

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Administrative Law Judge

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Case No. 15-ALJ-07-0404-CC

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**RECEIVED**  
DEC 19 2016  
**SC Court of Appeals**

South Carolina Department of Health and Environmental Control  
and Horry County Public Works ..... Respondents,

vs.

South Carolina Coastal Conservation League and South Carolina  
Wildlife Federation ..... Appellants.

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**MOTION TO COMPEL COMPLIANCE**

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The Appellants hereby move this Court for an Order compelling Respondent Horry County to comply with its Order granting supersedeas dated December 15, 2016. Due to the nature of this motion, which seeks adherence with this Court's Order, and the actions of Respondent, which are inconsistent with that Order, the Appellants request that this motion and the briefing schedule be expedited.

The Appellants filed their petition for supersedeas on November 7, requesting "to stay the work proposed by Horry County Public Works" which is the subject of the state certifications currently on appeal. As described in the petition, the certifications at issue "authorize Horry County to build a highway within and adjacent to Lewis Ocean Bay Heritage Preserve in Horry County." Specifically, the "road project would convert 5.6 miles of this dirt road into a four-lane highway with shoulders, a median, and turning lanes." The two state certifications on appeal

describe the project as follows: “the proposed work consists of widening, paving and re-aligning of the existing unimproved portion of International Drive. In detail, the work involves the construction of a paved four-lane roadway with 14-foot-wide lanes and a 125-foot right of way.” DHEC certifications, Exhibit A, attached. Based upon the petition and the project as described in the contested certifications, there can be no doubt that the Appellants sought to stay further construction on this road project.<sup>1</sup>

The Appellants have been informed by the Respondent Horry County that it has not ceased, and does not intend to cease, construction activities authorized pursuant to the two challenged state certifications, despite this Court’s Order. Specifically, counsel for the County communicated to the undersigned his legal interpretation that the “order issued by the court of appeals does not constitute an injunction to halt further work on the road.” Email correspondence dated December 16, 2016, Exhibit B, attached. Statements made by Horry County to the press that it intends to continue road construction work reflect this interpretation. The Appellants vehemently disagree with this interpretation and believe that the construction taking place right now pursuant to such interpretation is improper.

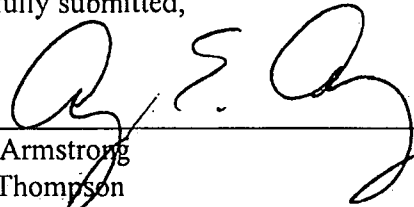
The Appellants respectfully request that this Court issue an Order compelling compliance with its December 15 Order granting Appellants’ petition for supersedeas, commanding Horry

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<sup>1</sup>As discussed in Appellants’ letter to this Court dated December 7, Horry County has commenced construction activities on the disputed project site. However, the full project which is authorized under the state certifications has not been completed, and it is that construction work for which the Appellants sought supersedeas. The Appellants were clear that the supersedeas was sought “both **because the TRO did not enjoin all construction activities** and because of the limited duration of TROs in general.” (Letter to Court, dated December 7, 2016, emphasis added). In other words, Appellants have sought to prevent the work authorized under the contested certifications, the “paving, widening and realigning” of International Drive, through their petition for supersedeas.

County to cease and desist from further construction activities which are described in the challenged state certifications attached as Exhibit A, and any other such relief deemed necessary to ensure compliance with this Court's mandate.

Respectfully submitted,



Amy E. Armstrong  
Amelia Thompson

SOUTH CAROLINA ENVIRONMENTAL LAW  
PROJECT

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Attorneys for the South Carolina Coastal  
Conservation League & South Carolina  
Wildlife Federation

December 19, 2016

Georgetown, South Carolina

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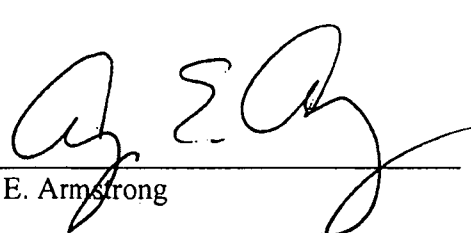
CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing Notice of Appeal on Respondents SCDHEC and Horry County Public Works and the Administrative Law Court by placing copies of same in the U.S. Mail addressed to:

Stan Barnett, Esquire  
305 North Civitas Street  
Mount Pleasant, SC 29464

Nathan M. Haber, Esquire  
1362 McMillan Avenue, Suite 400  
Charleston, SC 29405

Michael S. Traynham  
SCDHEC  
2600 Bull Street  
Columbia, SC 29201

  
\_\_\_\_\_  
Amy E. Armstrong

Georgetown, South Carolina

December 19, 2016



Catherine E. Heigel, Director

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

Public Notice # 2010-01157-3H (1)

Public Notice Date: June 25, 2015

### **NOTICE OF DEPARTMENT 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 SC 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:

Horry County Public Works  
International Drive Improvements  
Waccamaw River Tributaries  
Horry County  
P/N 2010-01157-3H (1)

After reviewing the project plans, staff of the Bureau of Water 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. Additionally, staff of the 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). Accordingly, the Department proposes to certify the project with conditions as follows:

1. The applicant must implement appropriate best management practices that will minimize erosion and migration of sediments on the project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, silt fences, or other appropriate devices. All disturbed land surfaces affected by the project must be stabilized.
2. The applicant must follow Horry County guidelines to control runoff and protect harmful contaminants from entering sensitive aquatic resources, as proposed. A final stormwater management plan must be in compliance with MS4 and other SCDHEC administered stormwater permitting requirements.
3. Only clean earthen material, free of all potential sources of pollution, may be used as fill.
4. Appropriate containment measures must be taken to prevent pollutants such as gasoline, oil, tar, and debris and other pollutants from entering the adjacent waters or wetlands.

# Exhibit A

5. All wetland and tributary crossings must be made with appropriately sized culverts, as proposed, to maintain natural stream morphology and allow unrestricted aquatic life passage.
6. The applicant must compensate for unavoidable project impacts by providing a minimum of 287.8 mitigation credits to compensate for wetland impacts. Credit documentation from the proposed Bass Lake Mitigation Tract III permittee responsible site must be submitted to SCDHEC and the Corps of Engineers prior to the work beginning.
7. Annual monitoring reports, as proposed in the Bass Lake Mitigation Tract III monitoring plan dated December 18, 2014, must be submitted to the SCDHEC for a period of five years after issuance of a Department of Army permit or until performance standards are met.

The SC 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. 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 Mark A Giffin, the project manager, at 803-898-4179.

The final State Certification will be issued if a request for a review conference is not granted by the Department.

The issuance of this Notice of Department Decision represents a final staff decision that may be appealed. Please see the attached appeal procedures for details.



Chuck Hightower, Manager  
Water Quality Certification,  
and Wetlands Section

cc: US Army Corps of Engineers  
Charleston District Office  
SC DHEC, Myrtle Beach EQC Office  
OCRM

## Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

Effective May 8, 2014

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 or settlement discussions 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. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

### 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:
  - o The grounds for amending, modifying, or rescinding the staff decision;
  - o a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - o the relief requested;
  - o a copy of the decision for which review is requested; and
  - o mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
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](mailto:boardclerk@dhec.sc.gov)).

4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
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. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response 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 a 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. Contested case guidance will be included within 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.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no 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, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

## **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 the 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 or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. 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.

**STAFF ASSESSMENT**

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (SCDHEC)  
DIVISION OF WATER QUALITY  
WATER QUALITY CERTIFICATION AND WETLANDS SECTION**

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**I. Background Information**

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**Applicant:** Horry County Public Works

**P/N Number:** P/N 2010-01157-3H

**P/N Date:** December 11, 2013

**Date Received:** December 11, 2013

**P/N Close:** January 11, 2014

**Section of Applicable Federal Law:** ( ) Section 10 (x) Section 404 (x) Section 401

**Section of Applicable State Law:** (x) Coastal Zone Consistency ( ) Construction in Navigable Waters Permit

**Brief explanation and purpose of activity:**

The proposed work consists of realigning, widening and paving a 5.6-mile portion of the existing International Drive. The purpose of the proposed project is to relieve traffic congestion and to provide a secondary evacuation route for the residents of the Carolina Forest Community and surrounding areas.

**Waterbody Names:** Waccamaw River tributaries

**Water Classifications:** FW

**Waterbody Location:** Between SC 90 and SC 31 east of Conway along the unimproved portion of International Drive in Horry County (Latitude 33.802391° N, Longitude -78.884481° W.)

**Waterbody on 2014 303(d) List or within approved TMDL?**

( ) Yes (x) No

There are no monitoring sites in tributaries in the project vicinity. The project is not located within a TMDL watershed.

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**II. Project Description**

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**A. Description of Work**

The proposed work consists of widening, paving and re-aligning the existing unimproved portion of International Drive. In detail, the work involves the construction of a paved 4-lane roadway with 14-foot-wide lanes with a 125-foot right of way. The remaining right-of-way width on either side of the travel lanes will be filled and graded to allow for drainage during storm events. The project originally

would have impacted 24.88 acres of freshwater wetlands located adjacent to tributaries of the Waccamaw River. Impacts include filling 21.33 acres, clearing 0.22 acre and excavating 3.33 acres. However, the project was modified (see Sections II. B. through E. below.) The majority of the project is located along the existing footprint of International Drive, but deviates from the existing footprint at 2 locations. The first location is where the existing International Drive intersects SC 90 where the proposed roadway is shifted to the west to avoid encroachment in a residential area. The second location is located at the midpoint of the proposed project. At this location, the existing footprint curvature is not sufficient to meet the 60-mph design speed criteria, and to accommodate current/future projected traffic volume for the service area. The project purpose, as stated by the applicant, is to relieve current and anticipated congestion for local/transient commuters and to provide a secondary evacuation route for the residents of the Carolina Forest Community and surrounding areas.

**B. Fill**

1. Is fill required?  Yes  No If no, proceed to Section II. C.

Amount	Acres/LF
Total	19.58 Acres and 26LF
Wetlands	19.58 LF
Open Waters of U. S.	26 LF

2. Is the fill temporary?  Yes  No

**C. Excavation**

1. Is excavation required?  Yes  No If no, proceed to Section II. D.

Amount	Acres
Total	4.35
Wetlands	4.35
Open Waters of U. S.	

2. Is excavation spoil site adequately sized for the amount of material?

Yes The applicant stated that all excavated material will be contained and stabilized within uplands until used for roadway fill. Excavated material not used for construction will be removed from the project site and deposited within uplands.

No

N/A

D. Other Impacts:  Yes  No  Mechanically cleared wetlands (0.26 acre)  
 Flooding wetlands

**E. Project Modification**

Was the project modified from the original public notice?

Yes The applicant modified the project by relocating an access road within the Horry County Solid Waste Authority property to reduce impacts to forested wetlands by 0.72 acres. The revised impacts are reflected in above Section B. 1.

No

**F. Compensatory Mitigation**

Is compensation required by DHEC?

**(x) Yes** The applicant proposed to provide compensatory mitigation to offset unavoidable project impacts by providing a permittee responsible plan due to the lack of sufficient available mitigation credits from an approved mitigation bank within the watershed. The originally proposed conceptual permittee responsible plan included the enhancement and restoration of 93.4 acres of wetlands adjacent to the South Prong of Sterritt Swamp located in Central Horry County west of the proposed project as detailed in the *404 Permit Application Package International Drive Re-Alignment/paving Horry County, South Carolina*. The applicant submitted a revised permittee-responsible plan with details in *Bass Lake Mitigation Tract III, Pee Dee Road, Yauhannah, Georgetown County, South Carolina* (December 18, 2014). The Bass Lake Mitigation Tract III site is located adjacent to and including a portion of the Pee Dee River Swamp in the Yauhannah Community in northern Georgetown County. The tract is located just upstream of the Highway 701 Bridge and northeast of Pee Dee River Road. The tract is situated southwest of Bass Lake Mitigation Tract II, north of the Richardson Mitigation Tract and northwest of the Haulover Tract WRP that is also protected. The tract consists of a total of 126.79 acres and includes approximately 121.54 acres of forested wetlands and approximately 5.25 acres for forested uplands occupying an area that buffers the river swamp from adjacent properties to the west. The tract is located within HUC 03040207 and within the secondary service area as defined by the COE for the Waccamaw River Lower Coastal Plain. Mitigation activities would enhance 121.54 acres of mature forested wetlands and interior drainage ways associated with Conch Creek, Bass Lake and the Pee Dee River by removing portions of an above-grade roadway that bisects the tract from east to west. This roadway has affected the pattern of natural drainageways within the tract and restricted the back-flooding function of the bottomland hardwood community during periods of low and rising water (generally less than 2 feet in depth). The work would involve the removal of 3 road crossings and would include the removal of an existing box culvert and replacing it with a bridge span (crossing 1), creating a multiple breached section (crossing 2) and replacement of an existing bridge with a longer span (crossing 3). These activities are expected to enhance the back flooding function of the hardwood community (as previously described) similar to successful mitigation activities used in the Bass Lake Mitigation Tracts I and II. The revised plan would provide 291.69 credits, which exceed the 287.8 wetland credits needed to offset project impacts. Mitigation Credits were calculated using the current Charleston Corps calculation methods found in "Guidelines for Preparing a Compensatory Mitigation Plan". The site will be protected through a conservation easement to be held by the Horry County Conservation Foundation, Inc. Therefore, the proposed mitigation should adequately offset project impacts provided the applicant submits a final mitigation plan with appropriate permittee responsible credit documentation and/or mitigation bank credit withdrawal documentation, which should be submitted to SCDHEC and the Corps of Engineers prior to the work beginning.

- No
- N/A

**G. Remediation**

Is remediation required?      Yes     No

**H. Stormwater Concerns**

1. Are water quality impacts from stormwater expected?

- Yes
- Temporary

**(x) No** Water quality impacts from non-point sources will be minimized and should not contravene the water quality standards or existing and classified uses of freshwater wetlands and tributaries associated with Waccamaw River if the applicant uses Best Management Practices (BMPs) and is in compliance with SCDHEC administered MS4 and other stormwater

permitting requirements during and after project construction to minimize erosion and migration of sediments.

**2. Has the applicant addressed stormwater concerns?**

**Yes** The applicant stated that proposed project will follow Horry County guidelines to control runoff and protect harmful contaminants from entering sensitive aquatic resources. During construction, stormwater runoff will be routed into, through, or across an Erosion Prevention and Sediment Control BMP before it is discharged. Stabilized construction entrances will be used at all points of ingress/egress to the construction site. Where construction or land disturbing activities occur, permanent or temporary stabilization will be performed. Erosion and sediment control BMPs that will be used during construction include, but are not limited to, silt fence systems, rock ditch checks and sediment tubes for ditch checks, outlet protection, level spreaders for pipe outfalls, pipe slope drains, rolled erosion control products, and construction de-watering.

Additionally, post construction BMPs will be used to provide water quality treatment. Vegetated channels, swales, and filter strips will be the primary water quality BMPs used for this project. These measures have been determined to provide an effective treatment of roadway runoff. Long-term maintenance will be provided by Horry County Public Works in accordance with a final maintenance plan to be implemented after construction is completed. All stormwater plans will be developed in accordance with federal and state guidelines as well as the Horry County Stormwater Management Design Manual, SCDHEC Stormwater Management BMP Handbook, and the SCDOT Stormwater Quality Design Manual.

**No**

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**III. Environmental Assessment**

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**A. Is the proposed activity water dependent? ( ) Yes (x) No**

**B. Are there feasible alternatives to the proposed activity?**

**Yes**

**No** The International Drive Re-aligning and pavement project is intended to meet the purpose of relieving current and anticipated traffic congestion on the existing roadway network and to provide a secondary evacuation route for the residents of the fast growing Carolina Forest Community. According to the applicant, a reasonable range of alternatives was considered and discussed at a comparable level of detail to avoid bias towards a particular alternative. The following criteria were initially used in the consideration of alternate routes:

1. **Location/Geometry and Size:** A 60-mph design speed was required when developing the roadway curvature and to accommodate current/future traffic volume for the service area. Existing utilities and structures played a role in the placement of the proposed road adjacent to and within the current right-of-way. The available route must be of sufficient width to accommodate the current need and future growth within the service area.
2. **Wetland Impact:** The proposed route limits the amount of additional wetland impacts by using as much of the existing roadway as possible while meeting all other design criteria.
3. **Acquisition:** The potential route must be available for acquisition without unreasonable hindrances or increased cost in relocating existing structures within the proposed right of way.
4. **Sensitive Faunal/Floral Communities:** The preferred alternative avoided known sensitive faunal communities located within the adjacent Lewis Ocean Bay Natural Heritage Preserve.

The applicant revised the original alternatives analysis in response to DHEC and agency concerns (letters dated October 30, 2014 and February 25, 2015 from Britt Feldner, The Brigman Company.) According to the applicant, the applicant considered those alternatives that are reasonable in terms of the overall scope and cost of the proposed project and produce the least environmental impact, including direct, indirect and cumulative effects. The following revised alternatives analysis summary is intended to indicate why and how the particular range of project alternatives was developed:

**No Build/Offsite Alternative:** The "No Build" alternative is also considered an offsite alternative, which represents abandoning any construction plans to provide an additional route for residents and transients within the Carolina forest community and its adjoining communities. With population growth in the Carolina Forest community experiencing greater than 500-percent growth in the last decade, the existing roads within the area including River Oaks Drive and Carolina Forest Boulevard creates bottlenecks and routine congestion throughout the year during both tourist and non-tourist seasons. With more housing developments and businesses planned and some under construction, additional congestion along Carolina Forest Boulevard and River Oaks Drive is eminent. US 501 and SC 22 are the 2 existing major highways used by motorists that travel between Conway and the developed area in Carolina Forest and Myrtle Beach. The connection points to the major road network at each end of the improved international Drive are River Oaks Drive and Carolina Forest Blvd. at the southeastern end and SC 90 at the northwestern end. The following alternatives demonstrate that the no-build alternatives, which include improvements to the surrounding road system, would not wholly accomplish the purpose and need of the proposed International Drive improvement project.

The applicant provided information addressing current travel times between Conway and Myrtle Beach due to high traffic volumes on US Hwy 501 during the regular commuter peak travel periods and the busiest travel time during the peak tourist season. The draft Strategic Corridors Section of the SCDOT Multimodal Transportation Plan (August, 2014) listed the US Hwy 501 corridor between Conway and Myrtle Beach as the number 1 most congested corridor in the State when ranked against 1,000 other strategic corridor segments. Delays are expected to worsen exponentially with the continued growth in the Myrtle Beach area. The proposed International Drive will provide a more direct route to the Horry County Solid Waste Authority Landfill and Material Recycling Facility for the fleet of large trash trucks from the Cities of Myrtle Beach and North Myrtle Beach. This will effectively remove this daily fleet from US Hwy 501 and along most of the length of SC 90, which will reduce traffic congestion on those roads.

The current road system within the project area fails to support efficient and safe travel between the Carolina Forest community and inland areas during regular weekday commuter peak travel times. Also, in the event of an approaching hurricane or other natural disaster, the existing travel ways are insufficient to support efficient and safe travel during evacuation procedures. Due to these reasons, the "No Build/offsite" alternative is not a feasible option and should not be considered a valid alternative that would meet the project purpose or solve the growing travel safety and congestion issues for local and transient commuters.

According to the applicant, development of the onsite alternatives for the project involved a stringent design process to meet the project needs while minimizing wetland impacts to the maximum extent possible. Considering current traffic volumes and congestion issues along river Oaks Drive and Carolina Forest Boulevard in addition to ongoing roadway improvements, Horry County was able to establish the design criteria necessary to meet the current and future needs of the proposed roadway. Rapid growth in the last decade has required continual upgrades to Carolina Forest Blvd. to support

the larger population. The GSATS (Grand Strand Area Transportation Study) travel demand network model was used to forecast the amount of traffic that would use the new roadway. The applicant provided details regarding the volume and types of traffic that would use International Drive in the year 2030. Considering the addition of trash trucks headed from the cities to the Horry County Solid Waste Authority Landfill and Material Recycling Facility, it was determined that a 4 lane roadway would be needed to provide adequate passing zones and to provide for adequate capacity for current and future traffic volumes.

**Offsite Alternative 1 – Lewis Ocean Bay Heritage Preserve:** International Drive is bordered to the east by the Lewis Ocean Bay Heritage Preserve (LOBHP). LOBHP is a 9,400-acre preserve currently under the ownership and management of the South Carolina Department of Natural Resources (SCDNR). During the initial design phases of the project, LOBHP was quickly ruled out as a viable option for the proposed route. Locating the route within the LOBHP would result in substantial impacts to environmental resources due to large undisturbed wetland component and 11 Red Cockaded Wood Pecker (RCW) clusters directly east of the existing road. This alternative would result in fragmentation to undisturbed wetland communities and protected species habitat. Furthermore, during initial discussions with representatives of SCDNR, bisecting LOBHP was strongly discouraged.

**Offsite Alternative 2 – Riverstone Virgin Route:** During early evaluation of the project objectives, Alternative 2 was explored to avoid any impacts to the SCDNR Lewis Ocean Bay Heritage Preserve and excessive roadway curvature. This route would cross a series of large contiguous uplands in order to minimize wetland impacts to the maximum extent possible. However, this alternative has greater impacts to natural resources, specifically forested wilderness, remote wetlands, and potential protected species habitat. Specifically this route would impact approximately 34.72 acres of fully functional wetlands in comparison to the preferred route impacts to 24.19 acres of slightly impaired wetlands. Construction of this alternative would not result in an overall improvement to the current fragmentation of wetlands within the existing roadbed and would further fragment a large undisturbed wetland complex and wildlife habitat. With the construction of this route, a substantial portion of the existing roadbed would remain in place to provide access to the Heritage Preserve, further fragmenting wetlands and wildlife habitat. In addition, the construction cost associated with this route would be substantially greater due to extreme access restrictions and the acquisition of 100 percent of the right-of-way (ROW) from private landowners. ROW acquisition costs could increase by as much as 300 percent since the applicant is currently acquiring half of the required 125-foot ROW from private landowners. Construction costs would also increase due to the need for additional clearing. Because of impact avoidance and minimization efforts, this alternative was not considered the preferred route mainly due to excessive impacts to natural communities and additional ROW acquisitions and construction costs.

**Offsite Alternative 3 – Truevine Community:** The current alignment of International Drive near the intersection of SC Highway 90 bisects the Truevine community. During the initial design phases, using the current alignment within this section of the roadway was abandoned to avoid substantial impacts to 8 individual private properties, 5 of which are single-family residences, due to the increased ROW width and roadbed construction. In addition, residents in 3 existing dwellings would be displaced due to the close proximity of these dwellings to the existing alignment. In order to avoid additional disturbances to a minority community that has been in existence for over 50 years, and to avoid of the associated environmental justice issues, the applicant chose to avoid the existing alignment within this section of the roadway.

**Offsite Alternative 4 – Improvements to US Highway 501:** The current Grand Strand Area Transportation Study (GSATS) Transportation Improvement Program (TIP) includes a project that will add a third southbound lane on US Highway 501 between Gardner Lacy Road/Myrtle Ridge Drive and SC 31 (Carolina Bays Parkway.) The widening project is programmed for construction in 2018. While this upcoming project will ease some of the existing commuter congestion in the short term (the current road is 46 percent over capacity), the GSATS Congestion Management Process report from 2014 indicates that this road will return to similarly congested levels in 2035 (38 percent to 55 percent) even with the additional widening improvements in place.

As the US 501 corridor will continue to be congested in 2035, despite the upcoming widening improvements, any additional improvements that may be installed beyond what is currently programmed would still have a very limited direct effect on the travel patterns for residents at the north end of Carolina Forest due to the 6 to 7 mile distance to US 501. Any long-term meaningful improvements to US 501, such as conversion to a limited access road with grade separated interchanges, are not likely to be implemented in the 20-year planning/design timeframe since they would be very cost-prohibitive due to the existing commercial land uses and access requirements.

In addition to the growth in Carolina Forest, there has been and will continue to be residential and commercial traffic growth east of the Atlantic Intercoastal Waterway in Myrtle Beach. New residents in this area regularly travel to Carolina Forest via Robert Grissom Parkway and International Drive to access the businesses, recreation, and medical facilities in the area and they will likely use the proposed International Drive to access Conway in order to avoid the US 501 congestion. Local residents will continue to look for alternate routes to avoid the congestion which the GSATS model indicates will continue to exist on US 501 even after the planned improvements are made.

In summary, alternate routes for regular commuter traffic to and from Conway will still be necessary and alternate inland evacuation routes from the developed area of Carolina Forest will still be needed with or without any improvements to US 501. This need will be fulfilled by the proposed improvements to International Drive and not by improvements to the US 501 corridor.

**Offsite Alternative 5 – Improvements to River Oaks Drive and Carolina Forest Blvd:** River Oaks Drive and Carolina Forest Blvd. (CF Blvd) are located at the southeast end of International Drive and serve as the main arterial roadways serving the local residents, businesses, schools, and churches in the heavily growing Carolina Forest area. These two roads are very heavily traveled because the only connections to the surrounding external road network are made at the ends of each roadway: Postal Way/US 501 at the south end and International Drive at the north end. Due to the lack of connectivity and the rapid growth in traffic within Carolina Forest, CF Blvd and River Oaks Drive have been widened near their external connection points at the north and south ends of Carolina Forest. Both roads were widened from a 2-lane roadway to a 4-lane roadway (with turn lanes on CF Blvd.) To improve safety and mobility within Carolina Forest, Horry County installed turn lanes at 3 internal intersections on CF Blvd. However, plans have been developed and the necessary ROW is in place for the eventual full-width widening for both roadways if and when a funding source becomes available. The future widening of both roadways is needed today for safe and adequate internal access within Carolina Forest and this will become an absolute necessity in the very near future as the remaining undeveloped parcels are built out. Even with the fully improved widened roadways in the future, both CF Blvd and River Oaks Drive will not satisfy the needs for the International Drive project. Improvements of these roadways are intended to serve local traffic within Carolina Forest and distribute it to the external road network, which is currently limited to US Highway 501, Grissom Parkway/SC 31, and SC 22 via SC 31. The proposed International Drive connection to SC Highway

90 will fulfill that need by providing a substantially shorter and more efficient connection to a third external road network for daily commuter and emergency travel. Therefore, improvements to CF Blvd and River Oaks Drive will not be an acceptable alternative since it does not meet the purpose and need of this project.

**Onsite Alternatives:** The following onsite alternatives, with the exception of the preferred alternative, were provided as a response to comments received (see Section VI. of this assessment.)

**Onsite Alternative 1 – Preferred:** The preferred alternative was chosen due to its lower impacts to natural communities. The majority of this route passes along the existing International Drive Corridor, uses the existing roadway and upland areas to the maximum extent practicable and has the least environmental impacts. The current International Drive roadway corridor has functioned for greater than 70 years as a non-public use road with extensive wetland fill and fragmentation between wetland and upland communities along the existing corridor. Based on the limits and distribution of wetlands adjacent to the current route, it is evident that the placement of this route chose the path of least resistance, transecting upland communities as much as possible due to equipment and construction limitations at the time. The proposed route uses the existing International Drive alignment with the exception of 1.3 miles. Abandoning the current alignment in this segment results in greater impacts to aquatic resources, but is necessary to meet curvature requirements and to avoid transecting a small community near the terminus of the project (see Offsite Alternative 3 and Onsite Alternative 2.) Therefore, the applicant chose a route through the adjacent Horry County Solid Waste Authority property.

The proposed route is the only alternative that clearly meets the project purpose and need while providing the least environmental impacts to surrounding resources. Furthermore, the proposed alternative minimizes impacts to adjacent landowners and potential residences. The benefits associated with the preferred alternative include:

- Using existing road infrastructure including ROW cleared area to the maximum extent minimized wetland impacts
- All water resource crossings were designed for only singular, perpendicular crossings (to the maximum extent practicable.)
- The proposed access road to the Horry County Solid Waste Authority was relocated slightly east of the originally proposed location in order to reduce wetland impacts by 0.72 acres
- Improvements to fragmented wetlands lacking cross-drainage along proposed/existing alignment by the placement of an adequate number of appropriately sized culverts
- Avoidance of a minority community
- Avoidance of existing red-cockaded Woodpeckers and foraging habitat within Lewis Ocean Bay Heritage Preserve
- Avoidance of further fragmentation of wetlands in a nearly undisturbed wetland ecosystem

**Onsite Alternative 2 – Design Speed:** This alternative would reduce the proposed speed limit to minimize impacts within the re-alignment portion of the project. According to the applicant every attempt has been made to design the improved International Drive along the existing alignment of the existing road; however, there will be 2 very long stretches of roadway with no curves (details provided by the applicant.) Given the length of these sections of roadway, the nature of the level terrain of the project area and the relatively long-distance trips (approximately 5.5 miles between SC 90 and River Oaks Drive) the limited access points and the high volume and mix of traffic that will use the proposed roadway, a 60 mph design speed was selected because all of the above factors will contribute to the

expected high operating speeds on the new roadway. The exclusive use of the alignment of the existing road bed for the entire length of the improved International Drive would not result in a safe roadway for the amount and type of traffic expected to use the new road. Travel speeds would need to be reduced to 25 mph or less in order for traffic to safely negotiate the existing sharp curve, which is not reasonable or safe for this type of roadway, as previously explained. Traffic operating at high speeds on the long straight sections would need to decelerate severely in order to safely negotiate the curve, which would likely result in a high number of vehicles running off the road.

The selected design speed of 60 mph meets SCDOT's design criteria for rural arterial roadways, and the posted speed limit is going to be set at 45 mph for the new roadway in order to restrict the travel speeds of compliant drivers to reasonable levels. The design speed is typically greater than the posted speed limit because it takes into account that a given percentage of motorists will travel at a speed that they are comfortable driving given the nature of the roadway, despite the posted speed limit. A roadway with a 60 mph design speed has a minimum horizontal curve radius of 1205 feet, and curves meeting or exceeding this design requirement were used when deviations from the alignment of the existing roadbed were absolutely necessary. As a result, the 0.6 mile portion of the route that abandons the current alignment is necessary to meet the curvature requirements of the 60 mph design speed.

**Onsite Alternative 3 – Two Lane Road:** The GSATS travel demand network model was used to forecast the amount of traffic that would use the new roadway. Depending on the various possible changes to the region's roadways, the travel demand model estimated that approximately 10,000 to 13,500 vehicles per day would use International Drive in the year 2035. This would equate to a borderline Level of Service (LOS) that is close to capacity for a 2-lane undivided roadway. The need for the proposed multi-lane roadway is obvious currently at the east end of the project near the schools (near River Oaks Drive) where traffic congestion is a twice a day occurrence. Due to projected volumes and continual required upgrades to the surrounding road infrastructure within the Carolina Forest Community, the applicant has chosen to master plan the project for projected volumes by designing a 4-lane road. Both River Oaks Drive and Carolina Forest were designed as 4-lane roads and originally constructed as 2-lane roads. During the last decade, both roads have undergone several upgrades and plans have been developed for the eventual build out (full width 4-lane widening) for both roadways when funding becomes available. Therefore, it is unreasonable to design and permit a road that will reach a borderline LOS that is close to capacity in 15 years.

For the portion of the proposed roadway between the schools and SC Highway 90, there will be a considerable number of trash trucks traveling between the cities and the Horry County Solid Waste Authority Landfill and the Material Recycling Facility. The capacity of a future 2-lane roadway will be stretched to its limit and likely beyond it due to the mix of slower moving trash trucks within the traffic stream. A 4-lane roadway (with median) would provide for adequate passing zones to allow faster moving vehicles to safely pass the trucks and other slower moving vehicles. Horry County would not allow passing zones on a 2-lane highway in the future, if a 4-lane roadway was not built, because of the volume of opposing traffic. The risk for high-speed head-on crashes would increase greatly on a 2-lane road if passing zones are included. Therefore, the proposed 4-lane roadway will provide for safer travel and adequate capacities for current and projected traffic volumes.

**Onsite Alternative 4 – Construction of a Roadway with Reduced Median and Shoulder Widths:** The proposed International Drive provides for a 26-foot-wide median instead of a 36-foot-wide median, which is the suggested standard SCDOT design criteria. The 10-foot outside shoulder meets the SCDOT design criteria for this type of roadway, and is needed for a safe pull-off area and for

adequate separation between the bike/pedestrian path and the travel lanes. The 10-foot outside shoulder and grass median can't be avoided altogether because they are required for this type of roadway and they both provide tangible safety benefits by reducing the frequency of crashes – especially head-on crashes in the case of the median. The National Cooperative Highway Research Program (NCHRP) Report 633 indicates that a 38 percent reduction in crashes can be expected on divided highways with adequate shoulders (compared to those without them), and that every 10 feet of median width can be expected to reduce crashes by 8 percent. Additional research has proven the safety benefits of shoulders and medians in reducing crashes.

The proposed side slopes, which are as steep as 3:1, were made steeper than the 6:1 maximum slopes shown in the SCDOT standard design criteria. The steeper side slopes were used in an effort to minimize the footprint of the proposed roadway disturbed area, which has resulted in fewer wetland impacts. The 3:1 maximum slope is used because it is the steepest slope that is considered traversable (providing a recovery zone) and would not require a guardrail to prevent vehicles from leaving the elevated roadbed.

By using 3:1 slopes and reducing the center median to 26 feet, the applicant has minimized project impacts by 17 percent reducing the required ROW width from 150 feet to 125 feet. According to the applicant, this demonstrates that impacts have been minimized to the maximum extent practicable within the project area.

**Onsite Alternative 5 – Use of Guardrails Instead of Proposed Shoulders:** The use of a guardrail can be installed to reduce the severity of "run-off-the-road" accidents at warranted locations. The primary purpose of a guardrail is to prevent a vehicle from leaving the road and striking a fixed object or terrain feature that is more hazardous than the guardrail itself. A guardrail also is installed when the steepness of the roadside terrain prevents an adequate clear zone. American Association of State Highway and Transportation Officials (AASHTO) policies, which are generally adopted by SCDOT, indicate that guardrails are used only when it is not economically feasible to eliminate a hazard more dangerous than the guardrail itself, make the feature traversable, or terrain conditions are such that an adequate roadside recovery area cannot be provided for the given design speed.

In the case of International Drive, the proposed 3:1 traversable side slopes will allow most errant vehicles at a typical road departure angle to safely travel down the low roadside embankment without overturning while coming to a stop. Guardrails are not being used along the entire length of this road because it is a fixed object that is located closer to the edge of the roadway than the bottom of the embankment. According to the applicant, Horry County needs to follow standard engineering practices in the design of the roadway and followed the AASHTO Roadside Design Guide by designing a typical section that is safe and does not result in unnecessary fixed objects located close to the roadway that would be subject to frequent hits from errant vehicles.

### C. Water Quality Assessment

#### Numeric Standards Contraventions?

Yes

**Temporary**, the proposed work may cause a temporary increase in turbidity levels, but ambient conditions should resume once the work is completed. Potential adverse impacts to water quality also can be minimized through the use of best management practices (see previous Section H., and the conditions described in Section VIII. of this staff assessment).

No

**Will the proposed activity cause alterations of current patterns or water circulation?**

Yes ( )

No (x) The applicant provided submitted drawings showing the locations of culvert placement, culvert size and an engineering analysis that ensures that no adverse flooding will occur. Therefore, the proposed work will include the placement of adequately sized culverts to allow unencumbered water circulation and aquatic life passage.

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#### **IV. Public Comments Received and Summary of Comments**

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##### **A. S. C. Department of Natural Resources (SCDNR)**

Date: January 9, February 18, 2014 and January 30, 2015

( ) Does not object to project provided the applicant adheres to the conditions in Section VIII.

(x) Hold in abeyance.

( ) Objects to the proposed project, see discussion in Section VI, Conclusions.

( ) No objection.

( ) Has elected to not conduct an investigation nor provide any comments.

SCDNR initially requested a 30-day extension to the comment period to allow adequate time for review. In their second letter, SCDNR expressed concerns regarding the proposed permittee responsible mitigation plan. The number and location of groundwater monitoring wells is not sufficient to represent baseline conditions and/or the level of impairment on the mitigation site. All wells are located adjacent to existing ditches and no wells are located within Mitigation Areas 4 and 5. Monitoring wells should be located in all areas and should be located along transects that run perpendicular to existing ditches. In addition, SCDNR questioned the benefits of removing the roadbed in Mitigation Area 4. SCDNR recommended that the mitigation and monitoring plan be revised accordingly.

SCDNR also expressed concern regarding the location of the reference well, which appears to be located at a lower elevation and within a partially impounded wetland system. SCDNR recommended that a more suitable reference site be selected, established and monitored for a minimum of 1 year to establish baseline conditions.

Also, SCDNR state that the applicant overestimated the Net Improvement Factor (NIF) for the majority of the site. With the exception of Mitigation Area 2 (roadbed removal), the mitigation site is only partially impaired, requiring restoration/enhancement of hydrology only. The remainder of the site is fully forested with a mature wetland plant community. A high or moderately high NIF (2.0 or higher) is not appropriate for mitigation areas involving only partial restoration (Mitigation Areas 1,3 and 5). Impairments in Area 4 are likely to be minimal and subject to low level enhancement (NIF <1.0). SCDNR recommended that the NIF values used in calculating credits be revised accordingly.

In addition, SCDNR is of the opinion that the number of credits required to mitigate for project impacts has been underestimated. Due to the project location a Priority Category of primary should be used for all impact areas in calculating required credits. Impact Area 1-1 also needs to be added to the required credit calculations (0.11 acre of fill, 0.04 acre of clearing). The majority of impact sites are intact and fully functional; therefore, an Existing Condition Factor of 2.5 should be used for all impact areas. SCDNR recommended that the total required credits should be recalculated using the recommended values.

SCDNR concluded that the proposed mitigation for the project's impacts falls short of the required

standard. For these reasons SCDNR recommended that the project be held in abeyance until the applicant can have the opportunity to work with agencies toward the goal of developing a more adequate and comprehensive mitigation plan.

SCDNR provided additional comments after a project revision and revised mitigation plan. SCDNR acknowledged the additional effort to minimize project impacts (a reduction of 0.72 acre of forested wetlands impact) and the proposal to transfer 20.3 acres of land (17.4 acres of which are wetlands) to the Lewis Ocean Bay Heritage Preserve (LOBHP). However SCDNR requested that the applicant provide more information regarding the 20.3 acres including a description of the property. SCDNR must provide a well described plan and justification to a number of entities before committing to and taking title to the proposed transfer.

Regarding the revised mitigation plan, SCDNR expressed concerns regarding the potential for wetland enhancement resulting from the proposed breaching of an elevated roadbed bisecting the tract. Given the limited information provided on baseline conditions, it is difficult to evaluate hydrological enhancement potential. SCDNR does not believe the current road system is significantly altering wetland hydrology, and at best, breaching this road system would be considered low level enhancement of r areas immediately adjacent to the road. Mitigation credits generated at this site largely would be in the form of preservation and would not be sufficient to meet the necessary credit requirements.

**B. U. S. Fish and Wildlife Service (USFWS)**

**Date:** December 17, 2013 and February 11, 2014

Does not object to project provided the applicant adheres to the conditions in Section VIII.

Hold in abeyance.

Objects to proposed project, see discussion in Section VI, Conclusions.

No objection.

Has elected not to take a position at this time.

USFWS initially requested a 30-day extension to the comment period to allow adequate time for review. In their second letter, USFWS expressed concerns regarding loss and/or degradation of fish and wildlife habitat, wetland functions water quality, disturbance to a large protected natural area and indirect and cumulative impacts due to vehicular mortality, habitat fragmentation and loss of migration pathways as well as facilitation of secondary development. To avoid and/or minimize impacts to fish and wildlife resources, USFWS recommended 6 measures including reducing the road footprint by abandoning plans to increase the road from 2 lanes to 4 lanes, reducing or eliminating road shoulders by installing guard rails, providing crossings for bears and other types of wildlife, using adequate road fencing to deter bears and eliminating curb cuts to avoid impacts due to secondary development.

USFWS also included recommendation addressing potential adverse impacts to federally protected species and critical habitat. USFWS is not able to concur with the Corps' determination that the proposed action is not likely to adversely affect federally protected threatened or endangered species and will not result in the destruction or adverse modification of designated or proposed critical habitat. The federally endangered red cockaded woodpecker (RCW) is known to occur at the Lewis Ocean Bay Heritage Preserve (LOBHP), which is located within and adjacent to the project area. USFWS listed 5 actions and additional information needed in order to evaluate the potential for adverse impacts to the RCW as a result of the proposed project. These include aerial and ground surveys, identification of tree cavities and status, a forage habitat analysis as well as road closures and other measures to accommodate prescribed burns.

USFWS expressed concern regarding the proposed mitigation plan for the proposed project. USFWS

is of the opinion that the number of mitigation credits required for the proposed impacts have been underestimated. The majority of the wetlands to be impacted are fully functional but have been labeled as slightly impaired. Also, since the project is adjacent to the LOBHP, the priority category used for all impact areas should be primary. In addition, the amount of mitigation credits to be generated by the proposed plan has been over-estimated. The mitigation site is only partially impaired and requires hydrological restoration/enhancement only. With the exception of the area of roadbed removal, the net improvement factors used are too high. USFWS recommended that the net improvement factors be revised to reflect the recommendations of the SCDNR. Also, the mitigation plan mentions that the land will be protected in perpetuity and that any ownership transfer will include a conservation easement with restrictive covenants. The applicant needs to specify which of these 2 mechanisms will be used to protect the land. USFWS recommended the use of the COE Standard Conservation Easement Model and that the easement be held by a qualified conservancy group.

In conclusion, USFWS recommended that the project be held in abeyance until their concerns have been adequately addressed and the requested survey and foraging habitat analysis for the RCW is completed and reviewed.

**C. National Marine Fisheries Service (NMFS)**

Date: January 10, 2014 and January 30, 2015

Does not object to project provided the applicant adheres to the conditions in Section VIII.

Hold In abeyance.

Objects to proposed project, see discussion in Section VI, Conclusions.

No objection.

Has elected not to take a position at this time.

NMFS stated that they would require more time to review the proposed project and mitigation. However, NMFS provided 4 preliminary comments addressing the proposed mitigation plan. Placement of road material into the uplands claimed as buffer credit should not be allowed, or at least no buffer credit should be awarded. Additional detail is needed supporting the conclusion that filling the ditch and replacing culverts would allow sheet flow across the site. Material used to plug the ditch should be identified and how the plug affects nearby wetlands should be discussed. Additional detail is needed supporting the conclusion that the site has severely reduced hydrology and will benefit from the proposed hydrologic increases. In addition, measurable performance standards, success criteria and reference sites area needed. These standards should be based on similarity to reference site data, not simply being "above baseline" as the plan currently states. NMFS also expressed concern regarding indirect impacts from the project that would result from development of the surrounding area and from increasing the amount of impervious surface in the watershed.

NMFS provided additional information addressing the revised mitigation plan and revised impact credit calculations. In the revised impact calculations, the applicant reduced the value of existing wetland conditions from "partially impaired" to "impaired" for 15 of the 38 wetland features because the wetlands are within an existing overhead transmission corridor. The remaining wetlands, except wetland 5 and 19, remained as "partially impaired." No values for wetlands 5 and 19 are provided. Not data are provided to support the newly proposed values.

Regarding the revised mitigation plan, NMFS stated that the intent of the restoration would be to enhance surface flow within the floodplain, but the applicant would put staff gauges only at the breach locations, not in the wetlands to demonstrate net improvement. Further, the applicant states the duration of the presence of surface waters within the enhancement area would be improved but not be measurable (i.e., no measurable performance standards are provided). In summary NMFS stated that

the mitigation plan does not provide data indicating the wetlands are currently impaired, does not provide measurable performance standards on which to judge success, and has not demonstrated that the proposed breaching and replacement of an existing culvert and bridge are likely to generate a net improvement. The protection of wetlands on Tract III may generate preservation credits to be used towards offsetting the proposed loss of wetlands but does not adequately compensate for those losses by itself.

**D. The South Carolina Environmental Law Project (SCELP)**

Date: January 17, 2014 and January 28, 2015

Does not object to project provided the applicant adheres to the conditions in Section VIII.

Hold in abeyance.

Objects to proposed project, see discussion in Section VI, Conclusions.

No objection.

Has elected not to take a position at this time.

SCELP believes that the project should not be approved without additional information and analysis to assess the roadway's true environmental and ecological impacts. Specifically, SCELP expressed concern regarding project impacts to important wildlife including the endangered red cockaded woodpecker. The application package stated that "further scientific investigation will be conducted" to address this issue. Horry County's conclusion that red cockaded woodpeckers will not be adversely affected is inconsistent with its own presentation and is not supported by evidence. The applicant cannot acknowledge that more information is needed to assess impact, while at the same time concluding there will be no impact.

SCELP also is of the opinion that the impact on black bears is inadequately addressed by Horry County's application. The black bears on and adjacent to Lewis Ocean Bay Heritage Preserve are imperiled by a number of factors, including fragmentation of habitat and collision with automobiles. The proposed project has the potential to exacerbate both of these concerns, acting as a nail in the coffin for this important and rare black bear population. SCELP referred to a 2010 contract between SCDNR and Horry County to convey a right-of-way for the proposed road. The contract contained a document showing the proposed roadway crossing multiple sections of bear habitat. Consequently, Horry County agreed in the contract to construct three 24-foot wide animal passageways under the proposed roadway and to construct heavy-duty fencing to guide wildlife into these passageways. These requirements have subsequently not been included in the County's project and SCDNR has agreed not to enforce the requirements. SCELP recommended that the project impact on black bears be thoroughly investigated and analyzed. SCELP recommended that, if a significant impact on black bears is indicated, the fencing and passageway requirements be reinstated and that a speed limit reduction and any other means be designed to limit automobile – bear impacts.

In addition, SCELP is of the opinion that the project proposal does not consider potential impacts resulting from future secondary development in the area that the improved road would facilitate. The County concludes, with little evidence or analysis, that secondary development from this roadway will be limited. SCELP recommends that secondary development be managed through limitations on curb cutouts, road access restrictions and other appropriate means. More information on this topic is required in order for the agencies to make informed decisions on the proposed project.

Also, SCELP submits that there is a strong case for an Environmental Assessment (EA) for the project based on the unique nature of the natural resource, the significance of the habitat fragmentation issue and the other considerations expressed in their letter.

Finally, SCEL P requested a public hearing on the proposed project.

In a followup letter dated January 28, 2015, SCEL P stated that the applicant's previous response failed to satisfactorily address several of the comments and concerns raised by regulatory agencies and other commenting parties. Specifically, SCEL P expressed concern regarding the range of alternatives and the lack of specific information provided by the applicant. SCEL P claims that the County disregarded offsite alternatives such as making improvements to Highway 501 or any of the other existing roadways nearby, versus the proposed changes to International Drive. SCEL P also challenged the County's assertion that proposed changes to International Drive would alleviate bottlenecks and congestion on existing roads in the area such as River Oaks Drive and Carolina Forest Boulevard. SCEL P is of the opinion that the proposed project will not alleviate this congestion, but will only move exiting bottlenecks or create new ones further west at the intersection with the 2-lane SC 90 roadway.

SCEL P also recommended alternatives to the proposed design criteria of the proposed International Drive. SCEL P recommended that consideration be given to reducing the speed limit to minimize impacts within the re-alignment and using the existing roadway footprint. SCEL P also stated that the applicant did not fully evaluate the feasibility of a 2-lane road with a lower speed limit. SCEL P questioned the applicant's statement that 10-foot shoulders are needed to provide for a safe emergency pull-off, without clear comparison to average roadway shoulder widths in practice or if reductions were possible. SCEL P also questioned the applicant's statement that guardrails are not feasible because they are considered a fixed object that could be hit by an errant vehicle without assessing the pros and cons for their use for this particular project.

In addition, SCEL P continued to express concern regarding secondary development that could result from the proposed project. SCEL P stated that it is irresponsible to plan a project to alleviate issues spouting from existing growth without considering what doors to secondary development the project itself could be opening. SCEL P claims that the project itself will facilitate secondary development along the roadway corridor; the ten proposed curb cuts accommodating 2 property owners are excessive and are laying the groundwork for what is likely to become the next subdivision for Carolina Forest.

SCEL P reiterated previously expressed concerns regarding project impacts on wildlife in the area, specifically habitat for red-cockade woodpeckers (RCW), and the local black bear population.

Finally, SCEL P expressed concerns regarding the revised mitigation plan. SCEL P indicated that the proposed Bass Lake Mitigation Tract 3 is located in Georgetown County and not within the same watershed as the proposed roadway. SCEL P also questioned whether the proposed permittee responsible plan is appropriate given the fact that the conservation value that will be derived from management of the tract is unclear. Additionally, there is little to no assurance that this tract will receive proper long-term management due to questions about monitoring and proposed stewardship of the site, according to SCEL P. Therefore, SCEL P continues to recommend that be denied until their concerns are addressed.

**E. Coastal Conservation League (CCL)**

Date: January 17, 2014

Does not object to project provided the applicant adheres to the conditions in Section VIII.

Hold in abeyance.

Objects to proposed project, see discussion in Section VI, Conclusions.

No objection.

Has elected not to take a position at this time.

CCL stated that project issues such as impacts to wetlands, fragmented habitat and increased development have not been adequately addressed in the permit application. Specifically, CCL stated that Lewis Ocean Bay has had a steady increase in its black bear population because of the favorable habitat and connectivity to other habitats. The proposed project will fragment the habitat and endanger bears as they move across the area, increasing bear mortality from vehicle collisions and resulting in an unsustainable bear population. The planned standard fencing on either side of the right-of-way will not stop bears from moving across the road. The 2010 agreement between the SCDNR and Horry county required that 3 wildlife passages be built and bear fencing be installed along the right-of-way. The 2013 modified contract dropped these actions and only addressed road closures for controlled burns. CCL recommends that wildlife passages and appropriate fencing be required to protect both the wildlife and drivers. CCL also recommended that International Drive be limited to a 2-lane road with a 35mph posted speed limit with signage warning drivers of wildlife.

CCL also stated that International Drive will impact 2 federally-protected red cockaded woodpecker foraging clusters. The permit application says "further scientific investigation will be conducted", but gives no indication when the investigation will be conducted and the results made available. No permit decision should be made until all investigations are complete and can be used to make more informed decisions.

In addition, CCL stated that the application does not include road design or engineering plans so the reader is unable to ascertain how many and where the access points will be located, but their location and connectivity will have significant impacts on land use, development and traffic. A thorough discussion of the proposed road access points and their subsequent direct, indirect and cumulative impacts on land use and the environment should be required before any permit decision is made.

Regarding alternatives, CCL is of the opinion that the permit application lacks a robust alternatives study that includes existing roadways, new alignments and route and design variations to the proposed route. The direct, indirect and cumulative impacts of the proposed route were either not studied or not included in the Alternatives Analysis and Route Selection. A study of these impacts needs to be available to inform decision makers and the public.

Also, CCL is of the opinion that the mitigation for project impacts is inadequate. The site lacks adequate mitigation features and its location and ownership are of concern. CCL stated that, based on the wetland impacts of a paved international Drive, the mitigation credits have been underestimated and the proposed site has greater functionality than acknowledged in the permit application. The mitigation site might need hydrology restoration in some areas, but a majority of the site is in good condition and forested with wetland plants. CCL stated that a more appropriate mitigation site might be the 2,973 acre unprotected half of Carvers Bay. That site has restoration and preservation value and a significant bear population that would be protected. CCL also is concerned with the conservation easement ownership. The application states that Horry County Solid Waste Authority will hold the easement with management activities being funded through the Solid Waste Authority's annual operating budget. The

Solid Waste Authority is not in the land conservation business and CCL would like to see the mitigation site deeded to a land trust like The Nature Conservancy or the Pee Dee Land Trust. Third party ownership would protect the site from the possibility that the Solid Waste Authority could be dissolved, sold or taken over by Horry County Council. Any of these actions would leave the site without adequate stewardship and protection.

In addition, CCL stated that, because of the location of the project adjacent to Lewis Ocean Bay Heritage Preserve, the projects impact on rare and endangered species and its fragmentation of bear and other wildlife habitat, the Corps of Engineers is legally bound to perform an environmental Assessment (EA) before a permit decision is made.

Finally, CCL requested that a public hearing be held on the permit application to further inform the decision making process.

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**V. Consistency with the Coastal Zone Management Program, R. 48-39-10 et seq.**

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Did the staff of the Office of Ocean and Coastal Resource Management (OCRM) find the project consistent with the S.C. Coastal Zone Management Program? (x) Yes ( ) No N/A ( )

Date: June 25, 2015

( ) Per revisions

(x) Per conditions included in Section VIII.

( ) If no, provide Sections of Coastal Zone Management Program cited.

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**VI. Conclusion on Water Quality Impacts and Classified Uses**

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When evaluating the proposed work, SCDHEC followed procedures for implementing State 401 Water Quality Certification regulations pursuant to Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, the requirements of Regulation 61-101, Water Quality Certification and R. 48-39-10 et seq. consistency with the Coastal Zone Management Program.

Previous sections of this staff assessment have provided a description and evaluation of specific project impacts to jurisdictional waters, and provided recommendations and modifications, when necessary, to ensure that the proposed work will not contravene water quality standards or change classified uses. The following analysis will address additional measures intended to avoid adverse impacts to water quality and other resources in the project area. The following analysis may also address other concerns raised by the SCDHEC, resource agencies or other commenting parties:

SCELP and CCL expressed concerns regarding project impacts to wildlife, including black bear and red cockaded woodpecker populations. They recommended that wildlife passages and appropriate fencing be required to protect both the wildlife (bears) and drivers. CCL also recommended that International Drive be limited to a 2-lane road with a 35mph posted speed limit with signage warning drivers of wildlife. They also recommended that further scientific investigation be conducted to assess project impacts to the red cockaded woodpecker before concluding that no impacts will occur. The applicant indicated that wildlife crossing signs and warning indicators would be erected along the corridor to protect passing wildlife from vehicles and provided information addressing potential red cockaded woodpecker habitat impacts. Although SCDHEC is supportive of measures to protect terrestrial wildlife, R. 61-101, F. 5. states that Certification will be denied if: (c) the proposed activity adversely impacts waters containing State of Federally recognized rare, threatened,

or endangered species. Therefore, because red cockaded woodpeckers and black bears are not aquatic species, their protection is outside the scope of this certification.

NMFS, SCELPA and CCL expressed concerns regarding secondary impacts resulting from the project. They requested more information regarding road access points and their subsequent direct, indirect and cumulative impacts on land use and the environment. The applicant responded by stating that there will be a limited number of access points to the roadway. Currently, these access points are curb cuts to adjacent properties providing access to owners that would be unavailable if the roadway was built without this access. Current access to most of these properties is through the existing, unimproved International Drive roadway and owners need to retain a legal access point. The locations of the proposed curb cuts were included in the applicant's response (Appendix A-2 of letter dated October 30, 2014.) Any proposed curb cuts and future curb cuts will be governed by the Horry County Land Development Regulations, which sets limits on driveway spacing and the number of access points based on the travel speed of the roadway and the amount of frontage for a given parcel of land. Horry County agreed to "take all reasonable steps to insure minimum access to the Road, and Grantee will strictly enforce County Land Development Regulations to limit the number of access points to the Road" (DNR Memorandum of Agreement provided by the applicant in Appendix I of letter dated October 30, 2014.)

The applicant also indicated that extensive secondary and cumulative development within accessed areas will be limited due to the surrounding wetlands, the presence of Lewis Ocean Bay Heritage Preserve and other factors. Although uplands exist within the adjacent private ownership, they are minimal and non-conducive to extensive development. Although the Carolina Forest community, situated adjacent to the southern terminus of the proposed project route, has experienced rapid growth within the past 2 decades, it is unreasonable to expect comparable development activities to occur adjacent to the preferred project alignment. According to the applicant, there is a clear distinction between past (pre-Clean Water Act) land altering activities (i.e., reduction of wetlands) that created conditions conducive for development (and dictated the limits of the Carolina Forest Community itself) and the currently nearly pristine condition of the Lewis Ocean Bay Heritage Preserve (LOBHP) and the Riverstone Tract, which frame the majority of International Drive. The LOBHP located on the eastern side of International Drive is under the protection of a Conservation Easement, which assures that it will remain in its natural condition in perpetuity. The Riverstone Tract, which is located on the western side of International Drive consists of approximately 3,800 contiguous acres with a limited road system and little to no drainage improvements. Freshwater wetlands comprise the majority (>85 percent) of this parcel. Future development within this parcel will be limited to the small percentage of non-wetlands. Potential development of adjacent properties will be subject to the provisions of both the Clean Water Act and Coastal Zone Management Act. A recent review of the original wetland determination verified by the USACE in 1998 revealed that greater than 95 percent of the originally verified wetlands remain fully intact today within the Carolina Forest Community. This clearly demonstrates the regulatory framework currently in place successfully limits wetland impacts to those only necessary and unavoidable.

SCDHEC will address cumulative impacts associated with potential future development through the permitting process (401 Water Quality and Coastal Zone Consistency Certifications as well as Coastal Zone and NPDES Stormwater Permits, where applicable), which will assure that water quality will be maintained, that the proper sequence of aquatic impact avoidance and minimization will be met and that wetland impacts will be offset through appropriate compensatory mitigation.

In addition SCELPA and CCL requested that the COE conduct an Environmental Assessment (EA) given the sensitive nature of the project area and the potential for project impacts expressed in their comments. An EA would be the result of the Federal NEPA process, which is outside the purview of SCDHEC.

USFWS, CCL and SCEL P are of the opinion that the permit application lacks a robust alternatives study that includes consideration of improving existing roadways, new alignments and route and design variations to the proposed route. The applicant initially responded by stating that a thorough alternatives analysis was completed (based on the first analysis provided) that included input and multiple coordination efforts through all participating agencies over the last several years. However, a modified alternatives analysis was provided in response to SCDHEC and additional agency comments (see Section III. B. of this assessment.)

Specifically, SCEL P claims that the County disregarded offsite alternatives such as making improvements to Highway 501 or any of the other existing roadways nearby, versus the proposed changes to International Drive. The applicant responded by evaluating Offsite Alternatives 4 and 5 provided in Section III. B.

In addition, SCEL P recommended that consideration be given to reducing the speed limit on the proposed International Drive to minimize impacts within the re-alignment and using the existing roadway footprint. The applicant responded by evaluating Onsite Alternative 2 provided in Section III. B. SCEL P also stated that the applicant did not fully evaluate the feasibility of a 2-lane road with a lower speed limit. The applicant responded by evaluating Onsite Alternative 3 provided in Section III. B.

SCEL P questioned the applicant's statement that 10-foot shoulders are needed to provide for a safe emergency pull-off, without clear comparison to average roadway shoulder widths in practice or if reductions were possible. SCEL P also questioned the applicant's statement that guardrails are not feasible without assessing the pros and cons for their use for this particular project. The applicant responded evaluating Onsite Alternatives 4 and 5 provided in Section III. B.

SCEL P also claimed that the proposed changes to International Drive will not alleviate congestion or enhance safe evacuation procedures, they will only move existing bottlenecks or create new ones further west at the intersection with the 2-lane SC 90 roadway. The applicant responded by pointing out that the proposed International Drive connection to SC Highway 90 will provide needed connectivity to the community at the north end of Carolina Forest by providing another route to and from Conway. Likewise, commuters between Conway and the north end of Myrtle Beach and Carolina Forest will be able to use the improved International Drive as an alternate route to the congested US 501 corridor that will to operate over capacity in the future despite the upcoming widening improvements. Safety will also be improved since the new connection to SC 90 will provide the community with an alternate evacuation route to inland destinations.

The applicant also stated that intersections are considered the critical pinch points for roadway capacity, and they need to be designed to safely and adequately accommodate future traffic flows. To minimize the potential for a new bottleneck at the intersection of International Drive and SC 90, the proposed project will widen the approaches of SC 90 to include left and right turn lanes onto the new roadway, which will safely remove the turning vehicles from the through travel lanes on SC 90. In addition, this intersection will be signalized to allow safe and efficient travel through the intersection. This will allow traffic from International Drive, including trash trucks to access SC 90 without having to pull out from a stop sign and slowly accelerate in front of SC 90 through traffic. Using the estimated future traffic volumes on SC 90 and International Drive (design year 2035) the level of service (LOS) is calculated as B during the evening peak traffic period, which indicates that the intersection will operate acceptably, with very little delay. In summary, the proposed International Drive will not create a new bottleneck at its intersection with SC 90 because it is being designed to accommodate current and future traffic flows.

SCDNR, USFWS, NMFS, SCEL P and CCL are of the opinion that the mitigation for project impacts is inadequate for a variety of reasons including insufficient monitoring to establish baseline and reference conditions, overestimation of improvement and credits (SCDNR and USFWS), buffer credits, work plan

improvements and success criteria (NMFS) as well as location and ownership issues (CCL). Initial agency comments were based on the originally proposed conceptual permittee mitigation plan involving a site adjacent to the South Prong of Sterritt Swamp located in Central Horry County west of the proposed project. The applicant responded by revising the originally proposed plan, abandoning the original mitigation site and proposing a plan involving the Bass Lake Mitigation Tract III site located adjacent to and including a portion of the Pee Dee River Swamp in the Yauhannah Community in northern Georgetown County (see Section II. F. of this assessment.)

Based on the revised mitigation plan, resource agencies continued to express concern and asked for additional information. SCDNR recommended that a Priority Category of Primary be used for all impact areas given the adjacency of the proposed road to the Lewis Ocean Bay Heritage Preserve (LOBHP.) In response, the applicant applied a Priority Category of Primary to all wetlands within the LOBHP as required by the Compensatory Mitigation Guidelines. The applicant indicated that the Guidelines do not state that a Primary Category be applied to those areas adjacent to a preserve; therefore, the applicant applied a tertiary priority to those wetlands within the adjacent private ownership.

In addition, SCDNR and SCEL P expressed concerns regarding the potential for wetland enhancement and conservation value from the mitigation activities proposed within the mitigation site due to limited information provide on baseline conditions. SCDNR stated that the applicant overestimated the Net Improvement Factor (NIF) for the majority of the site. With the exception of Mitigation Area 2 (roadbed removal), the mitigation site is only partially impaired, requiring restoration/enhancement of hydrology only. A high or moderately high NIF (2.0 or higher) is not appropriate for mitigation areas involving only partial restoration (Mitigation Areas 1, 3 and 5). Impairments in Area 4 are likely to be minimal and subject to low level enhancement (NIF <1.0.) SCDNR recommended that the NIF values used in calculating credits be revised accordingly. The applicant responded by providing details justifying the proposed enhancement activities and additional baseline information for the Bass Lake Mitigation Tract III.

SCEL P indicated that the proposed Bass Lake Mitigation Tract 3 is located in Georgetown County and not within the same watershed as the proposed roadway. However, the project is within the secondary service area for the Bass Lake site as defined by the COE for the Waccamaw River Lower Coastal Plain (HUC 03040207.) Additionally, SCEL P stated that there is little to no assurance that this tract will receive proper long-term management due to questions about monitoring and proposed stewardship of the site. The applicant responded by pointing out that the revised mitigation plan discusses a maintenance plan (Section 4.7), monitoring requirements (Section 4.9) and long-term management (Section 4.1.) Furthermore, the applicant designated the Horry County Conservation Foundation, Inc. as the third party easement holder.

NMFS indicated that the applicant reduced the value of exiting wetland conditions in project impacted areas from "partially impaired" to "impaired for 15 of the 38 wetland features because the wetland are within an existing overhead transmission corridor. The remaining wetlands, except wetland 5 and 19, remained as "partially impaired". No values for wetlands 5 and 19 are provided and not data is provided to support the newly proposed values. The applicant responded by indicating that a detailed description of the current condition of all impact areas within the proposed project was previously provided. Impact areas 5 and 19 were given an exiting condition as fully functional as stated in a response to USACE.

NMFS also stated that the mitigation plan does not provide data indicating that the wetlands are currently impaired, does not provide measurable performance standards on which to judge success, and has not demonstrated that the proposed breachings and replacement of an existing culver and bridge are likely to generate a net improvement. The applicant responded by providing details justifying proposed enhancement activities and additional baseline information for the Bass Lake Mitigation Tract III.

During roadway construction fuel, oil, tar, and other paving materials may also result in wetland impacts through contamination of stormwater runoff or accidental spills. All necessary measures should be taken to prevent oil, tar, trash, and other pollutants from entering adjacent offsite areas. Appropriate containment measures will prevent the aforementioned pollutants from entering the adjacent waters or wetlands.

Any pollutants present in fill material could be released if the material erodes during storm events and enters adjacent water or wetlands. The use of only clean fill material, free of pollutants, will prevent water quality degradation from contamination from such pollutants.

The water quality impacts of the proposed project will be temporary provided the applicant adheres to all of the conditions in Section VIII of this staff assessment. SCDHEC has reasonable assurance that the water quality standards of Regulation 61-68 will not be contravened as a result of the proposed work. The proposed activity will result in no significant degradation to the aquatic ecosystem or remove existing and classified uses of the Waccamaw River and is in compliance with the above regulations provided the applicant adheres to the conditions in Section VIII. The above assessment also ensures that the proper sequencing of avoidance, minimization, and appropriate compensation for unavoidable impacts has been demonstrated. Information about the technical aspects of this application is available from Mark Giffin, the project manager, by calling 803-898-4179 or by e-mailing [giffinma@dhec.sc.gov](mailto:giffinma@dhec.sc.gov).

SCDHEC 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.

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#### **VII. Staff Recommendation**

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Issue 401 Water Quality and Coastal Zone Consistency Certifications with conditions.

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#### **VIII. Conditions to be Placed on the 401 Water Quality and Coastal Zone Consistency Certifications When Issued**

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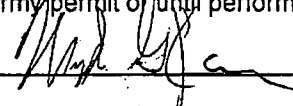
1. The applicant must implement appropriate best management practices that will minimize erosion and migration of sediments on the project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, silt fences, or other appropriate devices. All disturbed land surfaces affected by the project must be stabilized.
2. The applicant must follow Horry County guidelines to control runoff and protect harmful contaminants from entering sensitive aquatic resources, as proposed. A final stormwater management plan must be in compliance with MS4 and other SCDHEC administered stormwater permitting requirements.
3. Only clean earthen material, free of all potential sources of pollution, may be used as fill.
4. Appropriate containment measures must be taken to prevent pollutants such as gasoline, oil, tar, and debris and other pollutants from entering the adjacent waters or wetlands.

5. All wetland and tributary crossings must be made with appropriately sized culverts, as proposed, to maintain natural stream morphology and allow unrestricted aquatic life passage.

6. The applicant must compensate for unavoidable project impacts by providing a minimum of 287.8 mitigation credits to compensate for wetland impacts. Credit documentation from the proposed Bass Lake Mitigation Tract III permittee responsible site must be submitted to SCDHEC and the Corps of Engineers prior to the work beginning.

7. Annual monitoring reports, as proposed in the Bass Lake Mitigation Tract III monitoring plan dated December 18, 2014, must be submitted to the SCDHEC for a period of five years after issuance of a Department of Army permit or until performance standards are met.


Prepared by:

  
\_\_\_\_\_

Date:

6/25/15

Reviewed &  
Approved by:

  
\_\_\_\_\_

Date:

6/25/15



## Re: International Drive

**From:** Stan Barnett <stan.barnett@yahoo.com>  
**To:** Amy Armstrong <amy@scelp.org>  
**Subject:** Re: International Drive  
**Date:** Friday, December 16, 2016 4:59 PM  
**Size:** 9 KB

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The county had already performed all work authorized by the corps permit. They are continuing to work on the road. The order issued by the court of appeals does not constitute an injunction to halt further work on the road.

Did I miss something? Can you point out language in the order that constitutes an injunction? M I have seen your press release and was disappointed at the extent to which it plays so loose with the actual structure of the case.

I intend to have a nice weekend and trust you will do the same.

Sent from my iPhone

On Dec 16, 2016, at 4:18 PM, Amy Armstrong <amy@scelp.org> wrote:

Stan,

We just received a call from a reporter who indicated to our office that Horry County was not going to stop construction without a court order. Since the order granting supersedeas was issued yesterday, we just wanted to ensure that the county has stopped construction as ordered. It may be appropriate to inform all members of county council, as we were told by the press that Johnny Vaught was not aware of the court order.

Thanks and have a great weekend.

Amy

--  
Amy E. Armstrong  
S.C. Environmental Law Project  
P.O. Box 1380  
Pawleys Island, SC 29585  
Phone: (843) 527-0078  
FAX: (843) 527-0540  
amy@scelp.org

# Exhibit B



**South Carolina Environmental Law Project**  
*Lawyers for the Wild Side of South Carolina*

December 19, 2016

a 501c3  
non-profit organization

**Amy E. Armstrong**  
*Executive Director*  
**Michael G. Corley**  
*Staff Attorney*  
**Amella A. Thompson**  
*Staff Attorney*  
**Jessie A. White**  
*Staff Attorney*

Honorable Jenny Abbott Kitchings  
Clerk, Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: SCCCL & SCWF v. SCDHEC & Horry County;  
Appellate Case No. 2016-001758

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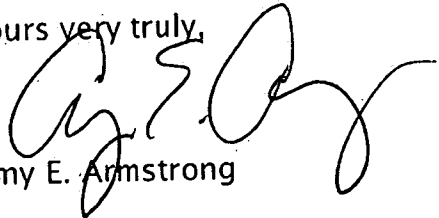
**ADVISORY COUNCIL**  
Josh Eogle, Esq.

Dear Ms. Kitchings:

I am enclosing for filing the Appellants' motion to compel compliance with this Court's Order granting the petition for supersedeas dated December 15, 2016, along with seven copies and my filing fee. Due to the nature of this motion, and the fact that road construction is ongoing despite this Court's Order, the Appellants request that this motion be expedited.

Please return a clocked-in copy in the self-addressed, postage-paid envelope provided. Thank you very much for your kind cooperation and assistance.

Yours very truly,

  
Amy E. Armstrong

cc: Nathan M. Haber, Esquire  
Michael S. Traynham, Esquire  
Stan Barnett, Esquire

**RECEIVED**

DEC 19 2016

**SC Court of Appeals**