



# South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

December 21, 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, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RECEIVED

DEC 22 2016

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

#### MAIN OFFICE

430 Highmarket Street  
Georgetown, SC 29440

#### MAILING ADDRESSES

P.O. Box 1380  
Pawleys Island, SC 29585

P.O. Box 5761  
Greenville, SC 29606

(843) 527-0078  
(864) 412-7921  
Fax (843) 527 0540  
E-mail amy@scelp.org  
michael@scelp.org  
amella@scelp.org  
jessie@scelp.org

#### BOARD OF DIRECTORS

Frances Close  
Chairperson

John Barton, Esq.  
John Mark Dean, PhD  
Margaret D. Fabri, Esq.  
Paula Feldman, PhD  
Susan Hilfer  
Gary W. Poliakoff, Esq.  
Leon Rice, Esq.  
Greg VanDerwerker, MD  
Nancy Vinson  
Wendy Zara

#### BOARD MEMBER EMERITI

Daryl Hawkins, Esq.  
Robert Schofield

#### ADVISORY COUNCIL

Josh Eagle, Esq.

Dear Ms. Kitchings:

In accordance with your letter, please accept this return in response to the request submitted by counsel for Horry County earlier today asking that the Court of Appeals allow the County to continue to perform certain construction activities related to the road project in dispute.

Appellants are concerned and troubled by the County's attempt to rollback this Court's order halting all construction. The County has moved forward with construction at a breakneck pace while a motion for stay and the petition for supersedeas were pending, and even while a Temporary Restraining Order was in place.<sup>1</sup> Throughout the permit appeals process, the County has reiterated its intent to get the road constructed as fast as possible, including paving at the beginning of the new year – an intent which has been confirmed as of today's letter. Appellants' have seen no indication that the County is willing to alter or adjust those firm goals, until today.

Additionally, the work that the County is asking to carry out is not minor. Rather it involves additional grading and filling activities, with no limitation on the extent of those activities. Setting up barricades to

---

<sup>1</sup> Appellants filed a motion for contempt for violating the TRO because the County continued with fill activities while the TRO was in effect. Although the motion for contempt was ultimately denied by the district court, the fact that the parties' interpretation of the TRO were so diametrically opposed gives the Appellants' great concern that allowing any construction activities could again lead to misconstruction, misunderstanding, or confusion of the Court's intent, should this Court allow any further construction activities.

prevent use of the road area should be sufficient to prevent any hazards and would certainly be reasonable even with the supersedeas in place. The County indicates in its letter its intent to place the barricades whether or not this Court allows any additional construction activities, and the Appellants would agree that placement of temporary barricades is not construction activity covered by the disputed certifications. Appellants also would note that the point of a supersedeas is not to get to a good stopping point on a project before construction ceasing and that on the one hand the County is claiming much of the work is done while at the same time asking the Court to allow them an exception from the supersedeas to continue performing work.

Finally, Appellants are concerned with the ability to police any such limited activity by the County. The County continued to perform construction work following this Court's Order granting supersedeas, necessitating a motion to compel compliance and second Order from this Court clarifying the effect of that supersedeas. Appellants believe the rule of law should be enforced, and request that the supersedeas be maintained as a complete halt to all construction work on the road.

The Appellants will work with the Court and the parties to have this appeal proceed as expeditiously as possible. The Appellants submitted their initial brief in November. While the Respondents' motion to dismiss, which is based on the grounds that all work authorized by the state certifications is complete, has stayed the briefing schedule, the Appellants intend to file a return to the Respondents' motion to dismiss on or before its deadline.

Thank you for your consideration of these important concerns.

Yours very truly,

  
Amy E. Armstrong

cc: Stan Barnett, Esq.  
Michael Traynam, Esq.  
Nathan Haber, Esq.