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JAN 11 2017  
SC Court of Appeals

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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Appellate Case No. 2016-001758

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

Vs.

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

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MOTION BY RESPONDENT HORRY COUNTY TO VACATE THE STAY OF THE  
SCDHEC CERTIFICATIONS AND THE ORDER PROHIBITING COMPLETION OF  
INTERNATIONAL DRIVE

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TO: ALL PARTIES AND THE COURT OF APPEALS:

PLEASE TAKE NOTICE that Respondent, Horry County Public Works hereby moves  
the Court of Appeals to vacate the Orders of December 15 and 20, 2016 staying the issuance of  
the two SCDHEC certifications at issue in this appeal and ordering that no further work (other  
than work to comply with the applicable storm water regulations) be done on International Drive.

I.

INTRODUCTION

This appeal involves a challenge by Appellants to two certifications issued by SCDHEC  
required by federal law as part of the issuance of federal permit pursuant to the Clean Water Act,  
Section 404, 33 U.S.C. Sec. 1344, required for filling of wetlands. This fill is necessary for the  
construction of International Drive in Horry County, a 5.5 mile long road. While it has been set

forth in other filings, for convenience of reference, the chronology of the state and federal legal challenges by Appellants to this project is as follows:

In State Court:

1. The ALC issued an Order on July 7, 2016 holding that both certifications were issued in accord with all applicable statutory and regulatory requirements.
2. Appellants moved to have the ALC reconsider this Order so as to consider two policies contained in the S.C. Coastal Management Program (CMP) and on July 26, 2016, the ALC issued an Order addressing those policies – CMP III-14.I(3) and III-73(E)(1) – and again upholding the issuance of the certifications.
3. On August 23, 2016, Appellants moved at the ALC for a stay of the Orders issued upholding the certifications. By this time, the Corps had issued the federal Section 404 permit, doing so on July 22, 2016. The permit incorporates conditions included in the DHEC certifications and these conditions thereby became conditions of the federal permit. Exhibit C to Horry County’s Motion to Dismiss Appeal.
4. On October 10, 2016, the ALC denied Appellants’ motion for a stay holding that, as the Corps had issued its permit – which the court held was the regulatory action which authorized the activity Appellants were challenging – any issues related to the certifications were moot.
5. On August 23, 2016, Appellants filed a Notice of Appeal of the ALC’s orders upholding the DHEC certifications.
6. On November 7, 2016, Appellants filed a Petition for Order of Supersedeas asking this Court to stay the effect of the DHEC certifications.

7. An Order of Supersedeas was issued on December 15, 2016 “to stay the issuance of two permits issued” by DHEC and to “prevent contested issues from becoming moot.”
8. By Order of December 20, 2016, the supersedeas Order was clarified to direct Horry County to “halt all work on the road project” pending resolution of the appeal. This directive was revised at the request of Horry County to permit compliance with storm water regulations requiring grassing of the project site so as to prevent water pollution in the form of sediment runoff.

In Federal Court:

1. On July 22, 2016, the Army Corps of Engineers issued its Section 404 permit to the County for the project.
2. On August 18, 2016, Horry County commenced work on the project in compliance with the 404 permit.
3. Not until September 1, 2016 did Appellants file a challenge to the 404 permit in U.S. District Court.
4. Thirteen days later on September 14, 2016 they filed a Motion for Preliminary Injunction.
5. Seven days later, on September 21, 2016, Appellants a Motion for a Temporary Restraining Order, fully two months after the Corps permit was issued.
6. A consent Temporary Restraining Order was entered by the District Court on September 23, 2016 allowing the County to proceed with work in wetlands already impacted and providing the County should not perform any work on the parts of the right of way being transferred to it by the SC Department of Natural Resources inside the Lewis Ocean Bay Heritage Preserve.

7. On November 18, 2016, the U.S. District Court issued an order denying the Appellants' a Preliminary Injunction and dissolving the consent Temporary Restraining Order.

## II.

### STAGE OF CONSTRUCTION OF INTERNATIONAL DRIVE

The above chronology is important only in that it illustrates how the construction of International Drive has moved so far during the pendency of state and federal litigation. It is anticipated that Appellants will again characterize the County's push to complete this project as somehow improper. The choice Appellants made in timing their various challenges left the County a choice between waiting an indefinite time before pursuing a project it deems is vital to the interests of its public or proceeding with work for which it had clear legal authority. The County chose to protect its citizens by proceeding with the project.

By the time of Application for the Order of Supersedeas by Appellants on November 7, 2016, all of the wetlands, with a few minor exceptions, had been filled on the non-Lewis Ocean Bay Heritage Preserve side of the right of way and all of the vegetation cleared. After issuance of the US District Court Order on November 28, 2016 denying a preliminary injunction and dissolving the Consent Temporary Restraining Order, the County continued preparation of the right of way by filling all the remaining wetlands and clearing the entire right of way. As of the date the Supersedeas Order was issued staying the certifications on December 15, 2016, no work remained to be done other than minor cleanup work to prepare the site for final concrete and paving work. It was only that minor cleanup work that was proceeding between December 15 and December 20, 2016 when the Court issued the Order prohibiting further construction work on the project until final resolution of this appeal.

The General Permit issued by SCDHEC and EPA for storm water management of construction work such as International Drive requires that when construction is halted for a significant period, specific steps must be taken to stabilize bare earth areas so that sediment does not run off into nearby streams and/or wetlands. The cost of this work, should the County have to undertake it, will be in excess of \$932,000.00. (Exhibit A, Affidavit of David Gilreath). If the project can be completed, this is not a cost which would be necessary. In addition, the stabilization measures are the best means available to prevent sediment runoff from a site such as International Drive in its current state, but they are not perfect. As the Affidavit of Steve Gosnell, attached as Exhibit B explains, long term use of grassing measures not only carries a significant cost of maintenance with them, but there is the very real risk that these measures, due to failure in some aspect not detected in time, will lead to water pollution. No sediment transport would occur if the road is completed as bare earth surfaces are replaced with either concrete or paving. Shoulders and the median, a relatively small area of the total right of way would be grassed and maintained as part of the County's road network.

### III.

#### VACATING THE STAY AND LIFTING THE ORDER PROHIBITING COMPLETION OF INTERNATIONAL DRIVE IS IN THE PUBLIC INTEREST

It is in the public interest for the International Drive project to be physically completed as designed and as permitted by the Army Corps of Engineers. The public interest served by this completion is in three spheres:

1. The County would save in excess of \$932,000 in unnecessary grassing and related work to stabilize bare earth;
2. Risk of water pollution would be removed; and

3. The County's pressing need for quicker access for emergency services (fire, police, EMS) to the communities along Highway 90 would be met more quickly.

A. Cost: As explained above, completion of the road project would allow the County to save in excess of \$932,000 in measures to stabilize the bare earth now present in the project right of way. These funds are taxpayer funds which are scarce and the public interest is served by conserving them.

B. Risk of Water Pollution Avoided: As explained above, removing bare ground and replacing it with the completed project will greatly reduce the risk of water pollution. Stabilization measures can only do so much to prevent sediment runoff from construction sites when construction is halted for significant periods of time. Sediment runoff is considered the most serious threat to water pollution by the Horry County Storm Water officials. (Exhibit B, Affidavit of Steve Gosnell).

C. Emergency Services and Public Safety: It is undisputed that completion of International Drive will provide much needed rapid response of emergency services – fire, police and EMS – to the communities along Highway 90 in the Conway area. The affidavit of Randy Webster, the County Emergency Management official explains that the current congestion prevents timely access to these communities by these services. (Exhibit C, Declaration of Randy Webster). He explains that the project will solve this problem and that in some cases this could be a matter of life and death, highlighted by the recent Hurricane in October 2016.

#### IV.

#### COMPLETION OF THE PROJECT WILL NOT RESULT IN ANY FURTHER ENVIRONMENTAL HARM

As explained above, completion of the project will lessen risks of water pollution in the form of sediment runoff. It will not, as explained in the Affidavit of Britt Feldner (originally

filed as Exhibit A with the County's Motion to Dismiss), result in any further wetland loss as all the wetlands in the right of way are filled. (Exhibit D). The County is respectfully asking to be allowed to complete the road on the condition that its use will be limited to emergency vehicles until this appeal is completely resolved. In addition, the County would not connect the road to the private property to the west with curb cuts until the appeal is resolved.

Other than wetlands impacts, all of the environmental damage the Appellants claim will result from this project are related to use of the road. These include: water quality impacts from oil and grease left on the roadbed by vehicles; noise from passing vehicles; secondary and cumulative impacts due to development facilitated by the road; and collisions of vehicles with Black Bears. If the road is not used other than for emergency vehicles and there is no connection to the private property to the west, none of these impacts will occur.

The County understands the risk of proceeding to complete the project but is confident in its position. The need to save scarce county funds and to connect its citizens to effective emergency services warrants this request.

#### CONCLUSION

For the reasons set forth herein, Horry County respectfully requests that the Orders of December 15 and 20, 2016 staying the SCDHEC certifications at issue in this appeal and prohibiting completion of the construction of International Drive be vacated with the condition that the County will allow the road to be used only for emergency vehicles and will not connect the road to adjacent properties with curb cuts until this appeal is fully resolved.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stan Barnett", written over a horizontal line.

Stan Barnett  
305 North Civitas Street  
Mount Pleasant, South Carolina 29464  
(843) 884-1031/ (843) 708-4887  
[stan.barnett@yahoo.com](mailto:stan.barnett@yahoo.com)  
Attorney for Respondent,  
Horry County Public Works

January 10, 2017  
Mount Pleasant, South Carolina

**EXHIBIT A**

DEPARTMENT OF PUBLIC WORKS

INFRASTRUCTURE & REGULATION  
DIVISION

4401 Privetts Road  
Conway, South Carolina 29526



Post Office Box 1236  
Conway, SC 29528-1236

Phone: (843) 915-5410  
Fax: (843) 365-0671

----- AFFIDAVIT -----

In order to protect the constructed improvements, comply with environmental permit requirements, and protect the wetlands located on adjacent properties Horry County is planning to stabilize all disturbed areas (entire project area) using standard methods including hydro seeding. When we resume construction we will be required to remove all new vegetation that will result from this stabilization effort. This will require substantial effort and expense to strip the entire area and dispose of the material off site as well as replace the lost fill material already put in place. The costs associated with this unnecessary work are shown below. All of this work is completely outside of the normal construction process and will be a 100% loss to Horry County.

Required weekly inspections (2 yrs)	42,000
Grading and shaping to maintainable slopes	40,000
Silt fence maintenance and repair	110,000
Silt fence replacement (at 2 yrs)	210,000
Hydro seeding	230,000
Vegetation removal, disposal, replacement of fill	300,000
Total	\$932,000

David Gilreath, P.E.  
Director of Public Works  
Horry County Government

1/10/2017  
Date

Sworn to before me this date January 10, 2017

  
Notary Public of South Carolina

Joyce J. Jordan Joyce J. Jordan  
Notary Public Printed Name

Commission Expiration Date: July 8, 2021

**EXHIBIT B**

DEPARTMENT OF PUBLIC WORKS

INFRASTRUCTURE & REGULATION  
DIVISION

4401 Privetts Road  
Conway, South Carolina 29526



Post Office Box 1236  
Conway, SC 29528-1236


Phone: (843) 915-5410  
Fax: (843) 365-0671

----- AFFIDAVIT -----

I am a Registered Professional Civil Engineer and have been practicing since 1988. I have over 20 years' experience in storm water management and design and over 30 years in road construction and associated storm water impacts. I am the Horry County Engineer, a position I have held since 1993. I am also the Assistant County Administrator, I&R Division.

The stabilization measures required by storm water regulations are the best means available to prevent sediment runoff from a site such as International Drive in its current state. Long term use of Best Management Practice grassing not only carries a significant cost of maintenance with them, but there is the very real risk that these measures, due to failure in some aspect not detected in time, will lead to water pollution. Minimal sediment transport would occur if the road is completed, as bare earth surfaces are replaced with either concrete or paving, and only shoulders and median areas are graded and grassed.

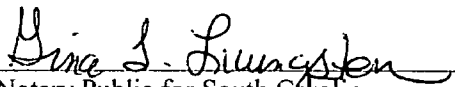
Sediment transport is the most serious threat of water pollution in Horry County. In the location of this project, sediment runoff would impact wetlands in Lewis Ocean Bay Heritage Preserve and the Carolina Bays located to the West of the project as well as to the streams draining the area. In my opinion, this is a type of water pollution which should be prevented.



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Steve S. Gosnell, P.E.  
Assistant Administrator, I&R Division  
Horry County Engineer

Sworn to before me this 10<sup>th</sup> day of January, 2017



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Gina S. Livingston  
Notary Public for South Carolina  
My Commission Expires: February 13, 2019

**EXHIBIT C**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Coastal Conservation League and ) Civil Action No.: 2;16-CV-3008-RBH  
South Carolina Wildlife Federation, )  
)  
Plaintiffs, )  
)  
vs. )  
)  
United States Army Corps of Engineers, )  
Charleston District, and Lt. General Todd )  
T. Semonite, Lt. Colonel Matthew Luzzato; )  
US Environmental Protection Agency; )  
Gina McCarty; Heather McTeer Toney, )  
Horry County, )  
)  
Defendants. )  
\_\_\_\_\_ )

**DECLARATION OF RANDAL WEBSTER**

I, Randall Webster, declare as follows:

1. I am Randall Webster and I reside at 1017 Dublin Drive in Horry County, S.C. in the Conway community.
2. I have been the Director of Emergency Management for Horry County, South Carolina since June 2003. My responsibilities include the overall planning, organization, control and implementation of emergency activities for Horry County. I direct and supervise the Emergency Management Department staff as well as direct and manage the actions of the Emergency Operations Center. I oversee the development, coordination and implementation of the Horry County Comprehensive Emergency Management Plan and coordinate multi-governmental and/or multi-departmental responses during large-scale emergencies. I direct and coordinate the requirements of the National Incident Management System and S.C. Chapter 58 Office of the

Governor Article I. Division of Public Safety Programs (a.k.a.58-1 Local Emergency Preparedness Standards). I am also responsible for departmental compliance with all other relative local, state and federal laws/regulations that govern emergency management. I am the primary liaison for disaster related coordination with State and Federal agencies as well as non-governmental organizations. I am responsible for the development and implementation of the emergency management multi-year strategic plan and am on-call for response to emergencies throughout the county as needed.

3. I have worked in various positions for Horry County since 1989. From May 1989 until 1992, I was a paramedic. From 1992 until 1995, I was a Supervisor in Emergency Medical Services. From 1995 to 1999, I was the EMS Deputy Director. From 1999 to 2000, I was the Interim EMS Director. I was the Fire Chief from 2000 to 2003 at which time I became the Emergency Management Director.

4. I am familiar with the project known as the International Drive project. My experience also has made me familiar with safety problems associated with our current limited and constricted roadways in central Horry County. In my opinion the International Drive project will provide needed public health and safety improvements to Horry County which are needed as quickly as possible. The project has been delayed and all of the delay risks unnecessary injury, property loss and loss of life.

5. International Drive will provide an alternate route to get to or from the Highway 90 corridor near Conway to the greater Myrtle Beach area. Currently, the only ways for vehicles to make that trip are either to head west toward Highway 501 and then turn southeast on 501 to Myrtle Beach or to head east toward Highway 22 and then on 22 to Highway 17 into the Myrtle Beach area. The travel distance saved with the project is between 15 and 20 miles. The project will also provide

an alternative escape route for residents of the Carolina Forest communities who currently are limited to use of Highway 501, an increasingly congested route even under normal conditions.

6. International Drive will save valuable time in the best of traffic conditions, probably some 30 minutes via the Highway 22 route and some 30 minutes via Highway 501. During tourist season or rush hours it would save considerably more time. The shorter the travel time for EMS services to reach communities, the better chance their services will minimize the risk of permanent injury or death. Similarly, firefighting resources are more effective the quicker they can reach a fire.

7. Without a direct access to Grand Strand which completion of the project would provide, access to emergency room care can be significantly impaired with dangerous delays.

8. The fire of 2009 in which many dozens of homes burned in central Horry County area showed the importance of getting firefighting resources to the scene of a fire as quickly as possible. Lack of quick access by fire trucks is dangerous. Had fire trucks been able to fight the fire of 2009 directly from International Drive, I believe the chances of limiting the reach of the fire would have been greatly increased. Evacuation routes for persons living along Highway 90 and in Carolina Forest would also be greatly improved by the project and in the event of another catastrophic fire, this could mean saving lives.

9. This part of Horry County has shown that it is prone to intense wild fires. The subsurface is composed of highly flammable peat formed in old Carolina Bays and there is an accumulation of other highly flammable material consisting of decayed pine needles, leaves and other vegetation. Remnants of crepe myrtles are common and this is particularly flammable. The three worst fires in South Carolina history have all occurred in this area due to the very flammable material here. It is vital that we improve access for firefighting resources to this part of the county. International

Drive will do that. Delaying its completion risks a disaster in terms of both property loss and lost lives.

10. Evacuation in the event of a hurricane or flood would also be made easier and more efficient by the project. Existing routes are limited as I described above so that congestion will create significant risks for residents who may be unable to flee in time.

11. During Hurricane Floyd in September 1999, the record flood event for us, we learned that Highway 90 will be severed in two locations if the Waccamaw reaches a certain level. People living between those two points were isolated from any emergency health care or fire and rescue (other than by boat) until the river receded. Today, that area is much more heavily populated with a large percentage of those residents retirees with a heightened need for quick emergency response. The recent flooding of October 1-5 nearly caused these residents to be isolated. The Waccamaw River came within one foot of the level that would have flooded Highway 90 in both the north and south directions. Highway 501 was severed for a time from the flooding due to the heavy rain. These facts, in my opinion, point up the importance of quickly completing International Drive to avoid health related crises due to the inability to reach residents along Highway 90 or even in Carolina Forest.

12. In the aftermath of Hurricane Matthew this year, the Waccamaw again reached the level of flooding it did in 1999. Highway 90 was severed where Sterritt Swamp covered the road blocking access to Highway 501 and where Tilly Swamp covered the road blocking access to Highway 22. In between these two locations, a number of neighborhoods are located where a significant percentage of the residents are retired and have health conditions. These communities contain some 400 homes. From October 8<sup>th</sup> to October 10<sup>th</sup>, Hwy 90 was reported to be impassible to these communities due to debris and flooding on 6 different occasions and they were cut off from

or, at minimum, exposed to extremely long response times by fire, police or EMS access and unable to drive themselves to an emergency room. For a substantially longer period of time, which I would estimate to have been approximately 9 hours, their access to these services was severely limited by the flooding conditions on Highway 90. Had International Drive been completed, there would have been no difficulty reaching any of these communities from the Horry County Fire Rescue station at the Carolina Forest end International Drive. That station would have been able to quickly render medical aid or fire support within minutes. This would be a potentially lifesaving difference.

12. Our area is prone to risks from floods, hurricanes and fires. All of these risks can be managed to minimize the unnecessary loss of property or life if efficient and timely emergency services transportation routes are created and maintained. International Drive will, based on my experience and knowledge of the area, achieve that goal. The current situation inherently risks property loss or loss of life due to the inability of these services to reach people as quickly as they need to. Moreover, inefficient evacuation routes risk unnecessary tragedy.

13. Pursuant to 28 U.S.C. Sec. 1746, I declare, under penalty of perjury, that the foregoing is true and correct to the best of my professional opinion, knowledge and belief.

Signed on the: 20<sup>th</sup> of October 2016.

  
RANDALL WEBSTER

**EXHIBIT D**



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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Appellate Case No. 2016-001758

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**RECEIVED**

JAN 11 2017

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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PROOF OF SERVICE

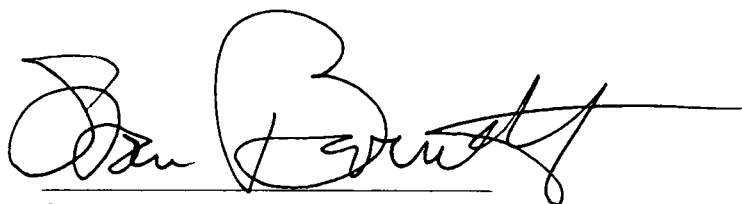
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I hereby certify that on this date I served the forgoing  
Motion to Vacate the Stay of Certifications Issued by SCDHEC  
and Order Prohibiting Completion of International Drive by placing  
copies of same in the U.S. Mail or delivery by Fed Ex addressed to:

Amy E. Armstrong, Esq.  
S.C. Environmental Law Project  
430 Highmarket Street  
Georgetown, S.C. 29440

Michael S. Traynham, Esq.  
SCDHEC  
2600 Bull Street  
Columbia, S.C. 29101

Nathan M. Haber, Esq.  
SCDHEC/OCRM  
1362 McMillan Avenue, Suite 400  
Charleston, S.C. 29405

A handwritten signature in black ink, appearing to read "Stan Barnett", with a horizontal line underneath it.

Stan Barnett  
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[stan.barnett@yahoo.com](mailto:stan.barnett@yahoo.com)  
Attorney for Respondent,  
Horry County Public Works

January 10, 2017  
Mount Pleasant, South Carolina

**STAN BARNETT**

Attorney at Law  
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**RECEIVED**

January 10, 2016

JAN 11 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
1220 Senate Street  
Columbia, S.C. 29201

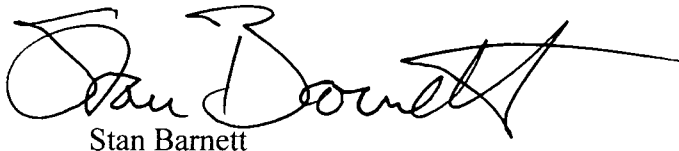
RE: S.C. DHEC and Horry County Public Works v. SC Coastal Conservation League and SC  
Wildlife Federation: Admin Law Court Case No. 15-ALJ-07-0404-CC  
Appellate Case No.: 2016-001758

Dear Ms Kitchings:

Enclosed for filing, please find the filing fee and the original and six copies of  
Respondent Horry County's Motion to Vacate the Stay of the Certifications Issued by SCDHEC  
and the Order Prohibiting Completion of International Drive.

With kindest regards and appreciation, I remain

Sincerely,



Stan Barnett

Cc: Amy E. Armstrong, Esq.  
Michael Traynham, Esq.  
Nathan Haber, Esq.  
Arrigo Carotti, Esq.