Don Williams*

Mike Fields *Mike Fields*

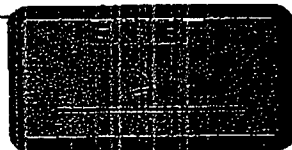
Notary *Miss M. Collier*

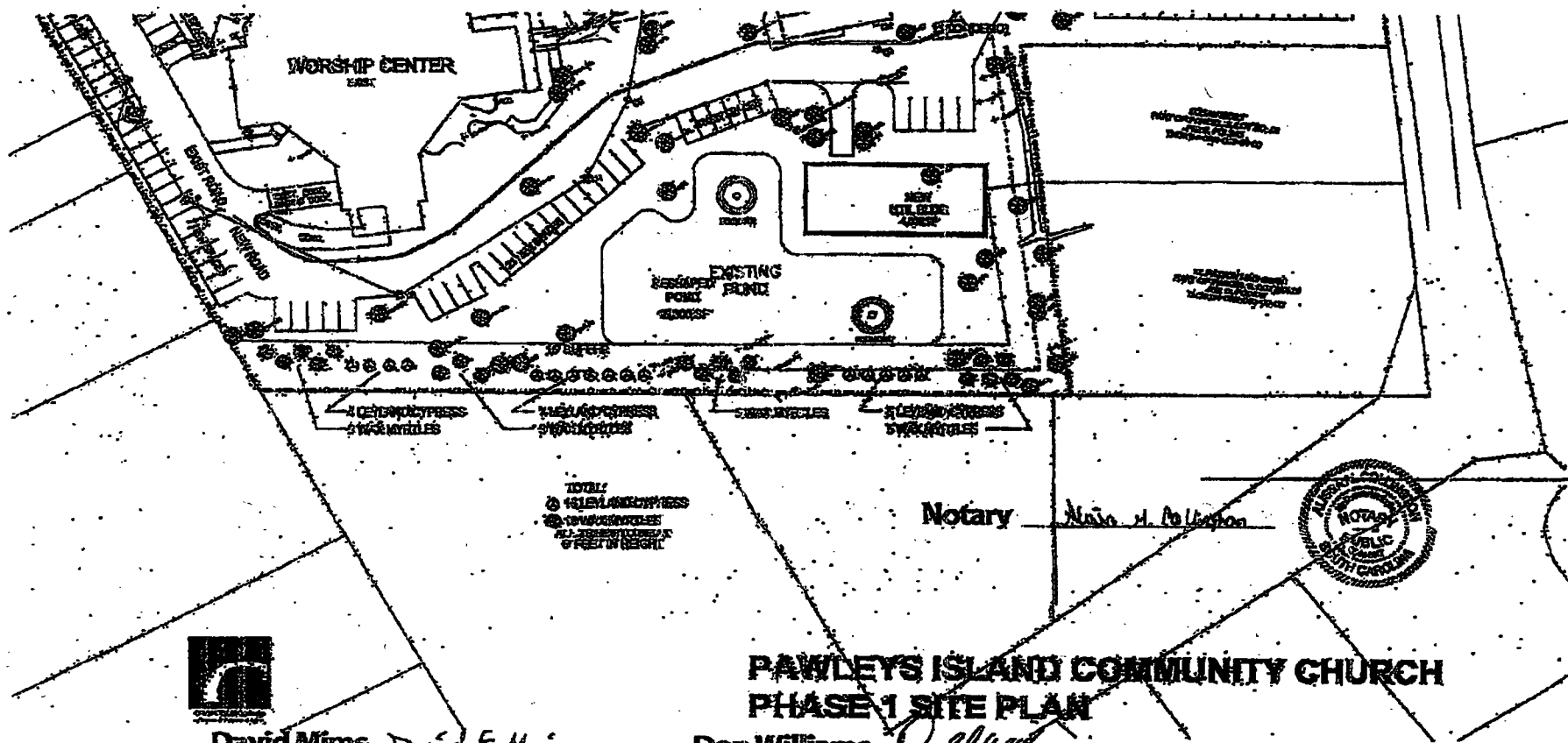


EXHIBIT A

01 JULY 2012

PAWLEYS ISLAND COMMUNITY CHURCH
PHASE 1 SITE PLAN





David Mims David F. Mims
 Tina Mims Tina C. Mims

Don Williams Don Williams
 Mike Fields Mike Fields

EXHIBIT B

2012 Amendment To:

**SC Administrative Law Court Decisions
2001 DOCKET NUMBER:
00-ALL-07-0028-CO**

PARTIES INCLUDED:

David Mims
Tina Mims

PAWLEYS ISLAND COMMUNITY CHURCH,
a South Carolina Not-for Profit Corporation
Don Williams, Senior Pastor
Mike Fields, Operations & Mission Director

This agreement arises out of the application of the Pawleys Island Community Church, a South Carolina Not-for Profit Corporation, hereinafter the "Church" for a wetland fill permit from the US Army Corp of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEOCORM) for the construction of a new storage building and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. When US Army Corp of Engineers was preparing to issue the wetland fill permit and consistency certification, the 2001 Agreement with the parties was discovered. The request was put on hold until the landowners, David and Tina Mims could be contacted.

The parties have met, discussed, negotiated and have reached an agreement which they desire to have incorporated into this amendment. Specifically, the parties have agreed as follows:

1. The designs for storage building, pond and other improvements at the site shall be amended so that Church can mitigate, with OCRM/DHEOCORM approval, a portion of the wetlands, as indicated on the submitted drawings, to construct a storage building and reshape the existing pond. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A.
2. The Church agrees that it has instructed its engineers, architects, contractors and others working on the Church Improvement project and pond reshaping project, to explore every additional design change, where feasible from a time and cost perspective, which will allow minimizing damage to existing wetlands and trees on the work site.
3. The Church agrees that the wetland preserved by this amendment shall remain in its natural state.
4. Within the area designated on Exhibit A, the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees and shrubs will be Live oak, cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height. The Church also agrees to protect and leave as many trees as possible in the vegetated buffer area and that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state. The landscape plan shall be consistent and configured as depicted in the drawing attached hereto as Exhibit B.
5. Upon agreement by the SC Administrative Law Court, the Church may immediately begin construction of storage building, new road, reshaping of pond and other improvements not inconsistent with this amendment.
6. The Church along with David and Tina Mims will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement as written.
7. If the Church relocates the utility building or modifies the buffer zone in any way that is not in accord with this amendment or exhibits then the terms of this amendment will be renegotiated by all parties to it.

We, as indicated by our signatures below, agree to these amendments, as stated above, to the 2001 agreement:

David F. Mims 9/17/12
David Mims Date

Tina A. Mims 9/17/12
Tina Mims Date

Don Williams 9/17/2012
Pawleys Island Community Church Date

Mike Fields 9/17/2012
Pawleys Island Community Church Date

Notarized by:

Alissa M. Collington

See:

Date:

September 17, 2012

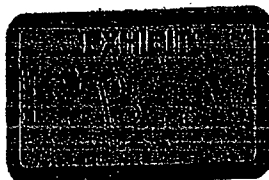


Exhibit 5

STATE OF SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Mary W. Abel, Daniel C. Abel, and
David F. Mims,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control, and Pawleys
Island Baptist Church a/k/a Pawleys
Island Community Church,

Respondent.

Docket No.: 13-ALJ-07-0547-CC

ORDER ON REQUEST TO MODIFY A SETTLEMENT AND DISMISSAL

This case was originally before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing brought by Petitioners Mary W. Abel, Daniel C. Abel, and David F. Mims (Petitioners), who were neighboring property owners or adjoining property owners to the Pawleys Island Baptist Church aka Pawleys Island Community Church (Church). The case was given Docket No. 00-ALJ-07-0626-CC. The Church applied for a state stormwater permit for the construction of a new sanctuary and other improvements to its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the Church requested a wetland fill permit from the U.S. Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC). After this case was filed, the parties entered into a Consent Order resolving the dispute. That Consent Order was subsequently approved by the Honorable C. Dukes Scott, Administrative Law Judge on January 8, 2001 (Consent Order).

The Church has now filed a request with this Court to modify its site plan and make further modifications to the Church property not in compliance with the original Order. However, Daniel C. Abel objects to that modification. The Court nevertheless finds that a request to modify the Permits issued as a result of the previous Consent Order has been filed with DHEC and is still subject to DHEC review. This matter is therefore apparently properly before DHEC for its review as to whether the Church's permits should be modified. Therefore

FILED

January 7, 2014

SC ADMIN. LAW COURT

since DHEC has not made a final determination on the proposed modification, and no request for a contested case review of that determination has been filed with this Court, I find that any action by the Court at this time would be premature. *See, e.g., South Carolina Baptist Hosp. v. S.C. Dep't of Health and Envtl. Control*, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987) ("It would be premature for a court to decide the merits of a dispute when the agency responsible for making the decision has not yet had an opportunity to decide the merits of the case.").¹

IT IS THEREFORE ORDERED that this case be **DISMISSED WITHOUT PREJUDICE**, and that DHEC continue its review of the Church's permit application.
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

January 7, 2014
Columbia, South Carolina

¹ This Court also notes that the only objection received to this request to modify the Consent Order was made by Daniel C. Abel, who is no longer an adjoining landowner.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

January 7, 2014
Columbia, South Carolina

**Dan Abel, Mary Abel, and
William Mashburn,**

· **VS.**

Respondents.

DEPARTMENT'S PREHEARING STATEMENT

On April 1, 2014, DHEC sent notice that it had granted an NPDES General Permit for Stormwater Discharges from Construction Activities (NPDES permit number SCR10Q459) ("stormwater permit") and Coastal Zone Consistency ("CZC") Certification CZC-12-0149 to Respondent Pawleys Island Community Church.

In 2000, DHEC issued a separate stormwater permit and CZC certification to the Church for a now-complete construction project. That decision was also challenged by Dan and Mary Abel. To resolve the dispute, a Consent Order of Settlement and Dismissal ("Consent Order") was signed by Administrative Law Court Judge C. Dukes Scott on January 8, 2001.

The 2001 Consent Order settled and resolved the Abel's objections to the 2000 stormwater permit and CZC certification. The Church finished its construction activities and fulfilled all of its responsibilities as directed by the 2001 Consent Order and amended stormwater permit.

Petitioner now challenges the Church's recent stormwater permit and CZC certification.

6. Summary of motions expected to be raised at the hearing and the appropriate authority underlying the motion:

The Department anticipates filing a motion to dismiss in this matter.

7. A list of proposed witnesses and exhibits is as follows:

Witnesses: Richard Geer, DHEC-BOW
Christine Koczera, DHEC-OCRM
Any witness named by any other party to this litigation.
Exhibits: The exhibits will consist of the Department's permitting file.

The Department reserves the right to supplement this list of witnesses and exhibits as discovery progresses and the issues in this case are more fully developed.

8. Discovery is necessary and the parties are in the process of conducting discovery.

9. The estimated time required for the hearing:

The hearing in this matter should last approximately one day.

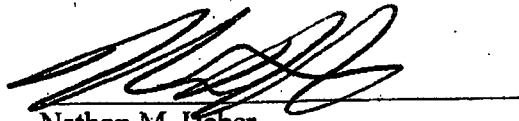
10. Any dates the parties, counsel or key witnesses are specifically unavailable during the next three months:

August 7, 2014, August 14, 2014, August 29, 2014, September 8 – 12, 2014, September 16 – October 6, 2014.

11. An email address where you can be reached:

habernm@dhec.sc.gov
crawfomd@dhec.sc.gov

Respectfully Submitted,



Nathan M. Haber
Staff Counsel
South Carolina Department of Health and
Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405
(843) 953-0229
(843) 953-0229 (fax)
Attorney for Respondent SCDHEC
habernm@dhec.sc.gov
crawfomd@dhec.sc.gov

July 29, 2014
Charleston, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Dan Abel, Mary Abel and William Mashburn,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Pawleys Island
Community Church,

Respondents.

Docket No. 14-ALC-07-0282-CC

**PETITIONERS' PREHEARING
STATEMENT**

FILED

JUL 31 2014

SC ADMIN. LAW COURT

**TO: ADMINISTRATIVE LAW JUDGE SHIRLEY C. ROBINSON, AND ALL PARTIES
AND THEIR ATTORNEYS:**

The Petitioners hereby submit the following information as their Prehearing Statement:

1. The nature of this proceeding;

This is a contested case hearing brought by the Petitioners Dan Abel, Mary Abel and William Mashburn, pursuant to Administrative Law Court Rule 11, to review the decision of the South Carolina Department of Health and Environmental Control Office of Coastal Resource Management ("DHEC/OCRM") to grant Stormwater Permit Coverage SCR10Q459 ("Stormwater Permit") and Coastal Zone Consistency Certification CZC-12-0149 ("Consistency Certification") to Pawleys Island Community Church ("PICC"). The Stormwater Permit and Consistency Certification are in plain violation of a previous settlement agreement entered between Dan and Mary Abel ("the Abels"), PICC and DHEC/OCRM.

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

The statutory provisions conferring subject matter jurisdiction are: (1) S.C. Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310, *et seq.*; (2) the S.C. Coastal Zone Management Act, S.C. Code Ann. § 48-39-150; and (3) S.C. Code Ann. § 44-1-60.

The ALC further retained jurisdiction over this matter by virtue of the Consent Order of Settlement and Dismissal ("Consent Order") issued by Administrative Law Judge Dukes Scott on January 8, 2001, Docket Number 00-ALJ-07-0626-CC, in a case challenging DHEC/OCRM's original decision to issue a stormwater permit and coastal zone consistency certification for modifications to the PICC property.

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

Whether the Consent Order and its terms are binding and enforceable by law upon the parties thereto, including the Abels, DHEC/OCRM and PICC.

Whether DHEC/OCRM improperly issued the Stormwater Permit and Consistency Certification to PICC in violation of the Consent Order. Specifically, whether DHEC/OCRM's decision to issue the Stormwater Permit and Consistency Certification to PICC violates both DHEC/OCRM's and PICC's continuing obligations under the Consent Order.

Whether PICC's plan, as approved by DHEC/OCRM, violates certain provisions of the Consent Order, including that the wetlands remaining on the PICC's property are to "remain in [their] natural state" as well as those related to maintenance of a buffer between the PICC property and surrounding properties.

4. The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations;

The Petitioners respectfully request that the Court reverse DHEC/OCRM's decision to issue the Stormwater Permit and Consistency Certification to PICC as it is a plain violation of the binding settlement agreement and Consent Order previously entered into between the parties.

This requested action is supported by common law principles of contract, the plain language of the Consent Order, and the principle of res judicata.

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

This is not the first time that PICC has sought a stormwater permit and coastal zone consistency certification for modifications to its property. Back in 2000, PICC sought the same approvals for construction activities. As a part of its construction project, PICC intended to fill federal and state jurisdictional wetlands. When DHEC/OCRM issued the stormwater permit and consistency certification for that project, the Abels and David F. Mims, as neighboring property owners, challenged that decision by filing requests for a contested case hearing in the Administrative Law Court. The case was given Docket Number 00-ALJ-07-0626-CC. The parties had numerous settlement discussions that eventually resulted in a Consent Order of Settlement and Dismissal ("Consent Order") issued by Administrative Law Judge Dukes Scott on January 8, 2001.

According to the Consent Order: "The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order." The settlement was "made a part of th[e] final order of the Administrative Law Judge Division[,] which "FURTHER ORDERED that th[e] matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein." (emphasis

added). In other words, the Abels agreed to dismiss their contested case in exchange for certain binding concessions from PICC. DHEC/OCRM was a party to the settlement agreement and agreed to amend the stormwater permit and consistency certification in accordance with the agreement and Consent Order.

The wetlands on PICC's property were a key issue in that contested case and a key component of the Consent Order. Protection of the wetlands, which are adjacent to important salt marsh creek in Pawleys Island, was a primary motivator in the Abels' decision to file the contested case and was specifically addressed in the Consent Order. Pursuant to the Consent Order, PICC's construction plan had to be "amended so that **approximately one-half (50%) of the wetland area on the site shall be preserved.**"(emphasis added). Further, as to that area of preserved wetlands, PICC committed to the following: "**The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.**"(emphasis added).

On June 7, 2012, PICC submitted its Notice of Intent to conduct additional construction activities on its property, which included filling and otherwise disturbing the wetland area that was agreed upon by all parties to the Consent Order to "remain in its natural state." Since the additional construction activities PICC desired to make on its property were not in compliance with the Consent Order, PICC submitted a proposed Modified Consent Order of Settlement and Dismissal ("Proposed Modification Order") dated October 1, 2013 to the Administrative Law Court in an attempt to replace the existing Consent Order. The Proposed Modification Order was not agreed to or signed by all of the parties to the original Consent Order as the Abels neither consented to nor signed the Proposed Modification Order. As stated by Administrative Law Judge Anderson: "The Church has now filed a request with this Court to modify its site plan and make further modifications to the Church property **not in compliance with the original Order.**" (emphasis added). Judge Anderson rightfully denied PICC's request, which was opposed by the Abels.

Notwithstanding the binding terms of the settlement agreement and Consent Order, DHEC/OCRM approved PICC's request to conduct additional construction activities on the subject property and issued the Consistency Certification and the Stormwater Permit on March 26, 2014 and March 31, 2014, respectively.

Under the valid, binding and enforceable Consent Order, the wetlands remaining on the PICC's property today are to "remain in [their] natural state." Despite DHEC/OCRM's agreement and commitment that the wetlands would remain unaltered, the DHEC/OCRM staff issued a Stormwater Permit and Consistency Certification that authorizes just the opposite, allowing PICC to fill all remaining wetlands on its property as a part of its stormwater plan. The Stormwater Permit and Consistency Certification thereby violate both DHEC/OCRM's and PICC's continuing obligations under the Consent Order.

Having failed with the ALJ, PICC then gained DHEC/OCRM's complicity in ignoring the terms of the Consent Order. That Consent Order is binding and enforceable by law. DHEC regularly resolves environmental disputes through negotiated settlement and consent orders of dismissal. If these efforts are to be accepted in good faith in the future, DHEC/OCRM must be reliable in abiding by the agreed upon terms, as well as Orders from this Court. To maintain credibility at the bargaining table, the Agency should be held to the terms of the settlement agreements and orders to which it is

a party.

6. **A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion;**

The Petitioners anticipate filing a motion for summary judgment in this matter.

7. **A list of proposed witnesses and exhibits;**

Witnesses:

- a. Dan and Mary Abel,
- b. Mike Fields and other representatives of PICC,
- c. Richard Geer, Christopher Stout and other employees of DHEC/OCRM,
- d. Additional witnesses identified as preparations for this case continue,
- e. Any witnesses identified by the Respondents.

Exhibits:

- a. All documents contained in the DHEC/OCRM permitting file for this matter,
- b. All documents pertaining to construction activities on the PICC property,
- c. Other documents generated through discovery, research and preparations for this case.

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

Discovery may be necessary, including standard interrogatories and requests for production of documents, entry upon the project site, and depositions.

9. **The estimated time required for the hearing;**

The Petitioners believe this hearing could be completed in one day.

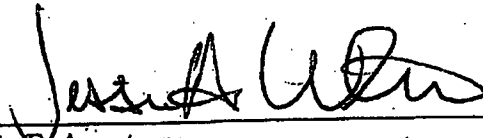
10. **Any dates the parties, counsel or key witnesses are specifically unavailable during the next three months; and**

August 11-12, 14-15, 28-29
September 5, 16-17

12. **An email address where you can be reached:**

Amy@scelp.org
Michael@scelp.org
Jessie@scelp.org

Respectfully submitted,



Amy E. Armstrong

Michael Corley

Jessie A. White

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585

Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone (843) 527-0078

FAX (843) 527-0540

Attorneys for the Petitioners

Georgetown, South Carolina
July 31, 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Dan Abel, Mary Abel and
William Mashburn,

Petitioners,

vs.

South Carolina Department of
Health and Environmental Control
and Pawleys Island Community
Church,

Respondents.

Docket No. 14-ALJ-07-0282-CC

**PAWLEYS ISLAND COMMUNITY
CHURCH'S PREHEARING
STATEMENT**

On behalf of Respondent Pawleys Island Community Church (the "Church"), the following information is submitted:

1. Nature of the proceeding:

This contested case arises as an appeal of the South Carolina Department of Health and Environmental Control's (the "Department") issuance of NPDES Stormwater Permit SCR10Q459 and Coastal Zone Consistency ("CZC") Certification CZC-12-0149 to Pawleys Island Community Church (the "Church").

2. The statutory provision(s) conferring subject matter jurisdiction and other applicable statutes and regulations:

The Court's subject matter jurisdiction arises from S.C. Code Ann. §§ 1-23-310 *et seq.*, and S.C. Code Ann. § 44-1-60.

Respondents do not challenge any specific statutory authority as the controversy centers on the language of a 2001 settlement agreement.

3. Issues to be presented for determination:

Whether the Department properly granted the NPDES Stormwater Permit and CZC Certification when the Church properly requested a new permit for minor redevelopment.

4. Action of the Court, if any:

The Church respectfully requests that the Court affirm the Department's issuance of the NPDES Stormwater Permit and CZC Certification.

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

On April 1, 2014, DHEC sent notice that it had granted an NPDES General Permit for Stormwater Discharges from Construction Activities (NPDES permit number SCR10Q459) ("Stormwater Permit") and Coastal Zone Consistency ("CZC") Certification CZC-12-0149 to Respondent Pawleys Island Community Church.

In 2000, DHEC issued a separate stormwater permit and CZC certification to the Church for a now-complete construction project. That decision was also challenged by Dan and Mary Abel. To resolve the dispute, a Consent Order of Settlement and Dismissal ("Consent Order") was signed by Administrative law Court Judge C. Dukes Scott on January 8, 2001.

The 2001 Consent Order settled and resolved the Abel's objections to the 2000 stormwater permit and CZC certification. The Church finished its construction activities and fulfilled all of its responsibilities as directed by the 2001 Consent Order and amended stormwater permit.

Petitioner now challenges the Church's recent stormwater permit and CZC certification.

6. **Summary of motions expected to be raised at the hearing and the appropriate authority underlying the motion:**

The Respondents anticipate filing a motion to dismiss in this matter.

7. **A list of proposed witnesses and exhibits is as follows:**

Witnesses: Don Williams, Pastor of Pawleys Island Community Church
Mike Fields, Facilities Manager of Pawleys Island Community Church
Any witness named by any other party to this litigation.
Exhibits: The exhibits will consist of the Department's permitting file.

The Church reserves the right to supplement this list of witnesses and exhibits as discovery progresses and the issues in this case are more fully developed.

8. **Discovery is necessary and the parties are in the process of conducting discovery.**

9. **The estimated time required for the hearing:**

The hearing in this matter should last approximately one day.

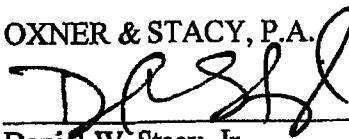
10. **Any dates the parties, counsel or key witnesses are specifically unavailable during the next three months:**

August 8, 2014 – August 12, 2014, September 1, 2014 – September 2, 2014, October 10, 2014 – October 20, 2014

11. **An email address where you can be reached:**
danstacy@loslaw.net

Respectfully Submitted,

OXNER & STACY, P.A.



Daniel W. Stacy, Jr.
90 Wall Street, Unit B
Pawleys Island, SC 29585
(843) 235-6747 – Office
(843) 235-6650 – Facsimile
Attorney for Respondent
Pawleys Island Community Church

August 5, 2014
Pawleys Island, South Carolina

FILED

NOV 25 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Mary W. Abel, Daniel C. Abel and David F.
Mims,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control, Office of Ocean and
Coastal Resource Management, and Pawleys
Island Baptist Church,

Respondents.

Docket No. 00-ALJ-07-0626-CC

**MOTION TO
ENFORCE CONSENT ORDER
AND TO
CONSOLIDATE**

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

PLEASE TAKE NOTICE that Mary W. Abel and Daniel C. Abel ("the Abels"), hereby move the Administrative Law Court for an order enforcing the Consent Order of Settlement and Dismissal (the "Consent Order") entered into by the parties to this action and to consolidate this action with the related challenge given Docket No. 14-ALC-07-0282-CC, which is pending before the Court as follows:

INTRODUCTION AND FACTUAL OVERVIEW

Pawleys Island Baptist Church, now known as Pawleys Island Community Church (the "Church"), is located on the east side of U.S. Highway 17, south from the intersection of U.S. Highway 17 and Waverly Road and approximately 500-600 feet from Pawleys Island Creek in the Pawleys Island area of Georgetown County, South Carolina.

In May 2000, as part of a project to expand its existing facility, the Church submitted a Joint Federal and State Application for proposed work to its property that involved impacts to wetlands. In particular, the proposed activity consisted of the placement of fill material in and the excavation

of a 0.30 acre freshwater wetland onsite. On June 26, 2000, also in relation to the proposed expansion project, the Church applied for a land disturbance and storm water discharge permit with the South Carolina Department of Health and Environmental Control ("DHEC"). The expansion project further required state certification that the proposed activity was consistent with water quality requirements under Section 401 of the Clean Water Act as well as a Coastal Zone Consistency ("CZC") determination from DHEC's Office of Ocean and Coastal Resource Management ("OCRM") that the project was consistent with the South Carolina Coastal Zone Management Program.

On October 2, 2000, DHEC issued Stormwater Permit #22-00-06-03 (the "2000 Permit") to the Church for land disturbing activities and discharges associated with the expansion of its existing facility. On October 9, 2000, DHEC also issued a CZC and water quality certification, referenced as P/N 2000-1D-262-C (the "2000 Certification"), for the project.

The Abels and David F. Mims, as neighboring property owners to the Church, challenged the 2000 Permit and Certification and filed requests for a contested case hearing, which was given the above-captioned Docket Number 00-ALJ-07-0626-CC. The parties had numerous settlement discussions that eventually resulted in a Consent Order of Settlement and Dismissal (the "Consent Order"). Exhibit A. The Consent Order, to which the Abels, Mr. Mims, the Church and DHEC/OCRM were all parties, was issued by Administrative Law Judge Dukes Scott on January 8, 2001. Exhibit A, p. 4.

According to the Consent Order: "The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order." Exhibit A, p. 1. This settlement was "made a part of th[e] final order of the Administrative

Law Judge Division[.]" which "FURTHER ORDERED that th[e] matter shall be DISMISSED, with prejudice, except that **the parties shall retain full rights to enforce the agreements stated herein.**" Exhibit A, p. 3 (emphasis added). Therefore, under the terms of the Consent Order, the parties agreed to the dismissal of the contested case in exchange for certain binding concessions with regard to construction activities on the Church property, described more fully below.

The wetlands on the Church property, which are adjacent to an important salt marsh creek in Pawleys Island, formed a key issue in the Abels' challenge giving rise to the contested case. Accordingly, the inclusion of specific provisions in the Consent Order addressing and protecting those wetlands played a significant role in facilitating an agreement between the parties.

In pertinent part, the Consent Order required that the Church's plan for expansion, including the construction of "the storm water pond and other improvements at the site shall be amended so that **approximately one-half (50%) of the wetland area on the site shall be preserved.**" Exhibit A, p. 2 (emphasis added). The Consent Order required that the Church instruct all agents, employees, contractors and others working on its behalf "to continue to explore additional design changes . . . which will allow possible additional expansion of the wetland area to be preserved" and "to employ all available Best Management Practices to prevent harm to the wetland beyond that authorized by this agreement and by the permit and certification as hereby amended." Exhibit A, p. 2. Further, pursuant to the Consent Order, the Church agreed "**that the wetland preserved by this Consent Order shall remain in its natural state.**" Exhibit A, p. 2 (emphasis added).

On June 26, 2012, the Church submitted a Notice of Intent ("NOI") for coverage under DHEC's general storm water permit for discharges associated with a proposal to conduct additional construction activities on its property, along with a request to DHEC/OCRM for a CZC certification for the project. The proposed work consisted of reconfiguring and extending the existing drive

entrance; constructing additional parking; constructing a 4,000 square foot utility building in the back of the property; constructing administrative offices in the location of an existing building; reconfiguring and expanding the existing storm water retention pond; adding an infiltration system. Moreover, the proposed activities included filling and otherwise disturbing the wetland area on the Church property that was agreed upon by all parties to the Consent Order to "remain in its natural state." Exhibit B, Site Plan, dated May 1, 2012 (revised Feb. 14, 2014).

The Church and DHEC/OCRM were aware and acknowledged that the additional construction activities proposed for the Church property were inconsistent with the Consent Order for they sought to have the agreement modified by this Court. On October 10, 2013, the Church submitted a proposed Modified Consent Order of Settlement and Dismissal (the "Proposed Modification Order") in an attempt to replace the existing Consent Order. Exhibit C. Specifically, the Proposed Modification Order stated that the Church "desire[d] to modify its site plan and mak[e] further modifications to the Church property not in compliance with the original Order" and thereby proposed to eliminate the requirements pertaining to the protection of the remaining wetlands on the Church property. Exhibit C, pp. 1, 2.

The Proposed Modification Order was not agreed to or signed by all of the parties to the original Consent Order as the Abels neither consented to nor signed the Proposed Modification Order. Exhibit C, p. 3. Additionally, the Administrative Law Court declined to modify the Consent Order. By Order dated January 7, 2014, the Court dismissed the request to modify the Consent Order as premature stating that the additional construction activities proposed for the Church property were still subject to the DHEC/OCRM permit review process. Exhibit D.

Notwithstanding the agreed upon terms of the settlement and Consent Order, DHEC/OCRM approved the Church's plan for additional construction activities impacting the protected wetlands

on its property and issued Stormwater Permit Coverage SCR10Q459 (the "2014 Permit") and CZC Certification CZC-12-0149 (the "2014 Certification") to the Church on March 31, 2014 and March 26, 2014, respectively. Exhibit E.

LEGAL ANALYSIS

I. The Consent Order of Settlement and Dismissal is Valid, Binding and Enforceable

Under South Carolina law, a settlement agreement is viewed as a contract and the enforcement of the terms of the agreement is governed by general principals of contract law. *Byrd v. Livingston*, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012); *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). Accordingly, a valid agreement of settlement between the parties is enforceable as a matter of law.

Since execution of the Consent Order, the validity of the agreement has not been called into doubt. There have not been questions raised as to the capacity or assent of any of the parties to the agreement nor have there been allegations that the agreed upon terms of the Consent Order were the result of any misconduct or wrongdoing. Rather, the agreement was voluntarily entered into and signed by all parties to the legal challenge of the 2000 Permit and Certification, including the initials of all signatories on every page. Exhibit A. Moreover, the agreement was reduced to writing and formally issued as the Consent Order by Judge C. Dukes Scott on January 8, 2001 and filed in the Administrative Law Court as part of the record for the case. Exhibit A; *Motley v. Williams*, 374 S.C. 107, 100, 647 S.E.2d 244, 246 (Ct. App. 2007) ("To be enforceable, settlement agreements must either be entered into the court's record or acknowledged in open court and placed upon the record"). Therefore, the Consent Order represents a valid, binding and enforceable agreement between the parties.

II. The Terms of the Consent Order are Valid, Binding and Enforceable

As stated above, the Consent Order is viewed as a contractual agreement and enforcement of its terms is subject to principles of contract law. *Byrd v. Livingston*, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012); *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). Here, the Consent Order served as the basis for the settlement and dismissal of the contested case challenge provided that the agreed upon conditions to construction activities on the Church property were honored.

The first such condition was that **"approximately one-half (50%) of the wetland area on the site shall be preserved."** Exhibit A, p. 2 (emphasis added). This plainly and unambiguously mandates the preservation of the wetlands on the Church property. The condition goes on to order the Church to amend its plans for expansion to accommodate the requisite protection of the wetland area, specifically requiring that the location and configuration of the storm water pond be altered to eliminate some of the proposed impacts, as depicted in the exhibit to the Consent Order. Exhibit A, p. 2. Notably, while the Consent Order does permit some impacts to the wetland area on the Church property, the agreement explicitly limits those impacts and imposes an obligation that the remaining, undisturbed wetland area **"remain in its natural state."** Exhibit A, p. 2.

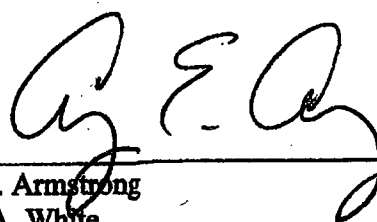
The terms of the Consent Order are clear and unambiguous. The agreement unequivocally bound the Church to ensure that the remaining one-half of the wetland area on its property remained in a natural state. Absent from the Consent Order is any restrictive language either narrowing the scope or confining the extent of the agreed upon conditions. Moreover, the Consent Order does not make reference to or otherwise establish that the duration of the conditions is temporary, that they are intended to expire or lapse, or that they will no longer be enforceable after a certain amount of time. In fact, the Consent Order specifically provides **"the parties shall retain full rights to enforce**

the agreements stated herein." Exhibit A, p. 3. Therefore, the obligation that the remaining wetland area on the Church property be preserved in a natural state is a valid and binding term of the Consent Order that is subject to enforcement by the parties to the agreement.

The additional construction activities proposed by the Church for its property and authorized under the 2014 Permit and Certification issued by DHEC/OCRM include impacts to wetlands that are protected by the terms of the Consent Order. The Church and DHEC were aware that these proposed activities were not in compliance with the Consent Order and attempted, albeit unsuccessfully, to replace the agreement with a modified consent order that would remove the impediment to the Church's plan for redevelopment of its property. *See* Exhibits C and D. Despite the plain requirement in the Consent Order that the remaining wetlands on the Church property remain in a natural state and the failure to obtain a modification of that agreement, DHEC/OCRM issued the 2014 Permit and Certification for activities that will impact or otherwise disturb those onsite wetlands.

CONCLUSION

WHEREFORE, the Petitioners request that the Administrative Law Court issue an order consolidating this action with the related challenge given Docket No. 14-ALC-07-0282-CC, enforcing the Consent Order of Settlement and Dismissal and declaring that the 2014 Department decisions that are the subject of Case No. 14-ALC-07-0282-CC are inconsistent with and in violation of the Consent Order of Settlement and Dismissal.



Amy E. Armstrong

Jessie A. White

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585

Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone (843) 527-0078

FAX (843) 527-0540

Attorneys for the Petitioners

Georgetown, South Carolina

November 25, 2014

File
Close file
Provide copy to
SW permit file

Exhibit A

STATE OF SOUTH CAROLINA ADMINISTRATIVE LAW JUDGE DIVISION

Mary W. Abel, Daniel C. Abel and David F.
Mims,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control, Office of Ocean and
Coastal Resource Management, and Pawleys
Island Baptist Church,

Respondents.

Docket No. 00-ALJ-07-0626-CC

CONSENT ORDER OF SETTLEMENT AND DISMISSAL

This proceeding arises out of the application of the Pawleys Island Baptist Church, a South Carolina Not-for Profit Corporation, [hereinafter the "Church"] for a state storm water permit for the construction of a new sanctuary and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the church also requested a wetland fill permit from the US Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC/OCRM). After DHEC/OCRM issued the storm water permit and consistency certification, requests for a contested case hearing were filed by Mary W. Abel, Daniel C. Abel and David F. Mims.

The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order. Specifically, the parties have

Consent Order of Settlement and Dismissal: Page 1 of 4

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agreed as follows:

1. The designs for the storm water pond and other improvements at the site shall be amended so that approximately one-half (50%) of the wetland area on the site shall be preserved. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A. The Church shall also amend its plans for the proposed structure shown on Exhibit A as "PROPOSED FUTURE BUILDING PHASE II" so that no portion of this structure will encroach upon the area of the wetland.

2. The Church agrees that it will instruct its engineers, architects, contractors and others working on the Church improvement project and storm water management project, to continue to explore additional design changes, where feasible from a time and cost perspective, which will allow possible additional expansion of the wetland area to be preserved.

3. The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.

4. In constructing the storm water system and church improvements, the Church shall instruct its engineers, architects, contractors and others working on its behalf to employ all available Best Management Practices to prevent harm to the wetland beyond that authorized by this agreement and by the permit and certification as hereby amended. In the event such additional harm to the wetland occurs despite best efforts, the church will restore or mitigate any such harm.

5. Within the area designated on Exhibit A as the "30' NOISE/VISUAL BUFFER," the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees and shrubs will be leyland

cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height with fifty percent (50%) of the trees at least ten (10) feet in height; provided however, that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state.

6. The existing basketball and volleyball fields will be removed and will not be re-located any closer to the rear property line of the church property than the front of the new sanctuary.

7. All lighting on the church property will be placed so that it is shielded or directed away from the properties adjacent to the "30' NOISE/VISUAL BUFFER," shown on Exhibit A.

8. Upon execution of this Consent Order, the Church may immediately begin construction of the new sanctuary and other improvements not inconsistent with this agreement and order.

9. The Church and the Petitioners will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement and order.

After review of the agreement, I conclude that it should be accepted and made a part of this order. Accordingly, upon the joint motion and consent of the parties,

IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a part of this final order of the Administrative Law Judge Division.

IT IS FURTHER ORDERED that the DHEC/OCRM permit and certification shall be, and same hereby are, amended in accordance with this agreement and order.

IT IS FURTHER ORDERED that this matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein.

DCA MOS
DFM
mch 1988

JPW
JW

AND IT IS SO ORDERED.

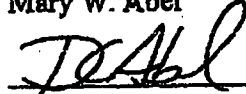

C. Dukes Scott
Administrative Law Judge

Columbia, South Carolina
December 8th, 2000
January

WE SO MOVE AND CONSENT:

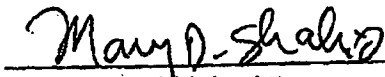
PETITIONERS:


Mary W. Abel

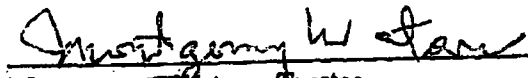

Daniel C. Abel


David Mims

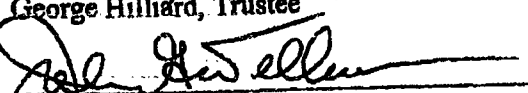
19
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

By: 
Mary D. Shahid, its Attorney

PAWLEYS ISLAND BAPTIST CHURCH,
a South Carolina Not-for Profit Corporation

By: 
Montgomery Watson, Trustee

By: 
George Hilliard, Trustee

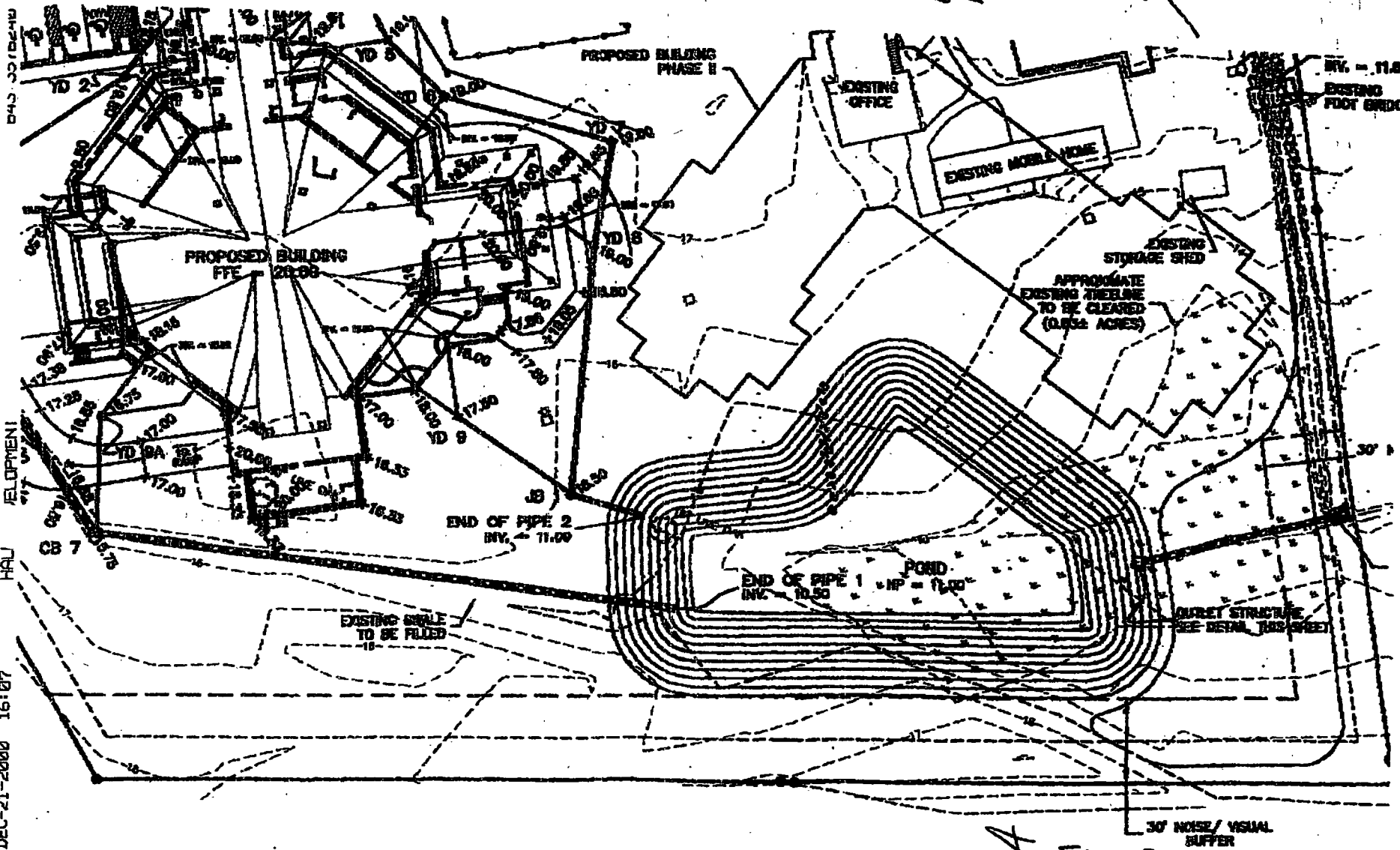
By: 
Jack Wellman, Trustee

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, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).

This 8th day of January, 2001

By: 
Judicial Law Clerk



[illegible]

Exhibit C

OXNER & STACY, P.A.

ATTORNEYS AND COUNSELORS AT LAW
90 WALL STREET - UNIT D
PAWLEYS ISLAND, SC 29585
TEL: (843) 233-6747 • FAX: (843) 233-6630

HARRY A. OXNER
DANIEL W. STACY, JR.

GEORGETOWN OFFICE:
233 CHURCH STREET
POST OFFICE BOX 481
GEORGETOWN, SC 29442-0481
TEL: (843) 927-8020
FAX: (843) 485-4121

REPLY TO:
PAWLEYS ISLAND OFFICE

October 10, 2013

Via Federal Express

Jana B. Shealy, Clerk
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Pawleys Island Community Church
O.S. File #12-1370

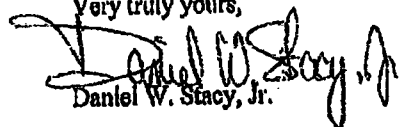
Dear Ms. Shealy:

It has been some time since we discussed this issue, but if you recall we had discussed the modification of a Consent Order being undertaken by the Church with the consent and agreement of the parties to the original Consent Order. I have provided herewith a Modified Consent Order executed by the parties. Please confirm what the filing fee will be and whether or not this can be executed by the appropriate Administrative Law Court Judge. We will be glad to discuss these issues with the Judge via telephone or in person, but would prefer not to have to undertake another hearing, if at all possible. The Modified Consent Order is self-explanatory, but I will be glad to go through the matter in detail with you at your request.

I look forward to hearing from you.

With kindest regards, I remain

Very truly yours,


Daniel W. Stacy, Jr.

DWS/sop
Enclosure

cc: Pawleys Island Community Church

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

MARY W. ABEL, DANIEL C. ABEL)
AND DAVID F. MIMS,)
)
PETITIONERS,)
)
V.)
)
SOUTH CAROLINA DEPARTMENT)
OF HEALTH AND ENVIRONMENTAL)
CONTROL AND PAWLEYS ISLAND)
BAPTIST CHURCH N/K/A PAWLEYS)
ISLAND BAPTIST CHURCH,)
)
DEPENDANTS.)
)

ADMINISTRATIVE LAW COURT
DOCKET NO.: 00-ALJ-07-0626-CC

**MODIFIED CONSENT ORDER OF
SETTLEMENT AND DISMISSAL**

WHEREAS pursuant to Administrative Law Court Consent Order signed by the Honorable C. Dukes Scott, Administrative Law Judge on January 8, 2001 (the "Order"), the parties above agreed to resolve the subject dispute before the Administrative Law Court pursuant to said Order;

WHEREAS Pawleys Island Baptist Church (the "Church" also known as "Pawleys Island Community Church") desires to modify its site plan and making further modifications to the Church property not in compliance with the original Order; and

WHEREAS the initial petition was brought by petitioners who were neighboring property owners or adjoining property owners to the Church; and

WHEREAS said parties have either moved away from and no longer own said adjoining properties, or now consent to the modifications requested by the Church; and

WHEREAS all necessary parties have consented to this Modified Consent Order of Settlement and Dismissal (the "Modified Order") as evidenced by their signatures attached hereto; and

WHEREAS, documents are referenced in this Modified Consent Order of Settlement and Dismissal and are attached hereto and is labeled as follows:

"Exhibit A" -- Amended Site Plan

"Exhibit B" -- Amendment Agreement (Mims and Pawleys Island Community Church)

DFM
JAM

WHEREAS, a new permit/application (the "Permit") is being made by the Church to undertake improvements to the Church property and said Permit cannot be reviewed by the South Carolina Department of Health and Environmental Control ("Department") without applying the heightened restrictions required under the Order until this Modified Consent Order of Settlement and Dismissal is approved by the Court;

WHEREAS, the adjoining landowners who were parties to the original action and still own the adjacent property have consented to this Amendment as set forth in the attached Exhibit B which is incorporated herein by reference; and

WHEREAS, the signatory parties to Exhibit B understand and acknowledge they have no additional rights under any applicable statutes and regulations by creation of this agreement; and

WHEREAS, the signatory parties to Exhibit B understand and acknowledge this agreement does not exempt the parties from any applicable statutory and regulatory requirements; and

NOW THEREFORE, the Administrative Law Court hereby executes this Modified Consent Order of Settlement and Dismissal as set forth herein; and

IT IS HEREBY ORDERED that the original Exhibit A from the January 8, 2001 Consent Order is hereby replaced with the Exhibit A attached hereto.

This proceeding arises out of the application of the Church for a state storm water permit for the construction of a new sanctuary and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the church also requested a wetland fill permit from the U.S. Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC/OCRM). After DHEC/OCRM issued the storm water permit and consistency certification, requests for a contested case hearing were filed by Mary W. Abel, Daniel C. Abel and David F. Milns.

The parties met, discussed, negotiated, and resolved their differences, and reached a settlement which was incorporated into the Order. Now, the parties desire to modify the Order dated January 8, 2001 as follows:

1. All parties hereto agree that the original "30' Noise/Visual Buffer" on the original Exhibit A shall be replaced with those buffers set forth on the Exhibit A attached hereto, all other heightened restrictions set forth in the Order are hereby deleted and only the restrictions set forth in Exhibit A shall apply to the site other than any existing basketball and volleyball courts will not be relocated any closer to the rear property line of the church property than the front of the new sanctuary.

2. The Department, by execution hereof, merely consents to this Modified Consent Order as it was an original party to the Order, but by its execution hereof specifically reserves the right to

DFM
JAM

approve or disapprove any permits applied for by the Church based solely on applicable statutory and regulatory criteria for such permits set forth by the Department and affiliated agencies.

After review of the agreement, I conclude that it should be accepted and made a part of this order. Accordingly, upon the joint motion and consent of the parties,

IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a part of this final order of the Administrative Law Judge Division.

IT IS FURTHER ORDERED that matter shall be **DISMISSED**, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein.

AND IT IS SO ORDERED.

Honorable C. Dukes Scott
Administrative Law Judge
Columbia, South Carolina

02-OCT, 2013

WE CONSENT:

Tina Mims
Tina Mims

David Mims
David Mims

Pawleys Island Community Church

By: Mike Fells

Its: Administrative Law Judge

South Carolina Department of Health
And Environmental Control
Office of Coastal Resource Management

By: [Signature]

Its: Attorney

David Mims *David E. Mims*

Tina Mims *Tina Mims*

Don Williams *Don Williams*

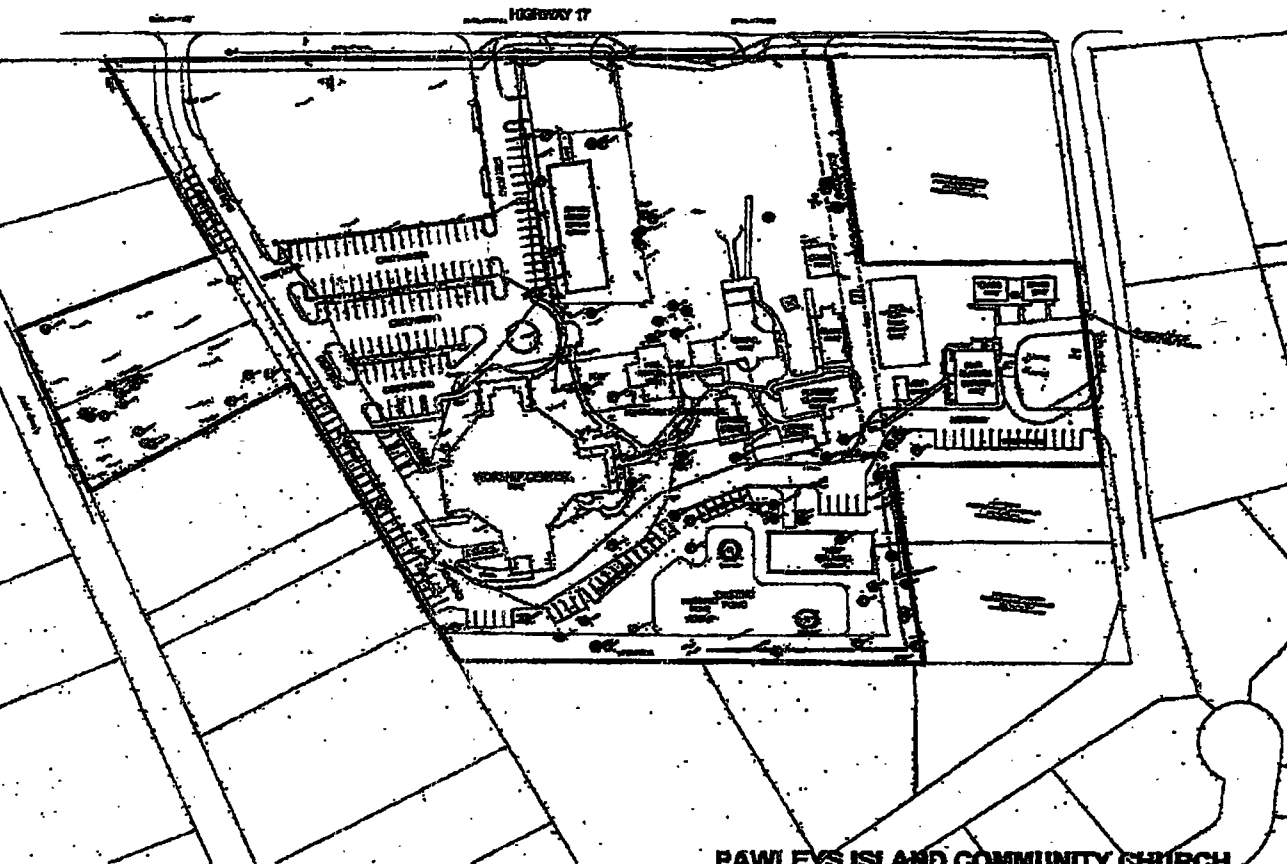
Mike Fields *Mike Fields*

Notary *Allen H. Collier*

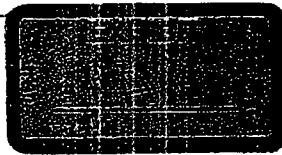


EXHIBIT A

21 JULY 2002



**PAWLEYS ISLAND COMMUNITY CHURCH
PHASE 1 SITE PLAN**



2012 Amendment To:

SC Administrative Law Court Decisions
2001 DOCKET NUMBER:
00-ALJ-07-0828-00

PARTIES INCLUDED:

David Mims
Tina Mims

PAWLEYS ISLAND COMMUNITY CHURCH,
a South Carolina Not-for Profit Corporation
Don Williams, Senior Pastor
Mike Fields, Operations & Mission Director

This agreement arises out of the application of the Pawleys Island Community Church, a South Carolina Not-for Profit Corporation, [hereinafter the "Church"] for a wetland fill permit from the US Army Corp of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEOCORM) for the construction of a new storage building and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. When US Army Corp of Engineers was preparing to issue the wetland fill permit and consistency certification, the 2001 Agreement with the parties was discovered. The request was put on hold until the landowners, David and Tina Mims could be contacted.

The parties have met, discussed, negotiated and have reached an agreement which they desire to have incorporated into this amendment. Specifically, the parties have agreed as follows:

1. The designs for storage building, pond and other improvements at the site shall be amended so that Church can mitigate, with CORMD/HCO approval, a portion of the wetlands, as indicated on the submitted drawings, to construct a storage building and reshape the existing pond. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A.
2. The Church agrees that it has instructed its engineers, architects, contractors and others working on the Church improvement project and pond reshaping project, to explore every additional design changes, where feasible from a time and cost perspective, which will allow minimizing damage to existing wetlands and trees on the work site.
3. The Church agrees that the wetland preserved by this amendment shall remain in its natural state.
4. Within the area designated on Exhibit A, the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees and shrubs will be Loblolly cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height. The Church also agrees to protect and leave as many trees as possible in the vegetated buffer area and that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state. The landscape plan shall be consistent and configured as depicted in the drawing attached hereto as Exhibit B.
5. Upon agreement by the SC Administrative Law Court, the Church may immediately begin construction of storage building, new road, reshaping of pond and other improvements not inconsistent with this amendment.
6. The Church along with David and Tina Mims will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement as written.
7. If the Church relocates the utility building or modifies the buffer zone in any way that is not in accord with this amendment or exhibits then the terms of this amendment will be renegotiated by all parties to it.

We, as indicated by our signatures below, agree to these amendments, as stated above, to the 2001 agreement:

David F. Mims 9/17/12
David Mims Date

Tina A. Mims 9/17/12
Tina Mims Date

[Signature] 9/17/2012
Pawleys Island Community Church Date

[Signature] 9/17/2012
Pawleys Island Community Church Date

Notarized by:

Alissa M. Collington

Sent:

Date:

September 17, 2012

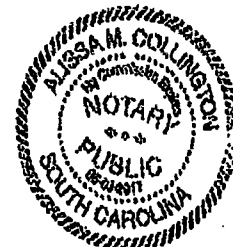


Exhibit D

STATE OF SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Mary W. Abel, Daniel C. Abel, and
David F. Mims,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control, and Pawleys
Island Baptist Church a/k/a Pawleys
Island Community Church,

Respondent.

Docket No.: 13-ALJ-07-0547-CC

ORDER ON REQUEST TO MODIFY A SETTLEMENT AND DISMISSAL

This case was originally before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing brought by Petitioners Mary W. Abel, Daniel C. Abel, and David F. Mims (Petitioners), who were neighboring property owners or adjoining property owners to the Pawleys Island Baptist Church aka Pawleys Island Community Church (Church). The case was given Docket No. 00-ALJ-07-0626-CC. The Church applied for a state stormwater permit for the construction of a new sanctuary and other improvements to its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the Church requested a wetland fill permit from the U.S. Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC). After this case was filed, the parties entered into a Consent Order resolving the dispute. That Consent Order was subsequently approved by the Honorable C. Dukes Scott, Administrative Law Judge on January 8, 2001 (Consent Order).

The Church has now filed a request with this Court to modify its site plan and make further modifications to the Church property not in compliance with the original Order. However, Daniel C. Abel objects to that modification. The Court nevertheless finds that a request to modify the Permits issued as a result of the previous Consent Order has been filed with DHEC and is still subject to DHEC review. This matter is therefore apparently properly before DHEC for its review as to whether the Church's permits should be modified. Therefore

FILED

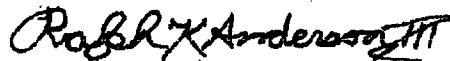
January 7, 2014

SC ADMIN. LAW COURT

097

since DHEC has not made a final determination on the proposed modification, and no request for a contested case review of that determination has been filed with this Court, I find that any action by the Court at this time would be premature. *See, e.g., South Carolina Baptist Hosp. v. S.C. Dep't of Health and Envtl. Control*, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987) ("It would be premature for a court to decide the merits of a dispute when the agency responsible for making the decision has not yet had an opportunity to decide the merits of the case.").¹

IT IS THEREFORE ORDERED that this case be **DISMISSED WITHOUT PREJUDICE**, and that DHEC continue its review of the Church's permit application.
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

January 7, 2014
Columbia, South Carolina

¹ This Court also notes that the only objection received to this request to modify the Consent Order was made by Daniel C. Abel, who is no longer an adjoining landowner.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

January 7, 2014
Columbia, South Carolina

Exhibit E



Catherine B. Tampleron, Director

Promoting and protecting the health of the public and the environment

CERTIFIED MAIL

April 1, 2014

MIKE FIELDS (91 7199 9991 7030 0134 8071)
PAWLEYS ISLAND COMMUNITY CHURCH
10304 OCEAN HWY
PAWLEYS ISLAND SC 29585

RE: PAWLEYS ISLAND COMMUNITY CHURCH ADMINISTRATIVE BUILDING
Georgetown County
File Number: 22-00-06-03A
NPDES Coverage Number: SCR10Q459

Dear Mike Fields:

The Department of Health and Environmental Control (Department or DHEC) has approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on **March 31, 2014**. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Stormwater Discharges from Construction Activities SCR100000 (CGP), this project has been granted coverage under the CGP. This project's general permit coverage number is **SCR10Q459**. The total disturbed area for this site is **2.2 acres**.

See attached DHEC Office of Ocean and Coastal Resource Management (DHEC-OCRM) certification approved 03/26/2014 for additional conditions related to the Coastal Zone Consistency determination.

Because this project is part of a larger common plan for development or sale (LCP), all applications for future land-disturbing activities that are part of this LCP (phases, outparcels, etc.) should include the above-referenced file number (22-00-06-03A), NPDES coverage number (SCR10Q459), and project name **PAWLEYS ISLAND BAPTIST CHURCH**.

An as-built survey, signed and sealed by a S.C. Licensed Land Surveyor, should be submitted for the 2 structure(s) on this site. The survey(s) should show grades, contours, and depths for all structures and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/or analysis must be accepted by the Department before a Notice of Termination (NOT) can be submitted.

The CGP can be downloaded at the following website:

<http://www.scdhec.gov/environment/water/swater/docs/CGP-permit.pdf> or you may request a copy from us via email (stormwatercgp@dhec.sc.gov). You are responsible for ensuring your contractor(s) complies

with the approved SWPPP and the minimum requirements of the CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act), SC Pollution Control Act, and the Federal Clean Water Act (CWA). Failure to comply with the approved SWPPP or applicable statutes and regulations may result in enforcement actions.

You must notify this DHEC EQC Regional Office prior to starting any land-disturbing activity. The address and telephone number of the EQC office are as follows:

Myrtle Beach EQC Office
927 SHINE AVE
MYRTLE BEACH SC 29577
843-238-4378

Inspections of this site must be performed by qualified personnel as described in Section 4.2.E of the CGP.

You should be aware that this approval is only applicable for the SWPPP that was submitted for this project. Any additional construction or land disturbing activity beyond the scope of the approved plans is not authorized. Any future work for this project not shown on the stamped, approved plans will require that you submit another site plan for review and approval. All major modifications require review and approval by the Department. Minor modifications to the approved SWPPP may be made by the SWPPP preparer and do not require review and approval by the Department; these changes should be signed and dated by the SWPPP preparer. If you have a question about whether a modification is major or minor, contact the Coastal Stormwater Permitting Section at (843) 953-0200.

A copy of the stamped, approved SWPPP (including a copy the CGP, contractor certifications, inspection records, rainfall data, etc), NOI, and CGP coverage letter from DHEC must be retained and available at the construction site (or accessible within 30 minutes during normal business hours) from the date of commencement of construction activities to the date of final stabilization. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.

All contractors who will conduct land-disturbing activities at the site must complete a Contractor Certification Form. Annual Blanket Utility Providers must provide a copy of their annual blanket registration information. You are also responsible for listing all contractors in the SWPPP and for holding a pre-construction conference with each contractor before they can conduct land-disturbing activity at the site.

The Department may conduct periodic inspections of your site. Any violations found during these inspections may result in enforcement action.

This NPDES coverage should be terminated by the permittee when one of the conditions listed in Section 5.1 of the CGP has been met. You must submit a Notice of Termination (NOT) to cancel your NPDES coverage under the CGP. Please see section 5.1 of the CGP for additional information required to be submitted with the NOT.

You are responsible for obtaining any other federal, state, or local permit that may be required for this project. In particular, any permits through the U.S. Army Corps of Engineers for the placement of fill

material in Waters of the United States. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

If material excavated during construction activities leaves the site, a mine operating permit may be needed. You are responsible for contacting the Mining and Reclamation Section to determine if a mining permit is required for the site. The Mining and Reclamation Section can be reached at (803)896-4261 or via e-mail at AskMines@dhec.sc.gov.

Please see the enclosed "Notice of Appeal Procedure" document for information about the procedures for appealing this NPDES coverage.

If you have any questions or cannot access the referenced websites, please call me at 843-953-0238.

Sincerely,



Richard V Geer, Engineer Associate
EQC Bureau of Water, Coastal Stormwater Permitting Section
1362 McMillan Ave, Suite 400, Charleston SC 29405

cc: Thomas P Bevins—ETS (91 7199 9991 7030 0134 8095)
Michael Corley—The South Carolina Environmental Law Project (91 7199 9991 7030 0134 8088)



Catharine B. Templeton, Director

Promoting and protecting the health of the public and the environment

South Carolina Board of Health and Environmental Control
Guide to Board Review
Pursuant to S.C. Code Ann. § 44-1-60
Effective April 1, 2013

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's 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 within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested; and
 - a copy of the decision for which review is requested.
3. RFRs should be filed in person or by mail at the following address:

South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).

4. The filing fee may be paid by cash, certified check or credit card. If a RFR is filed by facsimile or electronic mail, the filing fee may be mailed to the Clerk of the Board and the envelope must be postmarked within the time allowed for filing a RFR.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor.
7. The Clerk will email the RFR to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. A copy of the Notice of Appeal Procedure will be included with the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

8. If the RFR is to be considered by the RFR Committee, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response to the RFR should be provided by Department staff to the Clerk within eight (8) working days after the RFR is forwarded.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

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



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Coastal Zone Consistency Certification

To: Richard Geer, Project Manager - BOW-Coastal, Stormwater Permitting
From: Christine Koczera, Project Manager - OCRM, Coastal Zone Consistency Section
Cc: Curtis Joyner, Section Manager - OCRM, Coastal Zone Consistency Section
Re: Pawley's Island Community Church Administrative Building
Site location: 10304 Ocean Highway, Pawley's Island, Georgetown County
Tax Map No: 04-0161-052-00-00, 04-0161-049-01-00
Date: March 26, 2014
CZC #: CZC-12-0149
PN#: SCR10Q459

The staff of the Office of Ocean and Coastal Resource Management (OCRM) has reviewed the above referenced Coastal Zone Consistency request for land disturbing activity, including the construction of a new administrative building, parking, and associated infrastructure, as well as, modifications to the access drive and existing stormwater management pond and certifies that the above referenced project is **Consistent** with the Public Services and Facilities (Public / Quasi Public Buildings) Policies, the Activities in Areas of Special Resource Significance (Wetlands) Policies and the Stormwater Management (Runoff) Guidelines contained in the S.C. Coastal Zone Management Program provided that:

- in the event that any historic or cultural resources and archaeological or paleontological remains are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Code of Laws. Historic or cultural resources consist of those sites named to the National Register and those sites that are eligible for the National Register and other areas of special historic significance. 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 and;
- demonstrate that storage of the first ½ inch of run-off from the entire site or storage of the first one (1) inch of run-off through retention, detention, or infiltration systems, from the built upon portion of the property, whichever is greater.

This Coastal Zone Consistency did not include a review and authorization for any direct or indirect wetland impacts to freshwater wetlands or critical area. Any impacts to Critical Areas as determined by SCDHEC-OCRM, and/or freshwater wetlands, as determined by the U. S. Army Corps of Engineers must be authorized by the appropriate agency.

This certification shall serve as the final DHEC OCRM Coastal Zone Consistency approval and does not alleviate the applicant's responsibility to obtain other required local, state or federal approvals.



NOTICE OF INTENT (NOI)
For Coverage(s) of Primary Permittees
Under South Carolina NPDES General Permit
For Stormwater Discharges From Construction Activities SCR100000
(Maintain As Part of On-Site SWPPP)

For Official Use Only

File Number: _____
Permit Number: SCR10
Submission Package Complete: _____

Submission of this Notice of Intent constitutes notice that the Applicant identified in Section II intends to be authorized as a Primary Permittee in the state of South Carolina under NPDES General Permit SCR100000. Fees required for review and NPDES coverage of each application type are as listed on page 2 of the instructions.

SOUTH CAROLINA
DEPT OF HEALTH AND ENVIRONMENTAL CONTROL
ENVIRONMENTAL QUALITY CONTROL
STORMWATER PERMITTING SECTION
APPROVED FOR CONSTRUCTION ONLY

DHEC PERMIT #: SCR100459
FILE #: 22-00-00-03A
DATE ISSUED: 3/4/2014
BY: Russell

Date: 01/08/2014

Project/Site Name: Pawleys Island Community Church Administrative Building County: Georgetown

(Modification or Change of Information Only) Prior Approved NPDES Permit or File Number: _____

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

I. Notice of Intent (NOI) Application Type(s)

A. Project (Application/Review) Type(s) (Select ALL that apply):

- ☒ New Project (Initial Notification) Ongoing Project: ☐ Permitted or ☐ Un-Permitted
☐ Late Notification ☐ Low Impact Development (LID) or Project Design Above Regulatory Requirements
☐ New Owner/Operator or Company Name Change (see instructions, attach Form A (Transfer of Ownership))
☐ Major Modification: (see instructions, attach Form B (Major Modifications))
☐ MS4 Project Review
☐ Ocean and Coastal Resource Management (OCRM) Review
☐ Change of information/Other (Specify): _____

B. If Applicable, identify the entity designated as MS4 Reviewer and MS4 Operator (i.e., Lexington County, City of Greer, etc.): MS4 Reviewer _____ MS4 Operator _____

II. Primary Permittee Information

☐ Person or ☒ Company If a Company, are you a ☐ Landing Institution or ☐ Government Entity?
Company EIN (if applicable): EIN: _____

A. Primary Permittee Name: Pawleys Island Community Church
Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 8432374449 Fax: _____ Email Address: mike-plac@sc.twcba.com

B. Contact /ODSA Name (if different from above OR if owner is a company): Mike Fields
Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 8432374449 Fax: _____ Email Address: mike-plac@sc.twcba.com

C. Property Owner Name (if different from above): _____
Mailing Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____ Email Address: _____

III. Comprehensive Stormwater Pollution Prevention Plan (C-SWPPP) Preparer Information ☐ Change of Information

A. C-SWPPP Preparer Name: Thomas P. Bevins
B. Registered Professional ☒ Engineer ☐ Landscape Architect ☐ Tier B Land Surveyor S. C. Registration #: 13899
C. Company/Firm Name: Engineering and Technical Services, Inc. S. C. COA #: 00439
Mailing Address: PO Box 2040 City: Pawleys Island State: SC Zip: 29585
Phone: 8432373002 Fax: 8432372289 Email Address: tbevins@etsengineers.com

IV. Project/Site Information ☐ Change of information

A. Type of Construction Activity(ies) (Select ALL that apply):
☐ Commercial ☐ Industrial ☒ Institutional ☐ Mass Grading ☐ Linear ☐ Utility/Infrastructure
☐ Residential: Single-family ☐ Residential: Multi-family ☐ Multi-use (Commercial & Residential)
☐ Site Preparation (No New Impervious Area) ☐ Other (Specify) _____

B. Site Address/Location (street address, nearest intersection, etc.) 10304 Ocean Highway
City/Town: (if in limits): Pawleys Island Zip Code: 29585
Latitude: 33° 26' 08" N Longitude: - 79° 07' 47" W (Source): ☐ GPS ☒ Web Site: Google Earth
Tax Map Number (s) (List all): 04-0161-052-00-00 & 04-0161-049-01-00

- C. Is this site located on Indian Land? ☐ Yes ☒ No
- D. Proposed Start Date: 04/01/2014 Proposed Completion Date: 08/01/2014
- E. Disturbed Area (nearest tenth of an acre): 2.2 Total Area (acres): 10.1
- F. Modification Only: (nearest tenth of an acre): Disturbed Area: Current (Approved) Area:
Disturbed Area Change (Increase Only): Total Disturbed Area (After Change):
- G. Is this project part of a Larger Common Plan for Development or Sale (LCP)? ☒ Yes ☐ No
LCP/ Overall Development Name: Pawleys Island Community Church Check here if this is the First Phase. ☒
- Previous State Permit/File Number: Previous NPDES Coverage Number: SCR10
- H. Any Flooding Problems exist downstream of or adjacent to this site? ☐ Yes ☒ No (If yes, provide detailed description of flooding problems and applicable floodway/flood zone information in the C-SWPPP).
- I. Active S.C. DHEC Warning Notice, Notice to Comply or Notice of Violation for this site or LCP? ☐ Yes ☒ No
- J. List Relevant State and Federal Environmental Permits or Approvals applied for or obtained for this site (e.g., RCRA, USACOE, Nationwide, etc.). If None, list None.

- K. Any Waiver(s)/Variances/Exceptions Requested for this Project? (If yes, identify below and include Waiver Request and Justifications in the C-SWPPP for each proposed request).

1. Small Construction Activity Waiver(s) From NPDES permitting (Section 1.4 & Appendix B)? ☐ Yes ☒ No
If yes, identify requested waiver: ☐ Rainfall Erosivity Waiver ☐ TMDL Waiver ☐ Equivalent Analysis Waiver

2. Detention Waiver (72-302(b))? ☐ Yes ☒ No 3. Other (Specify):

V. Waterbody Information (Attach additional sheet(s) as needed)

☐ Change of Information

- A. Receiving Waterbody(s) (RWB) Information (List the nearest and next nearest receiving waterbodies to which the sites stormwater discharges will drain. If stormwater discharges drain to multiple waterbodies, list all such waterbodies).

1. Name of Receiving Waterbody (RWB)	2. Distance to RWB (feet)	3. Classification of RWB
a. Nearest: <u>un-named tributary to Pawleys Island Creek</u>	<u>550</u>	<u>FW</u>
b. Next Nearest: <u>Pawleys Island Creek</u>	<u>610</u>	<u>SFH</u>
c. Coastal Zone ONLY: Coastal Receiving Water (CRW): <u>Pawleys Island Creek</u>	<u>1160</u>	<u>Not Applicable</u>
d. Other Waterbodies: <u> </u>		

- B. Waters of the U.S. / State Information (Attach additional sheet(s) as needed)

Waters of the U.S. / State	1. On the site?	2. Delineated/ Identified?	3. Impacts?	4. Amount of Impacts
a. Jurisdictional wetlands	☒ Yes ☐ No	☒ Yes ☐ No	☒ Yes ☐ No	<u>0.17</u> Ac Fill
b. Non-jurisdictional wetlands	☐ Yes ☒ No	☐ Yes ☐ No	☐ Yes ☐ No	<u> </u> Ac
c. Other Water(s): <u> </u>	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	<u> </u> Ac <u> </u> Feet
d. Coastal Zone ONLY: Direct Critical Area	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	<u> </u> Ac <u> </u> Feet

5. If yes for impacts in B.3, describe each impact and activity, and list all permits (e.g., USACOE Nationwide Permit, DHEC General Permit) and certifications that have been applied for or obtained for each impact.

SAC 2011-01123-3NH

- C. S.C. Navigable Waters (SCNW) Information (Section 2.6.5) The Department will address any issues related to State Navigable Waters' Program under SC Regulation 19-450 during the review of the C-SWPPP for activities that will NOT require a 404 permit or a 401 certification. (Attach additional sheet(s) as needed).

1. Are S. C. Navigable Waters (SCNW) on the site: ☐ Yes ☒ No

a. If no, do not complete this question. Proceed to Section D (Impaired Waterbodies).

b. If yes, provide the name of S.C. Navigable Waters (SCNW) on the site: St. John & Agriculture Community District

2. If yes for C.1, will construction activities cross over or occur in, under, or thru the SCNW? ☐ Yes ☐ No
If yes, describe SCNW activities (e.g., road crossing, sub-aqueous utility line, temporary or permanent structures, etc.) and proceed to Section C.3:

3. Identify permits providing coverage of SCNW activities proposed for your site. If NONE, list none.

Permits/Certifications	Permit or Certification No.	Corresponding Covered SCNW Activity(ies)
a. DHEC General/ Other DHEC Permit	<u>none</u>	
b. USACOE 404 Permit or 401 Certification	<u>none</u>	
c. SCNW Permit If applied for or issued, identify Date applied for or issued: <u> </u>	<u>none</u>	☐ All Activities or ☐ Some Activities (Describe): <u> </u>

d. If a SCNW Permit has NOT been applied for provide an additional plan sheet that shows plan and profile views (drawn to scale) of the SCNW and associated activities. Include a description of all proposed activities on this plan.

D. Impaired Waterbodies Information (Attach additional sheet(s) as needed)

1. 303(d) Listed Impaired Waterbodies					
a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4 and the Name of the Corresponding Waterbody?		b. Is this WQMS(s) listed on the most current 303(d) list? If No, proceed to Section 2 of this table. If Yes, complete items c thru f.	c. List the pollutant(s) identified as "CAUSES" of the impairment	d. Will any pollutants causing the impairment be present in your site's construction stormwater discharges?	e. If yes for d, list the "USE SUPPORT" impairment(s) affected by the pollutant(s) identified in c.
04-11	Pawleys Island Creek	☐ Yes ☒ No		☐ Yes ☒ No	
		☐ Yes ☒ No		☐ Yes ☒ No	
		☐ Yes ☒ No		☐ Yes ☒ No	

f. If yes for d above, will use of the BMPs proposed for your project ensure the site's discharges will **NOT** contribute to or cause further WQS violations for the impairment(s) listed in c? ☐ Yes ☒ No
 (NOTE: If no for f, this site is NOT eligible for coverage under the CGP). See Instructions.

2. TMDL Impaired Waterbodies				
a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4?	b. Has a TMDL(s) been developed for this WQMS(s)? If No, identify as such below and proceed to Section VI. If Yes, complete items c thru f of this table.	c. If yes for b, what pollutants are listed as "CAUSES" or causing the impairment?	d. If yes for b, has the standard been "ATTAINED" or "Fully supported" for the impairment(s)?	e. If no for d (Not Attained), will any pollutants causing the impairment be present in your site's construction stormwater discharges?
04-11	☒ Yes ☐ No	fecal coliform	☐ Yes ☒ No	☒ Yes ☐ No
	☐ Yes ☒ No		☐ Yes ☒ No	☐ Yes ☒ No
	☐ Yes ☒ No		☐ Yes ☒ No	☐ Yes ☒ No

f. If yes for e above, are your discharges consistent with the assumptions and requirements of the TMDL(s)? ☒ Yes ☐ No
 (NOTE: If no for f, this site is NOT eligible for coverage under the CGP). See Instructions.

VI. Signatures and Certifications DO NOT SIGN IN BLACK INK! Read the Certifications below (in entirety). Provide date, printed name, and signatures below. If you are a New Owner/Operator, as Primary Permittee you must also sign and date the applicable Comprehensive SWPPP Acceptance & Compliance Agreement below.

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

Thomas P. Bevins

Printed Name of C-SWPPP Preparer

Signature of C-SWPPP Preparer

13899

S. C. Registration #

PRIMARY PERMITTEE: "I or I (on behalf of my company and its contractors and agents), as the case may be, certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather, and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I understand that DHEC enforcement actions may be taken if the terms and conditions of the C-SWPPP are not met and I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

"I or I (on behalf of my company and its contractors and agents), as the case may be, also hereby certify that all land-disturbing construction and associated activity pertaining to this site shall be accomplished pursuant to and in keeping with the terms and conditions of the approved plans and SCR100000. I also certify that a responsible person will be assigned to the project for day-to-day control. I hereby grant authorization to the to S. C. Department of Health and Environmental Control (DHEC) and/or the local implementing agency the right of access to the site at all times for the purpose of on site inspections during the course of construction and to perform maintenance inspections following the completion of the land-disturbing activity." (See Section 122.22 of S.C. Reg. 61-9 for signatory authority information.) Having understood the above information, I am signing this certification as Primary Permittee, to the aforementioned NPDES general permit."

Mike Fields

Printed Name of Primary Permittee

Signature of Primary Permittee

General manager

Title/Position

Date Signed 2/26/14

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Dan Abel and Mary Abel

Petitioners,

vs.

South Carolina Department of
Health and Environmental Control
and Pawleys Island Community
Church,

Respondents.

Docket No. 14-ALJ-07-0282-CC

**MEMORANDUM IN SUPPORT OF
RESPONDENTS PAWLEYS ISLAND
COMMUNITY CHURCH AND SOUTH
CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL'S MOTION TO DISMISS**

Respondents, Pawleys Island Community Church (the "Church") and the South Carolina Department of Health and Environmental Control ("the Department" or "DHEC"), hereby moves this Honorable Court for dismissal against Petitioners Dan Abel and Mary Abel (the "Abels"), pursuant to Rule 19 of the Administrative Law Court and Rule 12 of the South Carolina Rules of Civil Procedure, on the grounds that the complaint fails to allege facts sufficient to constitute a cause of action against the Respondents.

Petitioners' arguments regarding the application of a 2001 Consent Order are clear. As set forth more particularly below, Petitioners have not made a claim upon which relief may be granted regarding the Church's application for a permit for a new potential project on the Church campus and the Church is entitled to dismissal on all claims made by the Abels.

SUMMARY OF THE NATURE OF THE CASE

This request for a contested case hearing arises from the Department's decision to issue permits to the Church for construction and improvement to the Church's campus. Petitioners challenge DHEC's decision to grant an NPDES General Permit for Stormwater Discharges from

Construction Activities (NPDES permit number SCR10Q459) ("Stormwater Permit") and the associated Coastal Zone Consistency ("CZC") certification (CZC-12-0149) (the "Certification") to the Church.

STATEMENT OF THE CASE

On June 26, 2012, the Church applied for a Stormwater Permit and CZC Certification from DHEC for a construction project to be undertaken at the Church. On April 1, 2014, DHEC notified the Church it had granted the Stormwater Permit and the CZC Certification to the Church. Prior to commencement of the Church's new project, the Petitioners challenged the Stormwater Permit and the associated CZC Certification. On April 16, 2014, Petitioners filed a Request for Final Review in front of the Board of DHEC and on May 14, 2014 the Board notified the Petitioners that it had denied Final Review. On June 13, 2014, Petitioners filed a Request for Contested Case Hearing.

In 2000, the Church applied for and DHEC issued a separate Stormwater Permit and the associated CZC certification to the Church for a separate and distinct construction project that was completed over twelve (12) years ago. That decision was challenged by Dan and Mary Abel and David Mims and to resolve the matter, all parties negotiated and executed a Consent Order of Settlement and Dismissal ("Consent Order"), signed by Administrative Law Court Judge C. Dukes Scott on January 8, 2001. The Consent Order settled and resolved the Abel's objections to the 2000 Stormwater Permits and CZC certification and the Church completed its construction activities and fulfilled all the requirements as set forth by the Consent Order and the Amended Stormwater Permit with respect to that particular project.

On June 26, 2012, the Church applied for a new Stormwater Permit and accompanying CZC Certification for a new project, distinct from and unrelated to the 2000 project. During the

public notice and comment period for the CZC Certification, no comments were received concerning the Church's proposed construction. Because of questions raised by DHEC with regard to the Consent Order and certain buffering and other conditions requested by the original Petitioner Mims, the Church filed a Motion with the Administrative Law Court in October of 2013 to modify the Consent Order with the consent and acknowledgment of the Mims. Ruling that the motion was premature because no permits for the new project had been issued by DHEC, Judge Anderson ruled that any decision to issue permits should be rendered by DHEC first. DHEC, after review of the technical proposals presented by the Church and review of its requirements and regulations, proceeded to issue a Stormwater Permit and associated CZC certification to the Church.

AUTHORITY FOR MOTION

Rule 19(A) of the South Carolina Rules of Procedure for the Administrative Law Court ("RPALC") provides for pre-hearing motions and requires such motions to be in writing, state the grounds for relief and the relief sought, and be filed not later than ten (10) days before the hearing date, unless otherwise ordered by the administrative law judge. Rule 68, RPALC provides that the South Carolina Rules of Civil Procedure ("SRCP") may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by the RPALC. Rule 12(b)(6), SRCP, provides that a party against whom a claim is asserted may, as a defense, move the court to dismiss the claim for "failure to state facts sufficient to constitute a cause of action".

STANDARD OF REVIEW

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

alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.” Id.; Baird v. Charleston Cnty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602–03 (1995). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

ARGUMENT

I. The Church is entitled to dismissal because the NPDES Permit and associated CZC Certifications do not violate the previous Consent Order between the Abels, DHEC and Pawleys Island Community Church.

The terms and conditions of the 2001 Consent Order do not contain or require the placement of any permanent restriction on the use of the Church’s property. The Consent Order did not require a restrictive covenant to be recorded nor does the Consent Order contain any language purporting to make the terms and conditions of the Consent Order binding and applicable to any future heirs, successors or assigns of the Church. Barring such language, the Consent Order only applies to the permit decision from 2000 and addressed the Petitioners’ concerns with regard to the construction that was permitted under the original 2001 Consent Order.

In South Carolina, to permanently restrict or encumber real property “a restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with *all doubts resolved in favor of the free use of the property.*” Hardy v. Aiken, 369 S.C. 160, 166, 631, S.E.2d 539, 542 (2006) (quoting Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980) (emphasis added). In addition, “where the language of the restrictions is equally capable of two or more different

constructions that construction will be adopted which least restricts the use of the property."

Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998) (emphasis added).

The 2001 Consent Order is limited in application to a permitting decision and CZC certification made by DHEC for the Church's project in 2000. A court may not enlarge or extend a restriction "by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written." Id. at 4, 498 S.E.2d at 864. If the Petitioners desired to have the 2001 Consent Order permanently restrict or contain future development on the Church's property, such language should have been expressly included in the Consent Order.

In South Carolina, settlement agreements like the 2001 Consent Order are viewed as contracts. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2008). When interpreting a settlement agreement or consent order, general contract principles are applied. Id. at 241-42, 672 S.E.2d at 803. "In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." Southern Atl. Fin. Servs., Inc. v. Middleton, 349 S.C. 77, 80, 562 S.E.2d 482, 484 (Ct. App. 2002).

"The parties' intention must, in the first instance, be derived from the language of the contract." Ecclesiastes Production Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007). "In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered." Id. at 498, 649 S.E.2d at 502. "Circumstances surrounding the origin of an alleged restriction may also be considered in construing that restriction." Hamilton v. CCM, Inc. 274 S.C. 152, 158, 263 S.E.2d 378, 381 (1980).

The 2001 Consent Order represents a valid contract between the Parties, but “[w]ords cannot be read into a contract which impart intent wholly unexpressed when the contract was executed.” Blakely v. Rabon, 266 S.C. 68, 72, 221 S.E.2d 767, 769 (1976). Any intent by the Petitioners to prohibit all future development on the property is absent from the express language of the settlement agreement.

The Consent Order arose out of a permit application for the construction of new facilities by the Church in 2000. (Exhibit A, 2001 Consent Order). The Church completed the project in accordance with the terms of the Consent Order and associated permits and fulfilled all of its responsibilities as directed by the 2001 Consent Order and associated permits.

The 2001 Consent Order does not contain language that permanently restricts all future uses of the Church’s land. Because “[p]arties are governed by their outward expressions[,]...the court is not at liberty to consider their secret intentions.” Blakeley, 266 S.C. at 73, 221 S.E.2d at 769. Thus, the court may not gather any “secret intentions” or assumptions from the Abels in 2001 and make them applicable to prohibit the current Stormwater Permit and CZC Certification. If the Abels’ intention was to permanently and perpetually restrict the Church’s future use of its property, a requirement of recording a restrictive covenant, the required mechanism for such intent, should have been included in the 2001 Consent Order.

To the extent that any ambiguity may exist in the language of the 2001 Consent Order, “[t]he Court is to construe any ambiguity in favor of limited duration and against restricting property.” Hardy, 369 S.C. at 166, 631 S.E.2d at 452. “Where a restriction on land is capable of two different constructions, the construction which least restricts the property is favored.” Anderson v. Buonforte, 365 S.C. 482, 495, 617 S.E.2d 750, 757 (Ct. App. 2005). If this Court finds that the terms of the Consent Order are ambiguous as to whether the Consent Order

permanently restricts future development, the manifest weight of precedent does not burden the Church with a continuing obligation that restricts the use of the Church's land.

Negotiated settlements are indeed an important tool in resolving disputes and in reaching such an agreement of resolution each party bears the responsibility to ensure their objectives are met when the final terms of the agreement are reached. In understanding the importance of these tools the Church intends to fully comply with this Consent Order. The Church has not and will not apply terms and conditions that are not included explicitly within the settlement agreement. Without a requirement of recording a restrictive covenant or even any indication that the agreement applies to any heirs, assigns, or successors in interest, the Church should not be hindered with the placement of those restrictions which were intended some thirteen years later.

Indeed, the current dispute is the classic situation that precedent seeks to prevent. It is abundantly clear that the existing case law requires specificity in order to negate the struggle of reviewing of an agreement more than a decade old to decipher the meaning of its language. In this case, the clear language of the Consent Order creates no explicit restriction on the Church's future use and development of the property.

The Church complied with the responsibilities arising from the 2001 Consent Order and amended 2000 permit. Therefore, the Church is entitled to dismissal because the current Stormwater Permit and CZC certification (Exhibit B, Stormwater Permit and CZC Certification) do not violate the 2001 Consent Order.¹

II. The Church is entitled to dismissal because the Abels have not retained a sufficient property interest to sustain the 2001 Consent Order when they no longer own land adjacent to the Church property.

If the court interprets the 2001 Consent Order to impose permanent restrictions on the

¹ Further, neither the NPDES permit nor the CZC Petitioners are challenging in this action actually authorize the alteration of wetlands. (*see Exhibit B*).

Church's land, the Abels lack standing to enforce such a restriction. If the Church's land is deemed to be restricted, the Abels are without standing to petition this Court as to DHEC's permitting decision because the Abels will not be benefitted by the enforcement of the restriction.

It remains a well-established rule that a party seeking to enforce a restrictive covenant must be benefitted by the actual enforcement. In South Carolina, a "grantor lacks standing to enforce a covenant against a remote grantee when the grantor no longer owns real property which would benefit from the enforcement of that restrictive covenant." McLeod v. Baptiste, 315 S.C. 246, 247, 433 S.E.2d 834, 835 (1993). In other words, "a person seeking to enforce a covenant must be benefitted by that act." Id. at 247; *cf.* Dunlap v. Beaty, 239, S.C. 196, 207, 122 S.E.2d 9, 15 (1961) (grantor did have standing when she still owned property that would be affected by the grantee's breach of the restrictions); *accord* Lakewood Racquet Club, Inc. v. Jensen, 156 Wash.App. 215, 225, 232 P.3d 1147, 1152 (2010) (citing the "common law rule 'that a person must own land that benefits from the restriction in order to have standing to enforce it,'" and that "covenantees should not be able to enforce covenants once they divest their ownership interest in the benefitted property.")

The Abels forfeited their enforcement rights when they elected to sell the property that was benefitted by the agreements in the 2001 Consent Order. The Abels sold the real estate they owned that was adjacent to the Church in 2007, and they currently reside nearly three miles away from the Church. (Exhibit C, Deed Conveying Title to Real Estate). As such, the Abels are now a remote party.

As the Abels no longer own the property that is theoretically enhanced by the 2001 Consent Order, they have no cognizable harm about which to complain. There is no precedent

which provides for remote covenantees the enforcement power to restrict land in which those remote parties no longer have an interest. The Abels' preferred result will create confusion as to land use and allow for a change of the well-established law as to restrictions on real property. Those restrictions would have no corresponding beneficiary and would cease being the benefactor for an actual interested party. Moreover, South Carolina jurisprudence has traditionally disfavored restrictions on the free use of property.²

Assuming that the 2001 Consent Order contained a permanent restriction on the Church's land, the Abels are no longer benefitted by that restriction. When the Abels sold their property adjacent to the Church, they severed their right to enforce the restrictions because they are no longer benefitted by the enforcement of the restriction. Therefore, the Abels have not retained sufficient property interest to have standing to enforce the 2001 Consent Order.

CONCLUSION

For the reasons set forth above, the Church and the Department respectfully requests that the Court issue an Order dismissing this case with prejudice.

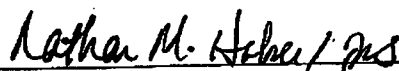
² *E.g., S.C. Dep't of Natural Res.s v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001); *Taylor v. Lindsey*, 332 S.C. 1, 4-5, 498 S.E.2d 862, 863-64 (1998).

Respectfully Submitted,

OXNER & STACY, P.A.



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December 12, 2014
Pawleys Island, South Carolina

File
Close file
Provide copy to
SW permit file

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Mary W. Abel, Daniel C. Abel and David F.
Mims,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control, Office of Ocean and
Coastal Resource Management, and Pawleys
Island Baptist Church,

Respondents.

Docket No. 00-ALJ-07-0626-CC

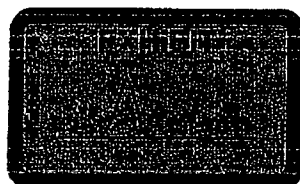
CONSENT ORDER
OF
SETTLEMENT AND DISMISSAL

*cc
P*

This proceeding arises out of the application of the Pawleys Island Baptist Church, a South Carolina Not-for Profit Corporation, [hereinafter the "Church"] for a state storm water permit for the construction of a new sanctuary and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the church also requested a wetland fill permit from the US Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC/OCRM). After DHEC/OCRM issued the storm water permit and consistency certification, requests for a contested case hearing were filed by Mary W. Abel, Daniel C. Abel and David F. Mims.

The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order. Specifically, the parties have

Consent Order of Settlement and Dismissal: Page 1 of 4



FILED

JAN 08 2001

Handwritten signature and initials
120

*DCM
DFM
MWA*

agreed as follows:

1. The designs for the storm water pond and other improvements at the site shall be amended so that approximately one-half (50%) of the wetland area on the site shall be preserved. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A. The Church shall also amend its plans for the proposed structure shown on Exhibit A as "PROPOSED FUTURE BUILDING PHASE II" so that no portion of this structure will encroach upon the area of the wetland.

2. The Church agrees that it will instruct its engineers, architects, contractors and others working on the Church improvement project and storm water management project, to continue to explore additional design changes, where feasible from a time and cost perspective, which will allow possible additional expansion of the wetland area to be preserved.

3. The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.

4. In constructing the storm water system and church improvements, the Church shall instruct its engineers, architects, contractors and others working on its behalf to employ all available Best Management Practices to prevent harm to the wetland beyond that authorized by this agreement and by the permit and certification as hereby amended. In the event such additional harm to the wetland occurs despite best efforts, the church will restore or mitigate any such harm.

5. Within the area designated on Exhibit A as the "30' NOISE/VISUAL BUFFER," the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees and shrubs will be leyland

cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height with fifty percent (50%) of the trees at least ten (10) feet in height; provided however, that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state.

6. The existing basketball and volleyball fields will be removed and will not be re-located any closer to the rear property line of the church property than the front of the new sanctuary.

7. All lighting on the church property will be placed so that it is shielded or directed away from the properties adjacent to the "30' NOISE/VISUAL BUFFER," shown on Exhibit A.

8. Upon execution of this Consent Order, the Church may immediately begin construction of the new sanctuary and other improvements not inconsistent with this agreement and order.

9. The Church and the Petitioners will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement and order.

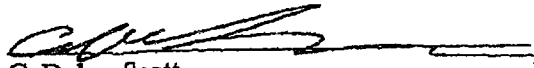
After review of the agreement, I conclude that it should be accepted and made a part of this order. Accordingly, upon the joint motion and consent of the parties,

IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a part of this final order of the Administrative Law Judge Division.

IT IS FURTHER ORDERED that the DHEC/OCRM permit and certification shall be, and same hereby are, amended in accordance with this agreement and order.

IT IS FURTHER ORDERED that this matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein.

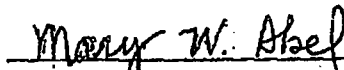
AND IT IS SO ORDERED.

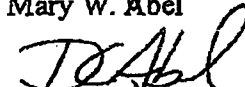

C. Dukes Scott
Administrative Law Judge

Columbia, South Carolina
December 8th, 2000
Sumner

WE SO MOVE AND CONSENT:

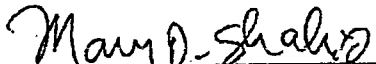
PETITIONERS:


Mary W. Abel

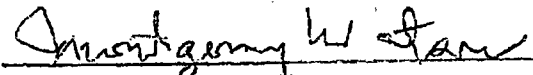

Daniel C. Abel

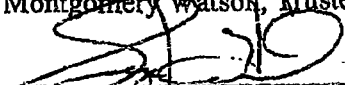

David Mims

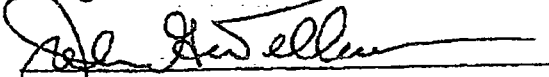
14
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

By: 
Mary D. Shahid, its Attorney

PAWLEYS ISLAND BAPTIST CHURCH,
a South Carolina Not-for Profit Corporation

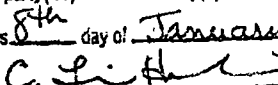
By: 
Montgomery Watson, Trustee

By: 
George Hilliard, Trustee

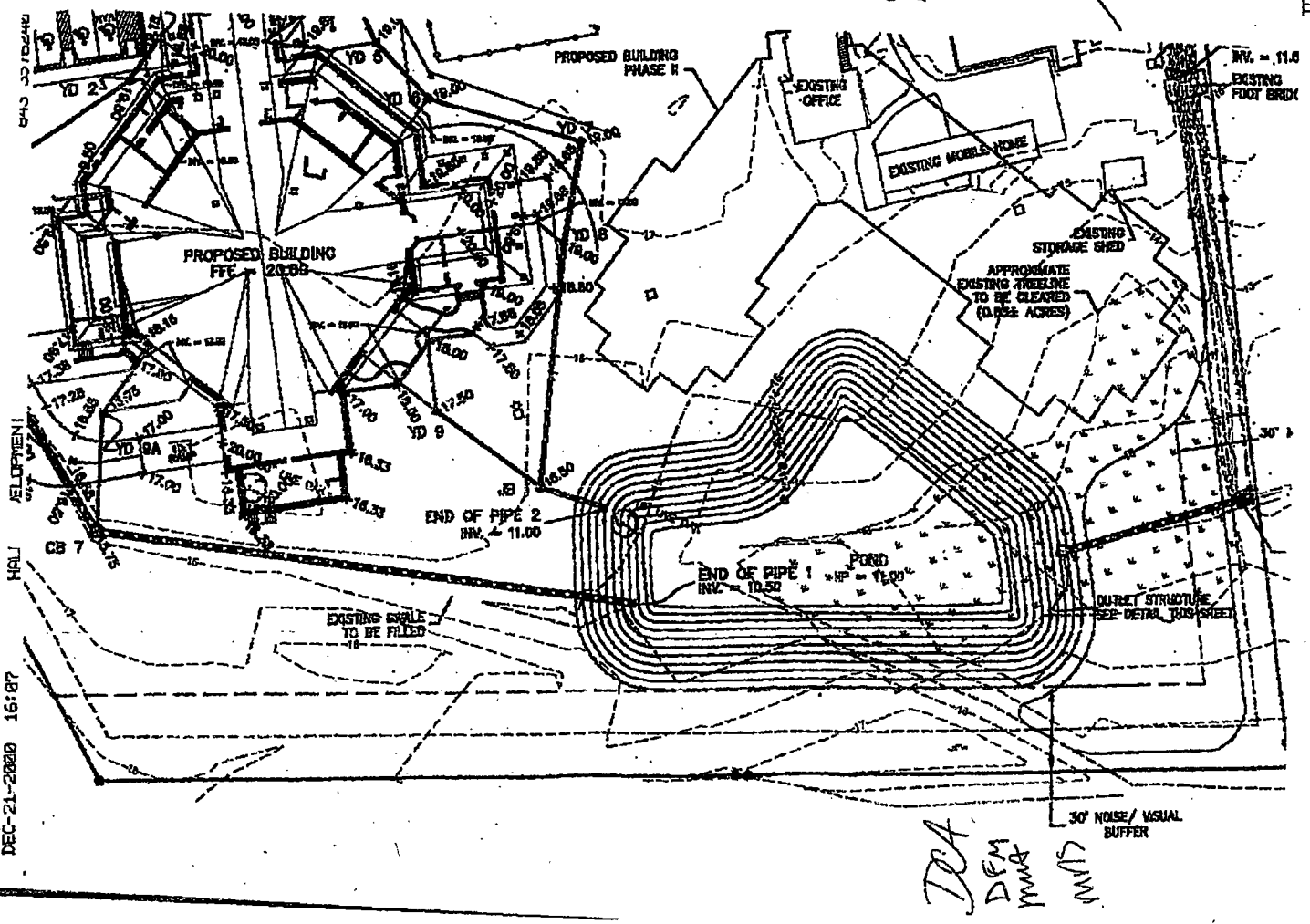
By: 
Jack Wellman, Trustee

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, postage paid, in the United States mail addressed to the party(ies) of their attorney(s).

This 8th day of January, 2001
By: 
Judicial Law Clerk

DEC-21-2000 16:07



TOTAL P.01



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

CERTIFIED MAIL

April 1, 2014

MIKE FIELDS (91 7199 9991 7030 0134 8071)
PAWLEYS ISLAND COMMUNITY CHURCH
10304 OCEAN HWY
PAWLEYS ISLAND SC 29585

RE: PAWLEYS ISLAND COMMUNITY CHURCH ADMINISTRATIVE BUILDING
Georgetown County
File Number: 22-00-06-03A
NPDES Coverage Number: SCR10Q459

Dear Mike Fields:

The Department of Health and Environmental Control (Department or DHEC) has approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on **March 31, 2014**. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Stormwater Discharges from Construction Activities SCR100000 (CGP), this project has been granted coverage under the CGP. This project's general permit coverage number is **SCR10Q459**. The total disturbed area for this site is **2.2 acres**.

See attached DHEC Office of Ocean and Coastal Resource Management (DHEC-OCRM) certification approved 03/26/2014 for additional conditions related to the Coastal Zone Consistency determination.

Because this project is part of a larger common plan for development or sale (LCP), all applications for future land-disturbing activities that are part of this LCP (phases, outparcels, etc.) should include the above-referenced file number (22-00-06-03A), NPDES coverage number (SCR10Q459), and project name **PAWLEYS ISLAND BAPTIST CHURCH**.

An as-built survey, signed and sealed by a S.C. Licensed Land Surveyor, should be submitted for the 2 structure(s) on this site. The survey(s) should show grades, contours, and depths for all structures and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/or analysis must be accepted by the Department before a Notice of Termination (NOT) can be submitted.

The CGP can be downloaded at the following website:

<http://www.scdhec.gov/environment/water/swater/docs/CGP-permit.pdf> or you may request a copy from us via email (stormwatercgp@dhec.sc.gov). You are responsible for ensuring your contractor(s) complies

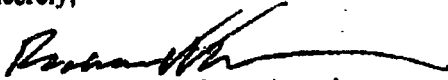
material in Waters of the United States. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

If material excavated during construction activities leaves the site, a mine operating permit may be needed. You are responsible for contacting the Mining and Reclamation Section to determine if a mining permit is required for the site. The Mining and Reclamation Section can be reached at (803)896-4261 or via e-mail at AskMines@dhec.sc.gov.

Please see the enclosed "Notice of Appeal Procedure" document for information about the procedures for appealing this NPDES coverage.

If you have any questions or cannot access the referenced websites, please call me at 843-953-0238.

Sincerely,



Richard V Geer, Engineer Associate
EQC Bureau of Water, Coastal Stormwater Permitting Section
1362 McMillan Ave, Suite 400, Charleston SC 29405

cc: Thomas P Bevins—ETS (91 7199 9991 7030 0134 8095)
Michael Corley—The South Carolina Environmental Law Project (91 7199 9991 7030 0134 8088)



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Coastal Zone Consistency Certification

To: Richard Geer, Project Manager - BOW-Coastal, Stormwater Permitting
From: Christine Koczera, Project Manager - OCRM, Coastal Zone Consistency Section
Cc: Curtis Joyner, Section Manager - OCRM, Coastal Zone Consistency Section
Re: Pawley's Island Community Church Administrative Building
Site location: 10304 Ocean Highway, Pawley's Island, Georgetown County
Tax Map No: 04-0161-052-00-00, 04-0161-049-01-00
Date: March 26, 2014
CZC #: CZC-12-0149
PN#: SCR10Q459

The staff of the Office of Ocean and Coastal Resource Management (OCRM) has reviewed the above referenced Coastal Zone Consistency request for land disturbing activity, including the construction of a new administrative building, parking, and associated infrastructure, as well as, modifications to the access drive and existing stormwater management pond and certifies that the above referenced project is **Consistent** with the Public Services and Facilities (Public / Quasi Public Buildings) Policies, the Activities in Areas of Special Resource Significance (Wetlands) Policies and the Stormwater Management (Runoff) Guidelines contained in the S.C. Coastal Zone Management Program provided that:

- in the event that any historic or cultural resources and archaeological or paleontological remains are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Code of Laws. Historic or cultural resources consist of those sites named to the National Register and those sites that are eligible for the National Register and other areas of special historic significance. 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 and;
- demonstrate that storage of the first ½ inch of run-off from the entire site or storage of the first one (1) inch of run-off through retention, detention, or infiltration systems, from the built upon portion of the property, whichever is greater.

This Coastal Zone Consistency did not include a review and authorization for any direct or indirect wetland impacts to freshwater wetlands or critical area. Any impacts to Critical Areas as determined by SCDHEC-OCRM, and/or freshwater wetlands, as determined by the U. S. Army Corps of Engineers must be authorized by the appropriate agency.

This certification shall serve as the final DHEC OCRM Coastal Zone Consistency approval and does not alleviate the applicant's responsibility to obtain other required local, state or federal approvals.

RETURN TO: LUMPKIN, ORNER & STACY, P.A. (rtm)
06-1551

Instrument Book Page
200700003456 379 205

Prepared By ~~and presented to~~
The Floyd Law Firm PC
15 Highway 17 South
PO Drawer 14607
Surfside Beach, SC 29587-4607
R. Jeffrey Sawyer - (843) 238-5141
File No.: 270150.001RJS

200700003456
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
02-09-2007 At 12:33 pm.
DEED 12.00
STATE TAX 949.00
COUNTY TAX 401.50
Book 379 Page 205 - 210

(Please do not write above this line - Reserved for Register of Deeds Office)

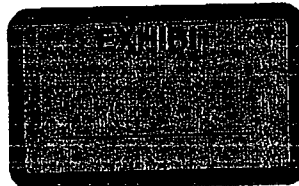
STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that Daniel C. Abel and Mary W. Abel, Grantors, in the State aforesaid for and in consideration of the sum of **THREE HUNDRED SIXTY FIVE THOUSAND DOLLARS 00/100 (\$365,000.00)** to them paid by W. Patton Mashburn and Elizabeth Ann Mashburn, the Grantees, receipt whereof is hereby acknowledged, have granted, bargained, sold and released; and by these presents, do grant, bargain, sell and release unto the said W. Patton Mashburn and Elizabeth Ann Mashburn, as joint tenants with the right of survivorship and not as tenants in common, their Heirs and Assigns, the following described property, to wit:

ALL that certain piece, parcel or lot of land, with improvements located thereon, situate, lying and being in the County of Georgetown, State of South Carolina in Tax District #4 and designated as a **PORTION OF LOT 3, TRUE BLUE PLANTATION** as is more fully shown on "Plat of a portion of Lot 3, in a subdivision of Lot 28 of True Blue Plantation, Waccamaw Neck, to be conveyed to Michael C. Cameron and Darlene K. Adams", dated May 27, 1985 prepared by Wendel C. Powers, R.L.S., and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 246; said lot being more particularly described according to said map as follows: Commencing at a pipe at the intersection of the northeast corner of said property and the right-of-way of S.C. Highway 22-206, thence running along the right-of-way of S.C. Highway 22-206 S 32°35' E 57 feet to a pipe; thence running S 9°38' E 74.6 feet along the arc of the a curve to a pipe, said pipe being located on the edge of the right-of-way of S.C. Highway 22-206; thence turning and running S 64°18' W 174.22 feet to a pipe; thence turning and running N 33°16' W 128.46 feet to a pipe; thence turning and running N 64°03' E 204.95 feet to a pipe, said pipe being the point of beginning. Butting and Bounding as follows: Northeast by the right-of-way of S.C. Highway 22-206 as shown on said map; Southeast by lands now or formerly of Charles J. & Rebecca M. Shaughnessy as shown on said map; Southwest by lands now or formerly of First Baptist Church of Georgetown as shown on said map; and Northwest by remaining lands of the Estate of Francis J. Thomas (this day being conveyed to James B. Franklin and Carolyn G. Franklin) as shown on said map. All of which will more fully appear by reference to the aforesaid map which is hereby made, pro tanto, a part and parcel hereof.

GEORGETOWN COUNTY PARCEL # **4-161-53**
SPE



This being the same property as conveyed to Daniel C. Abel and Mary W. Abel by Deed from Darlene K. Adams dated May 16, 1994 and recorded May 16, 1994 in Deed Book 572 at Page 171, Office of the ROD for Georgetown County.

Tax Map #: 04-01610-953

Property Address: 144 True Blue Dr., Pawleys Island, SC 29585

Grantee(s) Address: 144 True Blue Dr., Pawleys Island, SC 29585

THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said W. Patton Mashburn and Elizabeth Ann Mashburn, as joint tenants with the right of survivorship and not as tenants in common, their Heirs and Assigns, forever.

AND we, the Grantors, do hereby bind ourselves and our heirs and assigns, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said W. Patton Mashburn and Elizabeth Ann Mashburn, as joint tenants with the right of survivorship and not as tenants in common, their heirs and assigns, against us, the Grantors, and their heirs and assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by Grantors this 7th day of February, 2007.

Signed, Sealed and Delivered
in the Presence of

Barbara A. Abel
Witness #1

John A. Brazell
Witness #2 (Notary)

D. Abel (SEAL)
Daniel C. Abel

Mary W. Abel (SEAL)
Mary W. Abel

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Grantors sign, seal, and as act and deed, deliver the within Warranty Deed; that deponent with the other witness whose name is subscribed above, witnessed the execution thereof.

SWORN to before me this
7th day of February, 2007.

L. A. Bragg
Notary Public for South Carolina
My Commission Expires: 07-24-16

Terrence R. Raul
Witness

(SEAL)

File # 270150.001RJS

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

AFFIDAVIT
S.C. Code Ann. §12-24-20 et. seq.

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

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 144 True Blue Dr., Pawleys Island, SC 29583, was transferred by Daniel C. Abel and Mary W. Abel to W. Patton Mashburn and Elizabeth Ann Mashburn on February 8, 2007.

3. Check one of the following: The deed is

- (a) X Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) Exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 365,000.00.
- (b) The fee is computed on the fair market value of the realty, which is _____ Dollars (\$_____).
- (c) The fee is computed on the fair market value of the realty as established for property tax purposes, which is _____ Dollars (\$_____).

5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$_____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in Item 4 above here:	\$ 365,000.00
(b) Place the amount listed in Item 5 above here: (If no amount is listed, place zero here.)	<u>0.00</u>
(c) Subtract Line 6(b) from Line 6(a):	\$ 365,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 1350.50.

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

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

TDABL
Responsible person connected with this transaction

Daniel C. Abel
Print or type name here

SWORN to before me this 7th
day of February, 2007.

Lyn H. Bagell (L.S.)
Notary Public
My commission expires: 07-24-16

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty". Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement or realty after the transfer. Taxpayer may elect the use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) Transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) Transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) That are otherwise exempted under the laws and Constitution of the United States or the laws or Constitution of South Carolina;
- (4) Transferring realty whereby no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) Transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interest in the realty that are being exchanged in order to partition the realty;
- (6) Transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39 of the South Carolina Code of Laws;
- (7) That constitute a contract for the sale of timber to be cut;
- (8) Transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership or trust;
- (9) Transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A "Family Partnership" is a partnership whose partners are all members of the same family. A "Family Trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren and the spouses and lineal descendants of any of the above. A "Charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A).
- (10) Transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) Transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (12) That constitute a corrective deed or a quitclaim deed used to confirm title already vested in the Grantee, provided no consideration of any kind is paid or to be paid for the corrective or quitclaim deed.
- (13) Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) Transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) Transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Instrument Book Page
200700003456 379 210

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* 53009 204 Stacy
200700003456
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
02-09-2007 At 12:33 pm.
DEED 12.00
STATE TAX 949.00
COUNTY TAX 401.50
Book 379 Page 205 - 210
Wanda J. Prevatte

RECORD THIS DATE

AUDITOR GEORGETOWN CO.
LINDA S. MOCK

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Dan Abel and Mary Abel and
David F. Mims,

Petitioners,

vs.

South Carolina Department of
Health and Environmental Control,
Office of Ocean and Coastal
Resource Management and Pawleys
Island Baptist Church,

Respondents.

Docket No. 00-ALJ-07-0626-CC

**REPLY TO
MOTION TO ENFORCE
CONSENT ORDER AND TO
CONSOLIDATE**

TO: THE ADMINISTRATIVE LAW COURT AND TO THE PETITIONERS

PLEASE TAKE NOTICE that Pawleys Island Baptist Church (now known as Pawleys Island Community Church) (the "Church") and the South Carolina Department of Health and Environmental Control ("the Department" or "DHEC") hereby replies to Petitioners' Motion before the Administrative Law Court for an Order enforcing the Consent Order of Settlement and Dismissal (the "Consent Order") entered into by parties to this action and to oppose consolidation of this action with matters related to Docket No. 14-ALC-07-0282-CC, which is pending before the Court as follows:

INTRODUCTION AND FACTUAL OVERVIEW

Pawleys Island Baptist Church, now known as Pawleys Island Community Church, is located in Pawleys Island, South Carolina.

In 2000, related to the Church's plan to expand and grow its campus based on its recent growth and membership, the Church applied for the necessary permits for an improvement project free of all minor impacts to wetlands. As part of the project, the Church made

application with the necessary permitting agencies including land disturbance, stormwater discharge and Coastal Zone Consistency ("CZC") determination from DHEC's Office of Ocean and Coastal Resource Management ("OCRM") that the project was compliant.

On October 2, 2002, DHEC issued the necessary stormwater permit and CZC and water quality certification identified as Stormwater Permit #22-00-06-03 and P/N 2000-1D-262-C ("Permit and Certification") respectfully. Petitioners Abel and Mims as neighboring property owners did lodge a challenge to the Permit and Certification and filed requests for the necessary contested case hearing which was captioned as set forth herein. Ultimately, the parties had settlement discussions that resulted in the Consent Order of Settlement and Dismissal that is attached hereto as Exhibit A.

The terms of the Consent Order deal directly with the Permit and Certification that were issued by DHEC in 2000 as it relates to that particular project and the work associated with that project. The bulk of the Consent Order deals with concerns on behalf of Petitioner Mims with regard to potential light and noise pollution which concerns were addressed and accommodated by the Church as part of its construction plan. For purposes of the Permit, the Church did agree before the Court in the contested Order to modify its design to leave, as it related to the Permit, the wetlands in the configuration as set forth in the 2000 Consent Order. The terms and conditions of the Consent Order squarely address the proposed construction project set forth in the permit applications and the Consent Order is devoid of any reference to any permanent restrictive language on any wetlands on the property nor does the Order provide any restrictive covenants or language that binds successors, heirs and assigns into perpetuity with respect to wetlands on the site.

In June of 2012, the Church submitted a Notice of Intent ("NOI") for coverage under DHEC's general storm water permit for a new project for the Church based on continued growth and success of its operations. The Church also applied for the necessary DHEC/OCRM CZC certifications to undertake said project. The additional work involved additional facilities, parking and road improvements to the Church's property which project does reconfigure and expand the existing storm water retention pond and affect the remaining wetlands on the Church's property.

As it relates to the new permit application, OCRM raised the issues set forth in the Consent Order and the Church sought to have the Consent Order modified given that Petitioners Mims' issues have been addressed by the Church's landscape plan and they had no further objections. Petitioner Mims sold their property adjacent to the Church and their whereabouts were at the time unknown. Given the fact that they no longer had an interest in the adjacent property, it is the position of the Church that they had no standing to maintain their position established in the Consent Order. The Administrative Law Court, in its order dated January 7, 2014, elected to dismiss the request to modify the Consent Order as premature given the fact that OCRM and DHEC had not completed its review process.

OCRM and DHEC did approve the Church's plan for additional construction regarding its property and issued Stormwater Permit Coverage SCR10Q459 (the "2014 Permit") and CZC Certification CZC-12-0149 (the "2014 Certification") to the Church on March 31, 2014 and March 26, 2014, respectively, attached hereto as Exhibit B.

LEGAL ANALYSIS

- I. The Consent Order of Settlement and Dismissal has been complied with for purposes of the permit for which it was entered into.**

Settlement Agreements are viewed as contracts and the enforcement of the terms of the

agreement is governed by general principals of contract law. Byrd v. Livingston, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012); Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). Therefore, the settlement agreement between the parties enforceable on their face. Per the Consent Order, the work was done pursuant to the permits that were issued and the terms and conditions of the Consent Order were fulfilled for purposes of that agreement. The parties never intended for the agreement to be perpetual or to run with the land as noted by the complete absence of any restrictive covenant type language contained therein. Therefore, the Court applying principals of contract law should interpret the intention of the parties which was to define the terms and conditions of the agreement under which the work could be done.

II. Petitioners Abel lack standing to enforce the Consent Order.

In order to establish standing, the Courts of this State have well established the appropriate standard for standing and in Bailey v. South Carolina Department of Health and Environmental Control and Gene Townsend, 388 S.C. 1, 693 S.E.2d 426, sets forth the first and quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130; 119 L. Ed. 2d 351 (1992), the United States Supreme Court three prong standing test "First, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or eminent, not 'conjectural' or 'hypothetical'". Second, it must be a causal connection between the injury and the conduct complained of - the injury has to be "fairly... trace[able] to the challenged action of the defendant, and not...th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." By the sale of Petitioner Abel's property in 2007, they forewent any opportunity to suffer an injury-in-fact as set forth in the required three prong test. By agreeing to a Consent

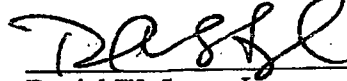
Order does not impose any binding restrictions on the property or bind any heirs, successors or assigns to the property, Petitioners forewent any opportunity to continue to enforce after they no longer owned the adjacent property. Furthermore, assuming the argument is correct, in the event the Church were to sell the property to a third party purchaser, nothing in the Consent Order would bind said third party purchaser to the terms and conditions hereof. Thereof, given the lack of restrictive language contained in the Consent Order and given Petitioner Abel's sale of the property, they failed to meet the standing test and therefore have no capacity to bring this current motion for enforcement.

III. The Motion to Consolidate is not ripe given the pleadings in the 2014 case.

The terms and conditions in the 2014 case seek to address the identical issues asserted by Petitioners in this motion. Therefore, it is not necessary for the Court to consolidate these issues or hear the motion presented by Petitioners, but rather rule on the 2014 case pending before the Court. Regardless of the Court's ruling in the 2014 case (14-ALJ-07-0282-CC) the issues presented here will be resolved and Respondents request the Court to deny the motion to enforce the Consent Order and consolidate as it is duplicative of the 2014 case, not ripe for decision and not necessary based on the causes of action contained in the 2014 case.

Respectfully Submitted,

OXNER & STACY, P.A.



Daniel W. Stacy, Jr.

90 Wall Street, Unit B

Pawleys Island, SC 29585

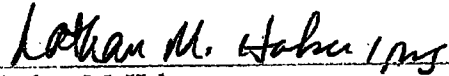
(843) 235-6747 – Office

(843) 235-6650 – Facsimile

danstacy@loslaw.net

Attorney for Respondent

Pawleys Island Community Church



Nathan M. Haber

Counsel

South Carolina Department of Health and

Environmental Control

1362 McMillan Avenue, Suite 400

North Charleston, SC 29405

(843) 953-0229

(843) 953-0201 (fax)

habernm@dhec.sc.gov

December 12, 2014

Pawleys Island, South Carolina

file
Close file
Provide copy to
SW permit file

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW JUDGE DIVISION

Mary W. Abel, Daniel C. Abel and David F.
Mims,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control, Office of Ocean and
Coastal Resource Management, and Pawleys
Island Baptist Church,

Respondents.

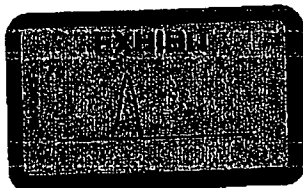
Docket No. 00-ALJ-07-0626-CC

**CONSENT ORDER
OF
SETTLEMENT AND DISMISSAL**

cc
P
This proceeding arises out of the application of the Pawleys Island Baptist Church, a South Carolina Not-for Profit Corporation, [hereinafter the "Church"] for a state storm water permit for the construction of a new sanctuary and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the church also requested a wetland fill permit from the US Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC/OCRM). After DHEC/OCRM issued the storm water permit and consistency certification, requests for a contested case hearing were filed by Mary W. Abel, Daniel C. Abel and David F. Mims.

The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order. Specifically, the parties have

Consent Order of Settlement and Dismissal: Page 1 of 4



FILED

JAN 08 2001

DA
DFM
MWA

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141

agreed as follows:

1. The designs for the storm water pond and other improvements at the site shall be amended so that approximately one-half (50%) of the wetland area on the site shall be preserved. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A. The Church shall also amend its plans for the proposed structure shown on Exhibit A as "PROPOSED FUTURE BUILDING PHASE II" so that no portion of this structure will encroach upon the area of the wetland.

2. The Church agrees that it will instruct its engineers, architects, contractors and others working on the Church improvement project and storm water management project, to continue to explore additional design changes, where feasible from a time and cost perspective, which will allow possible additional expansion of the wetland area to be preserved.

3. The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.

4. In constructing the storm water system and church improvements, the Church shall instruct its engineers, architects, contractors and others working on its behalf to employ all available Best Management Practices to prevent harm to the wetland beyond that authorized by this agreement and by the permit and certification as hereby amended. In the event such additional harm to the wetland occurs despite best efforts, the church will restore or mitigate any such harm.

5. Within the area designated on Exhibit A as the "30' NOISE/VISUAL BUFFER," the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees and shrubs will be leyland

cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height with fifty percent (50%) of the trees at least ten (10) feet in height; provided however, that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state.

6. The existing basketball and volleyball fields will be removed and will not be re-located any closer to the rear property line of the church property than the front of the new sanctuary.

7. All lighting on the church property will be placed so that it is shielded or directed away from the properties adjacent to the "30' NOISE/VISUAL BUFFER," shown on Exhibit A.

8. Upon execution of this Consent Order, the Church may immediately begin construction of the new sanctuary and other improvements not inconsistent with this agreement and order.

9. The Church and the Petitioners will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement and order.

After review of the agreement, I conclude that it should be accepted and made a part of this order. Accordingly, upon the joint motion and consent of the parties,

IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a part of this final order of the Administrative Law Judge Division.

IT IS FURTHER ORDERED that the DHEC/OCRM permit and certification shall be, and same hereby are, amended in accordance with this agreement and order.

IT IS FURTHER ORDERED that this matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein.

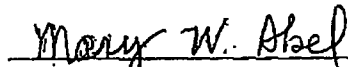
AND IT IS SO ORDERED.

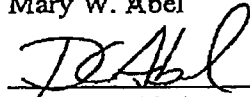

C. Dukes Scott
Administrative Law Judge

Columbia, South Carolina
December 8th, 2000
January

WE SO MOVE AND CONSENT:

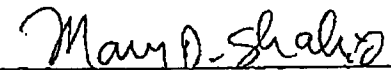
PETITIONERS:


Mary W. Abel

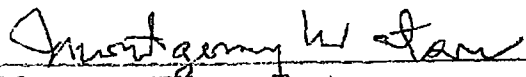

Daniel C. Abel

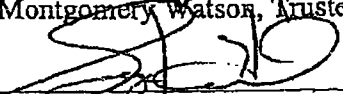

David Mims

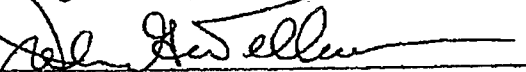
17
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

By: 
Mary D. Shahid, its Attorney

PAWLEYS ISLAND BAPTIST CHURCH,
a South Carolina Not-for Profit Corporation

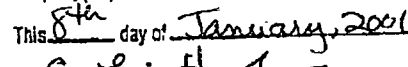
By: 
Montgomery Watson, Trustee

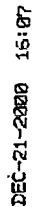
By: 
George Hilliard, Trustee

By: 
Jack Wellman, Trustee

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, postage paid, in the United States mail addressed to the party(ies) of their attorney(s).

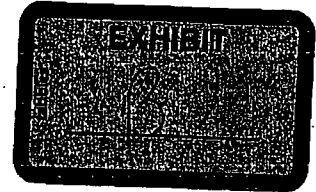
This 8th day of January, 2001
By: 
Judicial Law Clerk





Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment



CERTIFIED MAIL

April 1, 2014

MIKE FIELDS (91 7199 9991 7030 0134 8071)
PAWLEYS ISLAND COMMUNITY CHURCH
10304 OCEAN HWY
PAWLEYS ISLAND SC 29585

RE: PAWLEYS ISLAND COMMUNITY CHURCH ADMINISTRATIVE BUILDING
Georgetown County
File Number: 22-00-06-03A
NPDES Coverage Number: SCR10Q459

Dear Mike Fields:

The Department of Health and Environmental Control (Department or DHEC) has approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on **March 31, 2014**. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Stormwater Discharges from Construction Activities SCR100000 (CGP), this project has been granted coverage under the CGP. This project's general permit coverage number is **SCR10Q459**. The total disturbed area for this site is **2.2 acres**.

See attached DHEC Office of Ocean and Coastal Resource Management (DHEC-OCRM) certification approved 03/26/2014 for additional conditions related to the Coastal Zone Consistency determination.

Because this project is part of a larger common plan for development or sale (LCP), all applications for future land-disturbing activities that are part of this LCP (phases, outparcels, etc.) should include the above-referenced file number (22-00-06-03A), NPDES coverage number (SCR10Q459), and project name PAWLEYS ISLAND BAPTIST CHURCH.

An as-built survey, signed and sealed by a S.C. Licensed Land Surveyor, should be submitted for the 2 structure(s) on this site. The survey(s) should show grades, contours, and depths for all structures and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/or analysis must be accepted by the Department before a Notice of Termination (NOT) can be submitted.

The CGP can be downloaded at the following website:

<http://www.scdhec.gov/environment/water/swater/docs/CGP-permit.pdf> or you may request a copy from us via email (stormwatercgp@dhec.sc.gov). You are responsible for ensuring your contractor(s) complies

material in Waters of the United States. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

If material excavated during construction activities leaves the site, a mine operating permit may be needed. You are responsible for contacting the Mining and Reclamation Section to determine if a mining permit is required for the site. The Mining and Reclamation Section can be reached at (803)896-4261 or via e-mail at AskMines@dhec.sc.gov.

Please see the enclosed "Notice of Appeal Procedure" document for information about the procedures for appealing this NPDES coverage.

If you have any questions or cannot access the referenced websites, please call me at 843-953-0238.

Sincerely,



Richard V Geer, Engineer Associate
EQC Bureau of Water, Coastal Stormwater Permitting Section
1362 McMillan Ave, Suite 400, Charleston SC 29405

cc: Thomas P Bevins—ETS (91 7199 9991 7030 0134 8095)
Michael Corley—The South Carolina Environmental Law Project (91 7199 9991 7030 0134 8088)



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Coastal Zone Consistency Certification

To: Richard Geer, Project Manager - BOW-Coastal, Stormwater Permitting
From: Christine Koczera, Project Manager - OCRM, Coastal Zone Consistency Section
Cc: Curtis Joyner, Section Manager - OCRM, Coastal Zone Consistency Section
Re: Pawley's Island Community Church Administrative Building
Site location: 10304 Ocean Highway, Pawley's Island, Georgetown County
Tax Map No: 04-0161-052-00-00, 04-0161-049-01-00
Date: March 26, 2014
CZC #: CZC-12-0149
PN#: SCR10Q459

The staff of the Office of Ocean and Coastal Resource Management (OCRM) has reviewed the above referenced Coastal Zone Consistency request for land disturbing activity, including the construction of a new administrative building, parking, and associated infrastructure, as well as, modifications to the access drive and existing stormwater management pond and certifies that the above referenced project is **Consistent** with the Public Services and Facilities (Public / Quasi Public Buildings) Policies, the Activities in Areas of Special Resource Significance (Wetlands) Policies and the Stormwater Management (Runoff) Guidelines contained in the S.C. Coastal Zone Management Program provided that:

- in the event that any historic or cultural resources and archaeological or paleontological remains are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Code of Laws. Historic or cultural resources consist of those sites named to the National Register and those sites that are eligible for the National Register and other areas of special historic significance. 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 and;
- demonstrate that storage of the first ½ inch of run-off from the entire site or storage of the first one (1) inch of run-off through retention, detention, or infiltration systems, from the built upon portion of the property, whichever is greater.

This Coastal Zone Consistency did not include a review and authorization for any direct or indirect wetland impacts to freshwater wetlands or critical area. Any impacts to Critical Areas as determined by SCDHEC-OCRM, and/or freshwater wetlands, as determined by the U. S. Army Corps of Engineers must be authorized by the appropriate agency.

This certification shall serve as the final DHEC OCRM Coastal Zone Consistency approval and does not alleviate the applicant's responsibility to obtain other required local, state or federal approvals.

RETURN TO: LUMPKIN, ORNER & STACY, P.A. (rtm)
06-1551

Instrument 200700003456 Book Page 379 205

Prepared By ~~and~~ ~~RECEIVED~~
The Floyd Law Firm PC
15 Highway 17 South
PO Drawer 14607
Surfside Beach, SC 29587-4607
R. Jeffrey Sawyer - (843) 238-5141
File No.: 270150.001RJS

200700003456
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
02-09-2007 At 12:33 pm.
DEED 12.00
STATE TAX 949.00
COUNTY TAX 401.50
Book 379 Page 205 - 210

(Please do not write above this line - Reserved for Registrar of Deeds Office)

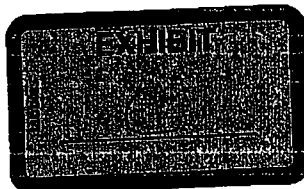
STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that Daniel C. Abel and Mary W. Abel, Grantors, in the State aforesaid for and in consideration of the sum of **THREE HUNDRED SIXTY FIVE THOUSAND DOLLARS 00/100 (\$365,000.00)** to them paid by W. Patton Mashburn and Elizabeth Ann Mashburn, the Grantees, receipt whereof is hereby acknowledged, have granted, bargained, sold and released; and by these presents, do grant, bargain, sell and release unto the said W. Patton Mashburn and Elizabeth Ann Mashburn, as joint tenants with the right of survivorship and not as tenants in common, their Heirs and Assigns, the following described property, to wit:

ALL that certain piece, parcel or lot of land, with improvements located thereon, situate, lying and being in the County of Georgetown, State of South Carolina in Tax District #4 and designated as a PORTION OF LOT 3, TRUE BLUE PLANTATION as is more fully shown on "Plat of a portion of Lot 3, in a subdivision of Lot 28 of True Blue Plantation, Waccamaw Neck, to be conveyed to Michael C. Cameron and Darlene K. Adams", dated May 27, 1985 prepared by Wendel C. Powers, R.L.S., and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 6 at Page 246; said lot being more particularly described according to said map as follows: Commencing at a pipe at the intersection of the northeast corner of said property and the right-of-way of S.C. Highway 22-206, thence running along the right-of-way of S.C. Highway 22-206 S 32°35' E 57 feet to a pipe; thence running S 9°38' E 74.6 feet along the arc of the a curve to a pipe, said pipe being located on the edge of the right-of-way of S.C. Highway 22-206; thence turning and running S 64°18' W 174.22 feet to a pipe; thence turning and running N 33°16' W 128.46 feet to a pipe; thence turning and running N 64°03' E 204.95 feet to a pipe, said pipe being the point of beginning. Butting and Bounding as follows: Northeast by the right-of-way of S.C. Highway 22-206 as shown on said map; Southeast by lands now or formerly of Charles J. & Rebecca M. Shaughnessy as shown on said map; Southwest by lands now or formerly of First Baptist Church of Georgetown as shown on said map; and Northwest by remaining lands of the Estate of Francis J. Thomas (this day being conveyed to James E. Franklin and Carolyn G. Franklin) as shown on said map. All of which will more fully appear by reference to the aforesaid map which is hereby made, pro tanto, a part and parcel hereof.

GEORGETOWN COUNTY PARCEL #

4-161-53
SPE



This being the same property as conveyed to Daniel C. Abel and Mary W. Abel by Deed from Darlene K. Adams dated May 16, 1994 and recorded May 16, 1994 in Deed Book 572 at Page 171, Office of the ROD for Georgetown County.

Tax Map #: 04-01610-053

Property Address: 144 True Blue Dr., Pawleys Island, SC 29585

Grantee(s) Address: 144 True Blue Dr., Pawleys Island, SC 29585

THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said W. Patton Mashburn and Elizabeth Ann Mashburn, as joint tenants with the right of survivorship and not as tenants in common, their Heirs and Assigns, forever.

AND we, the Grantors, do hereby bind ourselves and our heirs and assigns, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said W. Patton Mashburn and Elizabeth Ann Mashburn, as joint tenants with the right of survivorship and not as tenants in common, their heirs and assigns, against us, the Grantors, and their heirs and assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by Grantors this 7th day of February, 2007.

Signed, Sealed and Delivered
in the Presence of

Rebecca R. Paul
Witness #1

Ly. Brazell
Witness #2 (Notary)

D. Abel (SEAL)
Daniel C. Abel

Mary W. Abel (SEAL)
Mary W. Abel

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Grantors sign, seal, and as act and deed, deliver the within Warranty Deed; that deponent with the other witness whose name is subscribed above, witnessed the execution thereof.

SWORN to before me this
7th day of February, 2007.

Ly ABryell
Notary Public for South Carolina
My Commission Expires: 07-24-16

Terrence R. Paul
Witness

(SEAL)

File # 270150.001RJS

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

AFFIDAVIT
S.C. Code Ann. §12-24-20 et. seq.

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

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 144 True Blue Dr., Pawleys Island, SC 29585, was transferred by Daniel C. Abel and Mary W. Abel to W. Patton Mashburn and Elizabeth Ann Mashburn on February 8, 2007.

3. Check one of the following: The deed is

- (a) X Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) Exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 365,000.00.
- (b) The fee is computed on the fair market value of the realty, which is _____ Dollars (\$ _____).
- (c) The fee is computed on the fair market value of the realty as established for property tax purposes, which is _____ Dollars (\$ _____).

5. Check Yes or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in Item 4 above here: \$ 365,000.00
- (b) Place the amount listed in Item 5 above here: 0.00
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a): \$ 365,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 1350.50.

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

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

DADEL
Responsible person connected with this transaction

Daniel C. Abel
Print or type name here

SWORN to before me this 7th
day of February, 2007.

Lyn H. Bagell (L.S.)
Notary Public
My commission expires: 07-24-16

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty". Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement or realty after the transfer. Taxpayer may elect the use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) Transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) Transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) That are otherwise exempted under the laws and Constitution of the United States or the laws or Constitution of South Carolina;
- (4) Transferring realty whereby no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) Transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interest in the realty that are being exchanged in order to partition the realty;
- (6) Transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39 of the South Carolina Code of Laws;
- (7) That constitute a contract for the sale of timber to be cut;
- (8) Transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership or trust;
- (9) Transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "Family Partnership" is a partnership whose partners are all members of the same family. A "Family Trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren and the spouses and lineal descendants of any of the above. A "Charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A).
- (10) Transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) Transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (12) That constitute a corrective deed or a quietclaim deed used to confirm title already vested in the Grantee, provided no consideration of any kind is paid or to be paid for the corrective or quietclaim deed.
- (13) Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings;
- (14) Transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) Transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Instrument Book Page
200700003456 379 210

53009 *L O + Stacy*
200700003456
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
02-09-2007 At 12:33 pm.
DEED 12.00
STATE TAX 949.00
COUNTY TAX 401.50
Book 379 Page 205 - 210
Wanda J. Prevatte

RECORD THIS DATE
Linda S. Mock
AUDITOR GEORGETOWN CO.
LINDA S. MOCK

FILED

DEC 15 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Dan Abel, Mary Abel and William Mashburn,)

Docket No. 14-ALC-07-0282-CC

Petitioners,)

vs.)

**MOTION FOR SUMMARY
JUDGMENT**

Pawleys Island Community Church and the South)
Carolina Department of Health and Environmental)
Control,)

Respondents.)

TO: ADMINISTRATIVE LAW JUDGE SHIRLEY C. ROBINSON AND THE
RESPONDENTS

PLEASE TAKE NOTICE that Petitioners Dan Abel and Mary Abel ("the Abels") hereby respectfully move the Administrative Law Court pursuant to Rules 19 and 68 of the Rules of Procedure of the Administrative Law Court ("RPALC") and Rule 56 of the South Carolina Rules of Civil Procedure ("SCRCP") for an order granting summary judgment in favor of the Petitioners. In support of this motion, the Abels submit the following

INTRODUCTION AND FACTUAL OVERVIEW

Pawleys Island Community Church (the "Church") proposes to partially redevelop its property located on the east side of U.S. Highway 17, south from the intersection of U.S. Highway 17 and Waverly Road, and approximately 500-600 feet from Pawleys Creek in the Pawleys Island area of Georgetown County, South Carolina. In particular, the work proposed by the Church (collectively referenced as the "additional construction activity") consists of: reconfiguring and extending the existing drive entrance; constructing additional parking; constructing a 4,000 square foot utility building in the back of the property; constructing administrative offices in the location

of an existing building; reconfiguring and expanding the existing storm water retention pond; and, adding an infiltration system. In order to carry out the additional construction activity, the Church needed to obtain coverage under a general storm water permit from the South Carolina Department of Health and Environmental Control ("DHEC" or "Department" or "agency").¹ Since the Church needed a state permit, it was also required to obtain a certification from the agency that the additional construction activity covered by the permit would be consistent with the Coastal Management Program ("CMP") pursuant to S.C. Code Ann. § 48-39-80.² Further, since the additional construction activity included impacts to wetlands, the CMP policy guidelines for "Activities in Areas of Special Resource Significance," specifically for wetlands, were invoked.³ Accordingly, in issuing a final decision on the Church's storm water permit application, the Department was responsible for ensuring that the additional construction activities met the statutory and regulatory requirements for storm water management and that the additional construction activities were consistent with the CMP policies.

¹All development projects that involve construction or land-disturbing activities are required by the Department to seek a National Pollution Discharge Elimination System ("NPDES") construction general permit coverage and to have "a stormwater management plan both for pollution prevention during construction as well as to establish a long-term stormwater management system to address both quantity and quality control for the development after its complete[.]" (Transcript of Deposition of Richard Geer, attached as Exhibit 1, at page 5, line 12 through page 6, line 9).

²DHEC's Office of Ocean and Coastal Resource Management ("OCRM") reviews permit applications for proposed activities in the coastal zone and must issue a Coastal Zone Consistency ("CZC") Certification verifying that the proposed activities comply with the policies of the CMP as part of the final agency decision. (See Transcript of Deposition of Christine Koczera, attached as Exhibit 2, at page 5, line 16 through page 6, line 18).

³The CMP identifies wetlands as areas of special resource significance that are unique, environmentally fragile and integral to the coastal zone ecosystem and provides that in an effort to protect the value of coastal resources, OCRM "employs the additional resource policies presented in this section in review and certification of any permits associated with an activity in one of these areas" in addition to the "applicable policies for the individual activity which is proposed, as well as the general guidelines for evaluation of all projects[.]" (CMP III-69). According to the CMP wetland policies, "[p]roject proposals which would require fill or other significant permanent alteration of a productive freshwater marsh will not be approved unless no feasible alternative exists or an overriding public interest can be demonstrated, and any substantial environmental impact can be minimized." (CMP III-73).

This is not the first time that the Church has sought a storm water permit and CZC certification for construction activities on its property. Back in 2000, the Church, formerly known as the Pawleys Island Baptist Church, sought to expand its existing facilities to construct a new worship center, which involved impacts to wetlands. (See Transcript of Deposition of Donald Williams, attached as Exhibit 3, at page 13, line 19 through page 14, line 10). In particular, the Church's expansion project consisted of the placement of fill material in and the excavation of a 0.30 acre freshwater wetland onsite. (See Joint Federal and State Application, attached as Exhibit 4; Williams Deposition, page 14, line 5 through page 15, line 3). In order to carry out the expansion, the Church was required to obtain a land disturbance and storm water permit for the proposed construction activities, as well as a state certification that the activities were consistent with water quality regulations and the CMP policies.

By letter dated October 2, 2000, the Department notified the Church that the expansion project met the storm water management requirements and that it was consistent with the CMP and effectively issued a land disturbance permit, referenced as Permit #22-00-06-03 (the "2000 Permit"). (Attached as Exhibit 5). On October 9, 2000, the Department also issued a certification decision on the impacts to wetlands from the expansion project, referenced as P/N 2000-1D-262-C (the "2000 Certification"), finding the project consistent with state water quality regulations and the policies of the CMP. (See 2000 Certification, attached as Exhibit 6).

The Petitioners Dan and Mary Abel and David F. Mims challenged the 2000 Permit and Certification and filed requests for a contested case hearing, which was given Docket Number 00-ALJ-07-0626-CC. (See Exhibit 23, Affidavit of Dan Abel). The parties had numerous settlement discussions that eventually resulted in a Consent Order of Settlement and Dismissal (the "Consent Order"). (Attached as Exhibit 7, *see also* Exhibit 23). The Consent Order, to which the Abels, Mr.

Mims, the Church and DHEC/OCRM were all parties, was issued by Administrative Law Judge C. Dukes Scott on January 8, 2001. (Exhibit 7, p. 4).

According to the Consent Order: "The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order." (Exhibit 7, p. 1). This settlement was "made a part of th[e] final order of the Administrative Law Judge Division[,] which "FURTHER ORDERED that th[e] matter shall be DISMISSED, with prejudice, except that **the parties shall retain full rights to enforce the agreements stated herein.**" (Exhibit 7, p. 3) (emphasis added). Therefore, under the terms of the Consent Order, the parties agreed to the dismissal of the contested case in exchange for certain binding concessions with regard to construction activities on the Church property.

The wetlands on the Church property, which are adjacent to an important salt marsh creek in Pawleys Island, formed a key issue in the Abels' challenge giving rise to the contested case in 2000. (Exhibit 23, ¶ 4-7 ("Of primary concern was the Church's proposal to fill in 0.3 acres of jurisdictional wetlands onsite. . . . Those wetlands were a source of joy to us.")). "[T]he onsite wetlands have a direct surface and hydrological connection to Pawleys Creek, a salt water creek in the Pawleys Island community. Currently Pawleys Island Creek is a eutrophic system owing to polluted groundwater and surface water runoff from the watershed. Wetlands mitigate nutrients and sediment runoff and contribute to biodiversity of the creek and surrounding area." (Exhibit 23, ¶ 5). Accordingly, the inclusion of specific provisions in the Consent Order addressing and protecting those wetlands played a significant role in facilitating an agreement between the parties. (Exhibit 23, ¶ 7 ("Dr. Abel explains: "As with many compromises, the decision to fill in the wetlands left us (and the church as well, we suspect) with a bittersweet feeling. We were saddened at the loss of half of the wetlands, but were comforted that the remaining half would continue to exist.")).

In pertinent part, the Consent Order required that the Church's plan for expansion, including the construction of "the storm water pond and other improvements at the site shall be amended so that **approximately one-half (50%) of the wetland area on the site shall be preserved.**" (Exhibit 7, p. 2) (emphasis added). The Consent Order required that the Church instruct all agents, employees, contractors and others working on its behalf "to continue to explore additional design changes ... which will allow possible additional expansion of the wetland area to be preserved" and "to employ all available Best Management Practices to **prevent harm to the wetland beyond that authorized** by this agreement and by the permit and certification as hereby amended." (Exhibit 7, p. 2) (emphasis added). Further, pursuant to the Consent Order, the Church agreed "**that the wetland preserved by this Consent Order shall remain in its natural state.**" (Exhibit 7, p. 2) (emphasis added).

In June 2012, the Church applied to the Department for a storm water permit and CZC certification for the additional construction activities. (See Notice of Intent "NOI," attached as Exhibit 8; and CZC Request, attached as Exhibit 9). The proposed additional construction activity included filling and otherwise disturbing the remaining wetlands on the Church property. The Church failed to disclose the wetland impacts on its initial NOI and was required to submit a revised NOI reflecting the proposed wetland impacts. (See Email dated July 10, 2012, attached as Exhibit 10; Revised NOI, attached as Exhibit 11; *see also* Transcript of Deposition of Michael Fields, attached as Exhibit 12, page 13, line 20 through page 14, line 3; Geer Deposition, page 12, line 24 through page 14, line 22; Koczera Deposition, page 10, line 4 through page 14, line 15).

Upon initiating the permit review process, the Department was alerted to the Consent Order, to which the agency, the Church and the Abels and Mims were parties. At that point, the Department determined that moving forward with the project would be problematic given the conflict between

what was agreed to in the Consent Order and what was proposed as the additional construction activity. (Koczera Deposition, page 22, line 16 through page 26, line 10). As a result of that conflict, the Department drafted a CZC determination finding the additional construction activities “**Inconsistent**” based on the terms agreed upon in the Consent Order, including “that approximately one-half (50%) of the wetland area on site shall be preserved” and that “[t]he Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.” (Attached as Exhibit 13).

The Department also notified the Church, through its agent, about the existence of the Consent Order, explaining that the project conflicted with the Consent Order which “indicate[d] that the wetlands remaining on-site shall be preserved.” (See Email dated July 31, 2012, attached as Exhibit 14; Koczera Deposition page 26, line 18 through page 28, line 25; Fields Deposition, page 15, line 8 through page 16, line 20; Williams Deposition, page 35, line 15 through page 40, line 10). Therefore, both the Church and the Department were aware that the additional construction activities contravened the Consent Order and recognized that the project could not go forward until it was reconciled with the Consent Order or the agreement was modified.

By letter dated October 31, 2012, DHEC/OCRM memorialized the nature of the stalled status of the Church’s project, explaining that the Consent Order “restricts the property to certain requirements including the preservation of an onsite jurisdictional wetland.” (Attached as Exhibit 15; *see also* Koczera Deposition, page 31, lines 7 - 25). The Department continues that “[t]he current request **proposes to impact the preserved wetland and is contrary to the conditions of the Order**” and that “[a]ny modification or reopening of the Order **must be agreed to by the Administrative Law Judge Division and all consenting parties.**” (Exhibit 15) (emphases added). Moreover, the Department advised the Church that it “strongly suggests withdrawal of the current request to consider redesign options that incorporates the conditions of the Order.” (*Id.*).

During this time, the Department also informed the Church that certain information was still required in order to process the additional construction activity for review, and that the NOI for the project would lapse and require a new submission upon expiration of the year. (See Email dated December 12, 2012, attached as Exhibit 16; Geer Deposition, page 18, line 19 through page 20, line 4). The Consent Order was not modified and the Church failed to provide the Department with the requisite information before expiration of the year. (See Letter dated January 30, 2013, attached as Exhibit 17; Geer Deposition, page 20, lines 11 - 14). Rather, the Church acknowledged that the Consent Order "placed certain restrictions on the use of the church property" and that the Church was seeking to amend the agreement such that it would not conflict with the Church's plan for additional construction activity. (See Letter dated February 6, 2013, attached as Exhibit 18). Additionally, the Church requested that the review process be further delayed while it attempted to secure a modified Consent Order and settlement agreement "that would supersede the 2001 consent order and set out new conditions which would allow the Church to proceed with the proposed project as depicted in the 2012 plans." (*Id.*).

On October 10, 2013, the Church submitted a proposed Modified Consent Order of Settlement and Dismissal (the "Proposed Modified Order") to the Administrative Law Court for approval. (Attached as Exhibit 19). The Proposed Modified Order set forth that the Church "**desires to modify its site plan and mak[e] further modifications to the Church property *not in compliance with the original Order***" and thereby proposed to eliminate the requirements pertaining to the protection of the remaining onsite wetlands. (Exhibit 19, pp. 1, 2) (emphases added). The Proposed Modified Order was not agreed to or signed by all of the parties to the original Consent Order as the Abels neither consented to nor signed the Proposed Modified Order. (*Id.* at 3; Exhibit 23, ¶ 10). Moreover, the ALC declined to modify the Consent Order and dismissed the modification

request by Order dated January 7, 2014. (See Order on Request to Modify a Settlement and Dismissal, attached as Exhibit 20).

Notwithstanding the existence of the Consent Order, which the Department had previously identified as inconsistent with the Church's proposal and which remains unmodified, the Department inexplicably granted the permit and certification for the Church's additional construction activities including impacts to the protected wetlands onsite. In a letter dated April 1, 2014, the Department notified the Church that the additional construction activities complied with the storm water management requirements and granted coverage under the agency's construction general permit as SCR10Q459 (the "2014 Permit"). (Attached as Exhibit 21; Geer Deposition, page 38, lines 20 - 25). The Department decision document further contained a CZC Certification, referenced as CZC-12-0149 (the "2014 Certification"), finding the additional construction activities consistent with the applicable CMP policies. (See Exhibit 21, pp. 6 - 7, and Consistency Certification document, attached as Exhibit 22; *see also* Koczera Deposition, page 35, lines 20 - 22).

The Abels challenged the 2014 Permit and Certification as contradictory to the Consent Order.⁴ On April 16, 2014, the Abels filed a request for a Final Review Conference with the DHEC Board, which was declined. On June 13, 2014, the Abels filed a request for a contested case, given the above-captioned case number.

⁴At the time of the challenge to the 2000 Permit and Certification, which resulted in the Consent Order and the dismissal of Docket No. 00-ALJ-07-0626-CC, the Abels were neighboring property owners to the Church. While the Abels have since moved to a different residence, they remain permanent residents and members of the small Pawleys Island community. The Abels maintain many of the same concerns with the Church's additional construction activities that led to the original challenge and which were specifically addressed in the Consent Order - namely, the Abels' concern regarding the water quality of the Pawleys Creek tributary system, which is important salt marsh adjacent to the Church, from storm water runoff and other discharges associated with construction activity on the Church property. By its own recollection, the Church summarized the Abels' concerns as environmental in origin "about the wetland area" whereas Mr. Mims' concerns were not "as much of an environmental issue; it was neighborly issues." (Williams Deposition, page 15, lines 22 -23, and page 17, line 5 - 22).

STANDARD

Under Rule 68, RPALC, “[t]he South Carolina Rules of Civil Procedure ... may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by [the RPALC].” Pursuant to Rule 50(c), SCRCP, summary judgment shall be granted if “there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.” See also *Harris v. Anderson Cnty. Sheriff’s Office*, 381 S.C. 357, 673 S.E.2d 423 (2009); *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 629 S.E.2d 375 (Ct. App. 2006); *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Manji v. Blackwell*, 323 S.C. 91, 473 S.E.2d 837 (Ct. App. 1996); *Hunt v. Happy Valley Ltd. Partnership*, 315 S.C. 428, 434 S.E.2d 285 (Ct. App. 1993).

On a motion for summary judgment, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Knight v. Austin*, 396 S.C. 518, 722 S.E.2d 802 (2012). However, in order to successfully defeat a motion for summary judgment, the “non-moving party must come forward with specific facts showing genuine issues necessitating trial” and “may not simply rest on mere allegations or denials contained in the pleadings.” *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995); Rule 56(e), SCRCP. Moreover, it is not sufficient for the non-moving party to create an inference that is not reasonable or an issue of fact that is not genuine. *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006).

“Summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *M & M Group, Inc. v. Holmes*, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008). Accordingly, summary judgment should be granted “[w]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot

differ[.]” *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009).

ARGUMENT

I. The Consent Order and Settlement Agreement is a Valid, Binding and Enforceable Agreement Between the Parties

Under South Carolina law, a settlement agreement is viewed as a contract and enforcement of the terms of the agreement is governed by general principals of contract law. *Byrd v. Livingston*, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012); *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). Accordingly, a valid agreement of settlement between the parties is enforceable as a matter of law.

Since execution of the Consent Order, the validity of the agreement has not been called into doubt. There have not been questions raised as to the capacity or assent of any of the parties to the agreement nor have there been allegations that the agreed upon terms of the Consent Order were the result of any misconduct or wrongdoing. Rather, the agreement was voluntarily and purposefully entered into by the Church, the Department, the Abels and Mr. Mims. The Church wanted to expand its existing facilities and construct a new worship center. The Department authorized the construction activities on the Church property, which included impacts to wetlands, and the Abels and Mr. Mims challenged that decision as neighboring property owners and residents of the community who use and enjoy the natural resources at stake. In order to expand its existing facilities and construct a new worship center as the Church desired, it agreed to certain concessions that in turn alleviated the Abels’ and Mr. Mims’ concerns with the project, and the Consent Order embodies that agreement in addition to modifying the Department’s authorization for construction activity on the property. (Williams Deposition, page 19, lines 4 - 16).

The impacts proposed for the wetlands on the Church property were the primary motivation behind the Abels' challenge to the Church's expansion project and the protections put in place by the Consent Order in 2001 formed the basis for their willingness to settle and dismiss the contested case. (Exhibit 23, ¶ 7). Now, the impacts proposed for the remaining wetlands on the Church property prompted the Abels to challenge the Church's additional construction activity project not only from an environmental perspective, but also to enforce the protections expressly agreed to under the Consent Order. (Exhibit 23, ¶¶ 5 & 6)

The agreement between the parties regarding construction activity and impacts to the wetlands on the Church property was reduced to writing and signed by all of the parties, including the initials of each on every page. (See Exhibit 7). Moreover, the agreement was formally issued as the Consent Order by Judge C. Dukes Scott on January 8, 2001 and filed in this Court as part of the record. (Exhibit 7; *Motley v. Williams*, 374 S.C. 107, 100, 647 S.E.2d 244, 246 (Ct. App. 2007) ("To be enforceable, settlement agreements must either be entered into the court's record or acknowledged in open court and placed upon the record")). Therefore, the Consent Order represents a valid, binding and enforceable agreement between the parties.

II. This Court has a Duty to Ensure that the Plain Terms of Its Order are Obeyed

As stated above, the Consent Order is viewed as a contractual agreement and enforcement of its terms is subject to principles of contract law. *Byrd v. Livingston*, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012); *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). But more importantly, this Court has a duty to ensure that its own Order is obeyed. *State v. Bevilacqua*, 316 S.C. 122, 447 S.E.2d 213 (Ct. App. 1994) ("Courts have no more important function to perform in the administration of justice than to ensure their orders are obeyed."); S.C. Code Ann. § 1-23-630 ("Each administrative law judge of the division has the same power at chambers or in open hearing

as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction”).

Here, the Consent Order sets forth agreed upon requirements for construction activities on the Church property. The first such requirement was that “**approximately one-half (50%) of the wetland area on the site shall be preserved.**” (Exhibit 7, p. 2) (emphases added). This language plainly and unambiguously mandates the preservation of the wetlands on the Church property. The condition orders the Church to amend its plans for expansion to accommodate the requisite protection of the wetland area, specifically requiring that the location and configuration of the storm water pond be altered to eliminate some of the proposed impacts, as depicted in the exhibit to the Consent Order. (Exhibit 7, p. 2). Notably, while the Consent Order does permit some impacts to the wetland area on the Church property by way of amending the Department’s decision, the Order explicitly limits those permitted impacts and imposes an absolute obligation that the remaining, undisturbed wetland area “**remain in its natural state.**” (*Id.*) (emphasis added).

The terms of the Consent Order are clear and unambiguous. The language unequivocally bound the Church to ensure that the remaining one-half of the wetland area on its property remained in a natural state. Absent from the Consent Order is any restrictive language either narrowing the scope or confining the extent of the agreed upon conditions. Moreover, the Consent Order does not make reference to or otherwise establish that the duration of the conditions is temporary, that they are intended to expire or lapse, or that they will no longer be enforceable after a certain amount of time. In fact, the Consent Order specifically provides “the parties shall retain full rights to enforce the agreements stated herein.” (Exhibit 7, p. 3).

None of the parties dispute the express language of the Consent Order or attest that it is not an accurate reflection of what was agreed to. Therefore, the terms and obligations contained in the

Consent Order, including that the remaining wetlands on the Church property be preserved in a natural state, are valid and binding and this Court has a duty to ensure that the terms of its Order are obeyed. *State v. Bevilacqua*, 316 S.C. 122, 447 S.E.2d 213 (Ct. App. 1994).

III. The Additional Construction Activities are Inconsistent with the Consent Order

The additional construction activities proposed by the Church and authorized by the Department under the 2014 Permit and Certification include impacts to wetlands that are protected by the terms of the Consent Order. The Church and the agency were aware that these proposed activities were not in compliance with the Consent Order and attempted, albeit unsuccessfully, to replace the agreement with a modified consent order that would remove the impediment to the Church's plan for redevelopment of its property. (*See* Exhibits 19 and 20). Despite the plain requirement in the Consent Order that the wetlands on the Church property remain in a natural state and the failure to obtain a modification of that agreement, the agency authorized activities that will impact or otherwise disturb those onsite wetlands.

Under the valid, binding and enforceable Consent Order, the wetlands on the Church's property today are to "remain in [their] natural state." Despite the Department's agreement and commitment that the wetlands would remain unaltered, and this Court's requirement that it do so, the DHEC/OCRM staff issued a Stormwater Permit and CZC Certification that authorizes just the opposite, allowing the Church to fill all remaining wetlands on its property as a part of its storm water plan. The 2014 Stormwater Permit and the CZC Certification thereby violate both the Department's and the Church's continuing obligations under the Consent Order and should be reversed.

Prior to issuance of the 2014 Permit and Certification, the Church and DHEC were aware and acknowledged that the Church's proposed plan violated the Consent Order. To wit, the Church

unsuccessfully pursued an attempt to have that Consent Order modified and eviscerated. As stated by Administrative Law Judge Ralph K. Anderson, III: "The Church has now filed a request with this Court to modify its site plan and make further modifications to the Church property **not in compliance with the original Order.**" (Exhibit 20, p. 1) (emphasis added).

Having failed to secure this Court's modification of its Order, the Church has now gained the agency's complicity in ignoring the agreed-upon terms that are part of that Order. That Consent Order is binding and enforceable by law. The agency regularly resolves environmental disputes through negotiated settlement and consent orders of dismissal. *See, e.g., Greenfield Industries, Inc. v. DHEC*, Docket No. 13-ALJ-07-0046-CC, 2013 WL 2395892 (2013); *J. Rutledge Young, Jr. v. DHEC & Moore*, Docket No. 05-ALJ-07-0119-CC, 2006 WL 639403 (2006); *Burke v. DHEC*, Docket No. 04-ALJ-07-0394-CC, 2004 WL 3200402 (2004); *Huddleston, et al. v. DHEC*, Docket No. 01-ALJ-07-0230-CC, 2001 WL 1076368 (2001). If these efforts are to be accepted in good faith in the future, DHEC must be reliable in abiding by the agreed upon terms incorporated into a Consent Order of this Court. To maintain credibility at the bargaining table, the agency should be held to the terms of the settlement agreements and orders to which it is a party. Moreover, the parties must be able to rely on this Court's duty to ensure that the other parties are held to the terms of an agreement incorporated into a Consent Order filed in this Court.

Through the Consent Order, the ALC expressly retained jurisdiction over this matter and is authorized to enforce the binding terms of the settlement agreement and Consent Order which are violated by the 2014 Stormwater Permit and CZC Certification.

IV. The Department's Authorization Should be Invalidated to the Extent that it is Inconsistent with the Consent Order

The Consent Order explicitly instructs that the remaining wetland area on the Church property "shall remain in its natural state." The Department admits that the additional construction

activities proposed by the Church involve impacts to the remaining wetlands. The Department authorized the additional construction activities under the 2014 Permit and Certification. Accordingly, the Department's authorization of the additional construction activities violates the binding protections agreed to under the Consent Order and should be overturned.

There is no dispute as to any of the material facts in this case. The Church and the Department have both agreed and admitted: that the Consent Order permitted certain limited construction activities and placed certain protections on the wetland area on the Church property; that the Consent Order required that "approximately one-half (50%) of the wetland area on the site" be protected and that the Church preserve those wetlands in a "natural state[;]" that they are parties to the Consent Order, which is an enforceable agreement signed by a judge in this Court; and that the additional construction activity proposed for the Church property includes impacts to the wetlands on the Church property. (See Exhibits 7, 13 - 15, 18, and 19).

According to the Church, the Consent Order was entered into "[b]ecause we wanted to build a building, and there's some things that we needed to do to be able to move forward with that" and the expectation was that entering into the Consent Order was "what we needed to do in order to build the building that we wanted to build." (Williams Deposition, page 19, lines 4 - 16). The Church admits that it understands the agreement to be "[t]hat we could build the worship center with some concessions made on both parties." (Fields Deposition, page 12, lines 7 - 9). The Church admits that what it agreed to do regarding the wetlands is evidenced by the language of the agreement, specifically in paragraphs number one and three, and that "we were going to do what we said in [the Consent Order] that we were going to do for the construction we were doing at that time." (Williams Deposition, page 21, line 1 through page 23, line 5; Exhibit 7, p. 2). Yet, the Church appears to suffer from a fundamental misunderstanding of the nature of the agreement it entered into, claiming

ignorance as to the enforceable effect of the Consent Order into the future, even though the Church agreed and admitted that the Consent Order did not contain any time limitation on the preservation of the wetlands in a natural state. (Williams Deposition, page 22, line 24 through page 23, line 5).

With regard to whether the Church is bound by the terms of the Consent Order, the Church maintains that it was "bound for what we did at that time" but that no one believed "we're getting ready to lock ourselves into something that is going to last forever and ever on that." (Williams Deposition, page 22, lines 1 - 19). And while, at the time the Consent Order was entered into, "there was no one sitting around going, Okay, were going to go and sign this document, and six months down the road we can change it if we want to[.]" the Church's understanding of its commitment stemmed from "what do we need to do to get this thing done" rather than "even looking at down the road at that point." (Williams Deposition, page 24, lines 7 - 17). The Church has further agreed and admitted that the plan for additional construction activities would impact the remaining onsite wetlands and that if the project moved forward those wetlands would no longer remain in a natural state. (Williams Deposition, page 23, lines 10 - 16). However, with regard to the Church's actions if it were to move forward being contrary to the Church's obligation to preserve the wetlands, the Church merely believes "there was never anything in [the Consent Order] or in anyone else's mind that what had been agreed to 12 years previously had locked us in forever and ever." (Williams Deposition, page 23, line 16 through page 24, line 4).

The Department recognized, took the position and admitted that the additional construction activities were inconsistent with the terms of the Consent Order, particularly "the preservation of the wetlands" on the Church property. (Koczera Deposition, page 23, line 6 through page 24, line 8). Initially, the Department drafted a document stating that it had reviewed the Church's CZC "request

for land disturbance activity, including the construction of a new administrative building, additional parking, reconfiguration of an existing drive and the reconfiguration/modification of the existing stormwater management system and has determined that the project is **Inconsistent** based upon" the restrictions agreed to and put in place by the Consent Order and advising the Church that future review of the project "can commence once either site plan revisions to the existing project adhere to the referenced Consent Order or all parties involved with this Consent Order file an amendment with the court." (Exhibit 13). The Department understood that the Consent Order "had to be addressed" because the additional construction activity included impacts to wetlands that were required to be preserved under an agreement to which the Department was also a party. (Koczera Deposition, page 27, lines 20 - 25). The Department placed the Church's permit application on hold while an amended Consent Order allowing for the additional construction activities was attempted to be secured. The Department wrote to the Church or its agent and explained in plain terms:

The Consent Order, dated January 8, 2001, restricts the property to certain requirements including the preservation of an onsite jurisdictional wetland. The current request proposes to impact the preserved wetland and is contrary to the conditions of the [Consent] Order. Any modification or reopening of the Order must be agreed to by the Administrative Law Judge Division and all consenting parties. CZC Staff has discussed the matter and strongly suggests withdrawal of the current request to consider redesign options that incorporates the conditions of the Order.

(Exhibit 15).

The Church did not revise the site plans for the additional construction activity to adhere to the terms of the Consent Order: the project proposed impacts to 0.17 acres of wetlands⁵ and the 2014 Permit and Certification authorized impacts to 0.17 acres of wetlands. (See Exhibit 11, p. 1; Exhibit 21, p. 9; *see also* Fields Deposition, page 20, lines 9 - 17). The Church attempted to have the

⁵As previously discussed, the original NOI did not indicate that the additional construction activity would impact wetlands but, upon initial review of the application by the Department, the Church was required to submit a revised NOI reflecting that wetland impacts were in fact proposed in relation to the additional construction activity. (See Exhibit 8; Exhibit 10; Exhibit 11).

Consent Order amended by the court, but did so unsuccessfully and without the consent of all parties to the original agreement. (See Exhibits 19 and 20). Inexplicably, despite the manifest incompatibility of the project with the Consent Order, and the fact that the agreement has never been successfully modified, the Department changed course and authorized the Church to move forward with the additional construction activity.

The 2014 Permit provides storm water permit coverage for the Church's plan for additional construction activity, including the restructuring of the existing storm water pond and other work impacting the remaining wetland area on the Church property. Before the 2014 Permit could issue, the Department needed a CZC determination certifying those additional construction activities as consistent with the CMP policies. Despite the fact that the Department clearly considered the Church's plan for additional construction activities problematic and inconsistent with the Consent Order at one time, it issued the 2014 Certification stating that it had reviewed the Church's CZC "request for land disturbing activity, including the construction of a new administrative building, parking, and associated infrastructure, as well as, modification to the access drive and existing stormwater management pond and certifies that [the Church's] project is **Consistent** with the Public Services and Facilities (Public/Quasi Public Buildings) Policies, the Activities in Areas of Special Resource Significance (Wetlands) Policies and the Stormwater Management (Runoff) Guidelines" of the CMP. (Exhibit 21, p. 6; Exhibit 22, pp. 1, 4).

In addition to listing consideration of and consistency with the CMP wetland policies, the 2014 Certification verifies that "jurisdictional wetland impacts are proposed" for the purposes of "[s]tormwater pond modifications and building construction." (Exhibit 22, p. 4). Moreover, the 2014 Certification notes in two different sections that "[a] restrictive covenant was created and recorded under the original permit for the protection of non-impacted wetlands" and "is currently

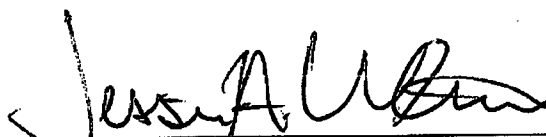
in the process of being amended to allow for jurisdictional wetland impacts[,]” (Exhibit 22, p. 5), and that “[t]he wetland impacts proposed for this permit were initially ‘protected’ under a recorded restrictive covenant between OCRM, the Mims, and the Abels” and “[t]he restrictive covenant needed to be amended to allow for the additional wetland impacts proposed under this project.” (Exhibit 22, p. 6). Notably, however, the 2014 Certification also provides that it “did not include a review and authorization for any direct or indirect wetland impacts to freshwater wetlands or critical area.” (Exhibit 22, p. 2). Thus the Department authorization is not only contradictory to the terms of the Consent Order, but it is also flawed on its face.

The 2014 Permit and Certification authorizing the additional construction activity were issued by the Department improperly in direct violation of this Court’s Order and should be invalidated. Alternatively, the 2014 Permit and Certification should be construed to allow only those activities consistent with the Consent Order and invalidated to the extent it authorizes impacts to the protected wetlands on the Church property. The Church even admitted that ultimately it just desires the ability to move forward with the additional construction project, explaining “if we can have access to land that we’ve purchased to be able to move forward, yeah, we’ll go through the process, and if there’s someone that tells us, ‘I’m sorry, you can’t do that,’ then we won’t do it” because “obviously, if it’s something that we can’t do, if we’re bound to something by law, then we’re not going to move forward; we obviously can’t move forward; we wouldn’t move forward. But if this is something that we can amend to be able to do what we wanted to do, we certainly want to pursue that.” (Williams Deposition, page 25, lines 11 - 15, and page 38, lines 19 - 25). Clearly, this Court has the authority to enforce its own Order, which “binds by law” the Church. Therefore, the terms of the Consent Order, including the preservation of the remaining wetland area on the Church

property, should be enforced and the Department authorization at issue in this case should be invalidated as a matter of law.

CONCLUSION

WHEREFORE, the Petitioners request that the Administrative Law Court issue an order granting summary judgment and declaring that the 2014 Department decisions that are the subject of Case No. 14-ALC-07-0282-CC are inconsistent with and in violation of the Consent Order of Settlement and Dismissal.



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December 15, 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dan Abel, Mary Abel and)
William Mashburn,)
Petitioners,)
v.) Docket No.:
14-ALC-07-0282-CC
South Carolina Department of)
Health and Environmental Control)
and Pawleys Island Community Church,)
Respondents.)

DEPOSITION OF: RICHARD GEER
DATE TAKEN: Monday, November 10, 2014
TIME: 10:07 a.m.
PLACE: Nexsen Pruet
205 King Street
Charleston, South Carolina
REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional Reporter,
Certified Realtime Reporter
and Notary Public

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

Exhibit 1

A P P E A R A N C E S

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I N D E X

Testimony of Richard Geer

Direct Examination by Ms. White.....	4
Cross-Examination by Mr. Stacy.....	44
Cross-Examination by Mr. Haber.....	44

CERTIFICATE.....	49

INDEX OF EXHIBITS

Deposition Exhibit 1 - Notice of Deposition.....	4
Deposition Exhibit 2 - Application cover letter and attachments.....	8
Deposition Exhibit 3 - Notice of Intent.....	8
Deposition Exhibit 4 - SWPPP diagrams.....	11
Deposition Exhibit 5 - July 20, 2012, letter from Geer to Bevins.....	17
Deposition Exhibit 6 - Geer e-mail.....	17
Deposition Exhibit 7 - January 30, 2013, letter from Geer.....	17
Deposition Exhibit 8 - February 6, 2013, letter from ETS.....	21
Deposition Exhibit 9 - Consent Order of Settlement and Dismissal.....	21
Deposition Exhibit 10 - E-mail communications.....	30
Deposition Exhibit 11 - August 29, 2013, letter from ETS.....	32
Deposition Exhibit 12 - September 17, 2013, letter from Geer to Bevins.....	36
Deposition Exhibit 13 - January 15, 2014, letter and revised NOI.....	36
Deposition Exhibit 14 - Final decision document...	38

STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent.

1 (The deposition commenced at 10:07 a.m.)

2 (Deposition Exhibit No. 1 marked for
3 identification.)

4 RICHARD GEER, SWORN.

5 DIRECT EXAMINATION

6 BY MS. WHITE:

7 Q. My name is Jessie White. I'm one of the
8 attorneys for the petitioners, Dan and Mary Abel.
9 Could you spell your name for me, Richard?

10 A. Yes. It's Richard, R-i-c-h-a-r-d, Geer,
11 G-e-e-r.

12 Q. Okay. Make sure I spelled that right.
13 Okay. If you have any questions during this
14 deposition, please direct them to me, and I can try to
15 restate the question or rephrase it if anything is
16 confusing.

17 Now that the deposition has commenced, you
18 will no longer be able to consult with counsel, so just
19 at any time, please, interrupt me. I'm not trying to
20 trick you. If you don't understand what I'm saying,
21 just let me know.

22 A. Okay.

23 Q. Have you seen this notice of deposition
24 before today?

25 A. Yes.

1 Q. Have you read it?

2 A. Not in detail, no, just enough to know that
3 I need to be here.

4 Q. Do you understand that you've been
5 designated on behalf of the Department to provide
6 testimony regarding the topics listed in that
7 deposition notice?

8 A. Yes.

9 Q. Okay. To start, I was hoping you could just
10 tell me very briefly about your background, training,
11 what your role is with the Department.

12 A. Okay. Yes. With the Bureau of Water with
13 DHEC and the stormwater permitting section, we issue
14 permits to -- for construction activities. Basically,
15 developments that do land-disturbing activities have to
16 have a stormwater management plan both for pollution
17 prevention during construction as well as to establish
18 a long-term stormwater management system to address
19 both quantity and quality control for the development
20 after it's complete, so...

21 Q. So that's kind of what the stormwater
22 permitting section as a whole is responsible for --

23 A. Right.

24 Q. -- looking at. What is your specific title
25 within that section?

1 A. Well, officially, it's engineer associate.
2 We're also called project managers. I receive an
3 application. It's processed, you know, the fees, and
4 logged in by an administrative assistant, but I receive
5 an application as well as an engineer report and
6 construction drawings, and I review those to make sure
7 they meet the state regulations and the requirements
8 for that -- for that permit. It's called NPDES
9 construction general permit.

10 Q. Okay. And how long have you been with the
11 Department?

12 A. Fifteen years.

13 Q. Have you always been in that capacity?

14 A. Yes, actually.

15 Q. Has your job description changed at all?

16 A. Well, I started in the Columbia office doing
17 strictly this stormwater permitting. Then I
18 transferred into the OCRM division in Charleston, and
19 at that time the stormwater permitting and the Coastal
20 Zone Consistency review were -- it was part of the same
21 process, reviewed by the same project manager, so I was
22 looking at the policies of the Coastal Zone Management
23 Program and applying those to the state stormwater
24 permit application as well as doing the stormwater
25 review, as I just explained, for pollution prevention.

1 Q. Okay.

2 A. So those two were -- for many years were
3 combined and done by the same staff. A few years -- a
4 few years ago, we split that -- split that up, and,
5 actually, they're separate staff. Christine is with
6 OCRM doing the Coastal Zone Consistency review, and I
7 am back to doing just stormwater, like I was when I
8 started 15 years ago. So I'm no longer -- I mean I --
9 the application that I review has to be certified
10 consistent with the Coastal Zone Management Program,
11 but that's -- I just received a memo from Christine's
12 section for that, so I'm no longer involved with that
13 review, but it's still a part of -- I mean, it's still
14 an item that I need before I can issue the stormwater
15 permit.

16 Q. Right. Okay. Thank you. Speaking
17 specifically about this project, the Pawleys Island
18 church submitted an application to you. Do you recall
19 when that was, how you received...

20 A. That was in -- I don't remember the exact
21 date off the top of my head, but I know it was kind
22 of -- kind of the middle to -- maybe June, July,
23 August, kind of that time frame, of 2012, because I
24 remember that they submitted an application that was --
25 you had to be -- the form changed the end of 2012, and

1 so they had to submit a new form; I remember that.

2 MS. WHITE: Okay. Mark this as Exhibit 2.

3 (Deposition Exhibit No. 2 marked for
4 identification.)

5 BY MS. WHITE:

6 Q. Does this appear to be the application you
7 received for the project? It might be missing certain
8 pages attached, but I believe in that first letter, it
9 lists certain things.

10 A. Yes. Yes, this looks like the cover letter,
11 transmittal letter. It mentions the application, which
12 is also called a Notice of Intent, or abbreviated NOI.
13 So that would technically be the application.

14 Q. Okay. That was going to be my question.

15 (Deposition Exhibit No. 3 marked for
16 identification.)

17 BY MS. WHITE:

18 Q. You mentioned the Notice of Intent. Is that
19 document, Exhibit No. 3, what you were referring to?

20 A. Yes.

21 Q. Okay.

22 A. This is the pre-2013 format.

23 Q. When you received this application, what --
24 are you able to tell during your initial review, just
25 looking at the submittal, what authorizations the

1 application is seeking?

2 A. Yes. I mean, this is -- is the indication
3 that they're going to perform construction activities
4 at this particular site.

5 Q. By "this," you're referring to the Notice of
6 Intent document?

7 A. Yes.

8 Q. Okay.

9 A. Yes.

10 Q. So, in looking over this project submittal
11 that you received, what were some of your initial
12 determinations? What is the review process that you go
13 through once you receive an application like this one?

14 A. Well, I consider the size of the disturbed
15 area. They also submit a set of construction drawings
16 as well as a report or engineering calculations that
17 include, you know, a narrative explaining what the
18 project is, you know, specifically. This form does
19 have -- this Notice of Intent form does have a lot of
20 information, you know, specifically identifies the
21 responsible party, the location of the site, the
22 approximate size of the disturbed area, and various
23 other things, but we also rely on a report that
24 includes a lot of narrative description as well as
25 supporting calculations to show that they meet some of

1 the requirements. And then we also review a set of
2 plans, engineer drawings, that are a physical
3 representation that show us on paper as well as what
4 the contractor or builder, any -- any parties involved
5 with the actual work, they refer to those drawings. So
6 we review those to make sure it's clear that, you know,
7 that the proposed project meets the requirements and
8 that, if the contractor follows those plans, they will
9 meet the requirements.

10 Q. Okay. During this initial review process,
11 are you talking to anyone else within the Department?
12 You mentioned the Coastal Zone Consistency
13 Certification used to be within the stormwater
14 permitting division and now they've been separated. Do
15 you communicate or exchange information or documents
16 with the Coastal Zone Consistency staff personnel in
17 relation to receiving an application for a stormwater
18 permit?

19 A. Yes. In fact, we ask that the applicant
20 provide an extra copy of this Notice of Intent form,
21 but if they don't, we make a copy. They also submit
22 with -- with their application an extra copy of the
23 site plan, and there also are a few forms that the
24 Coastal Zone Consistency staff request, and they --
25 that's -- that's part of the package that they send in

1 with this. And when the administrative assistant
2 receives this package, they will split it off. To save
3 everybody time, the administrative assistant who
4 receives it is technically in the stormwater section;
5 she enters it into our database, but it automatically
6 makes a duplicate entry for the Coastal Zone
7 Consistency staff, and then she takes their copies out
8 of the package, and we're in the same building, so she
9 just hands it off to the Coastal Zone Consistency
10 staff, and they -- they take it from there.

11 So, yes, there is -- you know, there are
12 additional forms that come in with this package that go
13 to them, but they need, you know, they need a copy of
14 this application as well.

15 Q. Okay.

16 (Deposition Exhibit No. 4 marked for
17 identification.)

18 BY MS. WHITE:

19 Q. Exhibit No. 4. These are diagrams from the
20 SWPPP, Storm Water -- I can't remember --

21 MS. ARMSTRONG: Pollution Prevention Plan.

22 Q. Storm Water Pollution Prevention Plan. I've
23 printed a full copy, if either of you would like to
24 verify that. I just didn't want to print several --
25 300 pages worth of documents. But if you turn to C6,

1 it's the sixth page. Do you see any sort of
2 identifying label on this diagram? Down near the
3 bottom, I believe.

4 A. Where it says, "Site and Staking Plan"?

5 Q. Yes. So is this what you were referring to,
6 similar types of diagrams that the applicant would
7 submit to show their site plan and what work they're
8 submitting as part of the project for your review?

9 A. Yes. This is -- is a typical site plan.
10 There are more detailed sheets that we look at that
11 give -- you know, from the stormwater perspective, give
12 a better idea in terms of how -- it gives a better idea
13 of the stormwater characteristics, the runoff
14 characteristics, that has -- it has contours,
15 elevations, topography, and drainage structures. This
16 does give a pretty good idea of the new structures that
17 will be in place.

18 Q. Right.

19 A. Like paving and buildings.

20 Q. As far as the overview goes --

21 A. Yes.

22 Q. -- of the proposed activity.

23 A. Yes.

24 Q. So could you look at this diagram and kind
25 of mark some of the activities that you were reviewing

1 for authorization under this stormwater permit?

2 A. Sure. There was -- a big portion of it is
3 this -- this -- it's labeled as Loop Road. It kind
4 of -- this road and an entrance to Alston Road. It
5 also included reshaping of an existing pond.

6 Q. And on that pond, can you verify where the
7 outline of the proposed reshaping is, and does it
8 include information of -- I believe there was an
9 existing pond there as well.

10 A. Yes, there is an existing pond shown on
11 this, and there is a delineation of a proposed reshaped
12 pond, yes.

13 Q. Okay.

14 A. You want me to mark that? I mean, this here
15 would be the existing.

16 Q. Right.

17 A. It's a little bit smaller. It's labeled
18 Existing Pond. Then there is a larger -- I can't
19 really describe the shape because it's a pretty odd
20 shape, but...

21 Q. Is it outlined differently?

22 A. It is outlined differently, looks -- I mean,
23 it's significantly larger than the original.

24 Q. It looks like it's a double-lined boundary
25 as well. Perhaps that's the way to describe it.

1 A. Yes.

2 Q. Okay. And I didn't mean to interrupt you,
3 if there was additional activities that you were
4 reviewing for authorization.

5 A. Well, it includes the road, that pond
6 reshaping, an additional building, and then the
7 associated --

8 Q. Is this proposed building above the pond
9 what you were referring to as the additional building?

10 A. Yes.

11 Q. So all of those activities that you were
12 just listing require a stormwater permit?

13 A. Yes.

14 Q. Okay. And do those activities include some
15 impacts to wetlands on site?

16 A. Yes.

17 Q. In particular, does the reshaping of the
18 pond as you described impact on-site wetlands?

19 A. Yes, it does.

20 Q. And does the construction of this proposed
21 building above the pond also impact wetlands?

22 A. Yes, it appears to.

23 Q. Okay. When you were doing your review of
24 this -- these activities for approval for a stormwater
25 permit, did you take into consideration those impacts

1 to the wetlands on site?

2 A. Yes, from the standpoint that I verify -- I
3 had to verify that they obtained authorization from the
4 Army Corps of Engineers for those impacts.

5 Q. How did you verify that?

6 A. I required a copy of the authorization.

7 Q. Did you ask the applicant for that, for a
8 copy of the authorization?

9 A. I don't recall if I asked the applicant
10 directly for it. There -- you know, sometimes it's
11 easy enough for me to find those authorizations in --
12 you know, copies of them from other staff that might --
13 might have been involved in that authorization, but I
14 think, if I recall correctly, that I actually obtained
15 it from the Coastal Zone Consistency staff that did the
16 certification of the Corps authorization. I think that
17 was Chris Stout, Myrtle Beach office. Because that's
18 another thing that I -- because I know that state --
19 that any permit application in the coastal zone has to
20 have that Coastal Zone Consistency. I also asked for
21 or obtained, I should say, a copy of that Coastal Zone
22 Consistency associated with that wetland permit, and
23 because I knew that that OCRM staff that would have
24 that Coastal Zone Consistency would base that
25 consistency on the Corps' authorization, so it's

1 easier -- easy enough for me to ask him just to send me
2 a copy of that with his certification. So I obtained
3 both of those before I issued coverage for this.

4 Q. Okay. In considering the impacts as we were
5 talking about to wetlands and your review for the
6 stormwater permit, I understand that there was a
7 nationwide permit that was also -- that applicant also
8 received coverage under a nationwide permit. But as
9 far as your review goes, did it include runoff
10 considerations and other impacts related to stormwater
11 to the wetlands on site in relation to the proposed
12 activities?

13 A. Yes. It would be -- it would have to be
14 reflected in the calculations. There is a specific --
15 I mean, it's based on cover type. So if you have, for
16 example, impervious parking lot would be represented,
17 you know, as completely impervious, no infiltration,
18 versus a wooded area would be very impervious -- I mean
19 very pervious, I should say, and a lot of rainfall
20 would infiltrate, in wetlands there would be a certain
21 amount of infiltration as well as storage. So that
22 would be reflected in those calculations that I
23 reviewed.

24 Q. Okay.

25 A. And so it would be -- it would be compared

1 to the existing conditions versus the proposed
2 conditions, so the existing conditions should show
3 pervious areas and reflect the wetlands, and then the
4 post-construction conditions would reflect a lot more
5 impervious, but, also, it would reflect the expansion
6 to the pond, so there would be more storage for that
7 runoff, which would, you know, counter both the
8 increase in impervious surface but also the reduction
9 in storage that the wetland might have provided.

10 Q. Okay. During your review of this project, I
11 want to talk a little bit about your communications
12 with the applicant.

13 A. Uh-huh.

14 (Deposition Exhibit Nos. 5, 6 and 7 marked
15 for identification.)

16 BY MS. WHITE:

17 Q. Okay. Do you recall the first time you --
18 when you first received the application and reviewed
19 the project, do you recall having to ask the applicant
20 for additional information?

21 A. Yes.

22 Q. And in Exhibit No. 5, a letter dated
23 July 20th, 2012, does that embody the first
24 communication you had with the applicant once you
25 received the project?

1 A. It is definitely my first round of technical
2 review comments. I don't recall whether I might have
3 had a conversation about, you know, preliminary or --
4 We often have, you know, conversations prior to the
5 application just to make sure they get the right
6 information together, so -- and if maybe something
7 minor were missing, you know, before I got into the
8 details of the technical review, I might have asked for
9 some of that. I don't recall whether that happened
10 with this. But this is definitely a formal technical
11 review comment letter, and it looks to be the first one
12 I issued on this.

13 Q. Okay. And do you remember whether you
14 received a response from the applicant in regards to
15 what you requested or commented on in that letter?

16 A. I eventually received a response. I don't
17 recall exactly when that was. I know this process went
18 on quite a long time.

19 Q. Do you recall contacting the applicant and
20 informing them that they would need to -- I think you
21 mentioned this, actually, earlier, that they would need
22 to submit a new NOI?

23 A. Yes, we -- we did that with a lot of
24 projects that were under review or, I should say, the
25 application had already been submitted, but a final

1 decision, a determination, and a permit had not been
2 issued yet, and with a -- The permit is a construction
3 general permit, which is typically reviewed or revised
4 every five years. And so what they're applying for is
5 coverage under a general permit, and, you know, to keep
6 that general permit up to date, it's revised every five
7 years.

8 Well, the new construction general permit
9 was approved in October of 2012 to be effective January
10 1st of 2013, so in December we sent out a lot of
11 letters or e-mails and made contact with many
12 applicants who were in the same boat where they -- we
13 had issued technical review comments, we hadn't
14 received an adequate response to those comments, so we
15 were notifying them that a new application would be
16 required and it would be -- because it's a new general
17 permit, there would be additional review comments if
18 they didn't address these and obtain coverage before
19 December 31st or by December 31st, I should say.

20 Q. Okay. And this is an e-mail, Exhibit 6.
21 Does that appear to be an example of what you just
22 said, reaching out to the clients and letting them know
23 about the new NOI that was going to become effective in
24 January of 2013?

25 A. Yes, that's what that is.

1 Q. And that's an e-mail from you to the church,
2 someone on behalf of the church, that submitted the
3 application?

4 A. Right. Yes, correct.

5 Q. Okay. And do you recall if they ever
6 responded to you or submitted what was required or
7 requested?

8 A. I know they did eventually. I don't recall
9 exactly when, again, because I know we went through
10 several -- several rounds of comments.

11 Q. Just following up, this is a letter dated
12 January 30th, 2013, where I believe you're again
13 reminding of the new NOI; is that correct?

14 A. That's correct.

15 Q. Okay. Do you remember when the applicant
16 responded to these communications, and, if so -- or, at
17 least, do you remember what they said when they did
18 contact you after you had sent these letters and
19 e-mails?

20 A. I don't recall the exact conversation. I
21 know we had several -- I know there were several
22 follow-ups in an effort to try and get this
23 information, and I know it took a significant amount of
24 time to get that. I really think it was late in 2013
25 before we got a substantial response from them, but I

1 don't recall the exact date.

2 (Deposition Exhibit No. 8 marked for
3 identification.)

4 BY MS. WHITE:

5 Q. Do you recall the applicant asking you to
6 place the project review on hold?

7 A. I don't recall.

8 (Deposition Exhibit No. 9 marked for
9 identification.)

10 BY MS. WHITE:

11 Q. Are you aware of a Consent Order of
12 Settlement and Dismissal with regards -- that was
13 entered into by OCRM, DHEC/OCRM, the church, and the
14 Mims and the Abels back in 2001?

15 A. I'm not extremely familiar with it, but yes,
16 I'm aware of it.

17 Q. Do you recall when that first was brought to
18 your attention?

19 A. I think that was -- I don't recall an exact
20 date, but I think it was early on in the process,
21 shortly -- it was -- it was probably about the time I,
22 you know, or shortly before, but in the range of when I
23 issued that first round of technical comments that I
24 think it...

25 Q. And this is Exhibit 8. It's a letter

1 from -- addressed to you from the church discussing the
2 Consent Order and, on the second page, asking you to
3 place the project review on hold. Do you recall
4 receiving that letter?

5 A. Yeah.

6 Q. Do you recall if that was the first you had
7 heard of the Consent Order that's referenced in that
8 letter?

9 A. No. I think it was -- I think it was before
10 this. I think it was in the early stages of the review
11 when I looked at the -- any previous permits that might
12 have been issued for -- for the site in an effort to
13 make sure that, you know, from a stormwater standpoint,
14 we consider cumulative impacts, you know, of what we
15 call a larger common plan. If they added some parking
16 or impervious sometime in the past and now they're
17 adding more, we need to make sure that what we're
18 comparing, you know, in terms of stormwater
19 calculations includes both of those improvements and
20 the stormwater system accounts for all of that.

21 Q. So does the Department have -- keep track of
22 properties that have received authorizations
23 previously? In reviewing a project, like you said, how
24 do you go about checking to see what was authorized
25 before or if anything was authorized before in order to

1 make those determinations?

2 A. Well, on the Notice of Intent, this
3 application that we were discussing earlier, it does
4 have a place that the -- I'm trying to find where it
5 is. Yeah, there's an item on that first page of that
6 application that asks, Is this project part of a larger
7 common plan or sale? And -- and that's -- that's
8 indication right there as to whether it was part of --
9 I mean as to whether it's part of a larger common plan.
10 Then we take that information and make sure that
11 they've, you know, considered that in their stormwater
12 calculations. And so, you know, we'll -- you know,
13 that will prompt us to look into that history, and we
14 can pull old files.

15 Q. Okay. I see. So on the first page of the
16 Notice of Intent, under Section III, Site Information?

17 A. Yes, item B of that section, yes.

18 Q. So the Department keeps some sort of record
19 that you're able to access when an applicant flags that
20 it's -- the project is part of a larger overall plan,
21 you're able to see what other authorizations or
22 activity has been -- or review has been undertaken?

23 A. Yes.

24 Q. Okay. And when you did that, what did it
25 alert you to?

1 A. Well, I could see that it was, you know,
2 some kind of settlement agreement or, you know,
3 additional conditions, you know, tacked onto that
4 permit that were, you know, associated with the
5 Coastal --

6 Q. Do you know if you saw a copy of the
7 settlement agreement?

8 A. I don't remember if I saw, you know, a copy
9 of that particular agreement. I...

10 Q. Can you recall what you understood to be the
11 significance of the Consent Order and Settlement
12 Agreement?

13 A. I understand -- I understood that it was --
14 you know, it added conditions to that original permit
15 and that there was, you know, some kind of, you know,
16 discussion, you know, to -- you know, in an effort to
17 move forward with the project between the neighbors and
18 the -- and the applicant, the church, and I don't -- I
19 mean...

20 Q. When you say original permit, do you know
21 what the original permit was, what kind of permit it
22 was?

23 A. There was a stormwater permit.

24 Q. Okay.

25 A. That was -- I mean, that's what I was

1 looking at.

2 Q. Okay.

3 A. So I didn't go into the details, and that's
4 why I don't recall whether I actually, you know, saw
5 that, you know, the particular, you know, settlement
6 agreement. I don't recall whether I, you know, saw
7 that specifically. And I'm sure I didn't -- I mean, I
8 shouldn't say I'm sure. I don't think I -- I think I
9 would have remembered if I, you know, ran into the
10 details and really, you know...

11 Q. Do you remember if it affected your review
12 process of the project at all?

13 A. Not -- The agreement, no. It was the, you
14 know, the stormwater, you know, the plans and the
15 calculations that I would have spent time on that would
16 have...

17 Q. I'm going to hand you Exhibit No. 9. This
18 is a copy of the Consent Order and Settlement
19 Agreement. Having it in front of you and flipping
20 through it, does it look at all more familiar, or are
21 you still unsure that you actually read through the
22 document?

23 A. I'm pretty sure I've read through the
24 document, yes. I'm not sure that I, you know, spent
25 any time on it, you know, when I first discovered it,

1 which was what I was -- I thought we were talking
2 about --

3 Q. Right.

4 A. -- previously, when I first looked at it and
5 was doing the review in July of 2012.

6 Q. Okay.

7 A. But since then, you know, I've seen it.

8 Q. And you mentioned that it included some
9 conditions to the original stormwater permit?

10 A. The settlement agreement?

11 Q. Consent Order and Settlement Agreement. Do
12 you recall whether that -- the conditions -- do you
13 recall whether -- or in the Department's file or system
14 on this -- the original permit that was the subject of
15 the Consent Order, what those conditions were on the
16 permit?

17 A. I don't recall what those were.

18 Q. Okay. Since moving beyond your first,
19 initial review of the project and speaking more
20 generally over kind of the lifetime of this project
21 when it was in your review, have you gotten a sense of
22 the significance or what the Consent Order and
23 Settlement Agreement, what was agreed to in the Consent
24 Order and Settlement Agreement?

25 A. I have a general idea.

1 Q. What is your general understanding of the
2 Consent Order?

3 A. That the neighbors were, you know,
4 interested in keeping, you know, a buffer and
5 preventing, you know, wetland impacts. I mean, that's
6 as much as I really understand.

7 Q. Do you recall whether there was a
8 requirement that wetlands on the church's property be
9 remained in their natural state?

10 A. That sounds -- yes, that sounds familiar.

11 Q. And you don't remember when you first became
12 aware of this Consent Order?

13 A. I'm not sure.

14 Q. Did you discuss the Order or what impact, if
15 any, it might have on your review process with any
16 other Department staff?

17 A. We discussed it, you know, in part of staff
18 meetings, discussed it in various stages of the project
19 review.

20 Q. Did the Department staff come to any
21 conclusions about what to do with this Consent Order,
22 given the project submittal that you had received?

23 A. From a stormwater standpoint, which is all I
24 can, you know, attest to, is that it's a -- it's not
25 something that affects the -- I mean the changes, you

1 know, proposed by this new application, you know, the
2 changes to the stormwater system were sufficiently --
3 and the runoff categories were sufficiently addressed
4 by the engineer in his stormwater management plan, in
5 his calculations, to account for this -- for this
6 change, and that, you know, so -- so from a stormwater
7 standpoint, they addressed all the stormwater
8 requirements --

9 Q. Okay.

10 A. -- for the application that was, you know,
11 under review.

12 Q. If you pull back out Exhibit No. 4, this is
13 the diagram, the site plan. You discussed some of the
14 activities that were going -- you were reviewing to be
15 authorized under the stormwater permit, and you said
16 some of those did include impacts to wetlands.

17 A. Correct.

18 Q. Including the reshaping of the pond and this
19 proposed building that you outlined?

20 A. Correct.

21 Q. And in this Consent Order, if you flip to
22 page 2, could you read that item number 1?

23 A. You want me to read it outloud?

24 Q. Yes, please.

25 A. "The designs for the stormwater pond and

1 other improvements at the site shall be amended so that
2 approximately one-half (50 percent) of the wetland area
3 on the site shall be preserved."

4 Q. So in reviewing activities that will impact
5 those wetlands, remaining wetlands, that the Order
6 states shall be preserved, as you just read, is it your
7 position that stormwater permit does not take into
8 consideration the requirements of that Consent Order?

9 MR. HABER: Object to the form.

10 A. I think that the design of the, you know, of
11 the pond meets the stormwater requirements, you know,
12 and the permit requirements and that, you know, the
13 permit itself, you know, doesn't authorize the wetland
14 impacts. So, you know, whether or not they're
15 preserved is -- to me, is up to whoever authorizes
16 those -- those impacts. My concern is whether the
17 stormwater system, you know, accounts for the changes
18 to runoff characteristics and prevents pollution, and
19 that's, you know -- so I found -- ultimately found, you
20 know, before I issued the permit, that it met those
21 requirements.

22 Q. Okay. So are you saying that you believe
23 the reshaping of this pond, authorizing the reshaping
24 of that pond, the construction activity that would go
25 into that, that is authorized under the stormwater

1 permit; is that correct? Am I understanding you
2 correctly?

3 MR. HABER: Object to the form.

4 A. What I'm saying is that that pond, the
5 characteristics of that pond, the expanded form of it
6 addressed the stormwater requirements, and that's all I
7 could attest to. Now, you know, in terms of, you know,
8 authorizing -- I mean, you know, because it overlaps,
9 you know, wetlands or includes impact to wetlands, that
10 prompted me to say, I'm not going to issue this until
11 it's authorized by the Corps of Engineers, and that is
12 really as far as I can go with, you know, respect to
13 the stormwater permit. You know, I'm not -- I didn't
14 authorize it. I just, you know, approved it because it
15 met the stormwater permitting requirements, and
16 somebody else authorized the wetland impacts.

17 Q. Okay. I asked you whether you spoke with
18 other Department staff about the Consent Order. Do you
19 recall whether you spoke to the applicant about the
20 Consent Order and how it might affect your review, if
21 at all?

22 A. I don't recall.

23 (Deposition Exhibit No. 10 marked for
24 identification.)
25

1 BY MS. WHITE:

2 Q. Exhibit No. 10 is some e-mail communications
3 between you and I believe some members or some of the
4 people who submitted the project on behalf of the
5 church. Do you recall having those conversations?

6 A. Yes.

7 Q. And is it your understanding that there was
8 some action being taken to modify the Consent Order?

9 A. Yes, I understand that -- I mean, I don't
10 know the details of how that was occurring. I just
11 know that there was -- you know, I do recall an attempt
12 to modify those.

13 Q. And is it correct that the applicant in
14 those e-mail communications in Exhibit 10 is notifying
15 you that some of that modification or attempted
16 modification is taking place?

17 A. Yeah, that's what it looks like, and I
18 vaguely recall that. The bulk of what this e-mail
19 chain is showing here is that, you know, from my
20 aspect, is that we had issued technical review
21 comments, and we had not received a response, and so we
22 were trying, just as an effort to follow up with the
23 consultant and the church, to find out if those, you
24 know, technical review comments were being addressed,
25 and, if so, you know, when we could expect them because

1 if the project was, you know -- should be considered,
2 we wanted to know that so that we would no longer waste
3 our time on it.

4 (Deposition Exhibit No. 11 marked for
5 identification.)

6 BY MS. WHITE:

7 Q. This is a letter from the applicant stating
8 that it's a response to your letter dated July 20th,
9 2012.

10 A. Yes.

11 Q. Is that what you were referring to in
12 needing a response to the technical comments that you
13 had provided?

14 A. Yes, that is -- that is a response, one of
15 their responses, to technical review comments, yes.

16 Q. And included in that response is a letter
17 drafted by Christine in the OCRM division?

18 A. Yes, I see that.

19 Q. Do you recall receiving that letter?

20 A. I recall seeing this letter, yes. I don't
21 remember whether it was part of this letter or not. I
22 can't remember. But I do recall seeing that.

23 Q. And can you summarize what she states in
24 that letter, in the letter from Christine that's
25 attached?

1 A. I'm sorry. Could you repeat the question?

2 Q. You said that you had -- you recalled seeing
3 that letter from Christine from the OCRM division, and
4 I was asking if you could summarize generally the
5 purpose of that letter, what she's stating in that
6 letter?

7 A. Sure. Give me a second to refresh my
8 memory.

9 It basically indicates that the Coastal Zone
10 Consistency Certification would be, you know, basically
11 on hold until, you know, until the Consent Order
12 settlement was -- was resolved, until that issue was
13 resolved.

14 Q. Okay. And did the OCRM staff's position
15 affect how you moved forward with your review of the
16 project at all?

17 A. Yes. I mean, well, it -- it did. I mean,
18 it means that I can't issue the stormwater approval
19 until I receive that certification from them, so, you
20 know, so it affects it in that way. If they can't
21 issue the Coastal Zone Consistency, then --- then I
22 can't issue the NPDES construction general permit
23 coverage for the project. That's how it affects.

24 Q. Going back to the Consent Order briefly,
25 Exhibit 9, I think.

1 A. Yes.

2 Q. If you can turn to the last page. This is
3 Exhibit A to the Consent Order. Are you able to
4 decipher what is going on in that diagram, what the
5 purpose of that diagram is?

6 A. It shows -- it shows the pond and various
7 pipes coming into it and a pipe exiting it. It shows a
8 proposed building. And I believe that's -- it's not
9 labeled, but it could be wetlands, the typical symbol
10 for wetlands.

11 Q. Where are you talking about?

12 A. This area here with the little -- I don't
13 know how to...

14 Q. To the right of the pond?

15 A. Yes. And it overlaps the pond some as well.

16 Q. If you also flip back to paragraph number 1
17 that you read outloud a few moments ago, that
18 references Exhibit A?

19 A. Yes.

20 Q. If you read that again, does it provide more
21 clarification as to what that exhibit is showing?

22 A. I mean it -- it says -- to me, it says the
23 same thing that I stated. I mean it's showing -- it's
24 showing a pond. And, I mean, I guess I assumed that --
25 it's showing the location of the pond. I guess I

1 didn't clearly state that. But it is showing a pond
2 and obviously a -- obviously, to me, the location of
3 the pond, where it should be oriented.

4 Q. Where the pond should be located under this
5 order; is that what you mean or is that what you said?
6 It's showing the location...

7 A. Yes, that's what I meant.

8 Q. Okay. Does this Exhibit A modify or change
9 that language that you read in the Consent Order in any
10 way that you can determine, or do they appear to be
11 consistent, do they appear to be inconsistent or...

12 MR. HABER: Object to the form.

13 A. I'm not sure I understand the question.

14 BY MS. WHITE:

15 Q. I'm trying to think of a better way to ask
16 this. I can come back to that while I think about it.

17 We've moved from when the project was first
18 submitted to you in 2012 to 2013, I believe, where
19 those e-mail communications between you and the client
20 in Exhibit 10, and also 2013 was that letter from the
21 client or from -- excuse me, not client -- applicant.
22 Do you recall what happened next in the review process?

23 A. Actually, I believe there was another round
24 of comments.

25 Q. Comments issued by you, by the stormwater...

1 A. I believe so. I think that there were still
2 some outstanding items, you know, that weren't
3 sufficiently addressed, and I believe I requested more
4 items or some clarification.

5 (Deposition Exhibit No. 12 marked for
6 identification.)

7 BY MS. WHITE:

8 Q. Does this letter dated September 17th, 2012,
9 appear to embody those requests for additional
10 information?

11 A. It's September of 2013. You said 2012.

12 Q. Excuse me. Yes.

13 A. It's Exhibit 12. But, yes, that's -- that's
14 what it looks like. That makes sense, yes. If I
15 received this Exhibit 11 on the 3rd of September, that
16 I would -- probably would have been the 17th when I
17 responded. That makes sense.

18 Q. Okay. So the review process was continuing
19 to move forward; is that correct?

20 A. Yes.

21 Q. And that letter embodies that you were still
22 asking for and receiving additional information from
23 the applicant?

24 A. Right.

25 (Deposition Exhibit No. 13 marked for

1 identification.)

2 BY MS. WHITE:

3 Q. One of the requests that you made in the
4 September 17th letter was for a new NOI?

5 A. Yes.

6 Q. And was that, as you discussed earlier,
7 because the general permit was updated --

8 A. Yes.

9 Q. -- as of January 2013?

10 A. Yes. So it was a new -- new form for the
11 NOI, and it was as -- there's some -- just a slightly
12 different format that we needed a revised form for.

13 Q. And I'm going to hand you Exhibit 13. This
14 is dated January 15th, 2014. Does that appear to be a
15 response letter from the applicant to your September
16 17th letter including a revised NOI for the project?

17 A. Yes.

18 Q. And do you recall whether there was
19 additional information that was requested or what
20 happened next in your review process of the
21 application?

22 A. I would have reviewed this, the information
23 that he submitted. I don't recall if -- I mean, I know
24 that -- I don't recall what was next in the process. I
25 know that, you know, I would ultimately need, you know,

1 additional sets of plans, you know, for issuing the
2 approval and, you know, the Coastal Zone Consistency
3 Certifications that I mentioned before, so those -- you
4 know, those -- those, at least, you know, I would have,
5 you know, been looking for, you know, if -- if this
6 sufficiently addressed all my previous comments, and I
7 don't recall if I had another round.

8 Q. But mostly technical comments by you, the
9 applicant responding, that was -- was that -- is that
10 an accurate summary of the communications between you
11 and the applicant?

12 A. Yes.

13 Q. And do you remember approximately when you
14 made a final decision on this project?

15 A. I don't remember the exact date. Sometime
16 maybe February or March or April.

17 (Deposition Exhibit No. 14 marked for
18 identification.)

19 BY MS. WHITE:

20 Q. This is Exhibit 14. Does that appear to be
21 what you issued as your final decision document?

22 A. Yes.

23 Q. So is that what would be the stormwater
24 permit?

25 A. Yes.

1 Q. Okay.

2 A. It would -- I mean, this is the approval
3 letter. There would be plans that were stamped
4 approved, a stamp similar to this.

5 Q. You're pointing to the NOI?

6 A. Right, the stamp in the upper right-hand
7 corner of the NOI, a stamp just like that on the plans
8 indicating that the plans, you know, met the
9 requirements and that a set of those plans with that
10 stamp on it would have to be on site during the
11 construction activity. So approval includes both this
12 Exhibit 14 that you handed me as well as a set of plans
13 that would -- with that stamp on it.

14 Q. Would they be the plans similar or the plans
15 that were in this SWPPP document?

16 A. They would be very similar. We would have
17 stamped the front page. And we don't -- we don't
18 always do that for the reduced plans that are part of
19 that report that I mentioned. Typically they're large
20 format plans that are much more legible than these
21 reduced sets, so...

22 Q. Okay. So, ultimately, what were your final
23 conclusions with regards to this project?

24 A. Well, the stormwater system and pollution
25 prevention plan that they proposed for the project, you

1 know, met the stormwater requirements, and that, you
2 know, I received Coastal Zone Consistency Certification
3 from OCRM division both for this stormwater permit
4 and/or the wetland permit, and I had received a copy of
5 that wetland permit authorization.

6 Q. In that first letter at the first page of
7 Exhibit 14, in the first paragraph, it states that the
8 total disturbed area is 2.2 acres?

9 A. Yes.

10 Q. Do you know what that -- is that figure --
11 does it represent all of these activities that you
12 described on the diagram on Exhibit 4? Is it just --
13 just a summary of all the different activities across
14 the entire project site?

15 A. The 2.2 acres is -- is disturbed area, so
16 that is area that's going to be either graded, cleared,
17 or excavated as part of this particular phase of the
18 project. As I recall, there might have been future
19 phases shown in some of the plans, my memory is now,
20 but -- so I would be more comfortable saying -- you
21 know, pointing to that 2.2 acres, I would be more
22 comfortable in looking at a set of plans that we
23 stamped, you know, and know that that's the final set,
24 and I could point out those 2.2 acres if you wanted me
25 to. But that is specific to, you know, to the area of

1 land disturbance.

2 Q. Okay. I was just trying to have, I guess, a
3 general understanding of what that number related to
4 with regards to the proposed activities that the
5 applicant said -- included in their original
6 application.

7 A. Uh-huh. That would include the pond
8 expansion, some roadway work, some parking work, and
9 additional building, so any kind of area, it would have
10 to bulldoze, excavate, or bring in fill to install
11 those features.

12 Q. Okay.

13 MR. HABER: Can we take a break for a
14 second?

15 MS. WHITE: Yeah.

16 (Recess taken.)

17 BY MS. WHITE:

18 Q. Just a couple more questions. I had asked
19 you about whether you discussed the Consent Order with
20 other staff. Do you recall generally what those
21 conversations and discussions entailed?

22 A. Not -- not in any detail, just that -- just
23 that it was -- you know, that there is a permit
24 history, you know, with the site and that -- that we
25 were aware of that, you know, agreement and needed to

1 consider it.

2 Q. Did anyone express concern about the Consent
3 Order?

4 A. I mean, I'm not sure what you mean by
5 "concern," but, I mean, there were, you know,
6 discussions about, you know, whether it should be, you
7 know, modified or, you know, or considered at all, you
8 know, or how to have it addressed. But that was -- you
9 know, I was not, you know, a part of all the discussion
10 because it seemed to be more of a Coastal Zone
11 Consistency issue than stormwater.

12 Q. Generally, when -- when the Department or
13 agency enters into a Consent Order like the one that we
14 had in this case, are all sections of the Department
15 bound by the terms of the Order?

16 MR. HABER: Objection. It's outside of the
17 scope.

18 A. I mean, I don't -- I don't know. I mean I
19 don't -- I mean, I would assume it depends on the
20 permit and the content of the agreement.

21 Q. At any time during your review of this
22 project, did you ever have concerns about the
23 existence -- about authorizing the project, issuing the
24 stormwater permit, given the existence of the Consent
25 Order?

1 A. You know, at the point I made my decision,
2 no. I mean we, you know, discussed it, you know,
3 internally and, you know, made a determination to move
4 forward, so...

5 Q. But, in general, over your entire review
6 process, did you ever have a concern or a moment where
7 you believed...

8 MR. HABER: Objection. Asked and answered.

9 A. I mean I -- my concern during the review was
10 whether or not the application calculations report and
11 plans met the requirements, the stormwater
12 requirements. That's -- those were my concerns, you
13 know.

14 Q. Okay. With regard to this Exhibit A of the
15 Consent Order, does Exhibit A affect the language in
16 condition one of the Consent Order in any way?

17 A. I'm not sure what you're asking. Could
18 you -- when you -- are you referring back to this?

19 Q. That first paragraph, yes.

20 A. I mean, this -- I mean, to me, this is just
21 a physical representation of what they're trying to say
22 here. I mean I referenced this exhibit, so...

23 Q. But is Exhibit A different than the language
24 of the Consent Order in condition one?

25 A. I don't -- I mean, I don't see how it could

1 be because, I mean, to me, it's -- it's -- it just says
2 that it shall be configured as depicted in this
3 exhibit. I mean, unless I'm understanding your
4 question wrong, I mean, this is referring to that, so
5 how could it be different?

6 MS. WHITE: I believe that's all the
7 questions.

8 CROSS-EXAMINATION

9 BY MR. STACY:

10 Q. Mr. Geer, I'm Dan Stacy. I'm here
11 representing the Pawleys Island Community Church. I
12 just really have one question for you.

13 The stormwater pollution prevention and
14 protection plan submitted by my client with respect to
15 this phase, did they comply in all respects with your
16 current requirements such that the permit was issued?

17 A. Yes, with regard to the NPDES construction
18 general permit, yes.

19 MR. STACY: Thank you.

20 CROSS-EXAMINATION

21 BY MR. HABER:

22 Q. A couple follow-up questions. Can you pull
23 out what's been labeled as Petitioner's 13 and
24 Petitioner's 3, I believe?

25 Okay. Looking at, first, Petitioner's

1 Exhibit 3, is that the original NOI that was submitted
2 by the applicant?

3 A. Yes.

4 Q. Okay. And as to Exhibit 13, is that an
5 updated NOI that was submitted by the applicant?

6 A. Yes.

7 Q. If you can, look at the first page of the
8 Exhibit 3, please, and specifically look at Section
9 IV.B.a. Do you see that? Within there, do you see
10 whether or not a Yes or a No is checked off in the box
11 under impacts to jurisdictional wetlands?

12 A. This exhibit says no impacts to
13 jurisdictional wetlands.

14 Q. Okay. Is it true, though, that -- Strike
15 that.

16 If you could, look at Exhibit 13, that NOI,
17 please.

18 A. Yes.

19 Q. If you could flip to page -- the second page
20 of that, under Section V.B.a. again?

21 A. Yes.

22 Q. Do you see anything different in that
23 NOI than in the first NOI?

24 A. Yes. This one indicates there are
25 jurisdictional wetland impacts.

1 Q. Okay. And with the permit that you issued,
2 which NOI were you utilizing to make that decision?

3 A. The NOI that was received on January 16th,
4 2014, the one indicated in Exhibit 13.

5 Q. Okay. Just for clarity, that's the most
6 recent of those two NOIs; correct?

7 A. Yes.

8 Q. And that one does have the box checked off
9 for wetland impacts?

10 A. Yes.

11 Q. Now, if you could, pull what's been labeled
12 as Petitioner's Exhibit No. 9. It should be a copy of
13 the Consent Order of Settlement and Dismissal.

14 A. Yes.

15 Q. Okay. There's some questions that you were
16 being asked regarding conditions of this agreement. Do
17 you recall that?

18 A. Yes.

19 Q. Would you be of the opinion that these
20 conditions that are in place within this exhibit are
21 reflected in the activity that was conducted after it
22 was executed?

23 A. Could you reask that again?

24 Q. Yeah. That wasn't very clear. Try that
25 again.

1 These conditions that were in place under
2 this Consent Order, say, for instance, a 30-foot noise
3 and visual buffer, do you know whether or not they were
4 put into place when this construction was undertaken?

5 A. I don't -- I don't know that for sure.

6 Q. Okay. What is your opinion as to the effect
7 of this Consent Order to the permit that you have just
8 issued?

9 A. It's -- it doesn't -- I don't see that it
10 applies to the permit --

11 Q. Okay.

12 A. -- I just issued.

13 Q. I was trying to find your authorization.
14 Okay. I think it's been marked as Petitioner's Exhibit
15 14. Do you see that?

16 A. Yes.

17 Q. Could you flip to page 2 of that exhibit?

18 A. Yes.

19 Q. Could you read the last paragraph? And it
20 goes over to page 3, please.

21 A. It says, "You are responsible for obtaining
22 any other federal, state, or local permit that may be
23 required for this project; in particular, any permits
24 through the U.S. Army Corps of Engineers for placement
25 of fill material in Waters of the United States."

1 Q. That's good. And is this a part of your
2 document?

3 A. Yes.

4 Q. Do you recall in the review process whether
5 or not it was brought to your attention that the Mims
6 had any conditions they wanted to put in place on this
7 permit as applied?

8 A. I don't recall being approached with any
9 additional conditions for this permit, no.

10 Q. Do you recall whether the -- Strike that.

11 MR. HABER: No further questions.

12 MS. WHITE: No further questions.

13 (The deposition concluded at 11:51 a.m.)

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition of Richard Geer; and that the transcript is a true record of the testimony given by the witness, and was sworn as such.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 14th day of November, 2014, in the City of Charleston, County of Charleston, State of South Carolina.

Kendra E. Johnston, RPR,

CRR and Notary Public

My commission expires:

August 24, 2022

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dan Abel, Mary Abel and)
William Mashburn,)
)
Petitioners,)
)
v.) Docket No.:
) 14-ALC-07-0282-CC
South Carolina Department of)
Health and Environmental Control)
and Pawleys Island Community Church,)
)
Respondents.)

DEPOSITION OF: CHRISTINE KOCZERA
DATE TAKEN: Monday, November 10, 2014
TIME: 12:03 p.m.
PLACE: Nexsen Pruet
205 King Street
Charleston, South Carolina
REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional Reporter,
Certified Realtime Reporter
and Notary Public

POST OFFICE BOX 21784
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Exhibit 2

A P P E A R A N C E S

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I N D E X

Testimony of Christine Koczera

Direct Examination by Ms. White.....	4
Cross-Examination by Mr. Stacy.....	48
Cross-Examination by Mr. Haber.....	50

CERTIFICATE.....	54

INDEX OF EXHIBITS

Deposition Exhibit 15 - CZC Request.....	7
Deposition Exhibit 16 - July 10, 2012, e-mail from Koczera.....	11
Deposition Exhibit 17 - E-mail attaching revised NOI.....	14
Deposition Exhibit 18 - July 17, 2012, e-mails....	14
Deposition Exhibit 19 - Coastal Zone Inconsistency Memorandum..	24
Deposition Exhibit 20 - E-mail from Koczera.....	27
Deposition Exhibit 21 - E-mails.....	29
Deposition Exhibit 22 - E-mails.....	29
Deposition Exhibit 23 - October 31, 2012, letter from Koczera.....	31
Deposition Exhibit 24 - Project Event Log.....	32
Deposition Exhibit 25 - CZC Certification.....	35

STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent.

1 (The deposition commenced at 12:03 p.m.)

2 CHRISTINE KOCZERA, SWORN.

3 DIRECT EXAMINATION

4 BY MS. WHITE:

5 Q. Hi, Christine. My name is Jessie White.

6 I'm one of the attorneys for the petitioners, Dan and
7 Mary Abel, in this case. If you have any questions at
8 any time during this deposition, please ask and please
9 direct them to me. Now that we've commenced the
10 deposition, you can no longer consult with your
11 counsel.

12 A. Okay.

13 Q. So if anything is unclear or you need me to
14 restate, rephrase, just let me know.

15 A. Okay.

16 Q. I'm not trying to trick you, so if you don't
17 understand me, I would like to know, too. Okay?

18 A. Okay.

19 Q. Have you seen -- This is Exhibit 1, the
20 Notice of Deposition. Have you seen this before?

21 A. Yes, I believe I -- Yes.

22 Q. Do you understand that you've been
23 designated on behalf of the Department to provide
24 testimony as outlined in that document?

25 A. Uh-huh.

1 Q. With regard to those topics?

2 A. Yes.

3 Q. Okay. To start, I'd like to hear a little
4 bit about your background and training and your job
5 with the Department, what your role with the Department
6 is.

7 A. Background as far as from college on or just
8 with DHEC in general?

9 Q. Just with DHEC is fine.

10 A. I've been employed with DHEC for seven
11 years, just over; originally came in as a coordinator
12 for the stormwater section; my background with NPDES
13 stormwater inspecting, stormwater regs. When DHEC --
14 What's the word I'm looking for? In 2012 DHEC kind of
15 restructured and Bureau of Water separated from the
16 Coastal Zone Consistency. At that time I became a
17 project manager for the Coastal Zone Consistency
18 section, and then my role would be to review state and
19 federal application funding assistance to ensure that
20 they're consistent with the Coastal Zone Management
21 Program.

22 Q. Okay. Do you recall when this project for
23 proposed expansions to the church property came to your
24 attention?

25 A. Late June of 2012. Yeah. I think the date

1 is the 26th, but I don't want to...

2 Q. Do you recall what the request included,
3 what authorizations it was seeking, what the project
4 was about?

5 A. It was a land disturbance, an NPDES
6 stormwater land disturbance permit application for an
7 expansion of the church facility for parking, a
8 building, some stormwater management reconstruction,
9 and an entranceway.

10 Q. Okay. And so it was for a stormwater
11 permit?

12 A. Uh-huh.

13 Q. But did you receive an application
14 separately or what -- what exactly did you receive that
15 first notified you about this project and prompted your
16 review?

17 A. A storm -- Okay. Sorry. A CZC
18 certification is initiated by a permit. We can't do a
19 certification without a permit request. So the permit
20 request will go to Bureau of Water, and at that time a
21 CZC request will be submitted with that. Once Bureau
22 of Water gets it, they separate the CZC component and
23 forward it over to us, and then we begin that review
24 for that permit. So at that time is when I got the
25 request form and, yeah, the request form to do a CZC

1 review for that permit.

2 Q. Okay.

3 (Deposition Exhibit No. 15 marked for
4 identification.)

5 BY MS. WHITE:

6 Q. This is Exhibit 15 I'm handing you. Do you
7 recall if this is what you received, the CZC request
8 that you just mentioned?

9 A. Uh-huh. Yes.

10 Q. Okay.

11 A. There was a little more to it, but yes.

12 Q. Okay. Upon receiving this submittal and
13 becoming aware of the project, what were your initial
14 determinations? What did you look at?

15 A. With the submittal package, there's also --
16 generally there's a site plan sheet, a copy of the
17 NOI that Stormwater receives. I can't recall exactly,
18 but location map. I don't think this one had it.

19 Upon initial review, we just pretty much go
20 through all the items submitted to ensure we have
21 everything administratively. Upon that, we complete a
22 GIS review from our database which we review for
23 archeological sites, wetlands, endangered species,
24 anything that might compromise a Coastal Zone
25 Management Program document that may have to be

1 resolved before we can move forward, and the policy
2 checklist submitted to determine if they're applicable
3 for the project.

4 Q. Okay. This is Exhibit No. 3, NOI. Does
5 that appear to be the original NOI that you received
6 for the project, to the best that you can recall?

7 A. Yes.

8 Q. Did you -- during this initial review
9 process, did you talk to anybody else in the Department
10 about the project or exchange information? You
11 mentioned that some documents from the Bureau of Water
12 were automatically forwarded to your division?

13 A. Yes.

14 Q. Do you -- I'm sorry.

15 A. No. I guess I just -- Are you talking about
16 initially, when I first looked at it, before anything
17 else?

18 Q. Yes.

19 A. No. The NOI and all this was supplied.
20 They copy it and include it with our submittal. So not
21 at that time, no.

22 Q. Okay. What does your initial review process
23 look like then? What steps do you take once you have
24 these documents in front of you?

25 A. I look for completeness, is everything

1 accurate or, to the best of my knowledge, accurate on
2 this to verify. I often compare it to what is proposed
3 on the NOI to ensure that what the site plan I'm
4 looking at corresponds to what they're submitting for
5 NPDES permit. I review the policy checklist to
6 determine if it's applicable for the project, and then
7 if -- where they determine they are consistent, if I
8 have any concerns with what they indicated, and I
9 complete the GIS review to ensure that nothing comes up
10 that may need to be addressed as far as moving forward
11 with the Coastal Zone Consistency.

12 Q. Okay. This is page 6 of Exhibit 4. These
13 are diagrams from the Stormwater Pollution Prevention
14 Plan, and this particular diagram is labeled Site Plan?

15 A. Uh-huh.

16 Q. Does that look familiar to you just in
17 general?

18 A. Uh-huh.

19 Q. Are you able to distinguish proposed
20 activities that were part of your review process on
21 that diagram?

22 A. Uh-huh.

23 MS. ARMSTRONG: Could you say yes or no?

24 A. Oh, I'm sorry.

25 MS. ARMSTRONG: Because the court

1 reporter...

2 A. I'm sorry. I apologize. Yes.

3 BY MS. WHITE:

4 Q. I had asked whether you could determine what
5 proposed activities were part of your review. Are you
6 able to kind of circle or identify in some way on that
7 map with the black pen?

8 A. Uh-huh.

9 Q. And explain what it is that you were
10 reviewing, what that activity was.

11 A. We review the limits of disturbance and the
12 construction, so this outlines the limits of
13 disturbance that they were proposing for their
14 modifications, their additional parking, and their
15 access drive loop to enter -- exit out this way, also
16 their proposed building and their stormwater management
17 reconstruction.

18 Q. Okay. So for your review for the Coastal
19 Zone Consistency, those were all of the activities that
20 you were taking into consideration?

21 A. Yes.

22 Q. Okay. Specifically, with regard to this
23 stormwater detention pond, are you able to determine
24 whether there is an outline of an existing pond and an
25 outline of a proposed pond?

1 A. Yes. Upon initial review, I did ask
2 regarding questions on that clarification. They
3 indicated it was non-jurisdictional, and it was not, in
4 the reconstruction, but yes, I can. I did have some
5 initial questions on that.

6 Q. Could you explain that a little bit more,
7 what you mean by initial questions?

8 A. On their NOI, they indicated no impacts,
9 but, at first glance, they indicated a jurisdictional
10 and that this pond was non-jurisdictional, so I asked
11 for clarification on that, and this was -- it was
12 called out incorrectly on their site plan, so the only
13 impacts proposed were over here for the reconstruction
14 and the building.

15 (Deposition Exhibit No. 16 marked for
16 identification.)

17 BY MS. WHITE:

18 Q. Is this where -- did you notify the
19 applicant of that concern you had with regards to the
20 wetland impacts --

21 A. Uh-huh.

22 Q. -- between the NOI and the site plan?

23 A. Uh-huh.

24 Q. And does this e-mail in Exhibit 16 embody
25 that?

1 A. Yes.

2 Q. Do you recall the response that you received
3 with regard to that communication?

4 A. The response -- I don't recall at that time
5 if I did receive Checklist 13. They did clarify that
6 those were mislabeled and that those were not wetlands
7 and that the only impacts were proposed for right here.

8 Q. By "right here"...

9 A. The jurisdictional impacts to the right, the
10 jurisdictional wetland, but that the existing pond, it
11 was mislabeled, that the non-jurisdictional wetlands,
12 that that wasn't -- that was an error on their part.

13 Q. Okay. But did you identify impacts to this
14 jurisdictional wetland on your initial review in
15 addition to believing that there was an issue with the
16 labeling? Is that what -- am I remembering you
17 correctly? I think that's what you said.

18 A. Yes. Yes. I know -- and I'd have to
19 reference back, but I know further in the dialogue in
20 that e-mail, we were going back and forth, and I did
21 have -- I clarified an error in typing. I can't recall
22 if it was regarding that or not. But, in general, yes.
23 Is that confusing?

24 Q. My question might not have been clear. I'm
25 speaking to the inconsistency that you identified

1 between the NOI and the proposed activities that were
2 diagrammed in the plans. You mentioned that the
3 NOI did not indicate that there were going to be
4 impacts to wetlands --

5 A. Uh-huh.

6 Q. -- and that there was also some discrepancy
7 between how they were labeled --

8 A. Uh-huh.

9 Q. -- and that they identified they were
10 labeled incorrectly.

11 A. Uh-huh. Yes. I'm sorry.

12 Q. Setting aside the issue with the labeling,
13 was there an issue with the NOI with regards to impacts
14 to this jurisdictional wetland to the side of the -- to
15 the right of the pond?

16 A. Yes.

17 Q. And what were those issues?

18 A. That it was not called out on the NOI that
19 they proposed impacts to that wetland.

20 Q. Okay. So what did you ask the applicant to
21 do in order to address that?

22 A. I asked them to clarify. I can't recall if
23 I asked for a revised NOI. That is a permit
24 application, and that is on stormwater, they'll ask --
25 ask them to revise their permit application, but upon

1 my comments, they responded and revised this section to
2 indicate the disturbance proposed.

3 (Deposition Exhibit No. 17 marked for
4 identification.)

5 BY MS. WHITE:

6 Q. Does this appear to be the revised NOI from
7 the applicant in response to your e-mail?

8 A. Yes.

9 Q. And if you could flip to the NOI that's
10 attached near the end, what is different about that
11 document, the revised NOI, and Exhibit 3, the original
12 NOI?

13 A. It referenced 1.7 acres -- or .17 acres of
14 jurisdictional impacts proposed and the application for
15 a nationwide to complete that.

16 Q. And at that point did you -- did you have
17 further concerns about the NOI that was submitted, the
18 revised NOI that was submitted? Excuse me.

19 A. No, not at that time.

20 (Deposition Exhibit No. 18 marked for
21 identification.)

22 BY MS. WHITE:

23 Q. This is Exhibit 18. If you look at the
24 e-mail dated July 17th, 2012, do you see that at the
25 bottom of the first page from you?

1 A. Did you say July...

2 Q. July 17th.

3 A. That's where I had an error, I think, that I
4 was talking about before.

5 Q. Could you explain what you mean?

6 A. I think at that time is where I had made the
7 error I was referencing before where, at glance, I
8 mixed up the lines of the pond, and I'm writing that I
9 was referencing the circle, which wouldn't have touched
10 that, and then, upon clarifying myself, it did. So he
11 was correct. It was an error on my part in my e-mail.

12 Q. You're referring to your e-mail at the
13 bottom of page 1 of Exhibit 18 where you state, "The
14 revised NOI submitted appears to need another
15 revision"?

16 A. Yes. Yes. He had clarified, and I think
17 when I -- if I recall, when I referenced it quick back
18 making sure I had everything, upon that review, I'd
19 looked at the original pond outline in error instead of
20 the proposed modifications where it did impact, so that
21 that response back was in error, and he reclarified it
22 above. I -- It was an error on my part.

23 Q. Okay. So in the third sentence, where you
24 say, "It indicates that wetlands are going to be
25 impacted"...

1 A. Yes. That's where he revised it, like -- he
2 revised it to indicate that impacts that were there for
3 the building and the pond, but when I looked at it at
4 glance to ensure I had what I'd asked for, I looked at
5 the current pond where it didn't overlap those
6 wetlands, and that was my error, instead of including
7 that, so that was where my comment came from. So it
8 was an error on my review to ensure I got the paperwork
9 I asked for. I looked at this, where it doesn't
10 overlap that pond, instead of the reconfigured area.

11 Q. Okay. If I'm understanding you correctly --
12 maybe I'm not, so correct me if I'm wrong. But was
13 your error that you were looking at the existing pond
14 boundaries as if those were the proposed boundaries?

15 A. Yes.

16 Q. And vice versa, with the proposed boundaries
17 of the pond as if they were the existing boundaries of
18 the pond?

19 A. Yes.

20 Q. And the error was that you -- I guess where
21 I'm not following you, it says that -- it indicates
22 that wetlands are going to be impacted is what you
23 said. If you thought that the existing pond boundaries
24 were the new boundaries and that those new boundaries
25 were not touching upon the wetlands...

1 A. Where did that revised one go? Yes, that is
2 correct. When I -- my response to this, where I put --
3 it indicates that wetlands are going to be impacted
4 with the pond expansion. In that reference, where my
5 error was, I was referencing the boundaries to the
6 existing pond, which was my error, in saying that --
7 he's saying they're going to be impacted here, but, at
8 quick glance, the boundaries of that pond is what I was
9 looking at, in which case there wouldn't have been.

10 Q. Okay. So were you just verifying that there
11 were going to be impacts to the wetlands as indicated
12 on the NOI?

13 A. Yes. Yes.

14 Q. Okay. Are you aware of a Consent Order and
15 Settlement Agreement with regards to the church
16 property?

17 A. Uh-huh. Yes.

18 Q. When did you first become aware of that
19 Consent Order?

20 A. I do not recall exactly when. It was after
21 this initial portion of the review, mid to late July.

22 Q. And do you recall how you became aware of
23 it?

24 A. Richard Geer.

25 Q. Could you explain that a little bit further?

1 A. When he had pulled the original file, he had
2 come across it and forwarded it over to me during his
3 review.

4 Q. And by "it," are you referring to the actual
5 Consent Order document or...

6 A. Yes.

7 Q. Okay. This is Exhibit No. 9. Does that
8 appear to be what you recall to be the Consent Order?

9 A. Yes.

10 Q. And what did you understand the significance
11 of the Consent Order to be? What was it about?

12 A. It -- it was in regards to a previous permit
13 issued and restrictions regarding wetland impacts for
14 the previous project for the site and other -- what do
15 I want to say -- I guess other items of concern.

16 Q. And when you say the previous project, the
17 permit at issue in that Order?

18 A. Yes.

19 Q. Is that a particular type of permit?

20 A. It references the -- references a land
21 disturbance permit and the Army Corps permit.

22 Q. Are you aware of -- does the Department keep
23 some sort of record of the permits? Are you able to
24 look when -- when you received this project for the
25 proposed expansion, in your review process, do you do

1 any sort of research with regards to any prior permits
2 or authorizations for that site?

3 A. We look -- we look for history, but if it
4 is -- We review our GIS and our other information, and
5 it will indicate if there had been previous permits or
6 activities in that area, and we do follow if it
7 pertains to what we're reviewing at that time, if
8 it's -- if it -- if the request that we are reviewing
9 for -- if the request we're reviewing for, I want to
10 say, is impacted by a previous project, then we will
11 reference back and review that.

12 Q. Did you reference back or review prior
13 permits in this instance?

14 A. In this case, it's a jurisdictional wetland,
15 and our CZC does not contain a review for
16 jurisdictional wetland impacts, so on that end, no, I
17 did not. The item was the fact that there was a
18 Consent Order and whether to move forward with a CZC
19 review, being that there was a Consent Order for the
20 project or the site. But regarding the impacts
21 proposed or the previous activity, we don't review for
22 jurisdictional wetland impacts.

23 Q. When you say "we," who do you --

24 A. OCRM CZC certification section.

25 Q. The CZC certification does not review

1 wetland impacts?

2 A. Our section.

3 Q. What is that section?

4 A. The CZC certification section, when we
5 receive a permit, we review for upland areas and
6 non-jurisdictional wetland impacts. If there is
7 jurisdictional wetlands or a Corps permit that includes
8 non-jurisdictional wetland impacts in that, then our
9 wetland section reviews that certification portion and
10 certifies the Corps permit.

11 Q. Okay. So looking back at Exhibit 4, to make
12 sure I'm following you -- This is Exhibit 4, page 6.

13 A. Okay. Sorry.

14 Q. You're saying your section would review
15 impacts in non-jurisdictional wetlands but not
16 jurisdictional wetlands?

17 A. Unless those non-jurisdictional wetlands
18 were included in the Corps permit, then we would not
19 look at those either. But if there is a standalone,
20 isolated wetland impact proposed in a project, we will
21 review for those impacts, but we do not look at
22 jurisdictional wetland impacts in my section.

23 Q. Okay. So does your review include the
24 construction of this proposed building that's to the
25 right and above the existing pond?

1 A. It does to the boundary of those wetlands,
2 so half of the building would be included in the
3 review.

4 Q. So you only review the construction of half
5 of a building?

6 A. We only review the land disturbance activity
7 on the upland portion, so yes, we would look at this
8 upland portion of the project to ensure that it's
9 consistent with the Coastal Management Program.

10 Q. But structures that are in both an upland
11 and proposed to be in a wetland, you would only review
12 half of that structure?

13 MR. HABER: Objection. Asked and answered.

14 A. We're reviewing the land disturbance
15 activity. If they're proposing this under their land
16 disturbance permit, then the applicant should be aware
17 that they're going to need a permit for this -- this
18 activity -- the portion of this building in this -- in
19 this area and this upland area on this. Our
20 certification only extend to that portion. So if
21 everything is consistent on this end, then -- then yes,
22 I will look at that, and the -- the Corps permit is --
23 I mean, they need to come in for a jurisdictional fill
24 permit. That -- that does not include my review.

25

1 BY MS. WHITE:

2 Q. Is your review -- does your review of these
3 land-disturbing activities relate to the stormwater
4 permit?

5 A. Yes.

6 Q. So are you reviewing the activities that the
7 stormwater permit is -- the proposed stormwater permit
8 will be authorizing?

9 A. For the upland areas of that permit, yes.

10 Q. If the stormwater permit authorizes
11 construction of this proposed building that is proposed
12 to be constructed on uplands and in wetlands, would the
13 certification still only look at the part of the
14 construction that's in the upland?

15 A. Yes.

16 Q. Okay. So going back to the Consent Order,
17 what were your initial determinations with regard to
18 that Consent Order?

19 A. Was whether or not we could move forward
20 with the review because there was a Consent Order.

21 Q. What did that -- what were those -- what did
22 they look like, whether -- I guess, how did you
23 determine whether you could move forward or whether you
24 could not move forward?

25 A. There was internal discussion as far as

1 reviewing and our initial -- I reviewed this with my
2 supervisor and discussed internally and how this should
3 be applied and how we interpreted it at that time and
4 whether or not it would affect the certification and
5 moving forward.

6 Q. Could you tell me more about those
7 discussions and what you determined?

8 A. In initial discussion was -- we discussed
9 the items of the Consent Order and whether the proposed
10 project was consistent with that Order as how we
11 interpreted it at that time.

12 Q. How you interpreted the Consent Order at
13 that time?

14 A. Yes. Well, upon initial review, yes, our
15 first -- Maybe that's wrong wording. Yeah, upon our
16 first review, how we were going to move forward and how
17 we interpreted it to be and whether we could move
18 forward with the consistency review.

19 Q. How did you interpret the Consent Order?

20 A. Initially we had thought that the
21 consistency -- the Consent Order was not in compliance
22 or -- the project proposed was inconsistent with the
23 Consent Order was how we initially discussed it when we
24 became aware of it.

25 Q. How did you make that determination? What

1 was that determination based on?

2 A. The referencing of the preservation of the
3 wetlands.

4 Q. On page 2 of the Consent Order?

5 A. Yes.

6 Q. The reference to the preservation of
7 wetlands, is that what you're referencing?

8 A. Yes.

9 (Deposition Exhibit No. 19 marked for
10 identification.)

11 BY MS. WHITE:

12 Q. This is Exhibit 19. Do you recall who
13 drafted this document?

14 A. Yes.

15 Q. Could you summarize what it -- or read the
16 first -- the first sentence?

17 A. "The staff of the Office of Ocean and
18 Coastal Resource Management has reviewed the above
19 referenced Coastal Zone Consistency request for land
20 disturbance activity, including the construction of a
21 new administrative building, additional parking,
22 reconfiguration of an existing drive and the
23 reconfiguration/modification of an existing stormwater
24 management system and has determined that the project
25 is inconsistent based upon a Consent Order of

1 Settlement and Dismissal entitled Mary W. Abel, Daniel
2 C. Abel and David F. Mims vs. South Carolina Department
3 of Health and Environmental Control, Office of Coastal
4 Resource Management, and Pawley's Island Baptist Church
5 filed with the State of South Carolina Administrative
6 Law Judge Division on January 8, 2001 (Docket No.
7 00-ALJ-07-0626-CC)."

8 Q. This document, does this embody what you
9 were just referring to as far as your initial staff
10 discussions about the Order and the proposed expansion
11 of the church property?

12 A. Yes. This was a draft.

13 Q. Okay. Does this draft represent the Coastal
14 Zone Consistency Certification Division section's
15 belief that the proposed project was inconsistent with
16 the terms and conditions agreed to in the Consent
17 Order?

18 MR. HABER: Objection. Asked and answered.

19 THE WITNESS: Can you repeat that?

20 BY MS. WHITE:

21 Q. Does this document represent your division's
22 determination on the consistency of the proposed
23 expansion?

24 A. This was drafted following internal
25 discussions. The -- It was a draft -- I'm sorry. Can

1 you repeat that one more time? I keep losing sight
2 of...

3 Q. Does it reflect the position that OCR -- the
4 Coastal Zone Consistency Certification, your division
5 of the Department, does it reflect its position with
6 regards to the Consent Order and the proposed expansion
7 of the church property?

8 A. It reflects -- it's a draft that reflects
9 our position on the effects of a Consent Order in
10 general on a project, on a certification request.

11 Q. Okay. Did you communicate that position
12 with the applicant?

13 A. With the engineer, the consultant, yes.

14 Q. Okay.

15 A. Well, there was discussion with the
16 consultant, yes.

17 Q. What did those discussions entail?

18 A. If I recall, we notified them of the Consent
19 Order and informed them of -- we notified and informed
20 them of the Consent Order and processes moving forward
21 and discussed the option to withdraw the request or
22 modify the existing request prior to moving forward
23 with a decision on our end.

24 Q. You discussed that with the applicant and
25 the engineer?

1 A. The engineer.

2 Q. Okay.

3 A. Yeah. We notified them of this and then
4 discussed ways to move forward as far as the request to
5 potentially withdraw, modify what they had.

6 Q. Okay.

7 (Deposition Exhibit No. 20 marked for
8 identification.)

9 BY MS. WHITE:

10 Q. This is Exhibit 20. Does this reflect your
11 notification to the applicant? By applicant, I'm
12 speaking generally including the engineer.

13 A. Okay.

14 Q. Notifying them of the Consent Order and your
15 division's position with how that impacts the project?

16 A. Yes..

17 Q. And do you recall --

18 A. Can I back up a second?

19 Q. Uh-huh.

20 A. The Consent Order also -- We were a party on
21 that Consent Order, which I -- is also part of the
22 reason why we felt that it had to be addressed, too.
23 It was the fact that we were a party to it, and there
24 were wetlands. So it was -- as a whole, we were a
25 party to that Consent Order moving forward.

1 Q. Okay. After you notified them of the
2 existence of this Order, do you recall what happened in
3 your discussions from there?

4 A. They -- they contacted the church and -- as
5 I recall, they contacted the church, notified the
6 church of the Order and also, I guess, notified the
7 church on how they wanted to move forward with their
8 review -- with a permit and a certification, notified
9 them of the Order.

10 Q. When you say they notified the church, who
11 are you referring to?

12 A. The consultant engineer.

13 Q. Okay. Did the applicants get back to you
14 after they notified the church?

15 A. Yes.

16 Q. Do you recall what happened from there?

17 A. They had indicated that they wanted to amend
18 the existing Order, and that they were working with one
19 of the adjacent property owners to discuss with them,
20 approach them on amending the Order, so they wanted to
21 try to work to amend the Consent Order.

22 Q. What is your understanding of why they
23 wanted to amend the Consent Order?

24 A. So that they can move forward with the
25 project.

1 Q. Was it necessary to amend the Order in order
2 to move forward with the project?

3 A. That's not something that I can determine.
4 That's their project.

5 (Deposition Exhibit No. 21 marked for
6 identification.)

7 BY MS. WHITE:

8 Q. Do these e-mail communications represent the
9 discussions regarding trying to get the Order amended,
10 as far as you can tell?

11 A. Yes.

12 Q. Yes?

13 A. Uh-huh.

14 (Deposition Exhibit No. 22 marked for
15 identification.)

16 BY MS. WHITE:

17 Q. Exhibit 22 is also communications about
18 amending the Order; is that correct?

19 A. Yes.

20 Q. Do you recall whether the Abels were
21 discussed in relation to amending the Consent Order?

22 A. It was my understanding that they were no
23 longer residing adjacent to the project area.

24 Q. Was it the Department's determination that
25 living adjacent to the property was a requirement to

1 enforce the terms of the Order?

2 A. I'm not sure that's my determination to
3 make. You're asking me if I think, in revising the
4 Consent Order, if the Abels -- if the Abels needed to
5 be involved to provide that?

6 Q. Uh-huh. Yes.

7 MR. HABER: Object to the scope of the
8 question. Outside your notice of deposition. My
9 client is not prepared to make a statement on that on
10 behalf of the client.

11 BY MS. WHITE:

12 Q. You stated that the Department is a party to
13 the Consent Order; is that correct?

14 A. Yes.

15 Q. As a party to the Consent Order, would the
16 Department be obligated to comply with the terms of the
17 Consent Order?

18 A. Yes, on its understanding of the Consent
19 Order.

20 Q. I believe in Exhibit 22, did the applicant
21 request the project to be placed on hold?

22 A. Yes.

23 Q. And in Exhibit 22, do you confirm that the
24 project was going to be placed on hold?

25 A. Yes. This -- Yes.

1 (Deposition Exhibit No. 23 marked for
2 identification.)

3 BY MS. WHITE:

4 Q. This is Exhibit 23. Does this letter also
5 reference the Consent Order?

6 A. Yes.

7 Q. What is the significance of this letter?

8 A. This letter was written to notify them that
9 we would keep the project open pending the Consent
10 Order. Generally, we work within a time frame where we
11 try to turn around certifications. This project was
12 unusual; therefore, we held it open while this was
13 being resolved, instead of making a determination.

14 Q. And could you read the last sentence of the
15 second paragraph starting with "CZC Staff"?

16 A. "...has discussed the matter and strongly
17 suggests withdrawal of the current request to consider
18 redesign options that incorporates the conditions of
19 the Order."

20 Q. And do you recall whether that suggestion
21 was taken?

22 A. This was previously discussed with them, and
23 that's when they were coming back to amend the Order,
24 so it was discussed with them, and they were working to
25 amend the Order.

1 Q. Do you recall whether the Order was amended?

2 A. At that time, I do not recall. I do not
3 think so.

4 Q. Do you recall whether it was amended at all?

5 A. There were drafts, yes.

6 Q. There were drafts?

7 A. Yes.

8 Q. Did you specifically play any role in those
9 drafts or the discussions with regards to modifying the
10 Order?

11 A. I was included in discussions and aware of
12 the modification being done or amendments being
13 proposed.

14 Q. Could you summarize some of those
15 discussions and the proposed amendments?

16 A. Do you have one I can reference?

17 MS. WHITE: Mark this, please, Exhibit 24.

18 (Deposition Exhibit No. 24 marked for
19 identification.)

20 BY MS. WHITE:

21 Q. This, I believe, Exhibit 24, Project Event
22 Log, seems to make reference near the bottom of a
23 conference call --

24 A. Uh-huh.

25 Q. -- regarding a second draft. Other than

1 that, I don't know what those discussions entailed,
2 which was why I was asking if you could summarize them.

3 A. The amendments were proposed to the Order to
4 allow for impacts to the wetlands and, also, I believe
5 there were amendments to the noise buffer and visual
6 buffers. The wording -- and this is as I recall. The
7 wording in the drafted Consent Order reference that
8 upon execution of that Order, land disturbance activity
9 could occur, and without a permit, land disturbance
10 activity cannot occur, so there was terminology and
11 wording.

12 Q. Are you able to look at the Consent Order,
13 Exhibit 9, I think, are you able to look at the
14 language in Exhibit 9 and identify what was proposed to
15 be amended?

16 A. What was to be amended? The -- the items
17 regarding the wetland impacts and the preservation of
18 the wetland in their natural state.

19 Q. To remove those references or what were --

20 A. To amend it to indicate that there could
21 be -- that wetland impacts were allowable.

22 Q. Okay.

23 A. And the noise and visual buffers, I believe
24 that was revised as well, to remove those from the
25 Order.

1 Q. How did the discussions and draft proposed
2 amendments to the Consent Order impact your review
3 process, if at all, with regards to this project?

4 A. My -- regarding the Coastal Zone Consistency
5 Certification itself and the items of my review, the
6 Consent Order at that time was the only thing holding
7 up my -- my review, so amending -- can you -- I lost
8 track of your question. Can you rephrase that one more
9 time?

10 Q. I think you were answering it. Just what
11 role did the Consent Order play in your review process
12 of the project?

13 A. The fact that there was a Consent Order at
14 that time we felt needed to be addressed before we
15 could move forward with the certification review.

16 Q. And did the discussions and draft proposed
17 modifications change your initial determination with
18 regard to that Order?

19 A. Yes, and the fact -- yes, and the fact that
20 we were a party to the Consent Order. I think that's
21 where -- we were a party to the Consent Order, and I
22 think that's where it held it up is the fact that we
23 were a party to -- to -- gosh. The wetland...

24 Q. When you say it held it up, what do you
25 mean?

1 A. I didn't continue with my certification
2 review to make a determination.

3 Q. Because?

4 A. Because there's an existing Consent Order
5 that we were a party to that outlined restrictions for
6 that project.

7 Q. And those restrictions, were they -- was the
8 reason you were unable to move forward because the
9 restrictions in the Order conflicted with what the
10 proposed activities that you were reviewing included?

11 A. Yes.

12 Q. Okay. I'm sorry.

13 A. No. I just...

14 Q. Do you recall when you did issue your final
15 certification?

16 A. Uh-huh. Yes.

17 (Deposition Exhibit No. 25 marked for
18 identification.)

19 BY MS. WHITE:

20 Q. This is Exhibit 25. Does this appear to be
21 your certification to the project?

22 A. Yes.

23 Q. I had several questions. The first -- You
24 list several policy guidelines, and you mentioned these
25 earlier, too. How do those fit into the project and

1 your review? When you first receive a project and a
2 CZC request --

3 A. Yes.

4 Q. -- does the applicant provide a checklist
5 that they believe is relevant --

6 A. Yes.

7 Q. -- to their project? And do you verify
8 whether it's correct?

9 A. Yes.

10 Q. Is that what you did in this case?

11 A. Yes.

12 Q. I believe it's Exhibit 15 maybe. Right
13 here, the original project submittal.

14 A. Uh-huh.

15 Q. They included a policy checklist for
16 commercial development; is that correct?

17 A. Yes.

18 Q. But in the final certification, you state
19 that the project is consistent with public services and
20 facilities, policies, activities, and areas of special
21 resource significance for wetlands policies and
22 stormwater management runoff guidelines.

23 A. Yes.

24 Q. How do you -- why didn't you include
25 reference to the commercial development policy that was

1 submitted with the original project?

2 A. This was not applicable to the project.

3 Q. Okay. So you determined that they submitted
4 the wrong checklist?

5 A. Yes.

6 Q. And did you ask them to submit --

7 A. Yes.

8 Q. -- these three other checklists that were
9 listed --

10 A. Yes.

11 Q. -- in the certification?

12 How did you come to the determination that
13 the land-disturbing activities outlined in Exhibit --
14 on Exhibit 4, the site plan activities, how did you
15 determine that they were consistent with these policy
16 guidelines in the final certification?

17 A. I reviewed the work proposed and the
18 policies per that type of activity that they're
19 proposing applied and ensured that the -- what they're
20 proposing here was consistent with our listed policies.
21 Did I say that clear?

22 Q. Are you able to explain what activities fall
23 under activities and areas of special resource
24 significance, wetlands policies?

25 A. Am I able to...

1 Q. Are you able to parce out activities that
2 fall under different policies, or is that --

3 A. Some overlap, but generally, yes, but some
4 policies overlap within the activity types.

5 Q. Okay. Where I was going, I'm wondering what
6 exactly it means just to certify consistent with the
7 wetland policies, but you --

8 A. That was -- our process has changed. I did
9 not reference a review for those policies. That was
10 our wetlands section. At that time, if there were
11 wetland impacts, I mean, that -- this was an error.
12 Our processes changed. We no longer include reference
13 of that policy unless it's a non-jurisdictional
14 wetland. At that time wetlands were also being
15 reviewed in the project by our wetlands staff, and if
16 wetlands were involved at that time, I included it.

17 Q. Okay. So wetland impacts were being
18 reviewed in relation to this project?

19 A. By our wetland section, yes.

20 Q. And I believe on the fourth page of Exhibit
21 25, is this part of the staff assessment of the
22 project?

23 A. Yes.

24 Q. If you turn to the second page of that staff
25 assessment, under section five, you list that wetland

1 impacts are proposed?

2 A. Uh-huh.

3 Q. And you reference under C what -- Well,
4 strike that.

5 The next page, under section VI A, you note
6 that the Consent Order is in the process of being
7 amended. Did you make this certification contingent
8 upon the Consent Order being amended?

9 A. No.

10 Q. Is it -- I'm trying to understand the
11 interplay between your section and what you described
12 as the wetlands section, Coastal Zone Consistency
13 Division. Is this certification -- this certification
14 appears to take into consideration wetland impacts
15 based on some of these factors that are listed; is that
16 not true?

17 A. Yes, it's true. I reference the
18 jurisdictional impacts.

19 Q. So how do you review impact wetlands, but
20 your final certification is not related to your review
21 of those wetlands?

22 A. I have not completed any of this portion
23 below the explanation. The decision document captures
24 that as reference that there are -- for the proposed
25 project there are impacts and the types of impacts to

1 clarify that they're jurisdictional and, in fact, not
2 non-jurisdictional. And then on the portion where it
3 describes actual impacts and the mitigation, I did not
4 complete that because that was not part of my review.

5 Q. But you did -- I'm sorry.

6 A. I was just going to say I summarized the
7 fact that there were jurisdictional impacts and that
8 there was a review being done on those, but that that
9 was not mine.

10 Q. Okay. And you reference this CZC number
11 12-0297?

12 A. Yes.

13 Q. Is that the other -- is that the wetlands
14 section review that you're referring to?

15 A. Yes.

16 Q. Is that done in conjunction with your
17 review?

18 A. It can be.

19 MS. WHITE: Can we take a break? Do you-all
20 mind?

21 (Recess taken.)

22 BY MS. WHITE:

23 Q. Just a few more follow-up questions.

24 You said that you determined in your final
25 certification that the commercial development policies

1 weren't applicable?

2 A. Uh-huh.

3 Q. Why did you determine that or what...

4 A. A church falls under a quasi-public
5 building, is defined as a quasi-public building, so
6 those policies wouldn't apply in our program document.

7 Q. Are you aware of whether or not the
8 Administrative Law Court ever adopted an amended
9 Consent Order?

10 A. They did not.

11 Q. So the certification that your section does
12 relates to stormwater permits; is that correct?

13 A. Stormwater permits is one of the permits,
14 yes.

15 Q. Okay. One of the permits. So with regard
16 to this project, where there was an application for a
17 stormwater permit, your certification review process
18 was in relation to that stormwater permit?

19 A. The upland portions of that stormwater
20 permit.

21 Q. Okay. And you weren't in the room when
22 Mr. Geer testified, but he stated that the stormwater
23 permit covers activities that include wetlands.

24 A. Yeah.

25 Q. And for activities that are going to impact

1 wetlands, the applicant has to receive authorization.
2 from the Corps; is that correct?

3 A. If it's jurisdictional, depending -- if
4 there are jurisdictional impacts proposed, then it's my
5 understanding they would need a Corps permit, and our
6 wetlands section certifies Corps permits.

7 Q. Okay. So then the wetlands section
8 certifies Corps permits, and that's a separate
9 certification --

10 A. Yes.

11 Q. -- from what your section --

12 A. Completed, yes.

13 Q. -- completes. Okay. So for a project
14 that -- like the one we're talking about here, that
15 does have a jurisdictional wetland, would it be correct
16 that the applicant has to obtain authorization from the
17 Corps for impacts to that wetland?

18 A. Yes.

19 Q. As well as a certification from the wetland
20 section of OCRM?

21 A. Yes.

22 Q. As well as a stormwater permit for all of
23 these proposed activities for the expansion of this
24 project?

25 A. Yes.

1 Q. And a separate certification for that
2 stormwater permit?

3 A. For the upland portions of that stormwater
4 permit, yes.

5 Q. Okay. And if the stormwater permit includes
6 wetlands in the activities, where does the
7 certification for those wetlands come from? Is it from
8 your office?

9 A. It's the wetlands -- the wetlands section of
10 OCRM, yeah, so it would be our office. It's a separate
11 section.

12 Q. Specifically with regard to the activities
13 that the stormwater permit authorizes, Mr. Geer
14 testified that the stormwater permit authorizes
15 activities that include some impacts to wetlands,
16 including the expansion of the pond and the
17 construction of this proposed building.

18 A. Okay.

19 Q. If your certification only covers impacts to
20 uplands, where does the certification for activities
21 under the stormwater permit that impact wetlands come
22 from?

23 A. That would be a question for Richard. My --
24 I can only speak to my certification that extends the
25 uplands portion. The certification for the Corps

1 permit is for that fill. That's his review regarding
2 what certification; he applies for that. It's a
3 separate permit. It's a federal permit. So he'd have
4 to speak for that. The project includes all of that,
5 but that's under his review, how -- how it's all
6 incorporated, I guess.

7 Q. So do you determine what activities to
8 review strictly based on whether they're taking place
9 in upland -- on uplands?

10 A. Yes, less those non-jurisdictional impacts
11 or non-jurisdictional wetlands, yes.

12 Q. And the last thing I wanted to ask about,
13 Exhibit -- I'm not sure what exhibit this draft
14 document is. Nineteen. Looking at Exhibit 19, at one
15 point -- this seems to indicate at one point that your
16 division took the position that activities you were
17 reviewing were not consistent with -- based on the
18 Consent Order.

19 MR. HABER: Object to the form.

20 A. Yes.

21 BY MS. WHITE:

22 Q. What happened between when you issued this
23 document or when you drafted this document on July
24 31st, 2012, and when you issued the final certification
25 on March 26, 2014, to change the position that you

1 took?

2 A. We notified the applicant of the Consent
3 Order and discussed the withdrawal or the revision of
4 the site plan. They indicated that they were going to
5 work to amend the Consent Order and had drafted an
6 Amended Consent Order to present that would include --
7 would include wetland impacts, allowable wetland
8 impacts. When that was presented to the court, it was
9 dismissed based on -- if I recall correctly, and this
10 is how I did it, the judge determined that it was
11 dismissed because you couldn't move forward because
12 DHEC did not make a final decision on the certification
13 of the permit.

14 At that point we revisited the Consent Order
15 to review it to determine if it was going to be
16 inconsistent or consistent, and at that point, going
17 through it again, it became clearer that it was tied to
18 the actual permit itself rather than the land or --
19 well, the land. The permit, it was -- the Consent
20 Order was created as an objection to the original
21 permit, and it was an amendment to that original
22 permit, so when that permit requirements were
23 fulfilled, the Consent Order was -- I guess the items
24 of the Consent Order were addressed.

25 Q. Is it your understanding that the Consent

1 Order does not place restrictions on the property?

2 A. It -- Yes.

3 Q. Yes, the Consent Order does not place
4 restrictions on the church property?

5 MR. STACY: Object to the form.

6 A. Under that permit, under the original
7 permit, it did; and the requirements were satisfied
8 when that permit -- under that permit. As that
9 permit -- as the work on that permit was completed, the
10 Consent Order, the items in that were addressed. So
11 relating -- you said the land, right? Relating to
12 that, yes, under that permit, yes; but the longevity of
13 that area, it did not indicate to be -- What's the word
14 I'm looking for? The Consent Order did not clearly
15 call out that those restrictions were tied to the land
16 or any future landowners or successors or anything like
17 that. It was to the permit itself, and that's how it
18 was viewed.

19 BY MS. WHITE:

20 Q. So looking at the Consent Order on page 2
21 under number one, when it says, "The designs for the
22 stormwater pond and other improvements at the site
23 shall be amended so that approximately one-half of the
24 wetland area on site shall be preserved."

25 MR. STACY: Object to the form.

1 BY MS. WHITE:

2 Q. Is that a temporary condition?

3 A. It's a condition of that permit.

4 Q. And under number 3, when it says, "The
5 Church agrees..." You see where I am?

6 A. Uh-huh.

7 Q. "...that the wetland preserved by this
8 Consent Order shall remain in its natural state," is
9 that limited in time in any way?

10 A. It's under that permit.

11 Q. Does it state specifically that it's under
12 that permit?

13 A. It references in 4 that the Church shall
14 instruct engineers, architects, contractors and others
15 working on behalf to employ all available BMP's to
16 prevent harm to the wetland beyond that authorized by
17 this agreement and by the permit and certification as
18 amended, hereby amended.

19 Q. So is it your understanding that the
20 original permit that's discussed in this Order was
21 amended by this Consent Order according to the
22 conditions that are listed?

23 A. The original permit was amended by this?

24 Yes.

25 Q. And is it your understanding that once the

1 work was completed according to the amended permit as
2 outlined in the Consent Order, that those restrictions
3 no longer applied?

4 A. Yes.

5 MS. WHITE: All right. I guess that's all.

6 CROSS-EXAMINATION

7 BY MR. STACY:

8 Q. Miss KoCzera, I'm Dan Stacy. I represent
9 the applicant in this matter, and I will be very brief,
10 try to be.

11 With respect to Exhibit 19, which was a
12 draft of an inconsistency memorandum, was that document
13 ever completed and issued?

14 A. No.

15 Q. Did you merely discuss the general contents
16 of it with the engineer, or did you actually share a
17 copy of it, or do you recall?

18 A. I did not share a copy.

19 Q. Okay. I think you've testified today that
20 you and your staff, as you worked through this process,
21 came to a different understanding of what was being
22 asked. Is that the reason that you issued your final
23 certification, Exhibit 25?

24 A. Yes.

25 Q. We talked a lot about this Consent Order of

1 Settlement and Dismissal. Is the United States Army
2 Corps of Engineers a party to that, to your knowledge?
3 It would be Exhibit No. 9 if you need to see it
4 quickly.

5 A. If I recall, no. No.

6 Q. Is it your understanding that the Corps has
7 permitting authority over wetlands that are deemed
8 jurisdictional?

9 A. Yes.

10 Q. So is it your understanding from your
11 position that if the Corps of Engineers issued a permit
12 to fill this wetland, with whatever conditions were
13 associated with that permit, that this wetland could be
14 filled?

15 A. If they issued a permit and it was certified
16 by our wetlands section, yes.

17 Q. Certification by your staff, does that mean
18 you look and see that they issued the permit?

19 A. No.

20 Q. What is the certification process of a
21 jurisdictional wetland by your staff that the Army
22 Corps of Engineers has issued a permit for?

23 A. The applicant would forward an application
24 to the Corps. The Corps would public notice it and
25 forward that information to our wetlands section, which

1 would create a certification file.

2 Q. Okay. So if the Corps of Engineers gave the
3 appropriate approval and permit to fill any
4 jurisdictional wetland, does your wetland certification
5 section have any authority to challenge that permit, or
6 do you just normally accept that as a federal decision?

7 MR. HABER: Object to the scope of the
8 question.

9 MR. STACY: I'll withdraw it. You can
10 strike that question. That's fine. That's actually
11 all I have.

12 MR. HABER: I'll be brief.

13 CROSS-EXAMINATION

14 BY MR. HABER:

15 Q. Do you have 19, Exhibit 19, and Exhibit 25
16 in front of you?

17 In looking at Exhibit 19, and your --
18 Petitioner's counsel spent a good deal talking about
19 this document. What is the date of this document?

20 A. July 31st, 2012.

21 Q. That's 2012?

22 A. Uh-huh.

23 Q. Is there anything written at the top
24 left-hand corner of this document?

25 A. "Draft."

1 Q. Okay. If you could look at Exhibit 25,
2 please. What's the date of that document?

3 A. March 26, 2014.

4 Q. Okay. And is there anything written on the
5 top right -- towards the top right of that document?

6 A. I've initialed my sign-off.

7 Q. And what does that mean?

8 A. That means that it is my final decision.

9 Q. Okay. So is it fair to characterize Exhibit
10 19 as a draft document and number 25 being a final
11 decision document?

12 A. Yes.

13 Q. Okay. Now, if you could flip to the second
14 page of Exhibit 25, please. If you could read to me
15 the last sentence of that first paragraph starting with
16 "Any impacts."

17 A. "Any impacts to Critical Areas as determined
18 by SCDHEC-OCRM, and/or freshwater wetlands, as
19 determined by the U.S. Army Corps of Engineers must be
20 authorized by the appropriate agency."

21 Q. In your view, is that consistent with what
22 you've testified to today?

23 A. Yes.

24 Q. Okay. Were you -- Petitioner's counsel was
25 asking you questions regarding the 2001 Consent Order,

1 January 2001 Consent Order. You made a couple
2 references to DHEC being a party or the Department
3 being a party. Do you recall that?

4 A. Yes.

5 Q. Okay. Now, if you could look at Exhibit 25.
6 It's the next to last page of that document. You see
7 section A where it says "Wetlands"? No, no, no.
8 Exhibit 25. There we go. Next to the last page, it's
9 section A, "Wetlands."

10 A. Yes.

11 Q. Okay. The petitioner's counsel made
12 reference to this; instead of using the words that were
13 written, they used the words "Consent Order." Do you
14 see where it says, "A restrictive covenant was created
15 and recorded under the original permit"?

16 A. Yes.

17 Q. Okay. Now, is that a misstatement?

18 A. Yes.

19 Q. Okay. So were you referring to the Consent
20 Order as opposed to restrictive covenant?

21 A. Yes.

22 Q. Are you of the opinion that if a restrictive
23 covenant was required under this Consent Order, we
24 wouldn't be in this litigation?

25 A. Yes.

1 Q. To your knowledge, was a restrictive
2 covenant required under this 2001 Consent Order of
3 Settlement and Dismissal?

4 A. It was not that I'm aware of.

5 Q. And if a restrictive covenant placing these
6 restrictions is set forth in the Consent Order of
7 Settlement and Dismissal from January 2001, if a
8 restrictive covenant was required with the Department
9 being a party to that Consent Order, would we adhere to
10 those recorded restrictive covenants?

11 A. Yes.

12 MR. HABER: I think that's it from the
13 Department.

14 MS. WHITE: Nothing further.

15 (The deposition concluded at 2:00 p.m.)
16
17
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25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, Kendra E. Johnston, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition of Christine Koczera; and that the transcript is a true record of the testimony given by the witness, and was sworn as such.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 14th day of November, 2014, in the City of Charleston, County of Charleston, State of South Carolina.

Kendra E. Johnston, RPR,

CRR and Notary Public

My commission expires:

August 24, 2022

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dan Abel, Mary Abel and)
William Mashburn,)
)
Petitioners,)
)
v.) Docket No.:
) 14-ALC-07-0282-CC
South Carolina Department of)
Health and Environmental Control)
and Pawleys Island Community Church,))
)
Respondents.)

DEPOSITION OF: DONALD WILLIAMS
DATE TAKEN: Tuesday, November 11, 2014
TIME: 9:47 a.m.
PLACE: Offices of South Carolina
Environmental Law Project
430 Highmarket Street
Georgetown, South Carolina

REPORTED BY: Kendra E. Johnston, RPR, CRR
Registered Professional Reporter,
Certified Realtime Reporter
and Notary Public

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

Exhibit 3

A P P E A R A N C E S

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Amelia Thompson

I N D E X

Testimony of Donald Williams

Direct Examination by Ms. Armstrong.....4

Cross-Examination by Mr. Haber.....43

Cross-Examination by Mr. Stacy.....45

CERTIFICATE.....47

I N D E X
INDEX OF EXHIBITS

Deposition Exhibit 8 - Letter to Glen Hall from

DHEC.....11

Deposition Exhibit 9 - Notice of Proposed

Decision-State Certification.11

Deposition Exhibit 10 - Letter from Daniel Stacy

and Modified Consent Order

of Settlement and Dismissal.40

S T I P U L A T I O N S
STIPULATIONS

It is hereby stipulated and agreed by and ,
between the parties hereto, through their respective
counsel, that the reading and signing of the transcript
is waived by the Deponent.

1 (The deposition commenced at 9:47 a.m.)

2 DONALD WILLIAMS, SWORN.

3 DIRECT EXAMINATION

4 BY MS. ARMSTRONG:

5 Q. Would you please state your name for the
6 court reporter?

7 A. Donald Williams.

8 Q. Mr. Williams, Amy Armstrong. Do you mind if
9 I call you Don?

10 A. That's fine; please.

11 Q. We met several months ago. Actually, we met
12 a long time ago. I can't remember exactly the context.
13 But I am here today representing Dan and Mary Abel in a
14 challenge to the permit and certification authorizing
15 construction activities on the church. And once we
16 start -- now that we've started your deposition, the
17 Supreme Court tells me I need to let you know that you
18 can no longer communicate with your attorney until the
19 deposition is concluded, so even if we take a break,
20 you need to not talk with him about your deposition or
21 this case. If you've got a question about something
22 that I ask or you don't understand the question, just
23 ask me to rephrase it, and I'll be glad to do that. I
24 want to make sure that I ask the right question and
25 that you understand that question.

1 I'm going to hand you what's been marked as
2 Exhibit 1 and ask you if you've seen that document?

3 A. Yes, or I knew about it. I knew about it.

4 Q. Do you understand that you've been
5 designated as a witness to speak on behalf of the
6 church in this case?

7 A. Yes.

8 Q. Okay. What I'd like you to do is go through
9 and read each of the numbered paragraphs 1 through 10,
10 and read it carefully, and if it's something that you
11 have knowledge or information about, if you would just
12 write your initials next to that.

13 A. Can I ask you questions?

14 Q. If it's for clarification about this, yes.

15 A. Yeah. This says the process of applying for
16 the permit certifications at issue in this proceeding.
17 I mean, I knew that -- I don't know much about what the
18 actual process was for any permits or certifications,
19 but I knew that, obviously, there is a process.

20 Q. I guess what I'm -- you know, if you hired
21 consultants, which I understand that you did, the
22 process from your perspective would be, We hired a
23 consultant and they kept us informed and they acted as
24 our agent. So if you're aware of those kind of
25 communications. You know, I understand you're not a

1 technical expert or stormwater expert. I'm just trying
2 to understand the church's process in applying for the
3 permit.

4 A. Number 3, the negotiations surrounding the
5 Consent Order of Dismissal, I knew that that was going
6 on, but I have really not a lot of knowledge of what
7 the actual negotiations were.

8 Q. Back in 2000, 2001?

9 A. Yeah, correct. You're talking about the
10 original thing that we did, the Mims and the Abels, all
11 that?

12 Q. Yes.

13 A. I mean, I knew that was happening, but I
14 wasn't a part of anything.

15 Q. You weren't involved in the negotiations?

16 A. No.

17 Q. Okay. Well, if you weren't involved, then
18 you can't -- don't write your initials by it.

19 A. Number 5, the church's understanding of its
20 obligations under the Consent Order of Dismissal,
21 again, we understood that we were supposed to do some
22 plantings and things like that, so I understood -- I
23 mean I knew there were some things that we needed to
24 do, but, again, wasn't part of any of that.

25 Q. Well, we'll get into the specifics. I'm

1 going to ask you questions about that. It seems that
2 you do know some information about what the church
3 thought it was required to do, and so if you do have
4 some of that knowledge, then if you'd just write your
5 initials by that numbered paragraph so I can understand
6 what you're going to be testifying about.

7 Okay. If you'll just read off the numbers
8 you've put your initials by for me.

9 A. One, two, seven, and ten.

10 MS. ARMSTRONG: Okay. So, Dan, neither of
11 your witnesses have indicated that they have knowledge
12 of items three, four, five and six, and it's related to
13 the negotiations surrounding the Consent Order, the
14 decision to enter into the Consent Order, and the
15 intent in entering into the Consent Order in 2001. Are
16 you -- do you have somebody that can testify on those?

17 MR. STACY: One of our issues at hand, Amy,
18 with respect to stuff that happened in that time period
19 is that the signatories to this document on behalf of
20 the church at the time, two of those gentleman are
21 deceased; one of them is, I understand, very elderly
22 and may or may not be capable. I just don't know that.
23 That's somebody we can certainly identify and produce
24 if you --

25 MS. ARMSTRONG: Is that Glen Hall?

1 MR. STACY: No. The gentlemen that actually
2 signed this document, the gentlemen that actually
3 executed this document. So sort of the inherent
4 problem that we have with an institution like this is
5 over time the faces change and the people come and go.
6 And so if you need for us to try to identify someone
7 who was there at the table, I can try to do that.

8 MS. ARMSTRONG: I might get what I need from
9 them today.

10 MR. STACY: Okay.

11 MS. ARMSTRONG: So I don't want to -- I
12 don't want to say that I need that right now.

13 MR. STACY: Because when we started this, I
14 just looked at these names and said, Tell me about
15 these guys, and it was no for two of them for sure
16 because they've died, and the other one I understand is
17 to be a lot older now.

18 MS. ARMSTRONG: Right.

19 MR. STACY: I'm not sure about that, so...

20 MS. ARMSTRONG: Okay.

21 BY MS. ARMSTRONG:

22 Q. So, Don, tell me about your employment with
23 the church.

24 A. Okay.

25 Q. When did it start?

1 A. Came on 15, almost 16 years ago, so I've
2 been there for 16 years, the last six, seven years in
3 the capacity of senior pastor. I was one of the
4 pastors up to that point, but senior pastor for the
5 last six or seven years.

6 Q. Okay. And so what year was it when you
7 started working with the church?

8 A. Oh, my gosh, Amy. This will be -- this year
9 is our 16th anniversary or next spring is our 16th
10 anniversary, so 1999?

11 Q. Okay. So around '98, '99 time frame?

12 A. Something like that.

13 Q. And when you first started with the church,
14 what capacity were you in?

15 A. I was the worship pastor and was there for a
16 couple of years doing just worship, and then Bob
17 Barrows and I were co-pastors for a number of years up
18 to the time that I came on as senior pastor six or
19 seven years ago.

20 Q. And what were your responsibilities with the
21 church when you were the worship master?

22 A. Worship master?

23 Q. Worship --

24 A. Pastor.

25 Q. -- pastor I mean. Whoops.

1 A. I'm not a master of many things at all.
2 Well, you know, in any church title, just like I'm sure
3 almost anyplace else, there's lots of hats that you
4 wear. And so one of the things that immediately we
5 saw, because we were multiple services in the chapel
6 that we have, that it was -- as we say, the foot was
7 growing bigger than the shoe, and we had at one point
8 four services going on, so that's when we started
9 talking about the potential of building the worship
10 center that we have currently. And so I was involved
11 in that process, more in making sure that we have the
12 function for the building and what the building was
13 going to do and how we can best serve our purposes and
14 what size and stuff like that that we needed. That was
15 much more my function than the nuts and bolts of how do
16 we get from chapel to the worship center. There was
17 other people that were doing those kinds of things.

18 Q. So you were around and involved when the
19 church began the process of constructing the
20 facility --

21 A. Yes.

22 Q. -- that you're in right now?

23 A. Yes.

24 Q. Do you know Glen Hall?

25 A. Uh-huh.

1 Q. Do you know whether he played any role in
2 that construction process?

3 A. You know, Glen, you know, had done a ton of
4 developing. It's not any kind of official capacity,
5 but just like in a lot of church things, he volunteered
6 his services. He's done a ton of development and those
7 kinds of things, and so -- and Glen was, you know, he
8 was involved in the process, but not in an official
9 capacity, just as a volunteer, kind of giving some of
10 his expertise in different areas.

11 Q. So do you know whether he was involved in
12 assisting the church in securing permits and
13 authorizations for that initial construction?

14 A. I would say -- I would say he was probably a
15 part of all that. I don't know that I can say for sure
16 what his level of involvement was.

17 (Deposition Exhibit Nos. 8 and 9 marked for
18 identification.)

19 BY MS. ARMSTRONG:

20 Q. So are you familiar with the decisions, the
21 approvals that DHEC gave the church back in 2000 to
22 construct the worship center?

23 A. Some of that.

24 Q. I'm going to hand you two documents. One is
25 Exhibit 8 and the other is marked as Exhibit 9. That

1 first document is actually addressed to Glen Hall --

2 A. Okay.

3 Q. -- from DHEC; correct? Do you understand
4 what this document purports to do?

5 A. Not really.

6 Q. Did you understand that you needed a
7 stormwater permit for the construction of the facility?

8 A. You know, Amy, I'm sure somewhere in
9 conversation someone said it. Again, these kind of
10 details are not -- that's not where I had my head at
11 the time. I'm sure that, you know, stormwater in the
12 Lowcountry, I'm sure someone would have said we have to
13 have a stormwater permit at some point, but that's not
14 anything that really registered with me, nor really any
15 of this kind of thing.

16 Q. All right. But this is a letter to Glen
17 Hall on behalf of Pawleys Island Baptist Church from
18 DHEC, and in the first paragraph, it states that it
19 meets the requirements of the South Carolina Storm
20 Water Management and Sediment Reduction Act, and that
21 it's consistent with the Coastal Zone Management
22 Program, and then it indicates that it's a land
23 disturbance permit. Do you understand -- do you know
24 whether this was issued in conjunction with the
25 construction activities for the worship center?

1 A. Do I know that?

2 Q. Yeah.

3 A. No. I mean...

4 Q. Okay. If you'll look at Exhibit No. 9, it's
5 entitled, "Notice of Proposed Decision," dated October
6 9th, 2000, and it's issued to Pawleys Island Baptist
7 Church, and that first little -- second little indented
8 paragraph indicates that there's -- it's a permit to
9 impact wetlands?

10 A. Uh-huh.

11 Q. Have you ever seen this document?

12 A. You know, again, maybe. I mean, it's so
13 long ago.

14 Q. Okay.

15 A. Again, if somebody would have said, Hey,
16 Don, you need to take a look at this, I probably would
17 have taken a look at it, because there were other guys
18 that were taking care of this more, so...

19 Q. Okay. And we've been talking about these
20 two documents, Exhibit 8 and 9, that both are addressed
21 and directed to Pawleys Island Baptist Church, and in
22 the present action, you're identified as Pawleys Island
23 Community Church. Is that the same church?

24 A. Yes.

25 Q. Was it just a name change?

1 A. Yes.

2 Q. And when did the name change occur?

3 A. It would have been 2002, when we went into
4 the new worship center.

5 Q. Okay. And so these -- Do you know, when you
6 constructed the original worship center, whether there
7 were wetlands that were impacted by that construction?

8 A. I knew that there's that area that we're
9 talking about back there, there's some wetlands issues.
10 I was aware of that.

11 Q. And do you recall how many acres of wetlands
12 were impacted under the first authorization?

13 A. I just know that it was there. No.

14 Q. And if you look at Exhibit No. 9 and turn to
15 page 4 of 6, the very top of that document, where it
16 indicates that wetland community losses are .3 acres,
17 would you have any reason to disagree that there were
18 actually .3 acres that the church impacted as a result
19 of this permit?

20 A. All I remember is that I knew there was an
21 issue with wetlands. The impact, the size, those kinds
22 of things, I would have no idea.

23 Q. Does it appear that this document entitled
24 "Notice of Proposed Decision - State Certification"
25 from the Department of Health and Environmental Control

1 that identifies wetland losses to be .3 acres is
2 accurate?

3 A. I would assume so, but I didn't...

4 Q. Okay. Do you understand the nature of the
5 wetland impacts under this authorization?

6 A. No.

7 Q. Do you know whether there was a challenge to
8 those decisions, those authorizations for the
9 construction of the new church facility?

10 A. Well, I knew there was -- the Abels and the
11 Mims had brought something. That's when this started,
12 I think.

13 Q. Back in 2000?

14 A. Something like that.

15 Q. 2001, around there?

16 A. Yeah.

17 Q. Do you know what the basis of the challenge
18 was for the construction activities?

19 A. I think it was -- you know, since we
20 revisited a lot of this, especially with the Mims, I
21 understand what their concerns were, and then I think
22 Mr. Abel's concern was the area that was right behind
23 his home at the time, about the wetland area there.

24 Q. And do you know what happened as a result of
25 the challenge?

1 A. Yeah. I think there are some things that we
2 as a church were supposed to do. There was some
3 negotiation that enabled us to do what we did at the
4 time, and I think we did all the things that we were
5 supposed to do.

6 Q. And were you involved in the negotiations?

7 A. No.

8 Q. I thought you said that, but I wanted to
9 make sure. So do you know who was involved in the
10 negotiations?

11 A. I don't know. I don't know if Glen would
12 have been involved with that. We had a guy at the time
13 by the name of David Bishop, who, again, was at our
14 church at the time, is no longer at our church. I'm
15 sure they would have been a part of that. I don't know
16 if our architect and the builder. I mean, I don't
17 know. I was not. I was made aware of what we needed
18 to do, planting some -- a buffer for the Mims. They
19 had --- We had a basketball court that was where -- an
20 outdoor basketball court where the worship center is.
21 They had been more concerned about the noise and stuff
22 from the basketball court. I don't know that their
23 concern was as much about wetlands or environmental
24 issues. A light that was out there, how close are we
25 going to build to their property, that was kind of the

1 gist of their concerns. And, I mean, as far as I know,
2 we, you know, got on that and did everything we needed
3 to do to make sure whatever kinds of things we were
4 supposed to do we had done.

5 Q. Do you know whether there were any
6 environmental concerns with the other parties and the
7 Abels specifically?

8 A. Well, the Abels, I knew that he -- that's
9 what he does; correct?

10 Q. If you mean he's --

11 A. I mean, he teaches like conservancy or
12 something like that.

13 Q. He's a biologist.

14 A. Yeah, okay. So I knew that's kind of been
15 his thought, that he was concerned about the, you know,
16 what was going to be happening with the building
17 project that happened to be on his -- bordering his
18 property. I don't know if it overlaps his property or
19 not, but borders his property. So I knew that was his
20 concern. And the Mims, it always felt to me like it
21 wasn't as much of an environmental issue; it was
22 neighborly issues.

23 Q. I'm going to hand you what's marked as
24 Exhibit No. 2. Have you seen this document before?

25 A. I think this is one that I probably did see

1 as far as, like, I just remember this 30-foot noise/
2 visual buffer. Those are the kind of things that stood
3 out to me, and the existing basketball, volleyball
4 fields, all the stuff that we said that we would do.

5 Q. Have you seen this document recently, within
6 the past two years?

7 A. I think Mike had it. I don't know. Is this
8 the one that came out after we had kind of gone down
9 the road with some of the plans and some of the
10 approvals, and this is one that somebody found?

11 Q. Well, I don't know that I can answer that
12 question, but if you look at the second to the last
13 page, it gives the date that it was signed and the
14 parties that signed it. So it was signed, and it looks
15 like --

16 A. December 8th.

17 Q. Looks like it was actually crossed out and
18 January --

19 A. January.

20 Q. -- was written in there, so it actually
21 looks like in the front, that it was filed on
22 January 8, 2001.

23 A. Okay.

24 Q. And this is a document that the church
25 entered into?

1 A. Yeah.

2 Q. Would you agree with that?

3 A. If these guys signed it, yeah.

4 Q. Do you know why the church entered into this
5 agreement?

6 A. Because we wanted to build a building, and
7 there's some things that we needed to do to be able to
8 move forward with that.

9 Q. So what was the church's expectation in
10 entering into this Consent Order of Settlement and
11 Dismissal?

12 A. I can give you my understanding. I don't
13 know that I can say this is what -- that everyone in
14 the church felt this way, but, I mean, to me, this is
15 what we needed to do in order to build the building
16 that we wanted to build.

17 Q. Okay. And what did you agree to do under
18 this Consent Order regarding the wetland areas on site?
19 I think I can refer you to paragraph number 1 on the
20 second page might help you.

21 (Deposition interrupted.)

22 BY MS. ARMSTRONG:

23 Q. I was asking you what the church agreed to
24 do regarding the wetlands and directed you to look at
25 paragraph number 1.

1 A. There's two phases to the building. There
2 is the large worship center. We knew we had to do
3 that. The second part I think is this proposed future
4 building phase two, which was always -- was one of
5 those things -- the architecture is a very fluid kind
6 of thing. He drew this thing up, and I don't know if
7 it even shows it. Yeah, yeah. This whole thing right
8 here.

9 Q. On Exhibit A to that document, the last page
10 to that document shows what you're referring to?

11 A. Yeah. This kind of boomerang looking thing.
12 But it was always a very, very fluid thing, and we just
13 never -- we knew that we had to do this. This is
14 something that he was sketching for kind of future kind
15 of things, and, obviously, that never came to fruition.

16 Q. Okay. You're talking about the structure
17 that's above the stormwater pond?

18 A. This one here.

19 Q. That's the stormwater pond if you're looking
20 at the map in that direction?

21 A. Yeah. Even at the time of this, you know,
22 it was something that he was proposing, wasn't anything
23 that we knew was going to be on the map, especially
24 once we started finding out how much it was going to
25 cost to do.

1 Q. Well, I'm a little less concerned with
2 buildings that you might build in the future and more
3 wanting to understand what the church agreed to do
4 regarding the wetlands under the Consent Order.

5 A. That we would not -- we would not move
6 forward with the proposed building phase two. "The
7 Church shall also amend its plans for the proposed
8 structure shown on Exhibit A as Proposed Future
9 Building Phase II so that no portion of this structure
10 will encroach upon the area of wetland."

11 Q. Okay. And I see you're reading from the
12 second sentence or the third sentence under paragraph
13 1.

14 What else did the church agree to do
15 regarding the wetlands on site aside from avoiding
16 future encroachment on wetlands or the potential phase
17 two building?

18 A. Are you talking about in the first one or
19 just in the whole document?

20 Q. I'm talking about the very first sentence of
21 paragraph number 1.

22 A. "The designs for the storm water pond and
23 other improvements at the site shall be amended so that
24 approximately one-half of the wetland area on the site
25 shall be preserved."

1 Q. And what was the church's intent on agreeing
2 to those specific terms about preserving one-half --
3 approximately one-half of the wetland area on site?

4 A. Again, I wasn't in a position then and am
5 not now really to speak to what everyone was thinking.
6 The guys that signed this document, I don't know that
7 we ever had a conversation about it other than we knew
8 this was moving forward. But I think that we were
9 going to do what we said in this document that we were
10 going to do for the construction we were doing at that
11 time.

12 Q. And would you agree that the church is bound
13 by this Consent Order of Dismissal?

14 A. We were bound for what we did at that time.
15 I don't know that I see anything in here or I don't
16 know that there's anyone who ever said to me that
17 we're -- we're getting ready to lock ourselves into
18 something that is going to last forever and ever on
19 that. I don't know that there was ever that sense
20 that -- but for what we needed to do to move forward
21 with our building. This is what we knew that we were
22 signing off on. I think that we agreed to do all those
23 things. I think we did them.

24 Q. Okay. Well, let's look at paragraph number
25 3. It says that, "The Church agrees that the wetland

1 preserved by this Consent Order shall remain in its
2 natural state." Is there any time limit where it says
3 you don't have to leave them in a natural state any
4 longer?

5 A. Huh-uh. But, again, my understanding of
6 it -- again, I'm not a builder, I'm not in that world,
7 but I think that we did that. "The Church agrees that
8 the wetland preserved by this Consent Order shall
9 remain in its natural state," and it has.

10 Q. Okay. And if you move forward with
11 construction, those -- the current plans would impact
12 those wetlands; is that correct?

13 A. That's what I understand.

14 Q. So those wetlands would no longer be
15 remaining in a natural state.

16 A. That would be correct.

17 Q. And so they would no longer -- this
18 provision would no longer be applicable. The church
19 would not have been maintaining them and preserving
20 them in a natural state if it fills them under the
21 authorization.

22 A. My understanding is that when we went to --
23 at least started investigating what we could do, that
24 we went through the process, and that the process was
25 cleared, that we were able to do this. So I don't know

1 if there's -- my understanding, there was never
2 anything in this document or in anyone else's mind that
3 what had been agreed to 12 years previously had locked
4 us in forever and ever. I don't know that was ever my
5 understanding of it. Again, I didn't sign off on any
6 of this stuff, but that was never -- again, I don't
7 know that -- at that time, there was no one sitting
8 around going, Okay, we're going to go and sign this
9 document, and six months down the road we can change it
10 if we want to. We were -- at the time, honestly, we
11 were looking at this, we were trying to build this
12 building. It cost almost a million dollars more than
13 what we thought it was going to build. And so we were
14 saying, Okay, what do we need to do to get this thing
15 done? We were just so happy to get that part of it
16 done, I don't know that we were even looking at down
17 the road at that point.

18 Q. So would it be your position that when you
19 entered into this, you didn't really mean that you were
20 going to actually preserve the wetlands --

21 A. Yes.

22 Q. -- in a natural state.

23 A. Yes, absolutely, because we said we were
24 going to do it, and everything that we agreed to here
25 is what we did when we did the building. We didn't

1 encroach on any more of the wetlands than what we were
2 supposed to; we didn't. I think everything we put in
3 here, the whole buffer, the noise, sound, the
4 basketball court, everything in this document, we did
5 every bit of it.

6 Q. But if you impact the wetlands now, they
7 will not be in a preserved state or natural state.

8 A. If we can go through the process, and this
9 is some land -- it's not a big piece of land, but it's
10 an important piece of land to us. There's only so much
11 that's in Pawleys Island. And if we can have access to
12 land that we've purchased to be able to move forward,
13 yeah, we'll go through the process, and if there's
14 someone that tells us, "I'm sorry, you can't do that,"
15 then we won't do it.

16 Q. Okay. Well, this Consent Order, do you
17 understand that it was signed by a judge?

18 A. I'm assuming that it was, yeah, if you say
19 that.

20 Q. Well, why don't you look at the second to
21 the last page with me. Well, actually, let's turn to
22 page number -- the page right before that. And at the
23 bottom of that page, it says that, "It is hereby
24 ordered that the agreements stated herein shall be, and
25 same hereby is, made a part of this final order of the

1 Administrative Law Judge Division," and, "It is further
2 ordered that the DHEC/OCRM permit and certification
3 shall be, and same hereby are, amended in accordance
4 with this agreement and order." And then if you turn
5 the page over, it says, "And it is so ordered." Do you
6 see where there's a signature of a judge?

7 A. Yeah.

8 Q. Okay. So you don't dispute that this is a
9 document that was signed, an order of a judge.

10 A. Seems pretty clear.

11 Q. Okay. And you understand that this Consent
12 Order is a document that's filed in the courthouse?

13 A. My assumption would be yes, somewhere.

14 Q. And do you understand that this is an
15 enforceable document?

16 A. My understanding is that it has been
17 enforced and that we did the things that we knew that
18 we needed to do to move forward with what we needed to
19 do.

20 Q. So how did the church determine that it was
21 relieved from obligations under this particular Consent
22 Order?

23 A. I don't know that anyone ever, again,
24 started the conversation with, Hey, I think that it's
25 been long enough that we can get out from what we've

1 said before. I don't know that anyone ever said that.

2 My position is that we were looking around for some
3 additional buildings that we needed to build, trying to
4 look at our campus, and trying to figure out how can we
5 maximize this space that God's given us, how can we be
6 the best stewards of this property, and someone came up
7 with the idea to put a building back there that would
8 really meet our needs well. That was the -- that was
9 the starting of it. The starting of it wasn't, Oh, my
10 gosh, what are we going to do with the wetlands? Maybe
11 it should be more on my radar. It just wasn't. But it
12 wasn't because of this document or anything legally.

13 Again, my role in most of what's going on at
14 the church is really a much bigger picture, how do we
15 need to function as a church, how do we -- and, again,
16 I hate doing buildings. I hate having to raise money
17 for those kinds of things. But it's just part of what
18 goes along with it. So when we were in discussion,
19 part of what I was saying was that this may be a great
20 area that would move in the flow of our traffic and
21 everything else for us to do something in this area,
22 and so we started in the process that, again, my
23 understanding was we were good to go with, that
24 everyone had signed off on, until someone at the 11th
25 hour found this document.

1 Q. Do you know what the purpose is of the
2 building that would be constructed partially in the
3 wetlands? Do you know what the purpose of that
4 building is?

5 A. Well, to be honest, which I always hate to
6 say "to be honest" because that somehow refers that I
7 have not been honest, but I have been honest, but to be
8 honest, we have kind of shifted some of what we were
9 going to be doing in that area because of the length of
10 this process. We had to move on to do some other
11 things. So we're in the middle of the construction
12 process now that has no way impacted any of the
13 wetlands. It's far, far away from wetlands and
14 everything else. But it is a piece of property that I
15 think does have some value to us, that does sit in a
16 place on our property, that could be of use to us in
17 the future.

18 Q. Do you understand what purposes the wetlands
19 on the property would be impacted for?

20 A. If we were to compromise that area, what
21 would happen?

22 Q. Right. The authorizations that you received
23 allow impacts to some wetlands, and I'm wondering if
24 you know for what purpose those wetlands would be
25 impacted?

1 A. Not really. Are you talking about the
2 actual purposes of wetlands or are you --

3 Q. No, no, no.

4 A. -- talking about what we're going to be
5 building?

6 Q. What you're going to be building.

7 A. I'm not sure. We started off with some
8 plans moving towards doing this and doing it on this
9 piece of property. We have since, because of the
10 length of all this, because I believe we're about two
11 years into this now, we've moved on, and we're doing
12 some other things, but this still has some -- some
13 value to us. Whether we pursue what we originally
14 planned to do there or not, I'm not sure. That's
15 not -- not on the top of the list of discussions these
16 days.

17 Q. Do you recall indicating to me several
18 months ago when we met that part of the -- the building
19 that would be constructed in wetlands would be a
20 storage facility?

21 A. It very well could be.

22 Q. Has that changed since the time we talked?

23 A. Well, it's -- it's a possibility to do that;
24 it's a possibility to do some kind of classroom things
25 for our school. It could end up being -- there's some

1 other talks about where we could locate the storage
2 facilities, which we need. So, at this point there's
3 no one saying, Hey, this is what we're doing on this
4 piece of property. The original discussions were to do
5 a like three- or four-bay storage area with some
6 additional classroom space. Is that still what we're
7 going to do? I'm not sure.

8 Q. Part of the other -- part of the
9 authorizations -- I was looking for some of your
10 drawings, and I don't have them under my fingertips
11 right at the moment, and we might get back to that.
12 But in looking at the drawings, my recollection and,
13 also, I think our discussion several months ago is
14 consistent with the drawings, that the other part of
15 the wetland impacts would be associated with enlarging
16 the stormwater detention pond. Is that consistent with
17 your understanding?

18 A. We -- I know that was part of what the
19 architect, the guy who's helping us develop this, about
20 doing some kind of bulkhead. There's been all kinds of
21 talk about it, that we were going to have to enlarge
22 that area or maybe reshape the pond to be able to -- I
23 think the bulk-heading, my understanding is, allows us
24 to have a smaller footprint, but actually gather more
25 stormwater is what my assumption was. So I know that

1 was part of the conversation as well.

2 Q. And the part of that, the bulk-heading and
3 the expansion work to the stormwater pond, would
4 impinge on some of the wetlands; is that your
5 understanding?

6 A. I'm not sure about that piece of it. We had
7 originally talked about doing a road back around
8 through that area. There's been an awful lot of talk,
9 Amy, but, you know, right now we're in another section
10 of our building. I think that this area that we're
11 talking about still has high value to us. We still
12 think it's in a great place for us to do something. If
13 it is the storage building, it would be the storage
14 building. And that's not totally my decision, what's
15 going to go up and who's going to be doing that.
16 That's a -- there's other people that have to weigh in
17 on that.

18 MS. ARMSTRONG: Can we go off the record for
19 just a minute?

20 (Discussion held off the record.)

21 BY MS. ARMSTRONG:

22 Q. Don, I'm going to hand you what was used as
23 an exhibit to DHEC's deposition yesterday, Exhibit No.
24 4, and there's a drawing of some proposed construction
25 activities. Have you seen those drawings?

1 A. Yeah.

2 Q. And there's a proposed building --

3 A. Uh-huh.

4 Q. -- down on the lower right corner?

5 A. Right.

6 Q. And part of that building is in wetlands.

7 A. Okay.

8 Q. Is that right?

9 A. Yes.

10 Q. Okay. And that was the building that you
11 had identified or mentioned earlier that would be for a
12 storage facility?

13 A. Yes.

14 Q. And then you indicated that it might not
15 actually be that; you might do something different with
16 that area.

17 A. We originally talked about it being a
18 storage facility, because if we were going to be
19 putting the road through, then that would cause us to
20 take out the area that we currently use for storage, so
21 we had talked about that, another -- a room or rooms
22 for our school to use. We have since -- I mean, this
23 is just -- this is not on the grid anymore, honestly.
24 The way that we've done it, we've had -- I mean, this
25 was a scenario of how we could use -- get a road back

1 through there. We're not planning to do that. There's
2 talk about taking this building and turning it sideways
3 so that we didn't have to do anything to the pond.
4 This is -- you know, this is nothing ever formal.

5 Q. So, in your mind, the church is not likely
6 to move forward with the drawing as it's presented on
7 this document?

8 A. My understanding currently is there's not
9 much of an appetite to do a road all the way back
10 there. Taking the road out, if this is -- you know,
11 the church and the leaders of the church would say,
12 This is the building that we need to do next, then that
13 may very well be the building we would do next.

14 Q. But you don't know exactly what it's going
15 to be used for?

16 A. Again, my hunch is some of it could be
17 storage, some of it could be classroom, some of it
18 could be classroom for the school, some of it could be
19 adult education stuff. There was all kinds of things
20 that it could be.

21 Q. And would the building need to be redesigned
22 to handle those different activities?

23 A. Not really, not the way we're talking about
24 doing it. It's kind of like a building that would have
25 lots of bays in it, so it could be storage. We could

1 not fill in all the bays so we'd have a bigger room,
2 bathroom, stuff like that to do other things. It's
3 kind of a multi -- you know, in church world, you
4 always need more space. You've always got more people
5 showing up. I mean, not always. That's a good
6 problem, having more people showing up than you know
7 what to do with. So trying to find places to host the
8 number of activities and ministries that we have going
9 on, we're always looking for appropriate places to do
10 that.

11 Q. So that building would not need to be
12 redesigned to handle the different functions that you
13 listed?

14 A. Not necessarily. It could be. And, again,
15 this -- my recollection of this, Amy, is that this is
16 one of several ways that we looked at doing this. This
17 is not like the only one. But I'll say this. I think
18 that all of them would have impacted that area that
19 we're talking about.

20 Q. Would have impacted the wetlands
21 specifically?

22 A. Yes. It's back there in that area, yes.

23 Q. And do you know how many wetlands are
24 proposed to be impacted under the current permit and
25 certification?

1 A. I have no idea. Sorry.

2 Q. And you hadn't been involved in the
3 communications with DHEC and the ETS about the
4 permitting process; is that accurate?

5 A. Correct. I mean, I'm sure that those things
6 were forwarded to me via e-mail, and I would see what
7 they are, and I would go on to more important things.

8 Q. I just wanted to make sure. I think Mike
9 was copied on the e-mail communications, and he
10 testified about some of those communications.

11 A. Yeah.

12 Q. I don't want to plow ground with you that
13 you don't know anything about.

14 A. I would rely on Mike to do that now.

15 Q. Okay. How did you first become -- well, you
16 knew about the Consent Order back in 2000, 2001, when
17 it was entered into. When it popped back up on your
18 radar screen, when was that and how were you alerted to
19 it?

20 A. You know, I think we were talking about some
21 of our needs. Someone came up with the idea of doing
22 this, of using this area. Best of my recollection, we
23 started walking down what would it take to be able to
24 do that. We were meeting with an architect at the time
25 who was just helping us dream, hey, what could things

1 look like. And so one of the things in particular that
2 we were looking at at the time was the storage facility
3 and said, well, maybe we could do this, and it could
4 also, for the time being, could also, you know, handle
5 classrooms and stuff like that. And so I think we
6 started walking down that road. And then my
7 understanding, I think the term I've heard is kind of
8 at the 11th hour something came up, someone found a
9 document and said, Hey, we can't do this. My
10 understanding was that we were moving completely on
11 until someone found this document and said, Hey, we
12 can't do this or, at least, there's a hiccup in the
13 process.

14 Q. When did you start walking the site and
15 having those initial discussions about wanting to do
16 something with that portion of the property?

17 A. A couple years ago, three years ago. I'm
18 not sure.

19 Q. So I'm trying to understand, when you said
20 the 11th hour, when do you understand the concern over
21 or the issue about this Consent Order was first raised?

22 A. My understanding was with Thomas Bevins, I
23 think. I think he's the one who first brought it to
24 our attention, because we were -- I mean, my
25 understanding is we were moving forward with the

1 process.

2 Q. And do you know when Thomas Bevins brought
3 it forward?

4 A. No. And, again, I think it was Thomas. I
5 can't say with all -- hundred percent certainty.

6 Q. Do you know who Kacy Gunter is?

7 A. Yes.

8 Q. And who is Kacy Gunter?

9 A. Well, he used to be a single guy in our
10 church, and now he's a married guy in another church,
11 but he works for FBI?

12 Q. ETS?

13 A. Maybe.

14 Q. Does he work for Thomas Bevins, your
15 consultant, or with him?

16 A. There may be a connection there. I never
17 put all that together. I know his dad owns FBI
18 Construction Company or something like that out of
19 Florence. That's what I thought he was doing. I
20 didn't know -- When Kacy got married and moved on, I
21 wasn't sure where he was working, but I do know him.

22 Q. So you don't know if he was doing any work
23 on behalf of the church for this permit?

24 A. No. I mean, I know he's an engineer. My
25 assumption was he was working for his dad's business.

1 Q. So, again, you say the 11th hour, and I'm
2 just -- to me, the 11th hour means like at the very
3 last minute. And so when was it that you actually
4 became aware of the --

5 A. And even the term "the 11th hour" is
6 something that I heard sitting around a table talking
7 about this stuff. That's not even my -- that's
8 something I heard someone else say. But it was just
9 that we were in the process, hey, everything is moving
10 forward; we're getting ready to sign off on this thing;
11 and then this document appeared or someone found this
12 document and said that this could slow things up.

13 Q. Were you involved in the discussions about
14 what to do about this document, the Consent Order of
15 Settlement and Dismissal?

16 A. I'm sure I had conversations about it.

17 Q. And what was the nature of those
18 conversations?

19 A. Oh, Amy, I don't -- you know, obviously, if
20 it's something that we can't do, if we're bound to
21 something by law, then we're not going to move forward;
22 we obviously can't move forward; we wouldn't move
23 forward. But if this is something that we can amend to
24 be able to do what we wanted to do, we certainly want
25 to pursue that.

1 Q. So you just said, If this is something we
2 can amend. Are you referring to amending the Consent
3 Order?

4 A. Correct.

5 Q. So you were understanding that the Consent
6 Order needs to be amended in order for you to proceed
7 with the construction activities?

8 A. Again, you're using language now that I've
9 heard. I would have never said it in those terms
10 because I don't speak that way. But is this going to
11 be a deal breaker for us? If it's a -- I mean, if this
12 thing is written in law, if this is the right one, if
13 this is written in law and we can't do what we want to
14 do, we're not going to do it; but if there's something
15 we can do to help us move forward, then let's -- let's
16 pursue what we can do and then let -- let the people
17 who have the final say say no, we can't do this --

18 Q. Okay.

19 A. -- or yes, we can do it.

20 Q. Do you have any understanding of what you
21 would need to do in order to move forward in light of
22 the Consent Order?

23 A. No.

24 Q. Okay. I'm going to represent to you that
25 Mike Fields and I talked a little bit about

1 communications with Thomas Bevins and some letters and
2 e-mails between the church and Mr. Bevins about the
3 need for the Consent Order to be amended in order for
4 the church to proceed.

5 A. Okay.

6 Q. Are you familiar with those conversations?

7 A. I can't say -- I know there were
8 conversations because I know those conversations have
9 kind of brought us to where we were today, I'm
10 assuming, so yeah.

11 Q. Do you know whether there were any efforts
12 to actually modify that Consent Order?

13 A. I do not know.

14 Q. So you don't know whether the church has
15 taken any steps to try and have changes to the Consent
16 Order?

17 A. Anything that's going on at this time is not
18 the church. It has been the people that we've -- are
19 talking with, are helping us in the process. It has
20 been engineers, Thomas, those guys that are...

21 Q. Okay. Mr. Stacy has been retained as your
22 attorney to work on this case?

23 A. Correct.

24 (Deposition Exhibit No. 10 marked for
25 identification.)

1 BY MS. ARMSTRONG:

2 Q. I'm going to hand you this document that's
3 marked as Exhibit No. 10. This is a letter from Dan
4 Stacy, your attorney, to the clerk of the South
5 Carolina Administrative Law Court, and it's regarding
6 the Pawleys Island Community Church, and attached to
7 that letter is what's entitled the Modified Consent
8 Order of Settlement and Dismissal. And if you flip to
9 the third page, it appears that it's been signed by
10 Tina Mims, David Mims, Mike Fields on behalf of the
11 church, and the attorney for the Department of Health
12 and Environmental Control.

13 So you would agree that the church did make
14 an attempt to modify the Consent Order?

15 A. Yes.

16 Q. You know understand that Dan and Mary Abel
17 were a party to the original Consent Order?

18 A. Yes.

19 Q. Would you think that it's necessary that
20 they be a party to an order modifying that original
21 order?

22 A. Personally, no.

23 Q. And why is that?

24 A. Well, at the time he was -- he was a
25 neighbor, it was something bordering his -- and I'm not

1 sure how much of it actually goes over into his
2 property. But my understanding is he no longer owns
3 it. I also understand that the guy who does own it
4 doesn't want to be a part of this, so...

5 Q. So did you know that this document was
6 submitted to the administrative law judge?

7 A. Again, I didn't know what the process was.
8 If you're telling me that it was, yeah. I knew there's
9 a process in place to try to get things moving forward.

10 Q. Do you know whether the court or the judge
11 has ever signed and adopted a Modified Consent Order?

12 A. No. My understanding of it was that there
13 was something that was in play, and that things were
14 moving forward, and that we were -- I hate to use the
15 term good to go, but I think we were going to be able
16 to do what we were at the time wanting to do, again,
17 until someone somewhere came up with this document that
18 then kind of alarmed everyone, said, Hey, we need to
19 work through this, which is why I think we're here.

20 MS. ARMSTRONG: All right. I think I'm
21 going to just take a few minutes. I might be done.

22 (Recess taken.)

23 MS. ARMSTRONG: I don't have any more
24 questions.

1 CROSS-EXAMINATION

2 BY MR. HABER:

3 Q. I just have a quick question. Mr. Williams,
4 I'm Nathan Haber. I represent the Department in this
5 matter.

6 Petitioner's counsel had asked you some
7 questions on what's been numbered as Exhibit 10. Do
8 you have that in front of you? I just want to ask you
9 a couple questions as to whether or not you have any
10 knowledge of the conversations with the Mims and the
11 church. Do you have any knowledge of those
12 conversations, say, back around in 2013 that preceded
13 this document?

14 A. Yes.

15 Q. Do you know whether or not the Mims -- Do
16 the Mims still live near the church?

17 A. Correct.

18 Q. Okay. And were the Mims original
19 signatories to the 2001 Consent Order?

20 A. Yes.

21 Q. Okay. You had spoken to some issues that
22 the Mims had back in 2000 regarding noise and visual
23 buffers. Do you recall?

24 A. Yes.

25 Q. In your conversations or the church's

1 conversations with them preceding this document, did
2 they express any concerns regarding any visual or noise
3 issues that they had with the project as proposed?

4 A. Can you say that again?

5 Q. Sure. I will point you to -- if you could
6 look at -- it's the last page of that exhibit, in
7 particular, paragraph -- what's been numbered paragraph
8 4.

9 A. Okay.

10 Q. Do you see where -- To your knowledge, were
11 those items that the Mims wished to have placed into
12 the permit?

13 A. Did we follow through?

14 Q. Well, in particular, this paragraph 4, in
15 regards to vegetated --

16 A. Yes.

17 Q. -- buffers and --

18 A. Yes. Yes.

19 Q. And to your knowledge, is that different
20 than the permit application as proposed to the
21 Department, the addition of those requirements in
22 number 4?

23 A. I don't know. I know that the Mims wanted
24 that, they wanted as much greenery and stuff; I know
25 that.

1 Q. And is that reflected on the preceding page
2 where it's been labeled as Exhibit B?

3 A. Yes.

4 MR. HABER: I don't have any further
5 questions.

6 CROSS-EXAMINATION

7 BY MR. STACY:

8 Q. Pastor Williams, Dan Stacy. I represent you
9 in this matter. I've just got a couple of follow-up
10 questions.

11 Can you get into your hands the Consent
12 Order of Summary and Dismissal that was marked as
13 No. 2? I believe you testified, but I just wanted to
14 clarify to make sure I understand, that your
15 understanding is that this agreement was entered into
16 by the church to fulfill the requirements of the 2000
17 permit that you -- 2000 permits that you obtained to
18 build the worship center?

19 A. Correct.

20 Q. Is it your understanding that the new permit
21 you have applied for for this new piece of work has
22 nothing to do with the 2000 permit that was the basis
23 of this settlement agreement?

24 A. Say that again.

25 Q. Was it your understanding that the new

1 permit you applied for for your new proposed
2 construction had nothing to do with the 2000 permits
3 that you obtained to build the sanctuary?

4 A. Correct.

5 MR. STACY: I don't have anything else.

6 MS. ARMSTRONG: I don't have anything else.

7 (The deposition concluded at 11:01 a.m.)
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1 C E R T I F I C A T E

2 STATE OF SOUTH CAROLINA:

3 COUNTY OF CHARLESTON:

4 I, Kendra E. Johnston, Registered Professional
5 Reporter and Notary Public, State of South Carolina at
6 Large, certify that I was authorized to and did
7 stenographically report the foregoing deposition of
8 Donald Williams; and that the transcript is a true
9 record of the testimony given by the witness, and was
10 sworn as such.

11 I further certify that I am not a relative,
12 employee, attorney or counsel of any of the parties, nor
13 am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the action.

16 WITNESS MY HAND AND OFFICIAL SEAL this 14th day
17 of November, 2014, in the City of Charleston, County of
18 Charleston, State of South Carolina.

19
20
21
22
23
24 _____
Kendra E. Johnston, RPR,
CRR and Notary Public
My commission expires:
25 August 24, 2022

**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: MAY 17 1997
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 the ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s).

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

1. Applicant's Name. Pawleys Island Baptist Church	4. Agent's Name (an agent is not required). Mike Whiten DDC Engineers, Inc.
2. Applicant's Address Post Office Box 777 Pawleys Island, SC 29585	5. Agent's Address. 1298 Professional Drive Myrtle Beach, SC 29577
3. Applicant's Contact Number (include area code). Residence: Business: (843) 237-4449 FAX: (843) 692-3210	6. Agent's Contact Number (include area code). Residence: Business: (843) 692-3200 FAX: (843) 692-3210
7. Project Title. Pawleys Island Baptist Church	9. Project Location Pawleys Island, SC Street Address: 10304 Ocean Highway County: Georgetown Latitude: 33° 26' 16"N Longitude: 77° 8' 42"W
8. Nearest Waterbody to project site (if known) Pawley's Island Creek Atlantic Ocean	

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

Take U. S. Highway 17 North towards Pawleys Island, South Carolina. Continue on 17 past Simmonsville and Marysville, SC. At the intersection of Marysville and the exit to Pawleys Island there will be a gas station (Exxon) on the right. Stay on U. S. 17 and go about a half of a mile past the Exxon. There will a Radio Shack on the right. Take the first driveway on the right just before the entrance to Radio Shack. The 7.72 acre tract is located on the east side of U. S. Highway 17, approximately 200 feet south of the intersection of Waverly Road (S-22-46) behind the Radio Shack in the Community of Pawley's Island, Georgetown County, South Carolina.

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 purpose of the proposed project is to impact a visually isolated wetland of 0.30 acres. A certified wetland delineation SAC-81-96-4228 (Y) was determined by the US Army Corps of Engineers on 01-06-97. 2.0 required mitigation credits are proposed as mitigation for the unavoidable impact.

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

The proposed project is for expansion of the existing church facility.

13 Type and Quantity of Materials To Be Discharged Dirt or Topsoil _____ cy Clean Sand _____ cy Mud _____ cy Clay _____ cy Gravel, Rock, or Stone: _____ cy Concrete _____ cy Other (describe): _____ cy TOTAL: _____ cy	14 Type and Quantity of Impacts to U.S. Waters including wetlands. Filling: 0.30 ☐ acres ☐ sq. ft. 477.63 ☐ cy Backfill & Bedding _____ ☐ acres ☐ sq. ft. _____ ☐ cy Landclearing _____ ☐ acres ☐ sq. ft. _____ ☐ cy Dredging or Excavation _____ ☐ acres ☐ sq. ft. _____ ☐ cy Flooding _____ ☐ acres ☐ sq. ft. _____ ☐ cy Draining _____ ☐ acres ☐ sq. ft. _____ ☐ cy Shading _____ ☐ acres ☐ sq. ft. _____ ☐ cy TOTALS 0.30 ☐ acres ☐ sq. ft. 477.63 ☐ cy
15. Names and Addresses of All Adjoining Property Owners (attach additional sheets if needed). SEE ATTACHED	
16 Has any portion of the work already commenced? If yes, describe all work that has been done and the dates of the work. No.	
17 List all Certifications, Approvals, and Denials received from Federal, State, or Local Agencies for work described in this application. 01/06/97 SAC-81-96-4228(Y) Corps of Engineers Charleston District	
18. Authorization of Agent I hereby authorize the agent whose name is given in block number 4 of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application. _____ Applicant's Signature Date	
19. Certification. Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant. _____ Applicant's Signature Date 11/9/2000 _____ Agent's Signature Date 5/10/00	
The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 4 and 18 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$ 10,000 or imprisoned not more than five years or both. Submit the completed application form with the required drawings and all supporting information as indicated below Send all original application materials to U.S. Army Corps of Engineers Charleston District, Regulatory Branch P.O. Box 919, Attn: CESAC-CO-P Charleston, South Carolina 29402 (843) 727-4330 Send one complete copy to: S.C. Dept of Health & Environmental Control Office of Ocean and Coastal Resource Management 1362 McMillan Avenue, Suite 403 Charleston, South Carolina 29401 (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) 734-5300	

Revised: 12/97

RECEIVED
10/3/00



Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 744-5838 FAX (843) 744-8772

October 2, 2000

Mr. Glen Hall
Pawleys Island Baptist Church
10304 Ocean Highway
Pawleys Island, SC 29585

Re: Pawleys Island Baptist Church
Permit #22-00-06-03
Georgetown County
Stormwater

Dear Mr. Hall:

The staff of the Bureau of Ocean and Coastal Resource Management (OCRM) certifies that the plans submitted for the above referenced project, dated August 28th, 2000, meet the minimum requirements of the S.C. Storm Water Management and Sediment Reduction Act. This project is also found to be consistent with the S. C. Coastal Zone Management Program. This land disturbance permit is contingent on the following special conditions:

- (a) The OCRM staff must be notified in writing at least seven (7) days prior to actual land disturbance in order to arrange sediment/erosion control inspections.
- (b) The responsible day-to-day contact must have a OCRM stamped set of plans on site at all times.
- (c) Prior to final project approval, a registered professional responsible for construction will submit a statement certifying that construction is complete and in accordance with approved plans and specifications. The permit number must be referenced on this request. OCRM staff will then conduct a final site inspection for design compliance.
- (d) The person responsible for maintenance shall perform or cause to be performed preventive maintenance of all completed storm water management practices to ensure proper functioning. OCRM will conduct periodic maintenance inspections.

Exhibit 5

- (e) Approved plans remain valid for five (5) years from the date of an approval. Extensions or renewals of the plan approvals may be granted by the OCRM upon written request by the person responsible for the land disturbing activity.
- (f) This approval is only applicable for the plans that were submitted for this project. Any additional construction or grading beyond the scope of these plans is not authorized.
- (g) No freshwater wetlands, as determined by the U. S. Army Corps of Engineers, shall be disturbed or altered without Corps authorization.

Failure to comply with any of the conditions of this permit may result in enforcement actions and/or penalties. The receipt of this permit does not relieve you of the responsibility of acquiring any other state, federal or local permits that may be required. Interested parties are provided ten days from receipt of this letter to appeal the action of the OCRM.

Sincerely,



Brett Whitin
Engineer Associate

BJW/4927/bjw

cc: Mr. H. Stephen Snyder
U. S. Army Corps of Engineers
Mr. James M. Wooten, PE
Mr. Jimmy Chandler
Mr. David Mims
Mr. Daniel C. & Mary W. Abel
Ms. Jennie Williamson

**Stormwater Management & Sediment Reduction Permitting and
Coastal Zone Management Program Consistency Determination
Bureau of Ocean and Coastal Resource Management - SCDHEC**

Project Name: _____

Consistency Determination:

- A. Project Consistent with: ☒ SCCMP ☒ S.C. Stormwater Management Act
B. Project Consistent with: ☐ SCCMP ☐ S. C. Stormwater Management Act
after revisions
C. Project Inconsistent with: ☐ SCCMP ☐ S.C. Stormwater Management Act

I. Brief Project Description and Purpose:

new parking and church

II. Brief Description of Stormwater Management & Sediment Reduction System(s):

storm drainage, detention pond, rock fence, creek inlet protection,
riprap, grassing

III. Summary of Public and Agency Comments (if any, so indicate) yes - see file

A. (Commentor) (Date of comment) (Comment summary)

IV. Stormwater and Sediment Reduction Assessment:

A. Does the project meet the minimum requirements of the S.C. Stormwater
Management & Sediment Reduction Act (if no, explain why not)? yes

B. Does this project require NPDES general permit coverage? no

C. Is a Stormwater Master Plan required & if so has one been submitted? no

V. Coastal Zone Management Assessment

A. Does the project impact any SCCMP-defined resources, including GAPC's (if
so describe)? no

B. Does the project meet Wetland Master Planning Policy (explain)? N/A

C. Is a dock master plan required (if so, why)? no

D. Is a critical area permit required (if so, describe)? no

VI. Conclusions (Describe how coastal resource impacts, if any, are being addressed. If the project is inconsistent with coastal zone management policy, list (A) specific policies, (B) specific reason project is inconsistent, (C) project modifications for bringing the project into consistency):

VII. Plan Review by:

Paul White
(name)

10/2/00
(date)

VIII. Approved by:

Paul White
(name)

10/2/00
(date)

IX. Notes:

State of South Carolina
Department of Health and Environmental Control
Bureau of Water
2600 Bull Street
Columbia, S. C. 29201

Public Notice No. DHEC-2000-C-262

Public Notice Date: October 9, 2000

NOTICE OF PROPOSED DECISION - STATE CERTIFICATION

The Department, acting on an application for Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act and for certification of consistency with the S.C. Coastal Zone Management Program in accordance with R. 48-39-10, et seq., and 15 CFR 93, has reached a proposed decision for the project described below.

Pawleys Island Baptist Church
permit to impact
Wetlands
Georgetown County
P/N 2000-1D-262-C

After reviewing the project plans, staff of the Office of Ocean and Coastal Resource Management determined that the proposed work is consistent with the Coastal Zone Management Program (48-39-10 et seq., and 15 CFR 93).

After reviewing the project plans, staff of the Division of Water Quality determined that there is a reasonable assurance that the proposed project will be conducted in a manner consistent with the certification requirements of Section 401 of the Federal Clean Water Act. Accordingly, the Department proposes to certify the project with conditions as follows:

1. The applicant must implement best management practices during construction to minimize erosion and migration of sediments offsite. 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.
2. All necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands.
3. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment and upon completion, all disturbed areas must be permanently stabilized.
4. Land disturbing activities must avoid encroachment into any wetland areas outside the permitted impact area. Wetlands that are unavoidably impacted must be appropriately mitigated.
5. To compensate for the proposed impacts the applicant must purchase 2.0 credits from an approved mitigation bank. Proof of the purchase of 2.0 credits must be submitted to the Division of Water Quality within 60 days of issuance of the 404 Permit.

Page 2

Pawleys Island Bapt. Church

October 9, 2000

The S. C. Department of Health and Environmental Control reserves the right to impose additional conditions on this Certification to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State standards.

The evaluation of the proposed work was conducted by the Bureau of Water and the Office of Ocean and Coastal Resource Management, and a copy of the staff assessment supporting the proposed decision is enclosed. A copy of plans submitted by the applicant is available for review in the office of the Division of Water Quality, Bureau of Water or at the Office of Ocean and Coastal Resource Management. Additional information about the technical aspects of this application is available from Sean Connolly, the project manager, at (803)898-3952.

The final State Certification will be issued if a request for an adjudicatory hearing is not granted by the Department.

Persons wishing to appeal this proposed certification impacts must submit in writing a request for an adjudicatory hearing which contains the following: an identification of the requestor, a statement of the grounds for request, and the relief sought, and an indication of whether or not the requestor proposes to proffer witnesses, evidence, or exhibits.

Requests for an adjudicatory hearing must be served on the Board of Health and Environmental Control within fifteen (15) days following the date of this notice.

The Department will grant or deny a request for the adjudicatory hearing after considering whether the person making the request has standing to seek a determination under the definition of "Contested Case" and other pertinent definitions as contained in Code of Laws of South Carolina 1976, Chapter 61, Rule 61-72 entitled "Procedures for Contested Cases."

The adjudicatory hearing request and 2 copies thereof must be submitted to The Board of Health and Environmental Control, Attn: Clerk of the Board, Office of the Commissioner, 2600 Bull Street, Columbia, S. C. 29201. A request must be received by 5:00 pm on October 24, 2000. A copy of such request must also be submitted to the project manager.

Additional information on the adjudicatory hearing may be obtained by contacting the Legal Office, The S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S. C. 29201, or by calling (803)898-3350.


Michael Sean Connolly, Project Manager
Water Quality Certification, Standards, Navigable Waters
and Wetland Programs Section

MSC

cc: U.S. Army Corps of Engineers
Charleston District Office
OCRM

STAFF ASSESSMENT

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL DIVISION OF WATER QUALITY WATER QUALITY CERTIFICATION, STANDARDS, AND WETLANDS PROGRAMS SECTION

I. Background Information

Applicant: Pawleys Island Baptist Church P/N Number: 2000-1D-262-C

P/N Date: June 2, 2000 Date Received: June 5, 2000 P/N Close: July 3, 2000

Section of Applicable Federal Law:

Section 10 ☐ Section 404 ☒ Section 401 ☒

Section of Applicable State Law:

Coastal Zone Consistency ☒ Construction in Navigable Waters Permit ☐

Date of Publication of P/N in newspaper: May 18, 2000

Date Affidavit Received: June 12, 2000

Amount of Fee: \$50.00

Date Fee Received: June 12, 2000

Brief explanation of activity:

The proposed work consists of the placement of fill material and excavating in a 0.30 acre freshwater wetland for the purpose of expanding an existing church facility. As mitigation for the proposed project the applicant agrees to purchase two (2) credits from an approved mitigation bank.

Waterbody Name: Noncontiguous Freshwater Wetland

Water Classification: FW

Waterbody Location: Ocean Hwy. south of U.S. Hwy 17, Georgetown County

Shellfish Waters? Yes ☐ No ☒ Shellfish Harvest Status: N/A

Waterbody on 303(d) List? Yes ☐ No ☒

If on 303(d) List, explain what steps taken to prevent further degradation of water quality.

II. Project Description

A. Fill

1. Is fill required? No ☐ Yes ☒ Total Amount: 477.63 cy (0.225 acres)
Amount in wetlands: 477.63 cy (0.225 acres)
Amount in open waters of U.S.: N/A

2. Is the fill temporary? Yes ☐ No ☒ N/A ☐

B. Excavation

1. Is excavation required? No ☐ Yes ☒ Total Amount: 0.075 acres
Amount in wetlands: 0.075 acres
Amount in open waters of U.S.: N/A

2. Type of excavation: Mechanical ☒ Hydraulic ☐ Other ☐ N/A ☐

3. Is excavated material expected to contain contaminants?
Yes ☐ No ☒ N/A ☐

4. Location of Disposal Site: Upland ☒ Confined ☐ Other ☐ N/A ☐

Excavated material will be used as backfill onsite of the proposed project.

5. Size of Disposal Area: N/A
Is this size adequate for amount of material to be disposed of? Yes ☒ No ☐ N/A ☐

6. Is this for ten year maintenance excavation/dredging? Yes ☐ No ☒ N/A ☐

C. Other Impacts: Mechanically cleared wetlands: N/A
Flooding wetlands: N/A
Other - explain: N/A

D. Wetland Types

1. Type and amount of wetlands impacted: Isolated: 0.30 acres

E. Project Modification

1. Was the project modified from the original public notice?
Yes ☐ No ☒ N/A ☐

2. What is the wetland acreage difference between the original and the modified proposals? N/A

F. Mitigation

1. Did the applicant propose mitigation for wetlands losses upfront?
Yes ☒ No ☐ N/A ☐

The applicant has agreed to purchase two (2) credits from an approved wetland mitigation bank.

2. Is mitigation required by DHEC?
Yes ☒ No ☐ N/A ☐

3. Type of Mitigation Required: Mitigation Bank: 2.0 credits

G. Remediation

1. Is remediation required? Yes ☐ No ☐ N/A ☒

H. Nonpoint Source Concerns

1. Are water quality impacts from nonpoint sources expected? Yes ☒ No ☐ N/A ☐

The Department feels that because the wetland is noncontiguous in nature and best management practices will be used water quality for any surrounding wetlands will not be contravened.

2. Has the applicant addressed nonpoint source concerns? Yes ☒ No ☐ N/A ☐

See Conditions to be Placed on Water Quality Certification When Issued (Section X)

3. Are any enforceable nonpoint controls required by DHEC? Yes ☐ No ☐ N/A ☒

The applicant must implement best management practices during construction to minimize any impacts to the surrounding area. The applicant is also to adhere to all conditions listed in Section X.

III. Environmental Assessment

A. Is the proposed activity water dependent? Yes ☐ No ☒ N/A ☐

B. Are there feasible alternatives to the proposed activity that reduce adverse consequences on water quality and classified uses? If yes, explain. If no, were they investigated? Yes ☐ No ☒ N/A ☐

Alternatives were investigated; however, according to the applicant, existing site characteristics preclude the placement of the pond in any other area of the site. Placement of the pond on the most southern portion of the site is not a feasible alternative because of trees protected by County tree ordinance and because of existing topography, drainage patterns, and soils. Topography in particular is a limiting factor in handling stormwater. Because of the inherent physical constraints of the site and existing wetland features, i.e., depth, soils, slope, attenuation abilities and, foremost, area, the wetland cannot be used to safely handle storm water. Therefore, the applicant states there is no feasible alternative, which reduces the adverse consequences on water quality and classified uses, and the activity does not alter the aquatic ecosystem in the vicinity of the project such that its functions and values are eliminated or impaired.

C. What is the purpose of the proposed activity?

The stated purpose of the proposed work is to expand an already existing church.

1. Are there public benefits? Yes ☐ No ☒ N/A ☐

D. Will the proposed activity adversely affect a public water supply? Yes ☐ No ☒ N/A ☐

E. Will the proposed activity adversely affect any existing water uses? Yes ☐ No ☒ N/A ☐

F. Are additional impacts expected (consider impacts to cultural, scenic, recreational, public health, and fish and wildlife values)? If yes, explain. Yes ☐ No ☒ N/A ☐

G. Water Quality Assessment

1. Are turbidity increases expected?
Yes ☐ Temporary ☐ No ☒

Due to the noncontiguous nature of the wetland, no turbidity increases can be expected.

2. Numeric Standards Contraventions?
Yes ☐ Temporary ☐ No ☒

3. Will the proposed activity cause alterations of current patterns or water circulation?
Yes ☒ Temporary ☐ No ☐

Water circulation will be altered in the noncontiguous wetland due to the placement of fill.

4. Will the proposed activity cause alterations of normal water fluctuations?
Yes ☒ Temporary ☐ No ☐

Water fluctuation will be altered in the noncontiguous wetland due to the placement of fill.

H. Benthic Community Losses: No ☒ Yes ☐ Amount: _____
Permanent ☐ Temporary ☐ Cumulative ☐

- I. Wetland community losses: No ☐ Yes ☒ Amount: 0.3 acres
Permanent ☒ Temporary ☐ Cumulative ☐

IV. Public Comments Received and Summary of Comments

- A. S. C. Department of Natural Resources ☒
Date: June 12, 2000

SCDNR offers no objection to the proposed project.

- B. U. S. Fish and Wildlife Service ☒
Date: June 15, 2000

The Service has elected not to take a position on proposed project. However, they ask to check with SCDNR to ensure no endangered or threatened species are located in the project area.

- C. Others (list with dates)

June 6, 2000 South Carolina Archives & History
SCA&H request notification if any archaeological materials are encountered.

June 29, 2000 South Carolina Coastal Conservation League
Request denial because of other alternatives to minimize stormwater run-off other than construction of a retention pond.

June 24, 2000 Andrew Cross (Adjacent Property Owner)
Feels the project would destroy the atmosphere as well as property values

July 3, 2000 Daniel and Mary Abel (Adjacent Property Owner)
Will lose noise barrier, runoff concerns, are listed has their reasons for opposition to the project.

V. Compliance with Section 401 of the Federal Clean Water Act

- A. Staff analysis of water quality impacts:

Wetlands provide many valuable water quality functions including water purification via pollution and sediment trapping, hydrological buffering, and food chain production (Sather and Smith, 1984, Office of Technology Assessment, 1984, Environmental Law Institute, 1983). The proposed project will impact 0.3 acres of noncontiguous freshwater forested wetlands. Because this wetland area is small and noncontiguous, it does not provide the frequency of water quality functions as a contiguous wetland. Therefore, this wetland loss will not adversely impact the overall aquatic ecosystem or change existing uses of any waterbodies surrounding the noncontiguous wetland to be filled.

The Department has reviewed all public comments. Existing state regulations for assessing the water quality impacts of a project do not take noise pollution and/ or property value into consideration when determining whether to issue or deny a permit application. The Office of Ocean and Coastal Management has also reviewed the above permit application and has determined the proposed work is consistent with the S.C. Coastal Zone Management Program. Several comments voiced concern about run-off impacting water quality; however, the applicant has addressed this problem with the creation of a stormwater management plan. This plan was submitted to the Office of Ocean and Coastal Resource Management and ensures that post-development run-off is equal to the pre-development rate.

Contaminated material used for fill could, if subject to erosion or leaching from storm events, result in the introduction of pollutants into adjacent wetlands or water. The use of only clean earthen material, free of all potential sources of pollution, as fill will avoid water quality degradation from the introduction of such pollutants.

VI. Consistency with the Coastal Zone Management Program, R. 48-39-10 et. seq.

Date: August 9, 2000

The Office of Ocean and Coastal Resource management (OCRM) has reviewed the proposed project and finds it consistent with the S.C. Coastal Zone Management Program.

VII. Compliance with the Construction in Navigable Waters Permitting Program R. 19-450 et. seq., 1976
Code of Laws: N/A

VIII. Conclusion

The Department has reasonable assurance that the water quality standards of Regulation 61-68 will not be contravened as a result of the proposed work and that this activity will result in impacts of classified uses with little degradation to the aquatic ecosystem. Water quality impacts of the proposed project will be temporary and water quality standards will not be contravened. Existing and classified uses of adjacent freshwater wetlands will be maintained.

The S. C. Department of Health and Environmental Control reserves the right to impose additional conditions on this Certification/Permit to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State water quality standards.

IX. Staff Recommendation

Issue 401 Water Quality Certification with conditions and find consistent with Coastal Zone Management Program.

X. Conditions to be Placed on Water Quality Certification When Issued

1. 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.
2. All necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands.
3. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment and upon completion, all disturbed areas must be permanently stabilized.
4. Land disturbing activities must avoid encroachment into any wetland areas outside the permitted impact area. Wetlands that are unavoidably impacted must be appropriately mitigated.
5. To compensate for the proposed impacts the applicant must purchase 2.0 credits from an approved mitigation bank. Proof of the purchase of 2.0 credits must be submitted to the Division of Water Quality within 60 days of issuance of the 404 Permit.

XI. References

Kusler, J. A. 1983. Our national wetland heritage: a protection guidebook. Environmental Law Institute. 167pp.

Office of Technology Assessment. 1984. Wetlands: Their use and regulation. U. S. Congress, OTA, OTA-0-206. 208pp.

Sather, J. H. and R. D. Smith. 1984. An overview of major wetland functions. U. S. Fish and Wildlife Service. FWS/OBS-84/18. 68pp.

South Carolina Department of Health and Environmental Control. Regulation 61-68, Water Classifications and Standards. Code of Laws of South Carolina, 1976, as amended. 22pp.

South Carolina Department of Health and Environmental Control. Regulation 61-69, Classified Waters. Code of Laws of South Carolina, 1976, as amended. 36pp.

South Carolina Department of Health and Environmental Control. Regulation 61-101, Water Quality Certification. Code of Laws of South Carolina, 1976, as amended. 8pp.

Prepared by: S-C-llg Date: October 4, 2000

Reviewed by: M. Rheta Jeddig Date: October 4, 2000
7 ghoe

Approved by: M. Rheta Jeddig Date: October 4, 2000

*File
Close to
Provide copy to
SW permit file*

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Mary W. Abel, Daniel C. Abel and David F. Mims,

Petitioners,

vs.

South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management, and Pawleys Island Baptist Church,

Respondents.

Docket No. 00-ALJ-07-0626-CC

CONSENT ORDER
OF
SETTLEMENT AND DISMISSAL

This proceeding arises out of the application of the Pawleys Island Baptist Church, a South Carolina Not-for Profit Corporation, [hereinafter the "Church"] for a state storm water permit for the construction of a new sanctuary and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the church also requested a wetland fill permit from the US Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC/OCRM). After DHEC/OCRM issued the storm water permit and consistency certification, requests for a contested case hearing were filed by Mary W. Abel, Daniel C. Abel and David F. Mims.

The parties have met, discussed, negotiated, and resolved their differences, and have reached a settlement which they desire to have incorporated into this order. Specifically, the parties have

Exhibit /

FILED

JAN 0 8 2001

*DCM
DFM
MWA*

[Signature]
340

agreed as follows:

1. The designs for the storm water pond and other improvements at the site shall be amended so that approximately one-half (50%) of the wetland area on the site shall be preserved. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A. The Church shall also amend its plans for the proposed structure shown on Exhibit A as "PROPOSED FUTURE BUILDING PHASE II" so that no portion of this structure will encroach upon the area of the wetland.

2. The Church agrees that it will instruct its engineers, architects, contractors and others working on the Church improvement project and storm water management project, to continue to explore additional design changes, where feasible from a time and cost perspective, which will allow possible additional expansion of the wetland area to be preserved.

3. The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state.

4. In constructing the storm water system and church improvements, the Church shall instruct its engineers, architects, contractors and others working on its behalf to employ all available Best Management Practices to prevent harm to the wetland beyond that authorized by this agreement and by the permit and certification as hereby amended. In the event such additional harm to the wetland occurs despite best efforts, the church will restore or mitigate any such harm.

5. Within the area designated on Exhibit A as the "30' NOISE/VISUAL BUFFER," the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees and shrubs will be leyland

cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height with fifty percent (50%) of the trees at least ten (10) feet in height; provided however, that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state.

6. The existing basketball and volleyball fields will be removed and will not be re-located any closer to the rear property line of the church property than the front of the new sanctuary.

7. All lighting on the church property will be placed so that it is shielded or directed away from the properties adjacent to the "30' NOISE/VISUAL BUFFER," shown on Exhibit A.

8. Upon execution of this Consent Order, the Church may immediately begin construction of the new sanctuary and other improvements not inconsistent with this agreement and order.

9. The Church and the Petitioners will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement and order.

After review of the agreement, I conclude that it should be accepted and made a part of this order. Accordingly, upon the joint motion and consent of the parties,

IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a part of this final order of the Administrative Law Judge Division.

IT IS FURTHER ORDERED that the DHEC/OCRM permit and certification shall be, and same hereby are, amended in accordance with this agreement and order.

IT IS FURTHER ORDERED that this matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein.

DCA MOS
DFM
mah.10.18

John W.
John W.

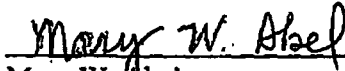
AND IT IS SO ORDERED.

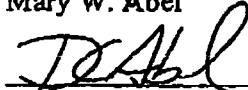

C. Dukes Scott
Administrative Law Judge

Columbia, South Carolina
December 8th, 2000

WE SO MOVE AND CONSENT:

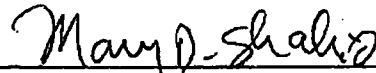
PETITIONERS:


Mary W. Abel

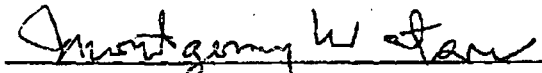

Daniel C. Abel

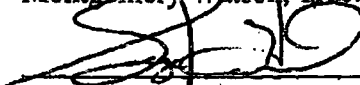

David Mims

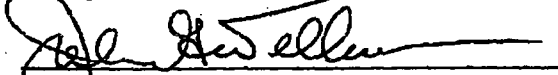
14
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

By: 
Mary D. Shahid, its Attorney

PAWLEYS ISLAND BAPTIST CHURCH,
a South Carolina Not-for Profit Corporation

By: 
Montgomery Watson, Trustee

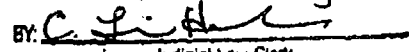
By: 
George Hilliard, Trustee

By: 
Jack Wellman, Trustee

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, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).

This 8th day of January, 2001

By: 
Judicial Law Clerk

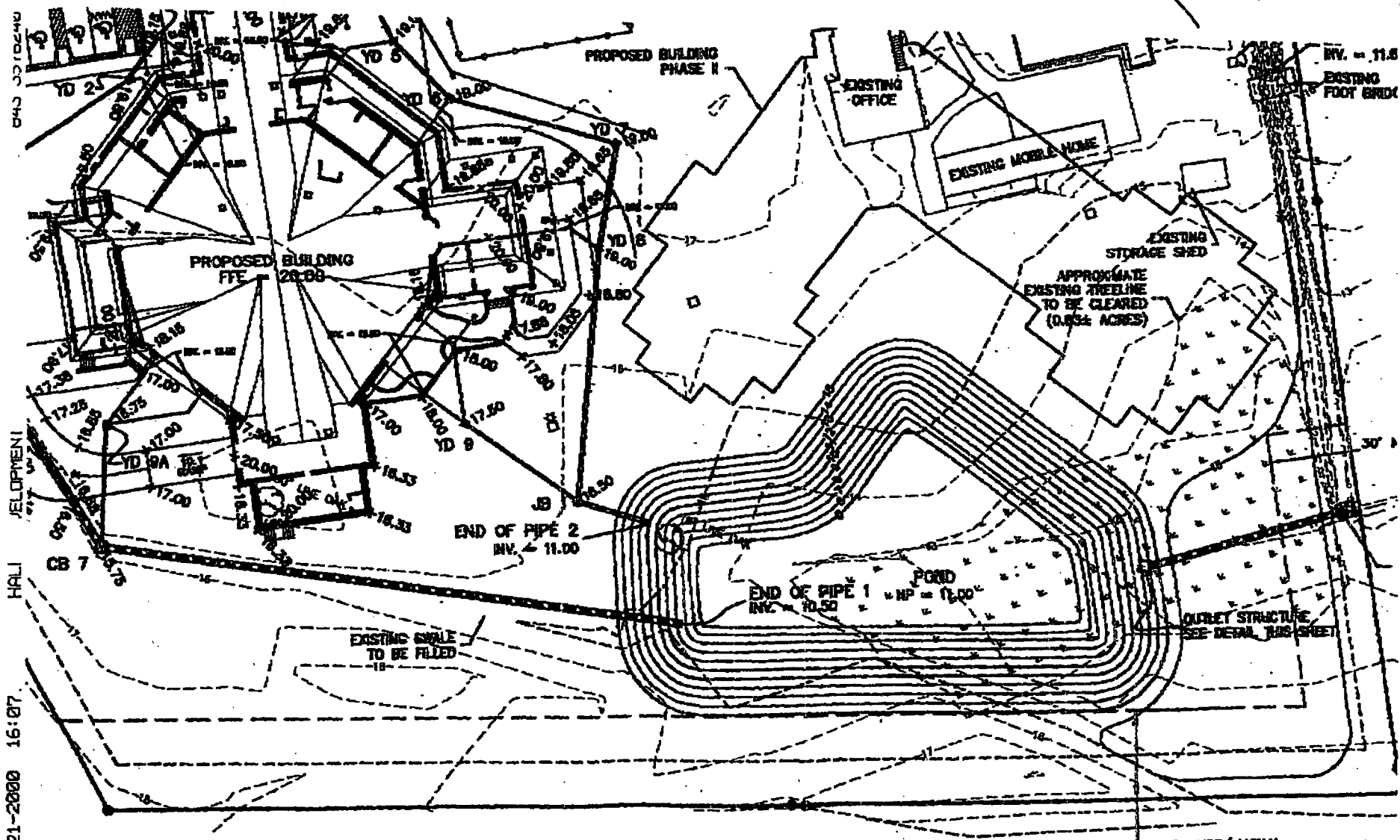
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HALI

DEVELOPMENT

043 0310240

11/01/01



Handwritten notes:
Apr 3
DCA
DPM
MMA
MPS



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

CZC-12-0149

For official use only

File number: 22

Permit number: SCR10 Q 459

Submission package complete: _____

Public Notice Start Date (OCRM only): _____

For official use only

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

Date: 06/07/2012

Project/ Site Name: Pawleys Island Community Church Administrative Building

County: Georgetown

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

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

I. Project Information

Project Owner/ Operator (Company or person): Pawleys Island Community Church

Company EIN: 57-0756928

Phone: 843-237-4449

Fax: _____

Mailing Address: 10304 Ocean Highway

City: Pawleys Island

State: SC

Zip: 29585

Permit Contact (if owner is company): Mike Fields

Phone: 843-237-4449

Mailing Address: 10304 Ocean Highway

City: Pawleys Island

State: SC

Zip: 29585

Email address (optional): mike-picc@sc.rr.com

II. Property Information

A. Site Location (street address, nearest intersection, etc.): East side of Hwy 17 approx. 300LF south of True Blue Dr.

City/ Town (if in limits): Pawleys Island

Latitude: 33° 26' 8" N

Longitude: -79° 7' 47" W

Tax map # (list all): 04-0161-052-00-00 & 04-0161-049-01-00

B. Property Owner: Pawleys Island Community Church

Phone: 843-237-4449

Mailing Address: 10304 Ocean Highway

City: Pawleys Island

State: SC

Zip: 29585

III. Site Information

A. Disturbed area (to the nearest tenth of an acre): 2.2 acres Total area: 10.1 acres

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

LCP/ Overall Development Name: Pawleys Island Community Church

Check here if this is the first phase. ☒

Previous state permit/ file number: _____

Previous NPDES coverage number: SCR10 ☐ ☐ ☐

C. Start Date (MM/DD/YYYY): 08/01/2012

Completion Date: 02/01/2013

D. Is this site located on Indian Lands? ☐ Yes ☒ No

If yes, name of reservation: _____

E. Type of Activity (check one):

☒ Institutional

☐ Residential: Single-family

☐ Commercial

☐ Industrial

☐ Linear

☐ Residential: Multi-family

☐ Multi-use (Commercial & Residential)

☐ Other: _____

☐ Site Preparation (No new impervious)

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

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

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

If yes, list the MS4 operator or urbanized area name: _____

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

IV. Waterbody Information

A. Nearest receiving waterbody(s) [RWB]: Pawleys Island Creek

Distance to nearest RWB (feet): 1,300

Classification of nearest RWB: SFH

Next/Nearest named RWB: Midway Inlet

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

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

JUN 26 2012

Exhibit 8

C. Impaired Waterbodies (See instructions.)

List the nearest DHEC water quality monitoring station(s) [WQMS(s)] to which construction stormwater (SW) discharges will drain and the corresponding waterbody(s): 04-11 Waterbody(s): Pawleys Island Creek

1. Is this WQMS(s) listed on the most current 303(d) List for Impaired Waters? ☐ Yes ☒ No

a. If yes for 1, list the impairment(s):

b. If yes for 1, will the site's construction SW discharges contain any pollutant(s) causing the impairment(s)? ☐ Yes ☒ No

c. If yes for b, list the impairment(s) affected by the pollutant(s) referenced in b.

d. If yes for b, will use of the proposed BMPs ensure that the site's discharges will not contribute to or cause further water quality standard violations for the impairment(s) listed in c? ☐ Yes ☒ No

2. Has a TMDL(s) been developed for this WQMS(s)? ☒ Yes ☐ No

a. If yes for 2, list the impairment(s): Fecal Coliform

b. If yes for 2, has the standard been attained for all impairment(s)? ☐ Yes ☒ No

c. If no for b, will the site's construction SW discharges contain any pollutant(s) causing the impairment(s)? ☐ Yes ☒ No

d. If yes for c, are your discharges consistent with the assumptions and requirements of the TMDL(s)? ☐ Yes ☒ No

D. 1. Are S.C. Navigable Waters (SCNW) on the site? ☐ Yes ☒ No

a. If yes for 1, list the name of the SCNW:

b. If yes for 1, will any construction activities cross over or occur in, under, or through the SCNW? ☐ Yes ☒ No

c. If yes for b, then describe activities:

d. If yes for b, are the activities in SCNW covered under a DHEC General Permit or other DHEC permit? ☐ Yes ☒ No

e. If no for d, has an SCNW permit been applied for or issued for the site? ☐ Yes, for all activities ☐ Yes, for some activities ☒ No

f. If yes for d or e, list permit number(s) and corresponding activities:

V. Operator Information

A. SWPPP Preparer: Thomas P. Bevins

S.C. Registration #: 1381919

Company/ Firm: Engineering & Technical Services, Inc.

S.C. COA #: 00438

Mailing Address: PO Box 2040

City: Pawleys Island State: SC Zip: 29566

Phone: (Day) 843-237-3002

(Mobile) 843-385-6882

(Fax) 843-237-2269

Email address (optional): tbevins@etsengineers.com

B. Operator of Day-to-Day Site Activities (ODSA) (Company or person): Mike Fields

Mailing Address: 10304 Ocean Highway

City: Pawleys Island State: SC Zip: 29566

Phone: 843-237-4449

Fax:

Phone:

Site Contact (if ODSA is company):

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

A. One copy of the SWPPP, all specifications and supporting calculations, forms, and reports are herewith submitted and made a part of this application. I have placed my signature and seal on the design documents submitted signifying that I accept responsibility for the design of the system. Further, I certify to the best of my knowledge and belief that the design is consistent with the requirements of Title 46, Chapter 14 of the Code of Laws of SC, 1976 as amended, pursuant to Regulation 72-300 et seq., and in accordance with the terms and conditions of SCR100000. (This should be person identified in Section V.A.)

Check one: ☒ Engineer ☐ Tier B Surveyor ☐ Landscape Architect

Thomas P. Bevins

Printed name of SWPPP Preparer

Signature of SWPPP Preparer

13899

S.C. Registration #

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

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

Mike Fields

Printed name of Project Owner/Operator

Signature of Project Owner/Operator

6/7/12

Date

NPDES COP Fee Schedule B

(Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Johnston Counties)

RECEIVED

This schedule should not be used for projects reviewed by a delegated entity or MS4 operator.

JUN 26 2012

If you are completing the fillable version of this form and if the County and Disturbed Area fields are correctly filled out on page 1 of this form, the fees in the right-hand column will be automatically determined on your answers to the questions below. This schedule should be attached to DHEC Form 2617, in a window envelope. DO NOT MAIL CASH. DHEC will notify the Project Owner/ Operator if the submitted check or credit card payment cannot be processed. The review clock will start when acceptable payment is received and after the project is deemed consistent with the S.C. Coastal Zone Management Plan.

1. Is this project located within 1/4 mile of a RWB (Item IV.A)? ☒ Yes ☐ No
If yes, proceed to Item 2. If no, proceed to Item 3.
2. a. Will this project or LCP (Item III.B) ultimately disturb more than 0.5 acre? ☒ Yes ☐ No \$ 125.00
If yes, enter \$125 in right-hand column and proceed to 2b. If no, see OCRM-SPWS for "Small Project Requirements in Coastal Counties" and proceed to 2c.
b. If yes for 2a, is this project exempt from S.C. Reg. 72-300 et seq? ☐ Yes ☒ No
If yes for 2b, review fees are not initially required; proceed to Item 4.
If yes for 2a and no for 2b, enter review fees of \$100/ disturbed acre (from Item III.A on page 1) in right-hand column. The review fees cannot exceed \$2000. Proceed to Item 4. \$ 220.00
c. If no for 2a, does this project meet the criteria of categories a, d, or e listed in the "SCCZ Requirements" section of the instructions (page 6)? ☐ Yes ☐ No
If no for 2a and yes for 2c, enter \$125 in the right-hand column. Then, enter review fees of \$100/ disturbed acre (from Item III.A on page 1) on this line in the right-hand column and proceed to Item 4. \$.00
3. a. Will this project or LCP (Item III.B) ultimately disturb 1 or more acres? ☐ Yes ☐ No \$.00
If yes, enter \$125 in right-hand column and proceed to 3b. If no, coverage under SCR100000 is not required; see OCRM-SPWS for "Small Project Requirements in Coastal Counties".
b. If yes for 3a, is this project exempt from S.C. Reg. 72-300 et seq? ☐ Yes ☐ No
If yes for 3b, review fees are not initially required; proceed to Item 4.
If yes for 3a and no for 3b, enter review fees of \$100/ disturbed acre (from Item III.A on page 1) in right-hand column. The review fees cannot exceed \$2000. Proceed to Item 4. \$.00
4. Total Required Fees
Add the values in the right-hand column. Maximum required fees are \$2125. DHEC will not review this project until all required fees are received. Total Required Fees: \$ 345.00

* If DHEC will review the project, then DHEC will notify the Project Owner/ Operator in writing within 20 days of receipt of the complete NOI and request review fees.

Payment by Check:

Make sure check is signed and has a current date on it. If check is more than 30 days old, it may be returned. The check must be for the entire amount of required fees.

STAPLE CHECK HERE

Make check payable to S.C. DHEC.

Payment by Credit Card:

Fill out the information below. Credit card payments must be processed by the applicant online at <http://www.scdhec.gov>. Upon receipt of the NOI, OCRM will provide a memo to the applicant containing directions for processing application fees online and specific invoice numbers necessary for online payment.

Name as it appears on Card: _____ Phone: _____
Mailing Address: _____ City: _____ State: _____ Zip: _____

For official use only: Invoice Numbers YE _____ YA _____ YV _____ YT _____

**RECEIVED**

JUN 26 2012

Stormwater, Construction &
Agriculture Permitting Division**DHEC OCRM State Coastal Zone Consistency (CZC) Certification
Request Form**

Project Name: Pawleys Island Community Church Administrative Building	
Applicant Information: Name Pawleys Island Community Church Address 10304 Ocean Highway Phone # 843-237-4449 E-mail mike-picc@sc.rr.com	Agent/Engineer Information: Name Kacy Gunter, PE/ETS Address PO Box 2040 Pawleys Island, SC 29585 Phone # 843-237-3002 E-mail kgunter@etsengineers.com
Site details: Address: 10304 Ocean Highway Pawleys Island, SC County: Georgetown TMS: 04-0161-052-00-00 & 04-0161-049-01-00	
Type of Permit Requested: (ex. NPDES, Mining, etc) NPDES	Name of Permitting Authority(s): (ex. DHEC Bureau of Water) DHEC Bureau of Water
Description of Proposed Activity(s): Reconfiguring existing drive, adding parking, constructing a 4,000 square foot administrative building, expansion and reconfiguration of existing pond and outlet structure, adding an infiltration system.	

All applicable Project Policy Checklist(s) that apply to the proposed project must be submitted with this request form. (See www.scdhec.gov/environment/ocrm/czc for available Policy Checklists)

Submitted By: Kacy Gunter, PE

Date: June 22, 2012

Exhibit 9



Pawley's Island Community Church

Koczera, Christine <koczerc@dhec.sc.gov>
To: "Gunter, Kacy" <kgunter@etsengineers.com>
Cc: mike-picc@sc.rr.com

10 July 2012 16:08

Hi Kacy,

I am in the process of completing the CZC review for the referenced project and have some comments / questions. Please see items listed below:

1. Policy Group Checklist 13 needs to be completed since the project is located within 1/2 mile of a RWB.
2. The plan sheet indicates both non-jurisdictional and jurisdictional wetland impacts are proposed. The NOI did not indicate this. Please clarify. I do not see where a wetland permit has been applied for.

Let me know if you have any questions.

Thanks,
Christine

-

Christine Koczera
Project Manager
Coastal Zone Consistency Certification
SC DHEC / Ocean Coastal Resource Management
1362 McMillan Ave., Suite 400
Charleston, SC 29405
Phone: 843-953-0702 Fax: 843-953-0260
E-mail: koczerc@dhec.sc.gov
<http://www.dhec.sc.gov/environment/ocrm/permits/stormwater.htm>

Please take a few moments to complete our customer survey:
http://www.scdhec.gov/environment/ocrm/coastal_permitting.htm

Exhibit 10



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

Official
Review
7/10/12
Reviewed
NOI

For official use only

File number: _____

Permit number: SCR10 _____

Submission package complete: _____

Public Notice Start Date (OCRM only): _____

For official use only

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

Date: 08/07/2012

Project/ Site Name: Pawleys Island Community Church Administrative Building County: Georgetown

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

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

I. Project Information

Project Owner/ Operator (Company or person): Pawleys Island Community Church

Company EIN: 57-0756928

Phone: 843-237-4449

Fax: _____

Mailing Address: 10304 Ocean Highway

City: Pawleys Island

State: SC

Zip: 29585

Permit Contact (if owner is company): Mike Fields

Phone: 843-237-4449

Mailing Address: 10304 Ocean Highway

City: Pawleys Island

State: SC

Zip: 29585

Email address (optional): mike-plcc@sc.rr.com

II. Property Information

A. Site Location (street address, nearest intersection, etc.): East side of Hwy 17 approx, 300LF south of True Blue Dr.

City/ Town (if in limits): Pawleys Island

Latitude: 33° 26' 8" N Longitude: -79° 7' 47" W

Tax map # (list all): 04-0161-052-00-00 & 04-0161-049-01-00

B. Property Owner: Pawleys Island Community Church

Phone: 843-237-4449

Mailing Address: 10304 Ocean Highway

City: Pawleys Island

State: SC

Zip: 29585

III. Site Information

A. Disturbed area (to the nearest tenth of an acre): 2.2 acres Total area: 10.1 acres

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

LCP/ Overall Development Name: Pawleys Island Community Church

Check here if this is the first phase. ☒

Previous state permit/ file number: _____

Previous NPDES coverage number: SCR10 ☐ ☐ ☐ ☐

C. Start Date (MM/DD/YYYY): 08/01/2012

Completion Date: 02/01/2013

D. Is this site located on Indian Lands? ☐ Yes ☒ No

If yes, name of reservation: _____

E. Type of Activity (check one):

☒ Institutional ☐ Residential: Single-family

☐ Commercial

☐ Industrial

☐ Linear ☐ Residential: Multi-family

☐ Multi-use (Commercial & Residential)

☐ Other: _____

☐ Site Preparation (No new Impervious)

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

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

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

If yes, list the MS4 operator or urbanized area name: _____

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

IV. Waterbody Information

A. Nearest receiving waterbody(s) (RWB): Pawleys Island Creek

Distance to nearest RWB (feet): 1,300

Classification of nearest RWB: SFH

Next/Nearest named RWB: Midway Inlet

B. 1. Waters of the U.S./ State	On the site?	Designated/ Identified?	Impacts?	Amount of impacts
a. Jurisdictional wetlands	☒ Yes ☐ No	☒ Yes ☐ No	☒ Yes ☐ No	0.170 Ac
b. Non-jurisdictional wetlands	☐ Yes ☒ No	☐ Yes ☐ No	☐ Yes ☐ No	Ac
c. Other Water(s) List:	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	Ac Feet

2. If yes for Impacts in B.1, describe each impact and activity, and list all permits (e.g., USACOE Nationwide permit, DHEC General Permit) and certifications that have been applied for or obtained for each impact.
Wetlands to be filled for construction of proposed utility building and expansion of existing pond. USACOE Nationwide permit to be applied for the .17 acres of proposed impacts.

C. Impaired Waterbodies (See Instructions.)

List the nearest DHEC water quality monitoring station(s) [WQMS(s)] to which construction stormwater (SW) discharges will drain and the corresponding waterbody(s). 04-11 Waterbody(s): Pawleys Island Creek

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

D. 1. Are S.C. Navigable Waters (SCNW) on the site? ☐ Yes ☒ No

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

V. Operator Information

- A. SWPPP Preparer: Thomas P. Bevins S.C. Registration #: 13899
Company/ Firm: Engineering & Technical Services, Inc. S.C. COA #: 00439
Mailing Address: PO Box 2040 City: Pawleys Island State: SC Zip: 29588
Phone: (Day) 843-237-3002 (Mobile) 843-385-8882 (Fax) 843-237-2269
Email address (optional): tbevins@etsengineers.com
- B. Operator of Day-to-Day Site Activities (ODSA) (Company or person): Mike Fields
Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 843-237-4449 Fax: _____
Site Contact (If ODSA is company): _____ Phone: _____

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

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

Thomas P. Bevins
Printed name of SWPPP Preparer

Thomas P. Bevins
Signature of SWPPP Preparer

13899
S.C. Registration #

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

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

Mike Fields
Printed name of Project Owner/Operator

Mike Fields
Signature of Project Owner/ Operator

6/7/12
Date



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

C2C-12-0149

For official use only

File number: 22-12-06-03

Permit number: SCR10 0459

Submittal package complete: _____

Public Notice Start Date (OCRM only): _____

For official use only

VOID

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

Date: 06/07/2012

Project/ Site Name: Pawleys Island Community Church Administrative Building County: Georgetown

Do you want this project to be considered for the Expedited Review Program (ERP)? ☐ Yes ☒ No (See instructions.)
If yes, is the design of this project above regulatory requirements or Low Impact Development? ☐ Yes ☒ No

I. Project Information

Project Owner/ Operator (Company or person): Pawleys Island Community Church

Company EIN: 57-0756928 Phone: 843-237-4449 Fax: _____

Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585

Permit Contact (if owner is company): Mike Fields Phone: 843-237-4449

Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585

Email address (optional): mike-plcc@sc.rr.com

II. Property Information

A. Site Location (street address, nearest intersection, etc.): East side of Hwy 17 approx. 300LF south of True Blue Dr.

City/ Town (if in limits): Pawleys Island Latitude: 33° 26' 8" N Longitude: -79° 7' 47" W

Tax map # (list all): 04-0161-052-00-00 & 04-0161-049-01-00

B. Property Owner: Pawleys Island Community Church Phone: 843-237-4449

Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585

III. Site Information

A. Disturbed area (to the nearest tenth of an acre): 2.2 acres Total area: 10.1 acres

B. Is this project part of a Larger Common Plan for Development or Sale (LCP)? ☒ Yes ☐ No
LCP/ Overall Development Name: Pawleys Island Community Church Check here if this is the first phase. ☒

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

C. Start Date (MM/DD/YYYY): 08/01/2012 Completion Date: 02/01/2013

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

E. Type of Activity (check one): ☒ Institutional ☐ Residential: Single-family ☐ Commercial ☐ Industrial

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

☐ Site Preparation (No new impervious)

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

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

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

If yes, list the MS4 operator or urbanized area name: _____

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

IV. Waterbody Information

A. Nearest receiving waterbody(s) (RWB): Pawleys Island Creek Distance to nearest RWB (feet): 1,300

Classification of nearest RWB: SFH Next/Nearest named RWB: Midway Inlet

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

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

RECEIVED
JUN 26 2012

C. Impaired Waterbodies (See instructions.)

List the nearest DHEC water quality monitoring station(s) [WQMS(s)] to which construction stormwater (SW) discharges will drain and the corresponding waterbody(s). 04-11 Waterbody(s): Pawleys Island Creek

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

D. 1. Are S.C. Navigable Waters (SCNW) on the site? ☐ Yes ☒ No

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

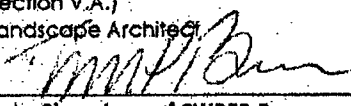
V. Operator Information

- A. SWPPP Preparer: Thomas P. Bevins S.C. Registration #: 13899
Company/ Firm: Engineering & Technical Services, Inc. S.C. COA #: 00439
Mailing Address: PO Box 2040 City: Pawleys Island State: SC Zip: 29585
Phone: (Day) 843-237-3002 (Mobile) 843-385-8882 (Fax) 843-237-2269
Email address (optional): bevins@etsengineers.com
- B. Operator of Day-to-Day Site Activities (ODSA) (Company or person): Mike Fields
Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 843-237-4449 Fax: _____
Site Contact (if ODSA is company): _____ Phone: _____

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

- A. One copy of the SWPPP, all specifications and supporting calculations, forms, and reports are herewith submitted and made a part of this application. I have placed my signature and seal on the design documents submitted signifying that I accept responsibility for the design of the system. Further, I certify to the best of my knowledge and belief that the design is consistent with the requirements of Title 48, Chapter 14 of the Code of Laws of SC, 1976 as amended, pursuant to Regulation 72-300 et seq., and in accordance with the terms and conditions of SCR 100000. (This should be person identified in Section V.A.)
- Check one. ☒ Engineer ☐ Tier B Surveyor ☐ Landscape Architect

Thomas P. Bevins
Printed name of SWPPP Preparer

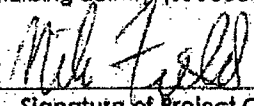

Signature of SWPPP Preparer

13899
S.C. Registration #

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

I hereby certify that all land-disturbing construction and associated activity pertaining to this site shall be accomplished pursuant to and in keeping with the terms and conditions of the approved plans and SCR 100000. I also certify that a responsible person will be assigned to the project for day-to-day control. I hereby grant authorization to the S.C. Department of Health and Environmental Control (DHEC) and/or the local implementing agency the right of access to the site at all times for the purpose of on site inspections during the course of construction and to perform maintenance inspections following the completion of the land-disturbing activity. (See Section 122.22 of S.C. Reg. 61-9 for signatory authority information.)

Mike Fields
Printed name of Project Owner/Operator


Signature of Project Owner/ Operator

6/7/12
Date

NPDES CGP Fee Schedule B
(Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper Counties)

This schedule should not be used for projects reviewed by a delegated entity or MS4 operator.

If you are completing the fillable version of this form and if the County and Disturbed Area fields are correctly filled out on page 1 of this form, the fees in the right-hand column will be automatically entered based on your answers to the questions below. This schedule should be attached to DHEC Form 2617. Do not send payment in window envelope. DO NOT MAIL CASH. DHEC will notify the Project Owner/ Operator if the submitted check or credit card payment cannot be processed. The review clock will start when acceptable payment is received and after the project is deemed consistent with the S.C. Coastal Zone Management Plan.

1. Is this project located within 1/2 mile of a RWB (Item IV.A)? ☒ Yes ☐ No
If yes, proceed to item 2. If no, proceed to item 3.
2. a. Will this project or LCP (Item III.B) ultimately disturb more than 0.5 acre? ☒ Yes ☐ No \$ 125.00
If yes, enter \$125 in right-hand column and proceed to 2b. If no, see OCRM-SPWS for "Small Project Requirements in Coastal Counties" and proceed to 2c.
- b. If yes for 2a, is this project exempt from S.C. Reg. 72-300 et seq? ☐ Yes ☒ No
If yes for 2b, review fees are not initially required; proceed to item 4. \$ 220.00
If yes for 2a and no for 2b, enter review fees of \$100/ disturbed acre (from item III.A on page 1) in right-hand column. The review fees cannot exceed \$2000. Proceed to item 4.
- c. If no for 2a, does this project meet the criteria of categories a, d, or e listed in the "SCCZ Requirements" section of the Instructions (page 6)? ☐ Yes ☐ No
If no for 2a and yes for 2c, enter \$125 in the right-hand column. Then, enter review fees of \$100/ disturbed acre (from item III.A on page 1) on this line in the right-hand column and proceed to item 4. \$ 00.00
3. a. Will this project or LCP (Item III.B) ultimately disturb 1 or more acres? ☐ Yes ☐ No \$ 00.00
If yes, enter \$125 in right-hand column and proceed to 3b. If no, coverage under SCR100000 is not required; see OCRM-SPWS for "Small Project Requirements in Coastal Counties".
- b. If yes for 3a, is this project exempt from S.C. Reg. 72-300 et seq? ☐ Yes ☐ No
If yes for 3b, review fees are not initially required; proceed to item 4. \$ 00.00
If yes for 3a and no for 3b, enter review fees of \$100/ disturbed acre (from item III.A on page 1) in right-hand column. The review fees cannot exceed \$2000. Proceed to item 4.
4. **Total Required Fees**
Add the values in the right-hand column. Maximum required fees are \$2125. DHEC will not review this project until all required fees are received. Total Required Fees: \$ 345.00
- * If DHEC will review the project, then DHEC will notify the Project Owner/ Operator in writing within 20 days of receipt of the complete NOI and request review fees.

Payment by Check:

Make sure check is signed and has a current date on it. If check is more than 30 days old, it may be returned. The check must be for the entire amount of required fees.

STAPLE CHECK HERE

Make check payable to S.C. DHEC.

RECEIVED

JUN 26 2012

Stormwater, Construction &
Agriculture Permitting Division

Payment by Credit Card:

Fill out the information below. Credit card payments must be processed by the applicant online at <http://www.scdhec.gov>. Upon receipt of the NOI, OCRM will provide a memo to the applicant containing directions for processing application fees online and specific invoice numbers necessary for online payment.

Name as it appears on Card: _____ Phone: _____
Mailing Address: _____ City: _____ State: _____ Zip: _____

For official use only: Invoice Numbers YE _____ YA _____ IV _____ ZT _____

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dan Abel, Mary Abel and)
William Mashburn,)
)
Petitioners,)
)
v.) Docket No.:
) 14-ALC-07-0282-CC
South Carolina Department of)
Health and Environmental Control)
and Pawleys Island Community Church,)
)
Respondents.)

DEPOSITION OF: MICHAEL FIELDS
DATE TAKEN: Tuesday, November 11, 2014
TIME: 8:57 a.m.
PLACE: Offices of South Carolina
Environmental Law Project
430 Highmarket Street
Georgetown, South Carolina

REPORTED BY: Kendra E. Johnston, RPR, CKR
Registered Professional Reporter,
Certified Realtime Reporter
and Notary Public

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

Exhibit 12

A P P E A R A N C E S

REPRESENTING THE PETITIONERS:

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PRESENT:

Amelia Thompson

I N D E X

Testimony of Michael Fields

Direct Examination by Ms. Armstrong.....4
Cross-Examination by Mr. Haber.....27

CERTIFICATE.....29

INDEX OF EXHIBITS

Deposition Exhibit 1 - Notice of Deposition.....4
Deposition Exhibit 2 - Consent Order.....11
Deposition Exhibit 3 - Notice of Intent.....12
Deposition Exhibit 4 - E-mails.....14
Deposition Exhibit 5 - October 31, 2012, letter
to Gunter from Koczera.....17
Deposition Exhibit 6 - February 6, 2013, letter
to Geer from Bevins.....18
Deposition Exhibit 7 - Letter and attached
Modified Consent Order of
Settlement and Dismissal...24

STIPULATIONS

It is hereby stipulated and agreed by and
between the parties hereto, through their respective
counsel, that the reading and signing of the transcript
is waived by the Deponent.

1 (The deposition commenced at 8:57 a.m.)

2 (Deposition Exhibit No. 1 marked for
3 identification.)

4 MICHAEL FIELDS, SWORN.

5 DIRECT EXAMINATION

6 BY MS. ARMSTRONG:

7 Q. Good morning, Mr. Fields. My name is Amy
8 Armstrong. As you know, I represent Dan and Mary Abel
9 in a challenge to permits authorizing some construction
10 activities on the church's property. We met a couple
11 months ago here in my office.

12 A. Correct.

13 Q. And I just want to give you a brief
14 instruction. The Supreme Court tells me I need to let
15 you know that once the deposition has started, you can
16 no longer communicate with your attorney, you can't
17 look to him for answers or anything. If you've got a
18 question, just ask me to rephrase my question or
19 restate it if you don't understand; otherwise, you need
20 to answer all of the questions. You may hear him
21 object to a form of the question, but you need to go
22 ahead and answer the question.

23 The purpose of the deposition today is for
24 us to just learn a little bit more about the church's
25 history with the project and the position that it's

1 taking in this case and the reason for the application.

2 And so I'm going to hand you what's been marked as

3 Exhibit No. 1 and ask you if you have seen that

4 document before?

5 A. Yes.

6 Q. Okay. And have you reviewed the document?

7 A. I've read it.

8 Q. You've read it?

9 A. Not today.

10 Q. Okay. Do you understand that you're here
11 designated as a witness to speak on behalf of the
12 church?

13 A. I do.

14 Q. Okay. If you could, mark your initials
15 right by the numbers of the items. We've got 1, 2, 3,
16 4. Just read each one and write your initials by the
17 ones that you are familiar with or you're going to be
18 providing testimony about or you have knowledge of.

19 A. The Consent Order, is that with the Mims?

20 Q. Correct, yes. I'm talking about the one
21 that was entered into in 2001.

22 A. Oh. I'm supposed to -- if I have knowledge
23 of?

24 Q. Right, if you are providing testimony
25 regarding the negotiations surrounding the Consent

1 Order in the 2000 case that was resolved in 2001.

2 A. I wasn't employed at the church.

3 Q. Right. And I thought that might be the
4 case. So if those are things that you don't have
5 familiarity with, like the actual negotiations with
6 that Consent Order, so you just --

7 A. None of these should be checked by me. I'm
8 sorry.

9 Q. That's okay.

10 A. I thought this was the one that I went and
11 negotiated with David and Tina.

12 Q. Okay. Right. You're talking about the
13 amendment..

14 A. Okay.

15 Q. Okay?

16 A. No.

17 Q. So if you'll just strike through your
18 initials. I don't want to have any confusion and I
19 don't want the church to be bound by your testimony if
20 you can't provide testimony on those issues.

21 A. I'm sorry.

22 Q. That's okay. And then just flip over to the
23 next page.

24 A. I'm not aware of anything in 2001, so if
25 this refers to a Consent Order of Dismissal...

1 Q. Well, some of the questions relate to --
2 some of the questions relate to the negotiations
3 surrounding the Consent Order, and some of them, I
4 think, relate to, you know, the church's, for example,
5 number 5, the understanding of its obligations, and
6 that could be something that's, you know, you'll have
7 to determine whether you can provide testimony on that.

8 And you crossed out the process of applying
9 for the permit and certification at issue and the
10 purpose of the work for which the subject permit
11 application was submitted to DHEC. You don't have
12 knowledge about either of those two? And I'm talking
13 about the permit and certification that is here before
14 us today.

15 A. You know, I'm not an expert in that. We had
16 hired a company to do that, so I know that we hired
17 somebody, so do I -- I mean, that's the knowledge that
18 I have, that we hired somebody to do the process for
19 us.

20 Q. Okay.

21 A. I misunderstood your answer a while ago. I
22 thought you said this all referred to the 2001 case.

23 Q. Not all of it, just the -- I mean, I think
24 you just have to -- I can't -- you know, I can't tell
25 you what you know, but I can tell you that my intent is

1 to understand different things related to that Consent
2 Order, so if it's the negotiations surrounding the
3 Consent Order and you weren't privy to those
4 negotiations, then you probably wouldn't have
5 knowledge. Whether the church has discussed that,
6 since you've been employed with the church, I think
7 that would be something that you would be testifying
8 about.

9 So just so I can make sure I've got the same
10 things identified as you, you've got your initials by
11 number 1 and number 2.

12 A. Correct.

13 Q. Number 7, 8, 9 and 10?

14 A. Correct.

15 Q. Okay. Part of this is just to help me not
16 ask you questions that you don't know anything about.

17 So tell me about your employment with the
18 church. How long have you been --

19 A. I started in January of 2009.

20 Q. Okay.

21 A. I am the administrative admissions pastor,
22 so...

23 Q. Okay. And in what kind of capacities do you
24 serve the church as administrative pastor?

25 A. General answer is everything but preach. I

1 do no preaching, per se, and other than what I'm doing
2 now, technology, payroll, run the day-to-day operations
3 of the church.

4 Q. And is that a full-time position?

5 A. It is.

6 Q. How long have you been associated with the
7 church?

8 A. As a member, since '97.

9 Q. 1997. And where was the church located
10 then?

11 A. In its current location in the chapel
12 building. The worship center didn't exist.

13 Q. And so what do you know about the history of
14 the church?

15 A. It's -- Bob Barrows started it, and it's
16 been there for, I don't know, 40 years.

17 Q. And what year did he start the church?

18 A. 1980's maybe, 19 -- I'm not sure.

19 Q. And there's a facility right now that I
20 think is used as the main chapel, the main worship
21 center?

22 A. Worship center.

23 Q. And do you know when that was constructed?

24 A. It was completed in 2002, probably started
25 in 2000.

1 Q. Do you know who was involved in the
2 permitting process for the church, the construction of
3 the church?

4 A. I do not.

5 Q. Do you know Glen Hall?

6 A. I do know Glen.

7 Q. Do you know whether he played any role in
8 securing permits for the first construction?

9 A. I do not.

10 Q. So you're not familiar at all with the 2000
11 certifications and permits associated with the
12 construction?

13 A. No, ma'am.

14 Q. Okay. Do you know anything about -- well,
15 what do you know about a challenge to the original
16 permits back in 2000?

17 A. As it relates to our application in 2012?

18 Q. Well, do you know what happened as a result
19 of the challenge to the Department?

20 A. I'm not sure I understand the question as
21 far as do I understand what happened. This is a result
22 of the challenge; correct?

23 Q. Well, I can't answer the questions. You
24 need to answer the questions related to the facts. And
25 so, I guess, what I'm wondering is were you aware that

1 the 2000 permits were challenged?

2 A. Yes.

3 Q. Okay. And do you know what happened as a
4 result of that challenge?

5 A. No. It's still happening.

6 Q. Was the church allowed to proceed with
7 construction, though?

8 A. No, we haven't done anything with
9 construction.

10 Q. I guess I'm talking about the 2000 permit
11 and certifications, the document -- the authorizations
12 that approved the construction of the worship center
13 that's on the site right now.

14 A. We built the worship center, yes.

15 Q. And do you know how you were able to build
16 the worship center? Did you need any approvals,
17 authorizations?

18 A. No. Be speculative on my part. I don't
19 really...

20 Q. Okay.

21 (Deposition Exhibit No. 2 marked for
22 identification.)

23 MS. ARMSTRONG: This is the Consent Order.

24 BY MS. ARMSTRONG:

25 Q. I'll hand you what's been marked as Exhibit

1 No. 2 and ask you if you've seen that document?

2 A. I have seen this document on the website,
3 yes.

4 Q. What do you know about this document?

5 A. That it was agreed in 2001 with the
6 neighbors and the church.

7 Q. And what was the nature of the agreement?

8 A. That we could build the worship center with
9 some concessions made on both parties.

10 Q. Do you understand that the Consent Order was
11 signed by a judge?

12 A. I do.

13 Q. And do you understand that this Consent
14 Order of Settlement and Dismissal is filed in the
15 courthouse?

16 A. I do.

17 Q. Do you understand that the Consent Order is
18 an enforceable document?

19 A. I do. And we're talking about the 2001
20 Consent Order with Dan, Tina, and the Pawleys Island
21 Baptist Church; correct?

22 Q. Correct, the one you're looking at right now
23 that's marked as Exhibit No. 2.

24 MS. ARMSTRONG: Go ahead and mark this.

25 (Deposition Exhibit No. 3 marked for

1 identification.)

2 BY MS. ARMSTRONG:

3 Q. I'm going to hand you what's marked as
4 Exhibit No. 3. And this is a document that you signed;
5 correct?

6 A. Yes.

7 Q. Okay. And what is this document?

8 A. It's the Notice of Intent for stormwater for
9 large and small construction activities.

10 Q. Okay. What was the purpose of submitting
11 this document?

12 A. To get approval so we can do some additional
13 building on the property.

14 Q. And are there any wetland impacts proposed
15 under that document?

16 A. It's actually outside of my expertise. I
17 know that's probably not a good answer. But Thomas
18 Bevins, ETS, we hired them, their expertise, to do
19 these things, and he would bring me a document to sign.

20 Q. Do you understand that there are wetlands
21 that are proposed to be impacted under --

22 A. I do.

23 Q. -- the church's project? Okay. And if you
24 look down under IV.B, do you see the amount of impacts
25 identified there?

1 A. 0.170?

2 Q. Yeah.

3 A. Yes.

4 (Deposition Exhibit No. 4 marked for
5 identification.)

6 BY MS. ARMSTRONG:

7 Q. I'm going to hand you what's marked as
8 Exhibit No. 4 and ask you to flip through this document
9 and see if it looks familiar.

10 A. Yes, I'm familiar with it.

11 Q. Do you know who Christine Koczera is?

12 A. I think she's a DHEC employee.

13 Q. And what about Kacy Gunter?

14 A. I think Kacy works for them, for DHEC. Kacy
15 used to be a member of our church. That's how I know
16 Kacy. How he got involved in this, I would assume he
17 works for Christine.

18 Q. You don't know if he works for Thomas Bevins
19 at ETS? I think he works --

20 A. I know Thomas. I don't know -- I don't
21 know -- No, I don't think I knew that.

22 Q. Well, these are -- what I've handed you as
23 Exhibit No. 4 are some e-mail communications starting
24 in July 13th of 2012 and going through September 25th
25 of 2012, and I see that both there are communications

1 between Christine and Kacy and you as well as Curtis
2 Joyner was copied on the e-mails and Thomas Bevins.
3 And so what I would like to ask you about is: You
4 don't know what role Kacy played?

5 A. I don't.

6 Q. Not sure?

7 A. I do not.

8 Q. Okay. Well, if you look at the last page,
9 at the very bottom paragraph where Christine writes to
10 Kacy and says that it appears that there's a Consent
11 Order of Dismissal which has been filed with the
12 Administrative Law Court and, in short, the Consent
13 Order indicates that the wetlands remaining on site
14 shall be preserved. Christine let Kacy know that that
15 was a limitation on the property back in 2012, didn't
16 she?

17 A. According to the e-mail, yes.

18 Q. And when did you actually find out about the
19 existence of the Consent Order that's Exhibit 2?

20 A. Thomas Bevins called me and told me that
21 there was such a document.

22 Q. And what did the church do next when it
23 learned of this Consent Order?

24 A. We asked Thomas what our next steps were.

25 Q. And what did he tell you?

1 A. That he had asked for all related documents
2 before he ever started this process, and nothing came
3 up until this came up at the 11th hour.

4 Q. And what did you do next? Did he advise a
5 course of action?

6 A. Yes, obviously, he did. What the very next
7 step was, I think we decided that we needed to get with
8 the DHEC folks and see exactly what this meant since we
9 had started the process.

10 Q. And what did the DHEC folks indicate that it
11 meant?

12 A. We couldn't proceed until we got approvals
13 to do away with this Order.

14 Q. And what approvals did you understand that
15 you needed?

16 A. About this time, I think we hired Mr. Stacy
17 and was told we needed to meet with the parties
18 involved with the original consent, which would have
19 been Mr. Abel and Mr. Mims, so we proceeded to contact
20 them.

21 Q. Were you ever able to contact Dan and Mary
22 Abel?

23 A. No, ma'am.

24 Q. What efforts did you make to try and contact
25 them?

1 A. Well, they were no longer neighbors, and we
2 didn't have a forwarding address or a number, so I
3 didn't Google search.

4 Q. Did you look in the phone book?

5 A. No.

6 Q. All right.

7 (Deposition Exhibit No. 5 marked for
8 identification.)

9 BY MS. ARMSTRONG:

10 Q. I'm going to hand you what's marked as
11 Exhibit No. 5. Do you recall seeing this letter dated
12 October 31st, 2012?

13 A. Yes. It was in an e-mail.

14 Q. And you're copied on this letter?

15 A. Correct.

16 Q. And it looks like Kacy Gunter, to me, is
17 employed with Engineering & Technical Services,
18 Incorporated?

19 A. Yes.

20 Q. And that would be the consulting firm that
21 you retained to assist you in securing permits?

22 A. Yes, ma'am.

23 Q. And what do you understand is the purpose of
24 this letter from DHEC to Kacy Gunter, your consultant?

25 A. Christine is stating that they're going to

1 hold everything until we can resolve the outstanding
2 Order.

3 Q. She also indicates that the Department's
4 view is that the Consent Order requires preservation of
5 the wetlands on site; isn't that right?

6 A. It says the Consent Order dated in 2001
7 restricts the property, yes.

8 Q. Restricts the property to certain
9 requirements, including preservation of an on-site
10 jurisdictional wetland.

11 A. Yes.

12 Q. And also that the Department believed that
13 the Administrative Law Court needed to modify the 2001
14 Order marked as Exhibit No. 3 in order for you to
15 proceed?

16 A. Correct.

17 Q. And then at the end of that last middle
18 paragraph, DHEC actually advised you to withdraw the
19 request? The middle paragraph, the last sentence.

20 A. Okay.

21 (Deposition Exhibit No. 6 marked for
22 identification.)

23 BY MS. ARMSTRONG:

24 Q. Now, the church never submitted -- withdrew
25 its permit application, did it?

1 A. Not to my knowledge.

2 Q. Okay. Did it ever redesign the drawings?

3 A. Based on this Consent Order?

4 Q. Based on the letter, Exhibit No. 5, where
5 Christine says that the Department strongly suggests
6 that the application be withdrawn and redesigned, was
7 that ever done?

8 A. Yes.

9 Q. It was?

10 A. I mean, we redesigned the drawings four
11 times. I don't know if it was based on our needs or
12 based on Consent Order or the Curtis group along with
13 ETS and I'm assuming DHEC recommendations.

14 Q. Do you know whether the project was ever
15 redesigned to avoid the wetlands?

16 A. To minimize impact, yes.

17 Q. From the original application where you
18 requested filling .17 acres?

19 A. I honestly can't answer that. I don't know
20 when they were done as far as -- we redesigned the pond
21 to move the pond further -- closer to the church so we
22 could move the building away from the wetlands. We
23 tried everything we could possibly do, and the best
24 that we could do is what we have on paper today.

25 Q. So what is your understanding of the extent

1 of the wetland impacts that are authorized, that you're
2 allowed to proceed with impacting today?

3 A. We can't do anything today.

4 Q. Well, the authorization that you have is
5 being challenged by the Abels; right?

6 A. Correct.

7 Q. Is that your understanding?

8 A. Right.

9 Q. Do you know how many wetlands are impacted
10 by those authorizations?

11 A. Just the one by the pond.

12 Q. Do you know the size of the impacts?

13 A. 0.170.

14 Q. Okay. So the extent of the wetland impacts
15 haven't changed from your initial application, your
16 Notice of Intent that's Exhibit 3?

17 A. Correct.

18 Q. Okay. So the answer is that, no, the
19 application wasn't withdrawn and redesigned to avoid
20 the wetland impacts.

21 A. Okay.

22 Q. You agree with that?

23 A. Yes.

24 Q. I'm going to hand you what's marked as
25 Exhibit No. 6. Are you familiar with this letter dated

1 February 6, 2013, from Thomas Bevins at ETS, your
2 consultant, to DHEC?

3 A. Yes. It's cc'd to me.

4 Q. And so you were aware that, on the first
5 page, the very bottom paragraph, that Thomas Bevins --
6 well, Thomas was acting on the church's behalf in this
7 letter, was he not?

8 A. Yes.

9 Q. Okay. And in that letter, the bottom
10 paragraph, Mr. Bevins recognizes that the 2001 Consent
11 Order needs to be amended in order for the church to
12 proceed with its current project; is that correct?

13 A. Rephrase the question or say it again. I
14 don't see Thomas Bevins's name in this paragraph.

15 Q. Well, look at the second page. Is it signed
16 by Thomas Bevins?

17 A. It is signed by Thomas.

18 Q. So he's the author of this letter?

19 A. Okay.

20 Q. And in this letter, is he acknowledging that
21 the church is seeking modifications to the property
22 that aren't in compliance with the original Order,
23 which is why --

24 A. That they're being asked to -- that they are
25 being asked by the attorney to draft an agreement, yes.

1 Q. To modify the original Order --

2 A. Yes.

3 Q. -- to allow the impacts that you're seeking?

4 A. From 2001.

5 Q. And you never had the Consent Order
6 modified; isn't that correct?

7 A. We have not.

8 Q. But you decided to proceed with the project
9 anyway. What was the basis for that decision?

10 A. Well, we talked to the neighbors, and they
11 were -- the existing neighbors, David and Tina Mims,
12 and asked them, you know, as good neighbors, we wanted
13 to do this and, Do you have a problem with it? And
14 they said, Show me your plans. We showed them the
15 plans, and they said, Okay, and they signed an
16 agreement to modify, which we handed over to ETS and
17 our attorneys.

18 Q. That was never signed or adopted by the
19 Administrative Law Court; correct?

20 A. I don't think it's ever been signed.

21 Q. Do you know whether the current permit and
22 certifications that were -- that will authorize the
23 future construction that the church is seeking, do you
24 know whether those -- that's a modification of the old
25 permit or whether it's a new permit?

1 A. I'm not sure.

2 Q. Okay. So can you tell me what changed from
3 May 2013, when the church acknowledged that it needed
4 to modify the Consent Order, to now, where the Consent
5 Order hasn't been modified, but you're still seeking to
6 proceed?

7 A. I'm not sure of the question.

8 Q. Well, let's see. I guess it's actually
9 February 6 is when this letter was written by Thomas
10 Bevins. So Thomas Bevins, acting on behalf of the
11 church, determined that the Consent Order needed to be
12 modified.

13 A. Which is the signatures that we obtained
14 from the Mims.

15 Q. Do you know whether that's a Consent Order
16 that was filed with the Administrative Law Court?

17 A. I would make that assumption, yes. That's
18 what we were out to do is to create a new amendment or
19 Consent Order to present to the court.

20 Q. So I understand the Mims signed a proposed
21 modified Consent Order; is that --

22 A. Okay.

23 Q. -- correct?

24 A. Proposed. It's not been approved, so I'm
25 assuming it's proposed, yes.

1 Q. I guess what I'm getting is, do you know
2 whether the document that the Mims signed has been
3 approved and adopted by the Administrative Law Court?

4 A. I do not.

5 Q. So do you know whether there's a modified
6 Consent Order that's in existence?

7 A. I do not.

8 Q. Whether there is a modified Consent Order in
9 existence, would that change the church's position in
10 moving forward with this project?

11 A. I don't think so.

12 Q. Okay. I'm just trying to understand where
13 you are right now, because it seems to me that the
14 church identified that there was a need to modify the
15 Consent Order back in 2012-2013.

16 A. Based on Christine's letter, yes.

17 Q. Correct. But now you don't believe that
18 that's necessary.

19 A. Oh, I do believe it's required. I'm not
20 sure I understand the questions, but I'm sure it needs
21 to be. We went to the Mims, had it notarized, agreed
22 upon, so I'm assuming that we feel like it needs to be
23 modified in order to move forward. That would be my
24 answer.

25 (Deposition Exhibit No. 7 marked for

1 identification.)

2 BY MS. ARMSTRONG:

3 Q. Mike, I'm going to hand you what's marked as
4 Exhibit No. 7. You are not copied on this document,
5 but I'm wondering if you've seen the letter from your
6 attorney dated May 15th, 2013, or the document that's
7 included and attached with that letter, which is
8 entitled Modified Consent Order of Settlement and
9 Dismissal?

10 A. Yes. This is the document we presented to
11 Dave and Tina Mims.

12 Q. And are you talking about being the entire
13 document or are you just talking about the one that's
14 marked at the bottom with an Exhibit C, where there are
15 the Mims' signatures?

16 A. All of it, because we met, and they modified
17 some numbers on it, and we attached the plans so that
18 we'd have pictures of what we talked about.

19 Q. Okay. And so on that first -- well, the
20 second page, which is the first page of the Modified
21 Consent Order, do you see in the second whereas
22 paragraph that the church states that it's desirous of
23 modifying the site plan and making further
24 modifications to the church property not in compliance
25 with the original Order?

1 A. I see that, yes.

2 Q. And that was the church's position at the
3 time this document was drafted?

4 A. Yes.

5 Q. And if you turn over two more pages, do you
6 see where there's a line for the signature of a judge?

7 A. Yes.

8 Q. That document is not signed, though, is it?

9 A. No.

10 Q. Are you aware of whether this document ever
11 was signed by a judge?

12 A. I have not seen a signature of this
13 document.

14 Q. Do you know whether it's been signed? Do
15 you have an idea whether it is or isn't?

16 A. I think we're still in process.

17 Q. So your understanding is that it's not been
18 signed by a judge.

19 A. Actually, there are so many documents, I
20 don't -- I don't -- I'm not sure if it has or not,
21 honestly.

22 Q. Okay.

23 A. I'm not sure how far everything got.

24 MS. ARMSTRONG: I may be about done. I'm
25 going to just take a few minutes, and I'll be right

1 back.

2 (Recess taken.)

3 BY MS. ARMSTRONG:

4 Q. I just have one more question for you, and
5 it's related to the last document that we were looking
6 at. On those signature pages where there are a bunch
7 of blank lines, there's a line for the judge, lines for
8 the Mims, for the church, and for DHEC, and I'm just
9 wondering whether you think that it's necessary to have
10 all parties to the original Consent Order and Agreement
11 sign a document amending that Consent Order and
12 Agreement?

13 A. That would be a question for my attorney.

14 Q. So if you were a party to an agreement, if
15 you agreed to something and then somebody wanted to
16 come in and change it later, would you feel that you
17 should be included in that amendment to the original
18 agreement?

19 A. If I was still with the organization, yes.

20 MS. ARMSTRONG: Okay. I don't have any
21 other questions.

22 CROSS-EXAMINATION

23 BY MR. HABER:

24 Q. I just have one, Mr. Fields. My name is
25 Nathan Haber. I represent the Department in this

1 matter.

2 Petitioner's counsel had shown you what's
3 been labeled as Exhibit No. 7. I believe you have it
4 in front of you. At the top left-hand corner, do you
5 see something handwritten on the top of that?

6 A. Second draft.

7 Q. Okay. And are you aware as to whether or
8 not this draft was what was submitted to the court?

9 A. I am not.

10 Q. Are you aware if any changes were made to
11 this document?

12 A. I am not.

13 MR. HABER: No further questions.

14 MR. STACY: I have none.

15 (The deposition concluded at 9:38 a.m.)
16
17
18
19
20
21
22
23
24
25

1 C E R T I F I C A T E

2 STATE OF SOUTH CAROLINA:

3 COUNTY OF CHARLESTON:

4 I, Kendra E. Johnston, Registered Professional
5 Reporter and Notary Public, State of South Carolina at
6 Large, certify that I was authorized to and did
7 stenographically report the foregoing deposition of
8 Michael Fields; and that the transcript is a true record
9 of the testimony given by the witness, and was sworn as
10 such.

11 I further certify that I am not a relative,
12 employee, attorney or counsel of any of the parties, nor
13 am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the action.

16 WITNESS MY HAND AND OFFICIAL SEAL this 14th day
17 of November, 2014, in the City of Charleston, County of
18 Charleston, State of South Carolina.

19
20
21
22
23

Kendra E. Johnston, RPR,

24 CRR and Notary Public

My commission expires:

25 August 24, 2022



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Coastal Zone Inconsistency Memorandum

To: Richard Geer, Project Manager - BOW Coastal
From: Christine Koczera, Project Manager - OCRM, Coastal Zone Consistency Section
Cc: Curtis Joyner, Section Manager - OCRM, Coastal Zone Consistency Section
Re: Pawley's Island Community Church Administrative Building
Site location: 10304 Ocean Highway, Pawley's Island, Georgetown County
Tax Map No: 04-0161-052-00-00, 04-0161-049-01-00
Date: July 31, 2012
CZC #: CZC-12-0149
PN#: SCR10Q459

The staff of the Office of Ocean and Coastal Resource Management (OCRM) has reviewed the above referenced Coastal Zone Consistency request for land disturbance activity, including the construction of a new administrative building, additional parking, reconfiguration of an existing drive and the reconfiguration/modification of the existing stormwater management system and has determined that the project is **Inconsistent** based upon a Consent Order of Settlement and Dismissal entitled Mary W. Abel, Daniel C. Abel and David F. Mims vs. South Carolina Department of Health and Environmental Control, Office of Coastal Resource Management, and Pawley's Island Baptist Church filed with the State of South Carolina Administrative Law Judge Division on January 8, 2001 (Docket No. 00-ALJ-07-0626-CC).

As agreed in the Consent Order of Settlement and Dismissal are the following:

- "The designs for the storm water pond and other improvements at the site shall be amended so that approximately one-half (50%) of the wetland area on site shall be preserved. The storm-water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A. The Church shall also amend its plans for the proposed structure shown on Exhibit A as "PROPOSED FUTURE BUILDING PHASE II" so that no portion of this structure will encroach upon areas of the wetland."
- "The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state."
- "In constructing the storm water system and church improvements, the Church shall instruct its engineers, architects, contractors and others working on its behalf to employ all available Best management Practices to prevent harm to the wetland beyond that authorized by this agreement and by the permit and certification as hereby amended. In the event such additional harm to the wetland occurs despite best efforts, the church will restore or mitigate any such harm."

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

Exhibit 13

Future Coastal Zone Consistency Certification review of the proposed project can commence once either site plan revisions to the existing project adhere to the referenced Consent Order or all parties involved with this Consent Order file an amendment with the court.



Pawley's Island Community Church Administrative Building

Koczera, Christine <koczerc@dhec.sc.gov>

31 July 2012 16:42

To: "Gunter, Kacy" <kgunter@etsengineers.com>

Cc: mike-plcc@sc.rr.com, "Bevins, T" <tbevins@etsengineers.com>, "Joyner, Curtis" <joynercm@dhec.sc.gov>, bfeldner@thebrigmancompany.com

Hi Kacy,

I am following up to our phone conversation regarding the referenced project. It appears there is a Consent Order of Settlement and Dismissal for the property which has been filed with the Administrative Law Court. In short, the Consent Order indicates that the wetlands remaining on-site shall be preserved. Below is a link to the Administrative Law Court's website and information needed to find the Consent Order referenced. Upon reviewing, please let me know if you wish to withdraw your CZC request or have CZC staff continue the review process. Let me know if you have any other questions or concerns.

Docket No. 00-ALJ-07-0626-CC

Mary W. Abel, Daniel C. Abel and David F. Mims vs. South Carolina Department of Health and Environmental Control, Office of Coastal Resource Management, and Pawley's Island Baptist Church
Filed January 8, 2001

<http://www.scalc.net/decisions.aspx?q=4&id=4871>

Thanks,
Christine

Christine Koczera
Project Manager
Coastal Zone Consistency Certification
SC DHEC / Ocean Coastal Resource Management
1362 McMillan Ave., Suite 400
Charleston, SC 29405
Phone: 843-953-0702 Fax: 843-953-0260
E-mail: koczerc@dhec.sc.gov
<http://www.dhec.sc.gov/environment/ocrm/permits/stormwater.htm>

Please take a few moments to complete our customer survey:
http://www.scdhec.gov/environment/ocrm/coastal_permitting.htm

Exhibit 14



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

October 31, 2012

Kacy Gunter
Engineering & Technical Services, Inc.
PO Box 2040
Pawleys Island, SC 29585

Re: Pawleys Island Community Church Administrative Building
Georgetown County
ID # CZC-12-0149

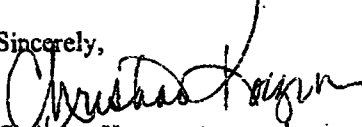
Dear Mr. Gunter:

As we have discussed, the Department will continue to hold the pending Coastal Zone Consistency (CZC) review for the Pawleys Island Community Church Administrative Building project until further notice.

The reason for this action is due to the conditions of the Consent Order of Settlement and Dismissal that was a consequence of an appeal (Abei and Mims vs. DHEC/OCRM and Pawley's Island Baptist Church, Docket No. 00-ALJ-07-0626-CC) of the prior land disturbance permit (P/N #22-00-06-03) issued to Pawley's Island Baptist Church. The Consent Order, dated January 8, 2001, restricts the property to certain requirements including the preservation of an onsite jurisdictional wetland. The current request proposes to impact the preserved wetland and is contrary to the conditions of the Order. Any modification or reopening of the Order must be agreed to by the Administrative Law Judge Division and all consenting parties. CZC Staff has discussed the matter and strongly suggests withdrawal of the current request to consider redesign options that incorporates the conditions of the Order.

The referenced Consent Order can be located on the South Carolina Administrative Law Court's website at www.scalc.net. Please contact me if you have any additional questions or concerns at (843)953-0702 or koczerc@dhec.sc.gov.

Sincerely,



Christine Koczera

Cc: Mike Fields, Pawleys Island Community Church
Thomas Bevins, Engineering & Technical Services, Inc.
Curtis Joyner, DHEC OCRM
Nathan Haber, DHEC OGC
Richard Geer, DHEC BoW -Coastal

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.sccr.com

Exhibit 15



Re: Pawleys Island Community Church Administrative Building

Geer, Richard <geerv@dhec.sc.gov>
To: tbevins@etsengineers.com
Cc: mike-picc@sc.rr.com

Thu, Dec 13, 2012 at 2:40 PM

Mr Bevins,

The Coastal Stormwater Section has not received the information requested on July 20, 2012 for the referenced project. Please submit this information as soon as possible. Please note that the effective date of the 2012 NPDES General Permit for Stormwater Discharges from Construction Activities is January 1, 2013 (see <http://www.dhec.sc.gov/environment/water/swater/news.htm#top>). If the requested information is not received and processed and coverage under the 2006 CGP is not issued prior to this effective date, the project will have to meet all the new requirements and the new NOI form will be required.

Respectfully,

Richard V. Geer
Engineer Associate
Coastal Stormwater Section
EQC Bureau of Water
Department of Health and Environmental Control
1362 McMillan Ave Suite 400
Charleston SC 29405
P: 843-953-0238 / F: 843-953-0201
geerv@dhec.sc.gov

On Fri, Jul 20, 2012 at 5:09 PM, Geer, Richard V. <geerv@dhec.sc.gov> wrote:

Mr Bevins,

Please see the attached NPDES CGP review comment letter for the referenced project. If you have any questions, feel free to contact me.

Respectfully,

Richard V. Geer
Engineer Associate
Coastal Stormwater Section
EQC Bureau of Water
Department of Health and Environmental Control
1362 McMillan Ave Suite 400
Charleston SC 29405
P: 843-953-0238 / F: 843-953-0201
geerv@dhec.sc.gov

Exhibit 16



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

January 30, 2013

MIKE FIELDS
PAWLEYS ISLAND COMMUNITY CHURCH
10304 OCEAN HIGHWAY
PAWLEYS ISLAND, SC 29585

RE: PAWLEYS ISLAND COMMUNITY CHURCH ADMINISTRATIVE BUILDING
Georgetown County
File number: 22-00-06-03A

Dear Mike Fields:

Since the referenced project did not qualify for coverage under the 2006 CGP by December 31, 2012 (the information requested on 7/20/12 has not been received), you will need to submit a Notice of Intent (NOI) application for coverage under the 2012 NPDES General Permit for Storm Water Discharges from Construction Activities (2012 CGP), which became effective on January 1, 2013. All projects approved on or after this date will be issued coverage under the 2012 CGP.

This project will be required to meet all of the terms and conditions of the 2012 CGP. New requirements may include, but are not limited to, types of operators, contractor certifications, new SWPPP requirements, buffer zones during construction, non-numeric effluent limits, phased plans, slope stabilization, water surface outlets (skimmers), porous baffles, pre-construction conferences, inspection frequencies, use of rain gauges, construction logs, and topsoil preservation. Please visit the DHEC website for information about the implementation of the new CGP: <http://www.scdhec.gov/stormwater>. The new application form and updated checklist for design professionals is posted on the DHEC website at <http://www.scdhec.gov/environment/water/swater/news.htm#top>. The construction drawings and engineering report must be revised, prepared in accordance with the 2012 CGP, and submitted for review. A signed, annotated checklist must be submitted for review as well with all projects ultimately disturbing more than 2 acres or disturbing greater than 0.5 acre and located within 1/4 mile of a coastal receiving water in a Coastal County when DHEC performs a technical review. Additional review fees are not required if fees have already been received by the Department for your project.

Due to lack of response for more than six months, the application will be considered withdrawn and no longer active if this additional information is not received within 10 calendar days. If this application is considered withdrawn, any proposed land disturbance activity at the site location will require a complete new submittal package and review fees. Review fees are non-refundable as per S.C. Regulation R.61-30, Environmental Protection Fees.

If you have any questions or cannot access the referenced websites, please contact me at geerrv@dhec.sc.gov or 843-953-0328.

Sincerely,

Richard Geer
Coastal Stormwater Permitting Section
EQC-Bureau of Water

cc: Thomas Bevins – Engineering & Technical Services Inc
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Charleston Office • 1362 McMillan Ave, Suite 400 • Charleston, SC 29405-2047
Phone: 843-953-0200 • Fax: 843-953-0201 • www.scdhec.gov

Exhibit 17



Engineering and Technical Services, Inc.

February 6, 2013

South Carolina Department of Health and Environmental Control
Coastal Stormwater Section
EQC Bureau of Water
1362 McMillan Avenue Suite 400
Charleston SC 29405

Attention: Mr. Richard V. Geer, Engineer Associate

Reference: Pawleys Island Community Church Administrative Building
Georgetown County
File No. 22-00-06-03A

Dear Mr. Geer:

This is in response to your letter dated January 30, 2013 concerning the status of the above referenced project. As you know, an application for Land Disturbing Activity for an expansion to the Pawleys Island Community Church Campus was submitted in approximately June 2012. A typical plan review was conducted by SCDHEC Coastal Stormwater Section and comments were produced. During the course of our response, we were advised by OCRM that a consent order from the South Carolina Administrative Law Court had been discovered which was related to the project site and it would have an effect on the proposed development of the site and subsequently, the approval of our land disturbance application.

This court action (Administrative Law Court Docket No. 00-ALJ-07-0626-CC) was dated January 8, 2001 and it placed certain restrictions on the use of the church property. The current church administration was not aware of the order and desired to investigate the details. Upon inquiries, it was determined that the status of the parties to the order had changed in the ensuing time since 2001 and some of those involved no longer live adjacent to the church site. The remaining landowners were contacted by representatives of the Church in August 2012. The parties met, discussed the issues, negotiated and resolved their differences and have reached a new agreement which they will have incorporated into an amended consent order. Generally, the parties have agreed to a set of terms which would allow the Church to proceed with the project as proposed in 2012.

The attorney for the Church has drafted an agreement and a revised consent order and has contacted the South Carolina Administrative Law Court. In a request on behalf of the Pawleys Island Community Church, the Administrative Law Court is being asked to issue an amended consent order that would supersede the 2001 consent order and set out new conditions which would allow the Church to proceed with the proposed project as depicted by the 2012 plans.

At this time the attorney for the Church is working with the Administrative Law Court Clerk to arrive at

Pawleys Business Center • 58 Centernmarsh Lane • P.O. Box 2040 • Pawleys Island, SC 29585
(843) 237-3002 • Fax (843) 237-2269 • <http://www.etsengineers.com>

Exhibit 18

Pawleys Island Community Church SCDHEC Coastal Stormwater Section (Cont.)
February 6, 2013
Page 2

a acceptable amended consent order which would then be executed by the Administrative Law Court Judge. I do not know how long the court may require to issue the new order, but I will follow up with the parties and advise you of the status.

It is my intention to provide an appropriate response to the SCDHEC Coastal Stormwater review comments and the comments from your January 30, 2013 letter.

The Church, through their attorney, is actively engaged in a dialog and an exchange of documents with the Administrative Law Court to arrive at an acceptable amended consent order which will be presented to OCRM and to your office. Therefore, based on the unusual circumstances surrounding this project, please accept this as a request on behalf of the Pawleys Island Community Church to have the subject application for Land Disturbing Activity to remain active and on hold with your office so to allow the Administrative Law Court to issue the anticipated amended consent order and to provide a response to the technical review comments.

If you have any questions or comments, please feel free to contact me at anytime. Your assistance and your patience are appreciated.

Sincerely,



Engineering and Technical Services, Inc.
Thomas P. Bevins, P.E.

cc: ETS-2012009
Mike Fields, Pawleys Island Community Church
Christine Koczera, SCDHEC / Ocean Coastal Resource Management
Mark Roman, Curtis Group Architects
Dan Stacy, Oxner & Stacy Law Firm
Janice Hucks, Westmoreland Group

OXNER & STACY, P.A.

ATTORNEYS AND COUNSELORS AT LAW
90 WALL STREET - UNIT B
PAWLEYS ISLAND, SC 29585
TEL: (843) 235-6747 • FAX: (843) 235-6650

HARRY A. OXNER
DANIEL W. STACY, JR.

GEORGETOWN OFFICE:
235 CHURCH STREET
POST OFFICE BOX 481
GEORGETOWN, SC 29442-0181
TEL: (843) 527-8020
FAX: (843) 485-4121

REPLY TO:
PAWLEYS ISLAND OFFICE

October 10, 2013

Via Federal Express

Jana E. Shealy, Clerk
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Pawleys Island Community Church
O.S. File #12-1370

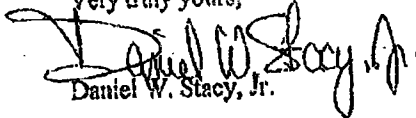
Dear Ms. Shealy:

It has been some time since we discussed this issue, but if you recall we had discussed the modification of a Consent Order being undertaken by the Church with the consent and agreement of the parties to the original Consent Order. I have provided herewith a Modified Consent Order executed by the parties. Please confirm what the filing fee will be and whether or not this can be executed by the appropriate Administrative Law Court Judge. We will be glad to discuss these issues with the Judge via telephone or in person, but would prefer not to have to undertake another hearing, if at all possible. The Modified Consent Order is self-explanatory, but I will be glad to go through the matter in detail with you at your request.

I look forward to hearing from you.

With kindest regards, I remain

Very truly yours,


Daniel W. Stacy, Jr.

DWS/scp
Enclosure

cc: Pawleys Island Community Church

Exhibit 19

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

MARY W. ABEL, DANIEL C. ABEL
AND DAVID F. MIMS,

PETITIONERS,

V.

SOUTH CAROLINA DEPARTMENT
OF HEALTH AND ENVIRONMENTAL
CONTROL AND PAWLEYS ISLAND
BAPTIST CHURCH N/K/A PAWLEYS
ISLAND BAPTIST CHURCH,

DEFENDANTS.

ADMINISTRATIVE LAW COURT
DOCKET NO.: 00-ALJ-07-0626-CC

MODIFIED CONSENT ORDER OF
SETTLEMENT AND DISMISSAL

WHEREAS pursuant to Administrative Law Court Consent Order signed by the Honorable C. Dukes Scott, Administrative Law Judge on January 8, 2001 (the "Order"), the parties above agreed to resolve the subject dispute before the Administrative Law Court pursuant to said Order;

WHEREAS Pawleys Island Baptist Church (the "Church" also known as "Pawleys Island Community Church") desires to modify its site plan and making further modifications to the Church property not in compliance with the original Order; and

WHEREAS the initial petition was brought by petitioners who were neighboring property owners or adjoining property owners to the Church; and

WHEREAS said parties have either moved away from and no longer own said adjoining properties, or now consent to the modifications requested by the Church; and

WHEREAS all necessary parties have consented to this Modified Consent Order of Settlement and Dismissal (the "Modified Order") as evidenced by their signatures attached hereto; and

WHEREAS, documents are referenced in this Modified Consent Order of Settlement and Dismissal and are attached hereto and is labeled as follows:

"Exhibit A" - Amended Site Plan

"Exhibit B" - Amendment Agreement (Mims and Pawleys Island Community Church)

DFM
JAM

WHEREAS, a new permit/application (the "Permit") is being made by the Church to undertake improvements to the Church property and said Permit cannot be reviewed by the South Carolina Department of Health and Environmental Control ("Department") without applying the heightened restrictions required under the Order until this Modified Consent Order of Settlement and Dismissal is approved by the Court;

WHEREAS, the adjoining landowners who were parties to the original action and still own the adjacent property have consented to this Amendment as set forth in the attached Exhibit B which is incorporated herein by reference; and

WHEREAS, the signatory parties to Exhibit B understand and acknowledge they have no additional rights under any applicable statutes and regulations by creation of this agreement; and

WHEREAS, the signatory parties to Exhibit B understand and acknowledge this agreement does not exempt the parties from any applicable statutory and regulatory requirements; and

NOW THEREFORE, the Administrative Law Court hereby executes this Modified Consent Order of Settlement and Dismissal as set forth herein; and

IT IS HEREBY ORDERED that the original Exhibit A from the January 8, 2001 Consent Order is hereby replaced with the Exhibit A attached hereto.

This proceeding arises out of the application of the Church for a state storm water permit for the construction of a new sanctuary and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the church also requested a wetland fill permit from the U.S. Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHBC/OCRM). After DHBC/OCRM issued the storm water permit and consistency certification, requests for a contested case hearing were filed by Mary W. Abel, Daniel C. Abel and David F. Mims.

The parties met, discussed, negotiated, and resolved their differences, and reached a settlement which was incorporated into the Order. Now, the parties desire to modify the Order dated January 8, 2001 as follows:

1. All parties hereto agree that the original "30' Noise/Visual Buffer" on the original Exhibit A shall be replaced with those buffers set forth on the Exhibit A attached hereto, all other heightened restrictions set forth in the Order are hereby deleted and only the restrictions set forth in Exhibit A shall apply to the site other than any existing basketball and volleyball courts will not be relocated any closer to the rear property line of the church property than the front of the new sanctuary.

2. The Department, by execution hereof, merely consents to this Modified Consent Order as it was an original party to the Order, but by its execution hereof specifically reserves the right to

DFM
JAM

approve or disapprove any permits applied for by the Church based solely on applicable statutory and regulatory criteria for such permits set forth by the Department and affiliated agencies.

After review of the agreement, I conclude that it should be accepted and made a part of this order. Accordingly, upon the joint motion and consent of the parties,

IT IS HEREBY ORDERED that the agreements stated hereinabove shall be, and same hereby is, made a part of this final order of the Administrative Law Judge Division.

IT IS FURTHER ORDERED that matter shall be DISMISSED, with prejudice, except that the parties shall retain full rights to enforce the agreements stated herein.

AND IT IS SO ORDERED.

Honorable C. Dukes Scott
Administrative Law Judge
Columbia, South Carolina

02-OCT, 2013

WE CONSENT:

Tina Mims
Tina Mims

David Mims
David Mims

Pawleys Island Community Church

By: Mike Fells

Its: Administrative Judge

South Carolina Department of Health
And Environmental Control
Office of Coastal Resource Management

By: [Signature]

Its: Attorney

David Mims *David E. Mims*

Tina Mims *Tina Mims*

Don Williams *Don Williams*

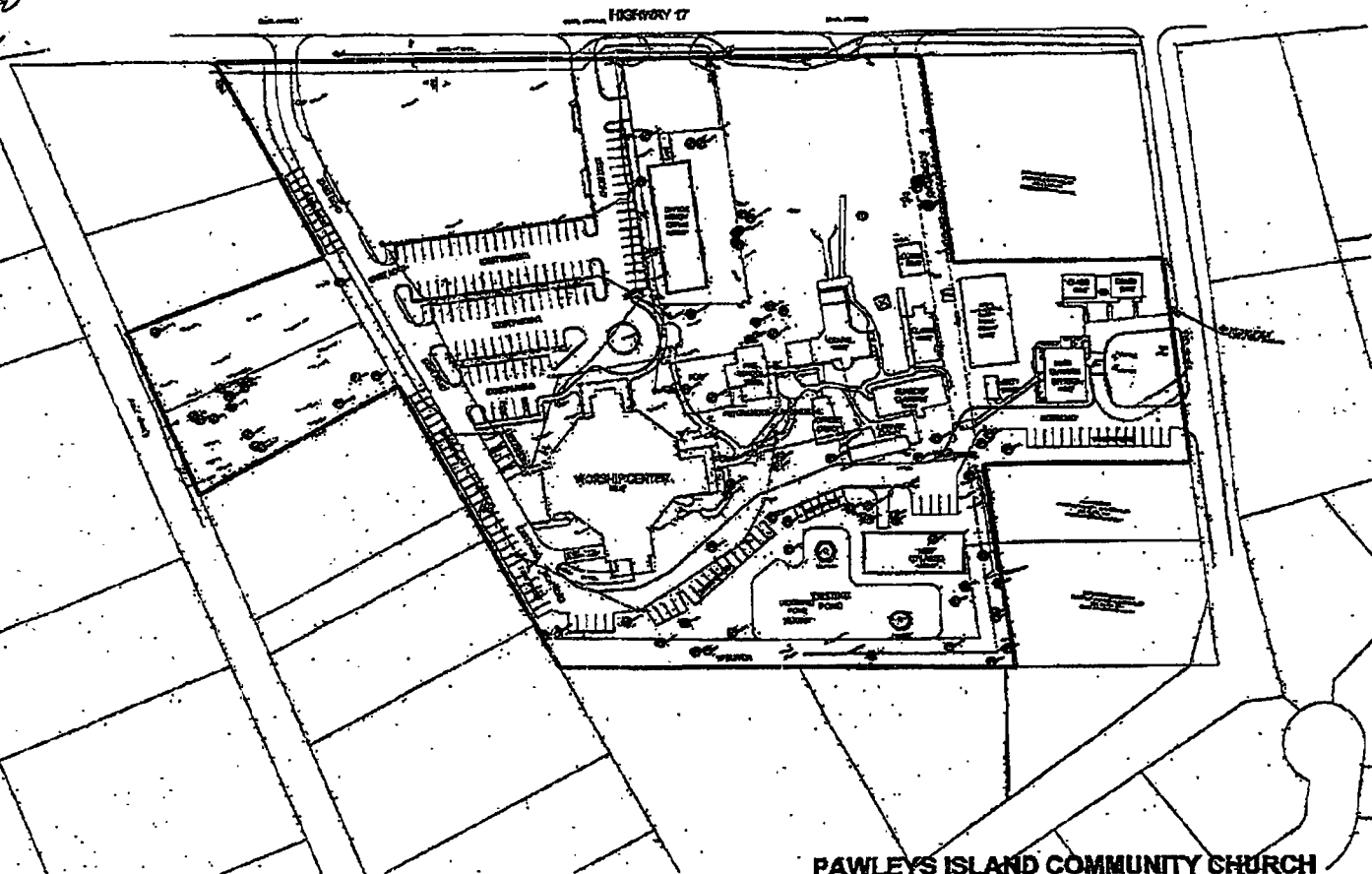
Milco Fields *Milco Fields*

Notary *Alissa H. Collington*

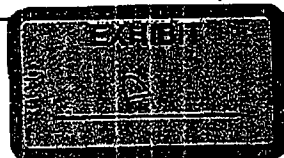


EXHIBIT A

01 JULY 2012



PAWLEYS ISLAND COMMUNITY CHURCH
PHASE 1 SITE PLAN



2012 Amendment To:

**SC Administrative Law Court Decisions
2001 DOCKET NUMBER:
00-AJ-07-0628-CC**

PARTIES INCLUDED:

David Mims
Tina Mims

PAWLEYS ISLAND COMMUNITY CHURCH,
a South Carolina Not-for Profit Corporation
Don Williams, Senior Pastor
Mike Fields, Operations & Mission Director

This agreement arises out of the application of the Pawleys Island Community Church, a South Carolina Not-for Profit Corporation, (hereinafter the "Church") for a wetland fill permit from the US Army Corp of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC/OCRM) for the construction of a new storage building and other improvements of its property on US Highway 17 in the Pawleys Island area of Georgetown County. When US Army Corp of Engineers was preparing to issue the wetland fill permit and consistency certification, the 2001 Agreement with the parties was discovered. The request was put on hold until the landowners, David and Tina Mims could be contacted.

The parties have met, discussed, negotiated and have reached an agreement which they desire to have incorporated into this amendment. Specifically, the parties have agreed as follows:

1. The designs for storage building, pond and other improvements at the site shall be amended so that Church can mitigate, with OCRM/DHEC approval, a portion of the wetlands, as indicated on the submitted drawings, to construct a storage building and reshape the existing pond. The storm water pond shall be altered to be located and configured as depicted in the drawing attached hereto as Exhibit A.
2. The Church agrees that it has instructed its engineers, architects, contractors and others working on the Church improvement project and pond reshaping project, to explore every additional design changes, where feasible from a time and cost perspective, which will allow minimizing damage to existing wetlands and trees on the work site.
3. The Church agrees that the wetland preserved by this amendment shall remain in its natural state.
4. Within the area designated on Exhibit A, the Church shall maintain a vegetated buffer of native, evergreen shrubbery and trees, with a density of at least one evergreen tree and one shrub every ten (10) feet; the trees and shrubs will be Leyland cypress and wax myrtles and similar species, and at planting will be at least six (6) feet in height. The Church also agrees to protect and leave as many trees as possible in the vegetated buffer area and that the portions of the vegetated buffer in wetland areas or in wooded areas not affected by development on the property, will remain in their natural state. The landscape plan shall be consistent and configured as depicted in the drawing attached hereto as Exhibit B.
5. Upon agreement by the SC Administrative Law Court, the Church may immediately begin construction of storage building, new road, reshaping of pond and other improvements not inconsistent with this amendment.
6. The Church along with David and Tina Mims will cooperate in the execution of any documents needed to secure any required permit amendments to carry out the provisions of this agreement as written.
7. If the Church relocates the utility building or modifies the buffer zone in any way that is not in accord with this amendment or exhibits then the terms of this amendment will be renegotiated by all parties to it.

We, as indicated by our signatures below, agree to these amendments, as stated above, to the 2001 agreement:

David F. Mims 9/17/12
David Mims Date

Tina A. Mims 9/17/12
Tina Mims Date

[Signature] 9/17/2012
Pawleys Island Community Church Date

Mike Fields 9/17/2012
Pawleys Island Community Church Date

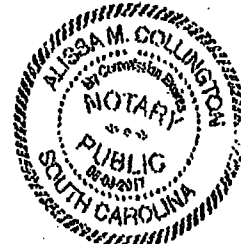
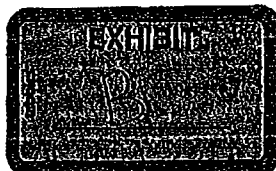
Notarized by:

Alissa M. Collington

Seal:

Date:

September 17, 2012



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Mary W. Abel, Daniel C. Abel, and
David F. Mims,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control, and Pawleys
Island Baptist Church a/k/a Pawleys
Island Community Church,

Respondent.

Docket No.: 13-ALJ-07-0547-CC

**ORDER ON REQUEST TO MODIFY
A SETTLEMENT AND DISMISSAL**

This case was originally before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing brought by Petitioners Mary W. Abel, Daniel C. Abel, and David F. Mims (Petitioners), who were neighboring property owners or adjoining property owners to the Pawleys Island Baptist Church aka Pawleys Island Community Church (Church). The case was given Docket No. 00-ALJ-07-0626-CC. The Church applied for a state stormwater permit for the construction of a new sanctuary and other improvements to its property on US Highway 17 in the Pawleys Island area of Georgetown County. In a related application, the Church requested a wetland fill permit from the U.S. Army Corps of Engineers which required a coastal zone consistency certification by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (DHEC). After this case was filed, the parties entered into a Consent Order resolving the dispute. That Consent Order was subsequently approved by the Honorable C. Dukes Scott, Administrative Law Judge on January 8, 2001 (Consent Order).

The Church has now filed a request with this Court to modify its site plan and make further modifications to the Church property not in compliance with the original Order. However, Daniel C. Abel objects to that modification. The Court nevertheless finds that a request to modify the Permits issued as a result of the previous Consent Order has been filed with DHEC and is still subject to DHEC review. This matter is therefore apparently properly before DHEC for its review as to whether the Church's permits should be modified. Therefore

FILED

January 7, 2014

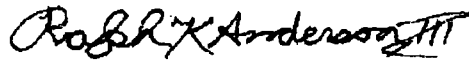
SC ADMIN. LAW COURT

399

Ext b 20

since DHEC has not made a final determination on the proposed modification, and no request for a contested case review of that determination has been filed with this Court, I find that any action by the Court at this time would be premature. *See, e.g., South Carolina Baptist Hosp. v. S.C. Dep't of Health and Envtl. Control*, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987) ("It would be premature for a court to decide the merits of a dispute when the agency responsible for making the decision has not yet had an opportunity to decide the merits of the case.").¹

IT IS THEREFORE ORDERED that this case be **DISMISSED WITHOUT PREJUDICE**, and that DHEC continue its review of the Church's permit application.
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

January 7, 2014
Columbia, South Carolina

¹ This Court also notes that the only objection received to this request to modify the Consent Order was made by Daniel C. Abel, who is no longer an adjoining landowner.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

January 7, 2014
Columbia, South Carolina



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

CERTIFIED MAIL

April 1, 2014

**MIKE FIELDS (91 7199 9991 7030 0134 8071)
PAWLEYS ISLAND COMMUNITY CHURCH
10304 OCEAN HWY
PAWLEYS ISLAND SC 29585**

**RE: PAWLEYS ISLAND COMMUNITY CHURCH ADMINISTRATIVE BUILDING
Georgetown County
File Number: 22-00-06-03A
NPDES Coverage Number: SCR10Q459**

Dear Mike Fields:

The Department of Health and Environmental Control (Department or DHEC) has approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on **March 31, 2014**. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Stormwater Discharges from Construction Activities SCR100000 (CGP), this project has been granted coverage under the CGP. This project's general permit coverage number is **SCR10Q459**. The total disturbed area for this site is **2.2 acres**.

See attached DHEC Office of Ocean and Coastal Resource Management (DHEC-OCRM) certification approved 03/26/2014 for additional conditions related to the Coastal Zone Consistency determination.

Because this project is part of a larger common plan for development or sale (LCP), all applications for future land-disturbing activities that are part of this LCP (phases, outparcels, etc.) should include the above-referenced file number (22-00-06-03A), NPDES coverage number (SCR10Q459), and project name **PAWLEYS ISLAND BAPTIST CHURCH**.

An as-built survey, signed and sealed by a S.C. Licensed Land Surveyor, should be submitted for the 2 structure(s) on this site. The survey(s) should show grades, contours, and depths for all structures and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the projects S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/or analysis must be accepted by the Department before a Notice of Termination (NOT) can be submitted.

The CGP can be downloaded at the following website:

<http://www.scdhec.gov/environment/water/swater/docs/CGP-permit.pdf> or you may request a copy from us via email (stormwatercgp@dhec.sc.gov). You are responsible for ensuring your contractor(s) complies

with the approved SWPPP and the minimum requirements of the CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act), SC Pollution Control Act, and the Federal Clean Water Act (CWA). Failure to comply with the approved SWPPP or applicable statutes and regulations may result in enforcement actions.

You must notify this DHEC EQC Regional Office prior to starting any land-disturbing activity. The address and telephone number of the EQC office are as follows:

Myrtle Beach EQC Office
927 SHINE AVE
MYRTLE BEACH SC 29577
843-238-4378

Inspections of this site must be performed by qualified personnel as described in Section 4.2.E of the CGP.

You should be aware that this approval is only applicable for the SWPPP that was submitted for this project. Any additional construction or land disturbing activity beyond the scope of the approved plans is not authorized. Any future work for this project not shown on the stamped, approved plans will require that you submit another site plan for review and approval. All major modifications require review and approval by the Department. Minor modifications to the approved SWPPP may be made by the SWPPP preparer and do not require review and approval by the Department; these changes should be signed and dated by the SWPPP preparer. If you have a question about whether a modification is major or minor, contact the Coastal Stormwater Permitting Section at (843) 953-0200.

A copy of the stamped, approved SWPPP (including a copy the CGP, contractor certifications, inspection records, rainfall data, etc), NOI, and CGP coverage letter from DHEC must be retained and available at the construction site (or accessible within 30 minutes during normal business hours) from the date of commencement of construction activities to the date of final stabilization. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.

All contractors who will conduct land-disturbing activities at the site must complete a Contractor Certification Form. Annual Blanket Utility Providers must provide a copy of their annual blanket registration information. You are also responsible for listing all contractors in the SWPPP and for holding a pre-construction conference with each contractor before they can conduct land-disturbing activity at the site.

The Department may conduct periodic inspections of your site. Any violations found during these inspections may result in enforcement action.

This NPDES coverage should be terminated by the permittee when one of the conditions listed in Section 5.1 of the CGP has been met. You must submit a Notice of Termination (NOT) to cancel your NPDES coverage under the CGP. Please see section 5.1 of the CGP for additional information required to be submitted with the NOT.

You are responsible for obtaining any other federal, state, or local permit that may be required for this project. In particular, any permits through the U.S. Army Corps of Engineers for the placement of fill

material in Waters of the United States. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

If material excavated during construction activities leaves the site, a mine operating permit may be needed. You are responsible for contacting the Mining and Reclamation Section to determine if a mining permit is required for the site. The Mining and Reclamation Section can be reached at (803)896-4261 or via e-mail at AskMines@dhec.sc.gov.

Please see the enclosed "Notice of Appeal Procedure" document for information about the procedures for appealing this NPDES coverage.

If you have any questions or cannot access the referenced websites, please call me at 843-953-0238.

Sincerely,


Richard V Geer, Engineer Associate
EQC Bureau of Water, Coastal Stormwater Permitting Section
1362 McMillan Ave, Suite 400, Charleston SC 29405

cc: Thomas P Bevins—ETS (91 7199 9991 7030 0134 8095)
Michael Corley—The South Carolina Environmental Law Project (91 7199 9991 7030 0134 8088)



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

Effective April 1, 2013

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's 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 within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested; and
 - a copy of the decision for which review is requested.
3. RFRs should be filed in person or by mail at the following address:

South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).

4. The filing fee may be paid by cash, certified check or credit card. If a RFR is filed by facsimile or electronic mail, the filing fee may be mailed to the Clerk of the Board and the envelope must be postmarked within the time allowed for filing a RFR.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor.
7. The Clerk will email the RFR to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. A copy of the Notice of Appeal Procedure will be included with the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

8. If the RFR is to be considered by the RFR Committee, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response to the RFR should be provided by Department staff to the Clerk within eight (8) working days after the RFR is forwarded.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

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



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Coastal Zone Consistency Certification

To: Richard Geer, Project Manager - BOW-Coastal, Stormwater Permitting
From: Christine Koczera, Project Manager – OCRM, Coastal Zone Consistency Section
Cc: Curtis Joyner, Section Manager – OCRM, Coastal Zone Consistency Section
Re: Pawley's Island Community Church Administrative Building
Site location: 10304 Ocean Highway, Pawley's Island, Georgetown County
Tax Map No: 04-0161-052-00-00, 04-0161-049-01-00
Date: March 26, 2014
CZC #: CZC-12-0149
PN#: SCR10Q459

The staff of the Office of Ocean and Coastal Resource Management (OCRM) has reviewed the above referenced Coastal Zone Consistency request for land disturbing activity, including the construction of a new administrative building, parking, and associated infrastructure, as well as, modifications to the access drive and existing stormwater management pond and certifies that the above referenced project is **Consistent** with the Public Services and Facilities (Public / Quasi Public Buildings) Policies, the Activities in Areas of Special Resource Significance (Wetlands) Policies and the Stormwater Management (Runoff) Guidelines contained in the S.C. Coastal Zone Management Program provided that:

- in the event that any historic or cultural resources and archaeological or paleontological remains are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Code of Laws. Historic or cultural resources consist of those sites named to the National Register and those sites that are eligible for the National Register and other areas of special historic significance. 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 and;
- demonstrate that storage of the first ½ inch of run-off from the entire site or storage of the first one (1) inch of run-off through retention, detention, or infiltration systems, from the built upon portion of the property, whichever is greater.

This Coastal Zone Consistency did not include a review and authorization for any direct or indirect wetland impacts to freshwater wetlands or critical area. Any impacts to Critical Areas as determined by SCDHEC-OCRM, and/or freshwater wetlands, as determined by the U. S. Army Corps of Engineers must be authorized by the appropriate agency.

This certification shall serve as the final DHEC OCRM Coastal Zone Consistency approval and does not alleviate the applicant's responsibility to obtain other required local, state or federal approvals.



NOTICE OF INTENT (NOI)
For Coverage(s) of Primary Permittees
Under South Carolina NPDES General Permit
For Stormwater Discharges From Construction Activities SCR100000
(Maintain As Part of On-Site SWPPP)

For Official Use Only

File Number: _____
Permit Number: SCR10 _____
Submittal Package Complete: _____

Submission of this Notice of Intent constitutes notice that the Applicant identified in Section II intends to be authorized as a Primary Permittee in the state of South Carolina under NPDES General Permit SCR1000000. Fees required for review and NPDES coverage of each application type are as listed on page 2 of the Instructions.

SOUTH CAROLINA
DEPT OF HEALTH AND ENVIRONMENTAL CONTROL
ENVIRONMENTAL QUALITY CONTROL
STORMWATER PERMITTING SECTION
APPROVED FOR CONSTRUCTION ONLY

DHEC PERMIT #: SCR100459
FILE #: 22-00-06-03A
DATE ISSUED: 3/31/2014
BY: [Signature]

Date: 01/08/2014

Project/Site Name: Pawleys Island Community Church Administrative Building County: Georgetown

(Modification or Change of Information Only) Prior Approved NPDES Permit or File Number: _____

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

I. Notice of Intent (NOI) Application Type(s)

A. Project (Application/Review) Type(s) (Select **ALL** that apply):

- ☒ New Project (Initial Notification) Ongoing Project: ☐ Permitted or ☐ Un-Permitted
☐ Late Notification ☐ Low Impact Development (LID) or Project Design Above Regulatory Requirements
☐ New Owner/Operator or Company Name Change (see Instructions, attach Form A (Transfer of Ownership))
☐ Major Modification: (see Instructions, attach Form B (Major Modifications))
☐ MS4 Project Review
☐ Ocean and Coastal Resource Management (OCRM) Review
☐ Change of Information/Other (Specify): _____

B. If Applicable, identify the entity designated as MS4 Reviewer and MS4 Operator (i.e., Lexington County, City of Greer, etc.): MS4 Reviewer _____ MS4 Operator _____

II. Primary Permittee Information

☐ Change of Information

☐ Person or ☒ Company

If a Company, are you a ☐ Lending Institution or ☐ Government Entity?
Company EIN (if applicable): EIN: _____

A. Primary Permittee Name: Pawleys Island Community Church

Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 8432374449 Fax: _____ Email Address: mike-plcc@sc.twcabc.com

B. Contact / ODSA Name (If different from above OR If owner is a company): Mike Fields

Mailing Address: 10304 Ocean Highway City: Pawleys Island State: SC Zip: 29585
Phone: 8432374449 Fax: _____ Email Address: mike-plcc@sc.twcabc.com

C. Property Owner Name (If different from above): _____

Mailing Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____ Email Address: _____

III. Comprehensive Stormwater Pollution Prevention Plan (C-SWPPP) Preparer Information ☐ Change of Information

A. C-SWPPP Preparer Name: Thomas P. Bevins

B. Registered Professional ☒ Engineer ☐ Landscape Architect ☐ Tier B Land Surveyor S. C. Registration #: 13899

C. Company/Firm Name: Engineering and Technical Services, Inc. S. C. COA #: 00439

Mailing Address: PO Box 2040 City: Pawleys Island State: SC Zip: 29585
Phone: 8432373002 Fax: 8432372269 Email Address: tbevins@etsengineers.com

IV. Project/Site Information

☐ Change of Information

A. Type of Construction Activity(ies) (Select **ALL** that apply):

- ☐ Commercial ☐ Industrial ☒ Institutional ☐ Mass Grading ☐ Linear ☐ Utility/Infrastructure
☐ Residential: Single-family ☐ Residential: Multi-family ☐ Multi-use (Commercial & Residential)
☐ Site Preparation (No New Impervious Area) ☐ Other (Specify) _____

B. Site Address/Location (street address, nearest intersection, etc.) 10304 Ocean Highway

City/Town (If in limits): Pawleys Island Zip Code: 29585

Latitude: 33° 26' 08" N Longitude: - 79° 07' 47" W (Source): ☐ GPS ☒ Web Site: Google Earth

Tax Map Number (s) (List all): 04-0161-052-00-00 & 04-0161-049-01-00

- C. Is this site located on Indian Land? ☐ Yes ☒ No
- D. Proposed Start Date: 04/01/2014 Proposed Completion Date: 09/01/2014
- E. Disturbed Area (nearest tenth of an acre): 2.2 Total Area (acres): 10.1
- F. Modification Only: (nearest tenth of an acre): Disturbed Area: Current (Approved) Area:
 Disturbed Area Change (Increase Only): Total Disturbed Area (After Change):
- G. Is this project part of a Larger Common Plan for Development or Sale (LCP)? ☒ Yes ☐ No
 LCP/ Overall Development Name: Pawleys Island Community Church Check here if this is the First Phase. ☒
 Previous State Permit/File Number: Previous NPDES Coverage Number: SCR10
- H. Any Flooding Problems exist downstream of or adjacent to this site? ☐ Yes ☒ No (If yes, provide detailed description of flooding problems and applicable floodway/flood zone information in the C-SWPPP).
- I. Active S.C. DHEC Warning Notice, Notice to Comply or Notice of Violation for this site or LCP? ☐ Yes ☒ No
- J. List Relevant State and Federal Environmental Permits or Approvals applied for or obtained for this site (e.g., RCRA, USACOE, Nationwide, etc.). If None, list None.
- K. Any Waiver(s)/Variances/Exceptions Requested for this Project? (If yes, identify below and include Waiver Request and Justifications in the C-SWPPP for each proposed request).
- | |
|--|
| 1. Small Construction Activity Waiver(s) From NPDES permitting (Section 1.4 & Appendix B)? ☐ Yes ☒ No
If yes, identify requested waiver: ☐ Rainfall Erosivity Waiver ☐ TMDL Waiver ☐ Equivalent Analysis Waiver |
| 2. Detention Waiver (72-302(B)) ☐ Yes ☒ No |
| 3. Other (Specify): |

V. Waterbody Information (Attach additional sheet(s) as needed) ☐ Change of Information

A. Receiving Waterbody(s) (RWB) Information (List the nearest and next nearest receiving waterbodies to which the sites stormwater discharges will drain. If stormwater discharges drain to multiple waterbodies, list all such waterbodies).

1. Name of Receiving Waterbody(ies) (RWB)	2. Distance to RWB (feet)	3. Classification of RWB
a. Nearest: un-named tributary to Pawleys Island Creek	550	FW
b. Next Nearest: Pawleys Island Creek	610	SFH
c. Coastal Zone ONLY: Coastal Receiving Water (CRW): Pawleys Island Creek	1180	Not Applicable
d. Other Waterbodies:		

B. Waters of the U.S. / State Information (Attach additional sheet(s) as needed)

Waters of the U.S./ State	1. On the site?	2. Delineated/ Identified?	3. Impacts?	4. Amount of Impacts
a. Jurisdictional wetlands	☒ Yes ☐ No	☒ Yes ☐ No	☒ Yes ☐ No	0.17 Ac Fill
b. Non-jurisdictional wetlands	☐ Yes ☒ No	☐ Yes ☐ No	☐ Yes ☐ No	Ac
c. Other Water(s):	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	Ac Feet
d. Coastal Zone ONLY: Direct Critical Area	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	Ac Feet

5. If yes for Impacts in B.3, describe each impact and activity, and list all permits (e.g., USACOE Nationwide Permit, DHEC General Permit) and certifications that have been applied for or obtained for each impact.

C. S.C. Navigable Waters (SCNW) Information (Section 2.6.5) The Department will address any issues related to State Navigable Waters' Program under SC Regulation 19-450 during the review of the C-SWPPP for activities that will NOT require a 404 permit or a 401 certification. (Attach additional sheet(s) as needed).

1. Are S. C. Navigable Waters (SCNW) on the site: ☐ Yes ☒ No

a. If no, do not complete this question. Proceed to Section D (Impaired Waterbodies).

b. If yes, provide the name of S.C. Navigable Waters (SCNW) on the site: St. John & Agriculture Farming Division

2. If yes for C.1, will construction activities cross over or occur in, under, or thru the SCNW? ☐ Yes ☐ No
 If yes, describe SCNW activities (e.g., road crossing, sub-aqueous utility line, temporary or permanent structures, etc.) and proceed to Section C.3:

3. Identify permits providing coverage of SCNW activities proposed for your site. If NONE, list none.

Permits/Certifications	Permit or Certification No.	Corresponding Covered SCNW Activity(ies)
a. DHEC General/ Other DHEC Permit	none	
b. USACOE 404 Permit or 401 Certification	none	
c. SCNW Permit If applied for or issued, identify Date applied for or issued:	none	☒ All Activities or ☐ Some Activities (Describe):

d. If a SCNW Permit has NOT been applied for provide an additional plan sheet that shows plan and profile views (drawn to scale) of the SCNW and associated activities. Include a description of all proposed activities on this plan.

D. Impaired Waterbodies Information (Attach additional sheet(s) as needed)

1. 303(d) Listed Impaired Waterbodies

a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4 and the Name of the Corresponding Waterbody?		b. Is this WQMS(s) listed on the <u>most current</u> 303(d) list? If No, proceed to Section 2 of this table. If Yes, complete items c thru f.	c. List the pollutant(s) identified as "CAUSES" of the Impairment	d. Will any pollutants causing the impairment be present in your site's construction stormwater discharges?	e. If yes for d, list the "USE SUPPORT" Impairment(s) affected by the pollutant(s) identified in c.
Nearest DHEC WQMS(s)	Corresponding Waterbody				
04-11	Pawleys Island Creek	☐ Yes ☒ No		☐ Yes ☐ No	
		☐ Yes ☐ No		☐ Yes ☐ No	
		☐ Yes ☐ No		☐ Yes ☐ No	

f. If yes for d above, will use of the BMPs proposed for your project ensure the site's discharges will NOT contribute to or cause further WQS violations for the Impairment(s) listed in c? ☐ Yes ☐ No
(NOTE: If no for f, this site is NOT eligible for coverage under the CGP). See Instructions.

2. TMDL Impaired Waterbodies

a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4?	b. Has a TMDL(s) been developed for this WQMS(s)? If No, identify as such below and proceed to Section VI. If Yes, complete items c thru f of this table.	c. If yes for b, what pollutant(s) are listed as "CAUSES" or causing the impairment?	d. If yes for b, has the standard been "ATTAINED" or "Fully Supported" for the Impairment(s)?	e. If no for d (Not Attained), will any pollutants causing the impairment be present in your site's construction stormwater discharges?
04-11	☒ Yes ☐ No	fecal coliform	☐ Yes ☒ No	☒ Yes ☐ No
	☐ Yes ☐ No		☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No		☐ Yes ☐ No	☐ Yes ☐ No

f. If yes for e above, are your discharges consistent with the assumptions and requirements of the TMDL(s)? ☒ Yes ☐ No
(NOTE: If no for f, this site is NOT eligible for coverage under the CGP). See Instructions.

VI. Signatures and Certifications DO NOT SIGN IN BLACK INK! Read the Certifications below (in entirety). Provide date, printed name, and signatures below. If you are a New Owner/Operator, as Primary Permittee you must also sign and date the applicable Comprehensive SWPPP Acceptance & Compliance Agreement below.

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

Thomas P. Bevins

Printed Name of C-SWPPP Preparer

Signature of C-SWPPP Preparer

13899

S. C. Registration #

PRIMARY PERMITTEE: "I or I (on behalf of my company and its contractors and agents), as the case may be, certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I understand that DHEC enforcement actions may be taken if the terms and conditions of the C-SWPPP are not met and I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

"I or I (on behalf of my company and its contractors and agents), as the case may be, also hereby certify that all land-disturbing construction and associated activity pertaining to this site shall be accomplished pursuant to and in keeping with the terms and conditions of the approved plans and SCR100000. I also certify that a responsible person will be assigned to the project for day-to-day control. I hereby grant authorization to the S. C. Department of Health and Environmental Control (DHEC) and/or the local implementing agency the right of access to the site at all times for the purpose of on site inspections during the course of construction and to perform maintenance inspections following the completion of the land-disturbing activity." (See Section 122.22 of S.C. Reg. 61-9 for signatory authority information.) Having understood the above information, I am signing this certification as Primary Permittee to the aforementioned NPDES general permit."

Mike Fields

Printed Name of Primary Permittee

Signature of Primary Permittee

General manager

Title/Position

Date Signed



Catherine B. Templeton, Director
Promoting and protecting the health of the public and the environment

Coastal Zone Consistency Certification

To: Richard Geer, Project Manager - BOW-Coastal, Stormwater Permitting
From: Christine Koczera, Project Manager – OCRM, Coastal Zone Consistency Section
Cc: Curtis Joyner, Section Manager – OCRM, Coastal Zone Consistency Section
Re: Pawley's Island Community Church Administrative Building
Site location: 10304 Ocean Highway, Pawley's Island, Georgetown County
Tax Map No: 04-0161-052-00-00, 04-0161-049-01-00
Date: March 26, 2014
CZC #: CZC-12-0149
PN#: SCR10Q459

The staff of the Office of Ocean and Coastal Resource Management (OCRM) has reviewed the above referenced Coastal Zone Consistency request for land disturbing activity, including the construction of a new administrative building, parking, and associated infrastructure, as well as, modifications to the access drive and existing stormwater management pond and certifies that the above referenced project is **Consistent** with the Public Services and Facilities (Public / Quasi Public Buildings) Policies, the Activities in Areas of Special Resource Significance (Wetlands) Policies and the Stormwater Management (Runoff) Guidelines contained in the S.C. Coastal Zone Management Program provided that:

- in the event that any historic or cultural resources and archaeological or paleontological remains are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Code of Laws. Historic or cultural resources consist of those sites named to the National Register and those sites that are eligible for the National Register and other areas of special historic significance. 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 and;
- demonstrate that storage of the first ½ inch of run-off from the entire site or storage of the first one (1) inch of run-off through retention, detention, or infiltration systems, from the built upon portion of the property, whichever is greater.

Exhibit 22

This Coastal Zone Consistency did not include a review and authorization for any direct or indirect wetland impacts to freshwater wetlands or critical area. Any impacts to Critical Areas as determined by SCDHEC-OCRM, and/or freshwater wetlands, as determined by the U. S. Army Corps of Engineers must be authorized by the appropriate agency.

This certification shall serve as the final DHEC OCRM Coastal Zone Consistency approval and does not alleviate the applicant's responsibility to obtain other required local, state or federal approvals.



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Project Name: Pawley's Island Community Church Administrative Building

Consistency Determination (from Section VI):

Consistent: ✓

Inconsistent:

Consistent with revisions:

I. Background Information:

CZC ID: CZC-12-0149

Date of CZC Public Notice: November 21, 2012

Date Received: November 12, 2012

County: Georgetown County

Nearest Waterbody: Pawley's Island Creek

Location Description: 10304 Ocean Highway

State Permit Type(s): NPDES Stormwater

Permit Agency(ies): DHEC-BOW-C

Permit Number: SCR10Q459

II. Brief Project Description:

Construction of a new administrative building, parking, and associated infrastructure, as well as, modifications to the access drive and existing stormwater management pond.

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

None

IV Policy Assessment:

A. Check the appropriate policy group that applies to this proposed project:

☐ I. Residential Development

☐ II. Transportation Facilities (*Ports, Roads and Highways, Airports, Railways*)

- ☐ III. Coastal Industries (*Agriculture, Forestry, Mining, Manufacturing, Fish and Seafood Processing, and Aquaculture*)
- ☐ IV. Commercial Development
- ☐ V. Recreation and Tourism (*Parks and Commercial Recreation*)
- ☐ VI. Marine Related Facilities (*Marinas, Boat Ramps and Docks*)
- ☐ VII. Wildlife and Fisheries Management (*Artificial Reefs and Impoundments*)
- ☐ VIII. Dredging (*Dredging and Spoil Disposal*)
- ☒ IX. Public Services and facilities (*Sewage Treatment, Solid Waste Disposal, Public Buildings, Dams and Reservoirs and Water Supply*)
- ☐ X. Erosion Control (*Funding and General Erosion Control*)
- ☐ XI. Energy and Energy Related Facilities
- ☒ XII. Activities in Areas of Special Resource Significance (*Barrier Islands, Dune Areas, Navigational Channels, Public Open Spaces and Wetlands*)
- ☒ XIII. Stormwater Management (*Runoff, Bridge Runoff, Golf Course Management, Mines and Landfills*)
- ☐ XIV. Beach and Shoreline Access

V. Environmental Assessment:

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

Yes, jurisdictional wetland impacts are proposed.

B. What is (are) the purpose(s) of the impact(s) to coastal resources, if any?

Stormwater pond modifications and building construction.

C. Does the project demonstrate no feasible alternatives or overriding public interest (explain)?

Wetland staff has completed the CZC Certification for the Corps permit.

D. Does the project impact a GAPC (if so, describe)?

No - project is not affecting any GAPCs.

E. Is a dock master plan required (if so, why)?

No

F. Has the project been modified to minimize impacts (if so, describe)?

N/A

G. Is mitigation required and, if so, does it meet CZM policy (describe)?

No

H. Does the project contravene any coastal zone management policy? ☐ Yes / ☒ No

VI. For impacts to Jurisdictional and Non-jurisdictional Wetlands - Summary of impacts and mitigation:

- A. Wetlands: Jurisdictional wetland impacts are proposed. A restrictive covenant was created and recorded under the original permit for the protection of non-impacted wetlands. The restrictive covenant is currently in the process of being amended to allow for jurisdictional wetland impacts. Review and mitigation for these impacts has been reviewed and approved by the Corps and OCRM's Wetland Section (SAC-39-2011-01123-3N, #CZC-12-0297).

1. Amt. Wetlands Impact Requested (acres): _____ None

2. Amt. Wetlands Impact Allowed (acres): _____ None

3. Type of Impacts Allowed (in acres):

_____ fill

_____ dredge

_____ clear

_____ impound

_____ drain

_____ other – (specify) _____

4. Does the project meet Wetland Master Planning Policy (explain)?

B. Mitigation: N/A

1. Size (in acres) and Type:

_____ wetland preservation onsite

_____ wetland preservation offsite

_____ upland buffers onsite

_____ upland buffers offsite

_____ creation onsite

_____ creation offsite

_____ restoration/enhancement onsite

_____ restoration/enhancement offsite

_____ mitigation bank (credits) – (name of bank) _____

_____ in-lieu-fee mitigation (credits)

donation \$ _____ name of recipient _____

2. Mitigation Requirements: N/A

_____ stamped recorded plat
_____ stamped recorded restrictive covenants
_____ > stamped recorded conservation easement
_____ proof of purchase of mitigation credits
_____ proof of donation
_____ other (specify) _____

VII. Staff Consistency Determination:

- ☒ Project is consistent.
_____ Project is inconsistent (deny).
_____ Project is consistent with revisions.

VIII. For projects inconsistent with the SCCZMP: N/A

A. The project is inconsistent with the following policies:

B. Specific reason(s) project is inconsistent:

C. Modifications for bringing the project into consistency:

IX. **Field Assessment By:** N/A **Date:** _____

X. Approved By:

1. CZC Section Project Manager: Christine Koczera *Christine Koczera* **Date:** March 26, 2014

1. CZC Section Manager: _____ **Date:** _____

XI. Notes:

The wetland impacts proposed for this permit were initially 'protected' under a recorded restrictive covenant between OCRM, the Mims, and the Abels. The Mims and Abels are/were two adjacent property owners at the time the initial NPDES SW land disturbance permit was issued. The restrictive covenant needed to be amended to allow for the additional wetland impacts proposed under this project. Please see file for additional correspondence regarding the amendment.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Dan Abel, Mary Abel and William Mashburn,

Petitioners.

vs.

South Carolina Department of Health and
Environmental Control and Pawleys Island
Community Church,

Respondents.

Docket No. 14-ALC-07-0282-CC

**AFFIDAVIT OF
DAN ABEL**

PERSONALLY APPEARED before me Dan Abel who being duly sworn deposes and says:

1. I am a citizen of the State of South Carolina, having been born and raised in this State.
2. I reside at 108 Salt Marsh Circle, Unit 24-G in Pawleys Island, where I have lived for 5 years. Prior to that, I resided at 144 True Blue Road in Pawleys Island where I lived for 16 years. I have been a member of the Pawleys Island community for 21 years.
3. I received my B.S. and M.S. in Marine Biology from the College of Charleston and my Ph.D. in Marine Biology from the University of California-San Diego, Scripps Institute of Oceanography. I am currently a Professor of Marine Science at Coastal Carolina University in Conway, South Carolina. I am also an environmental scientist and former author of a newspaper column on the environment as well as three textbooks, and I have been concerned with the health of Pawley's Creek since we moved to the area 21 years ago.
4. In 2000 my wife, Mary Abel, and I learned that the Pawleys Island Community Church (formerly Pawleys Island Baptist Church) applied for a permit and certifications to allow the construction of a new sanctuary and make other improvements to the Church property. Of primary concern was the Church's proposal to fill in 0.3 acres of jurisdictional wetlands onsite. Those wetlands were a source of joy to us. We had watched the wildlife in this small but significant ecosystem since we moved in. We had seen immature bald eagles, hawks, snakes, raccoons, turtles, and myriad other animal life among the wetland flora. Our kids grew up on the fringe of this system (just as I – a native South Carolinian – did further south), and they are lifelong devotees of the outdoors, in no small part a

Exhibit 23

result of being raised adjacent to the magnificent natural environment of this area. As environmentalists, we felt we could not watch this ecosystem be destroyed.

5. Moreover, the onsite wetlands have a direct surface and hydrological connection to Pawleys Creek, a salt water creek in the Pawleys Island community. Currently Pawleys Island Creek is a eutrophic system owing to polluted groundwater and surface water runoff from the watershed. Wetlands mitigate nutrients and sediment runoff and contribute to biodiversity of the creek and surrounding area.
6. The relationship between the wetlands proposed to be filled by the Church and the adjacent salt water Pawleys Creek are important to me for personal and professional reasons. I enjoy recreating in and around the Pawleys Island community, and Pawleys Creek in particular. I enjoy watching birds and other wildlife which are dependent on this estuarine system and the attendant water quality for their propagation and survival and my enjoyment.
7. The primary basis of my challenge to the authorizations for construction on the Church's property was the impacts to the wetlands. David Mims also challenged the authorizations. Mr. Mims, Mary and I met with Church officials, discussed possible resolutions to our collective concerns, and ultimately negotiated a settlement agreement. In January of 2001, my wife Mary W. Abel and I signed a legal document that represented that compromise and settlement with Pawley's Island Baptist Church. The compromise allowed the church to fill in 50% of the wetlands adjacent to our house and required it to preserve 50% of the wetlands in perpetuity. As with many compromises, the decision to fill in the wetlands left us (and the church as well, we suspect) with a bittersweet feeling. We were saddened at the loss of half of the wetlands, but were comforted that the remaining half would continue to exist. Moreover, Pawleys Island Baptist Church had always been a good neighbor, and we did not want to impede their expansion plans. So, we at least felt good that they could still build as they had planned, although the compromise meant that they must reconfigure the site plan. I believed the compromise to protect half of the wetlands onsite was reasonable and understood that the Church shared that belief. At no point during our negotiations did the Church express any belief or understanding that its obligations would be anything other than what they agreed to under the plain terms of the settlement agreement.
8. The Consent Order specifically states that "The Church agrees that the wetland preserved by this Consent Order shall remain in its natural state" and "...that the parties shall retain full rights to enforce the agreements stated herein." These statements, which had no time limitations on them, assured us that we made the right decision. And we had no reason to doubt that the decision was as binding as any legal contract we had ever signed. Further, we were confident that the Church would honor the commitment its representatives made verbally and cemented by handshake, then affirmed by signing the Consent Order. Furthermore, since a state

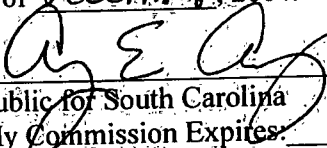
agency, SC DHEC, was involved, we felt that the agreement was as solid as any legal agreement could ever be.

9. Thus, in late 2013, we were shocked to receive notification that the Church was in the final stages of receiving a permit to do precisely what they promised and legally agreed never to do under the 2001 Consent Order and settlement agreement—fill in the wetlands. The health of Pawleys Creek is directly influenced by the state of its watershed, and wetlands such as these are important to the creek and are fast disappearing. Thus, although our concerns were based at first in part on our proximity to this wetland system, we continue to be affected because of the impact on Pawleys Creek and biodiversity of the area if these wetlands are destroyed, as we are still residents of this special community. There is no mitigation for the loss of these wetlands locally.
10. I learned that Church asked the Administrative Law Court to modify the 2001 Consent Order and Settlement Agreement to which my wife Mary and I are parties. I was not asked whether I consented to amend or modify our settlement agreement. The Chief Administrative Law Judge conducted a conference call regarding the modification request. I objected to modification of the Consent Order at that time because the modification would eliminate material provisions of the agreement to which I am a party.


Dan Abel

SWORN TO before me this

15th day of December 2014.


Notary Public for South Carolina

1. My Commission Expires: _____

(SEAL)

AMY E. ARMSTRONG

Notary Public, State of South Carolina
My Commission Expires 1/8/2023