

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2016-001758

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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.

RESPONSE TO HORRY COUNTY'S MOTION TO VACATE STAY

The Appellants submit this Response to Respondent Horry County's Motion to Vacate the Stay recently entered and reaffirmed by this Court. The stay prohibits Horry County from undertaking any additional construction activities, and specifically improving and paving International Drive, until such time as the legality of the authorizations for that paving, as issued by Respondent SCDHEC, can be determined in this appeal.

Based on the Motion to Vacate's inconsistency with the County's own prior representations; its dubious, post hoc timing; its bombastic, patently self-serving content; its facially incredible scientific propositions; its concealing of the County's own role in creating this purported dilemma; and its complete lack of relation to any change in circumstances or to the applicable legal standard; Appellants can draw no other conclusion but that the County's Motion is an attempt to bring undue public pressure and scrutiny upon this Court. Appellants do not

state such conclusion lightly. Rather, as will be explained herein, the County's Motion, which is filed on the heels of this Court having to *twice* order the County to stop work and of the Court rejecting the County's attempt to have this appeal dismissed as moot, is the ultimate confirmation that the County will say or do whatever it has to in order to brazenly push forward on this project, as it has done up until this Court's Order.

As an initial matter, Horry County's Motion to Vacate must also be viewed in light of the fact that its most inflammatory representations are far-removed from the legal inquiry before this Court. Indeed, even the most relevant portions of the County's Motion are at best tangential to the basis upon which this Court granted the stay in this case, which is that such "order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." (See Court's Order of December 15, 2016, granting supersedeas). Appellants submit that the credibility and intention of the County's Motion are apparent in that disconnect. With the proper legal framework in mind, Appellants' opposition to the County's Motion follows.

The Timing of the County's Motion is Dubious and Unjustified:

As this Court is keenly aware, the stay in this case is not the product of happenstance or of some automatic procedural trigger.¹ Rather, the stay (and its subsequent reaffirmation) is the culmination of a fully contested process during which the Court very recently considered and

¹In a typical case, matters under appeal to this Court are automatically stayed, so as to preserve the effectuality of this Court's Order. See SCACR Rule 225 ("As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree."). However, such automatic stay does not apply to appeals from contested cases decided by state agencies. SCACR Rule 241(b)(11). Thus, the automatic stay provision in the Appellate Court Rules did not apply to this matter. Rather, administrative appeals such as this are stayed upon motion "for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal." See SCACR Rule 241(c)(1).

reconsidered the propriety of staying construction for the purpose of preserving its jurisdiction, with Horry County having multiple opportunities to fully state the basis of its opposition to a stay. Horry County has provided no justification for this Court to consider the stay for the third time in a month.

Appellants first moved for supersedeas on November 7, 2016, and Horry County responded with a memorandum forcefully opposing the legal and factual basis for a stay. This Court rejected the County's arguments and granted supersedeas on December 15, 2016. Appellants reasonably assumed that the Court's issuance of supersedeas put the issue of ongoing construction to bed, but Horry County continued right on with construction, relying on an untested legal theory that it was not bound by this Court's Order. (See Appellants' Motion to Compel Compliance). Appellants were then forced to file a Motion to Compel Compliance with this Court's Order, wherein Appellants once again asked this Court to make clear that the County was to desist from all road construction activities. (See Id.). And the Court did reaffirm the stay, this time by Order of December 20, 2016. **Horry County did not ask for reconsideration or rehearing either time this Court ordered it to stop roadway construction.** However, upon losing its motion to dismiss, Horry County is back before this Court with a new set of arguments and figures in opposition to the stay, only 21 days after the Court reaffirmed the validity of such measure.²

Absolutely nothing has changed that would lead Horry County to have new arguments in

²Appellants do not believe that Horry County's Motion is even authorized by the Appellate Court Rules, given the limitations on stay and supersedeas in Rule 241 and the fact that the time to move for reconsideration of this Court's previous order has passed. Horry County does not state the rule under which its Motion is filed, nor the standard of review applicable to such Motion.

opposition to the stay. Once again: the arguments/figures in Horry County's Motion to Vacate are not the product of some change in circumstances that has occurred since this Court issued and reaffirmed the stay only weeks ago. Rather, the arguments/figures in the County's Motion to Vacate could and should have been presented during the two other times this Court recently ruled on the stay. Having lost on supersedeas, on its effort to ignore the supersedeas, and on its motion to dismiss, Horry County is simply taking another bite at the apple with a new set of arguments, this time backed by provocative, improbable and bare-boned affidavits.

In addition to being dilatory, inefficient and repetitive, the timing of the County's filings raises significant doubts as to the credibility of the figures and conclusions it has now drummed up. That is especially true in light of the fact that the County's motion to dismiss this appeal was denied just five days before its Motion to Vacate was filed. Horry County has repeatedly relied on its position that the state authorizations at issue in this appeal are ineffectual at this juncture, and that this Court's jurisdiction therefore is as well.³ That proposition was fully and finally rejected in the Court's denial of the County's motion to dismiss, and the County then faced the realization that it could not push its way out of this appeal. Five days later, the circumstances that have remained unchanged since before this Court ordered supersedeas suddenly pose significant potential consequences for Horry County. Appellants submit that, when viewed in the context of the procedural history before this Court, the County's Motion to Vacate reveals its true nature as the final thrashing of a party that has repeatedly maintained that it is not limited or bound by the jurisdiction of this Court, and that is reeling from having such position rejected.

³The County advanced this same argument in opposing supersedeas, in continuing to construct after issuance of supersedeas, and in moving for dismissal.

Even if Real, the County's Purported Dilemma is of its Own Conscious Creation:

The basis of Horry County's Motion to Vacate is essentially that the consequences of making the County stop at this point in construction are not justified. As explained in detail below, the various purported consequences advanced by Horry County are unsupported, exaggerated, or completely fabricated. First, though, it is significant to note in relation to such consequences that Horry County has contemplated and accepted the risk of proceeding with road construction in the face of pending legal challenges and has acted with knowledge that it could be required by court order to stop work in progress. Indeed, the County has shown a unique propensity for such risk during the pendency of this dispute, proceeding with construction at a breakneck pace any time it has been allowed a window, including while motions to enjoin construction have been pending and, in Appellants' view, even after such motions have been granted (see above discussion of this Court's second stay Order). In moving to vacate the stay, the County seeks to avoid the natural consequences of the risk that it cultivated and indeed flaunted.

Horry County began construction of International Drive on August 22, 2016, shortly after issuance of the Administrative Law Court's final decision. See (myhorrynews.com article, attached hereto as Exhibit A). At the time construction began, Horry County Council Chairman Mark Lazarus acknowledged that this appeal was forthcoming, but indicated that Horry County had made the decision to begin work anyway, stating: "**There are always risks, but this is certainly an acceptable risk we are willing to take.** ... We have the money in the bank and all the required permits for this project, and we are going to get this road built." (Id. (emphasis added)). According to Horry County's press release, the decision to proceed with construction in

the face of this appeal was made “[a]fter lengthy discussions with county staff and legal counsel.” (Id.). It goes without saying, but the risk that Horry County now complains of is exactly the risk that it knowingly and willingly assumed: that the County would have to stop work before completion of the highway.

Appellants learned that the County had received a federal permit and began construction through its aforementioned press release issued on August 22, 2016. Appellants filed a notice of appeal in this Court the day after Horry County began construction, on August 23, 2016, and also filed a motion for stay in the ALC on that same day, seeking to halt filling of the wetlands during the pendency of this appeal. On September 1, 2016, Appellants filed their challenge to the federal permit for this project, and on September 14, 2016, Appellants moved for a preliminary injunction in federal court. Horry County pushed forward with construction through the notice of appeal, the ALC motion for stay, the federal complaint, and the federal motion for preliminary injunction.

As of September 23, 2016, one month after construction began, Horry County had filled portions of nearly all of the 24+ acres of wetlands on the project site, except for the wetlands on the Lewis Ocean Bay Heritage Preserve side of the road. See (Horry County’s federal contempt response, excerpts attached hereto as Exhibit B). On that day, a temporary restraining order was entered in federal court preventing any destruction of the Heritage Preserve wetlands and vegetation, among other limitations. Appellants’ Petition for Supersedeas was filed in this Court on November 7, 2016, while the temporary restraining order was still in effect. The TRO was then dissolved on November 18, and this Court entered supersedeas on December 15, leaving a 27-day window wherein Horry County could have performed construction activities. Horry

County says that it completed all pre-paving work on the highway during this window, despite the fact that the Petition for Supersedeas was pending in this Court. In other words, the supposedly problematic condition in which International Drive now exists is the product of Horry County's hurried work while Appellants' Petition for Supersedeas was under consideration by this Court.

In sum, with the exception of the very first day of construction, all of Horry County's construction activities have been undertaken while either a motion for injunctive relief was pending or while an injunction was actually in place.⁴ While all of Horry County's construction activities may have been within their rights under the letter of the law, the County has certainly embraced the risk inherent in proceeding with construction that is under direct and immediate dispute. Most notably of all, the present state of International Drive, which the County says is unsustainable and problematic, is the direct result of work performed while the very stay at issue here was pending before this Court. Surely there can be no clearer example of proceeding at one's own risk.

The Alleged Financial Implications are Contradictory and Disingenuous:

To state it simply, the County's position on the difficulty of maintaining or remediating its construction site is highly dependent on the outcome the County is seeking at the time. As explained below, when it has served the County's interest in continuing construction, the County has readily touted its ability to halt and even undo construction if ordered. Now that the reverse

⁴The Appellants have had to seek intervention from both this Court and the federal court after Horry County continued construction activities after entry of the supersedeas and temporary restraining order, respectively. In both instances, Horry County claimed to have understood a liberal interpretation of the orders that allowed continued work in onsite wetlands.

argument facilitates the County's objective of continuing construction, the County's new position on stabilization is not altogether surprising. In all, the exorbitant price quoted by Horry County for stabilizing and maintaining the current construction site fails from the standpoint that: it is inconsistent with the County's prior representations; it includes the cost of significant work that would take place regardless of the stay; and it is based on the barest of unsupported, self-serving declarations.

The County's estimate of \$932,000 to stabilize the site in accordance with its stormwater permit is startling in light of the County's prior representations to this Court regarding the exact same work. After the Court ordered Horry County to stop construction for a second time on December 20, 2016, counsel for Horry County wrote this Court seeking permission for the County to complete "**small additional work**" to stabilize the site. (Letter of December 21, 2016, attached hereto as Exhibit C (emphasis added)). This included "work to comply with the N.P.D.E.S. stormwater general permit authorization (including some **minor** grading and grass seeding, which must be commenced within 14 days)." (Id. (emphasis added)). In other words, the "small additional work" Horry County was seeking to perform outside of the stay is the same work it has now quoted at \$932,000.⁵ The Court construed counsel's letter as a motion, and after Appellants opposed that motion, the County doubled down on its description of the stabilization work as "minor" and explicitly quoted the price of the work at \$250,000:

⁵As described in the County's Motion to Vacate: "The General Permit issued by SCDHEC and EPA for stormwater 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" (p. 5).

DHEC polices compliance with the storm water permit. If the county is in any way prevented from following the requirements of that NPDES permit there will be sediment runoff which will pollute nearby streams and wetlands. **The cost of this work is significant, some \$250,000, and is a cost necessitated only by the Court's order to halt further construction.**

(Motion reply email of December 22, 2016, attached hereto as Exhibit D).

Horry County has not explained why its estimate for this work jumped almost \$750,000 in less than a month, but what is clear is that the quotes in the County's Motion to Vacate and in its earlier reply are for exactly the same work. The difference, of course, is that it served the County's interests to provide a lower estimate in its earlier motion, whereas the opposite is true in the Motion at hand. For what it's worth, neither estimate shows any particular detail that would allow the Court to judge credibility or accuracy. In counsel's email of December 22, the cost figure is stated flatly, and the same is true in the County employee's affidavit attached to the Motion to Vacate.⁶

Perhaps the stark difference in these figures is attributable to the fact that the estimate accompanying the Motion to Vacate makes no effort to distinguish or exclude stabilization work that would be required under the NPDES stormwater permit, irrespective of the stay. According to his affidavit, Mr. Gilreath bases his cost estimate on stabilization of "all disturbed areas (entire

⁶This is the most relevant instance, but not the only time that the County has adjusted its position on maintenance/restoration of the construction site depending on its needs at the time. When the issue of a preliminary injunction was before the federal court, the County advanced the argument that such injunction should not be issued because the work it had performed could be reversed, and the wetlands it had filled could be restored, should the court eventually order it. (Excerpts from the County's injunction response, attached as Exhibit E ("Restoration of wetlands is not difficult. ... Any harm to wetlands from construction of the road would, therefore, not be irreparable should this Court rule in favor of Plaintiffs and invalidate the Corps' permit.")). When it behooves the County, its position is that it is prepared to go so far as undoing work when ordered. When its incentives are reversed, however, the County's position is that the cost of even pausing the work is unbearable.

project area).” Of course, that would include not only the roadway/paving footprint, but also the shoulders, median, and other areas that would remain grass after the final paving. It follows from the stormwater permit requirements cited by the County that these areas would have to be stabilized after paving anyway and that such cost would be a part of the normal project budget. Nevertheless, Mr. Gilreath includes that entire cost in his estimate, without explanation. Further, a substantial portion of Mr. Gilreath’s cost estimate is based on his inclusion of a silt fence replacement after two years. We are given no idea, though, whether the inclusion of that item is based on Mr. Gilreath’s presumption that this appeal will last more than two years, or whether such replacement might be an expected outcome in a construction project of this magnitude and duration. Likewise, Gilreath includes a surprisingly large figure for weekly inspections over the next two years, with no explanation of what the inspection schedule would normally be for this project. Presumably, though, such inspections do not just arise as a result of the stay, and Mr. Gilreath is double-counting. With mindfulness to not belaboring the point, Appellants’ purpose is to show that one could poke one hundred holes in Mr. Gilreath’s inflated cost estimate, and his affidavit does not provide any of the detail necessary to determine the basis or credibility of his numbers.

The County’s nearly million dollar purported price tag for just maintaining the construction site during this appeal is at the heart of what Appellants describe above as the County’s effort to bring undue public pressure to bear on the Court. In light of the fact that this cost estimate is not relevant to the Court’s legal inquiry, that it is contradicted by the County’s prior representations in the most direct way possible, and that its inflammatory total is offered with little support or explanation, Appellants submit that their description of the County’s actions

is not hyperbole.

The County's Scientific and Technical Propositions are Illogical:

The self-serving nature of the County's cost estimate pales in comparison to that of the proposition the County advances in relation to the environmental impact of paving. The headline for the County's environmental argument, which is enough to make any unbiased water quality scientist or engineer blush, might be phrased as follows: "Paving of Five Lane Highway Greatly Reduces Water Pollution." Rarely has a less scientific, more self-interested proposition been advanced than Horry County's argument that a five-lane asphalt highway must be paved through a state-designated heritage preserve in order to "greatly reduce" the water pollution that would result from leaving the area as grass and dirt.

One of the most striking parts of Horry County's environmental argument is its flagrant contradiction. In the opinion of Horry County employee Steve Gosnell, the best management practices for stabilizing a construction site, which consist primarily of planting grass and installing silt fences, apparently cannot be trusted to stop sediment runoff from the roadway footprint. (County's Motion, Exhibit B). Paving is necessary, he says, to stop this sediment transport. (*Id.*). One might ask, then, how the County intends to stabilize the shoulders, median, and other grassy areas that will not be paved. The answer, of course, is seeding and silt fences. The County apparently feels comfortable with its ability to stabilize and prevent sediment transport on every part of the construction zone except the part that would be paved.

The reality, though, is that Mr. Gosnell's comfort with stabilizing the non-paved portions of this project is the only part that he gets right. The other part of his opinion is what facilitates a statement in Horry County's Motion that is as facially absurd as one might encounter in the field

of environmental law: that “removing bare ground and replacing it with the completed project will greatly reduce the risk of water pollution.” (Motion, p. 6). Appellants believe that even the average non-scientist would understand that the idea of filling in wetlands and then covering the grass and dirt with impermeable asphalt in order to generate an environmental benefit is laughable. Imminently qualified water quality scientist Dan Tufford, Ph.D., also reaches that conclusion in regard to the circumstances here:

[P]aving the road does not remove the risk of water pollution, but actually exacerbates water pollution. ... There is no scientific basis upon which one could conclude that paving a 5 lane road, including filling and eliminating 24 acres of wetlands, would improve water quality. Water quality in the vicinity of the project has been harmed by the fill of those wetlands and will deteriorate further if the road is paved.

(Tufford Declaration, attached hereto as Exhibit F).

Dr. Tufford bases his opinion on his observations that “[s]tabilization measures, when appropriately implemented for the specific site and when properly maintained, will largely eliminate water pollution for long periods of time.” (Id. at ¶ 14). Dr. Tufford does not share Mr. Gosnell’s situational skepticism of these best management practices. Further, Dr. Tufford’s opinion is informed by his pre-construction observations of the wetlands adjacent to International Drive, which he observed to have “minimal, if any, degradation,” resulting from sediment transport from the dirt road. (Id. at 13). Consistent with common sense, Dr. Tufford’s opinion is that any sediment transport from a stabilized construction site poses a far less serious threat to adjacent water quality than does the paving of a five-lane road. See (Id.).

Of equal significance, Dr. Tufford explains that the paving of International Drive would significantly reduce the chances that the onsite wetlands could ever be restored. See (Id. at 9-12).

Specifically, [p]aving over wetlands would make it more difficult to restore the wetlands than if the wetlands remain filled with dirt,” because paving “would further compact [the wetlands], causing a complete loss of their functions and values.” (*Id.* at 10). Translated into the terms of the legal inquiry before this Court, allowing Horry County move forward with paving could very well render this case moot by eliminating this Court’s ability to award an effective remedy.

Horry County’s proposition that completion of the road project will not result in any further harm fails on the bases that highways are not environmentally superior to grass and dirt and that paving will place the nail in the coffin of the wetlands at issue in this appeal. The County’s environmental arguments, which may be its only arguments with any relation to the legal question before the court, provide no basis for this Court to vacate the stay.

The County’s Emergency Services Argument is Hollow Alarmism:

Nothing about the emergency services rhetoric in Horry County’s motion suggests that the stay should be vacated. Any time a new road is constructed, that road will necessarily shorten the route for emergency services to reach some set of residents. Likewise, any time a new road is constructed, especially on the coast, one could imagine a scenario where that road is used by some set of residents to flee a natural disaster. However, advancing speculative scenarios based off these truisms is the most superficially provocative justification one could possibly advance for a highway project. Yet, such transparent alarmism is exactly what Horry County resorted to when this project came under serious scrutiny, and it is exactly what the County has recycled in an attempt to overturn this stay. It is necessarily true that International Drive could allow some potential patient to get to the hospital faster, or could allow some potential resident to escape some potential disaster, but to the extent the County maintains that this emergency services

justification is the basis for the project, or a primary benefit to be derived therefrom, that proposition is clearly contradicted by the history of this project.

In 2007, Horry County put into effect a one penny sales tax increase on all retail sales, accommodations, and prepared food and beverage. See <<http://www.ridingonapenny.com/>>. This tax increase, which lasted for a period of seven years, went into the County's "Riding on a Penny" program, which funded certain road projects within Horry County. Id. The County brought in approximately \$425 Million through this program, and it prioritized fifteen specific road projects where this money would be spent. Id. The paving of International Drive, which Horry County would have us believe would remedy an emergency services dilemma that has existed since at least 1999 (See Declaration of Randal Webster), was ranked thirteenth of fifteen priorities and was slated for only two lanes of paving. Id. If the hazard posed by International Drive's present unpaved condition is as serious as Horry County's speculation on possible emergency scenarios would suggest, one could scarcely imagine the dire circumstances that must have existed in relation to the twelve projects with higher priority.

In reality though, the emergency services component of this project is something the County created in order to enhance its legal defense, and such justification was never mentioned during the planning and initial approval processes. For example, during the critical public notice and comment period for this project, when the justification for this project was front and center, emergency services was never mentioned as a purpose for this road. Horry County's application for the authorizations at issue in this appeal described the purpose of the road as "reliev[ing] current and anticipated congestion for ... commuters and to provide a secondary evacuation route." (Joint application, attached as Exhibit G). The County reiterated this purpose in two 27-

page responses to the public comments it received on the project, and it never once mentioned emergency services. (Response to comments, excerpts attached as Exhibit H). Over time, though, the headlining purpose of this road morphed to suit the County's need for a justification that is easy to get behind and tough to disprove. The strategy has worked so well for the County that it is still using this "hollow alarmism" before the Court at present.

The hollowness of the emergency services rhetoric is apparent, though, from the declaration on which it is based, that of Horry County employee Randall Webster. Mr. Webster throws around a great deal of alarming speculation, but decompressing his declaration reveals its dearth of substance. While acknowledging two existing highways that are available for residents in the area proximate to International Drive, Mr. Webster's declaration rests on the undeniable truism that "[t]he shorter the travel time for EMS services to reach communities, the better chance their services will minimize the risk of permanent injury or death." (Declaration, ¶ 6). Horry County does not and cannot point to any incident where increased harm has come to a citizen in the vicinity of International Drive as a result of delayed emergency services, though Mr. Webster's declaration does offer a lot of "what if." If Horry County is truly unable to provide effective emergency services to citizens in one of its major population zones without the paving of International Drive, that failure rests squarely on the County. However, such doomsday speculation rings hollow, given the infrastructure in place in this highly developed portion of one of South Carolina's most highly developed counties. Similarly unpersuasive is the idea that these doomsday scenarios can only be headed off by paving a five-mile stretch that runs parallel to two existing major highways.

The Appellants urge this Court to look beyond the County's attempt to skew the Court's

analysis through invocation of a tired narrative that is wielded all too easily and often in disputes like this to take away from the legal inquiry at issue.

Conclusion:

Horry County's Motion to Vacate represents the County's last ditch attempt to conjure whatever pressure, bias, or alarm may aid it in overturning a stay that this Court has already twice affirmed. For all of the reasons stated herein, Horry County's Motion should be denied.

Respectfully submitted,



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Attorneys for the Appellants

Georgetown, South Carolina
January 18, 2016

Exhibit A



BREAKING

Solicitor: Gilbert Road death appears to be self defense



http://www.myhorrynews.com/news/local/carolina_forest/article_50cc8572-6886-11e6-99bc-3fddaac6696c.html



PREVIOUS

Albini transfers his love of animals into children's books



TOP STORY

Horry County begins work on International Drive

From staff reports info@myhorrynews.com Updated Aug 22, 2016



Horry County won't wait for an appeal.

County officials on Monday announced they are moving forward with the construction of International Drive, despite a court challenge from two conservation groups. Crews began working on the road Friday.

"After lengthy discussions with county staff and legal counsel, Horry County began construction on International Drive," the county said in a news release. "County construction crews began clearing trees and vegetation along the right-of-way corridor of International Drive in order to get the road passable for construction vehicles in the interim. This work is estimated to take approximately 40 days. Horry County will contract the construction and paving operations of International Drive by a request for proposal that is estimated to be publicized around the first of October. Once a contract is awarded the paving operation are estimated to take 8-12 months, but a final date will not be known until a contract is awarded."

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The project in question is the paving and widening of a nearly 6-mile section of road between Carolina Forest and S.C. 90.

Residents have long argued that extending International Drive will benefit their community by providing another evacuation route as well as quicker access to medical facilities.

Although Horry County voters approved the road work in a 2006 sales tax referendum, International Drive is one of the last unfinished projects from the county's road-building program, RIDE II.

Construction was supposed to begin in 2015, but environmental objections put the brakes on the project.

Although conservationists challenged the DHEC certifications in court, last month a judge ruled in the county's favor. The conservationists vowed to appeal the decision, meaning the legal process would be delayed for at least a year.

County officials, however, opted to begin work anyway.

"There are always risks, but this is certainly an acceptable risk we are willing take," Horry County Chairman Mark Lazarus said in the release. "Now that the judge ruled in favor of SC DHEC Sec 401 (water quality) permit, this allowed the U.S. Army Corps to issue their Sec 404 (wetland fill) permit to us on July 22, 2016. We now have all the permits in our possession that allows us to begin construction on this road. There is the potential that a federal court action could be filed to stop us from paving the road, but again we are willing to take that risk. We have the money in the bank and all the required permits for this project, and we are going to get this road built."

The conservation groups plan to ask a judge to issue an "automatic stay" to prevent the county from proceeding with the project during the appeal process, said Nancy Cave, north coast director for the Coastal Conservation League, one of the two groups pursuing the court action (the other is the S.C. Wildlife Federation).

Before Monday's announcement, Cave said she had heard rumblings about the county's plans.

"I wasn't completely surprised by it," she said.

Exhibit B

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

Coastal Conservation League and)
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.)
_____)

Civil Action No.: 4:16-CV-3008-RBH

**HORRY COUNTY'S
RESPONSE IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
CONTEMPT**

STANDARD FOR CIVIL CONTEMPT

The party seeking a rule to show cause based on alleged contempt of court must show more than a bare preponderance of evidence. The proof must be clear and convincing. Levin v. Tiber Holding Corp., 277 F.3d 243 (2nd Cir. 2002), citing Stringfellow v. Haines, 309 F.2d 910, 912 (2nd Cir. 1962); Schauffler for and on Behalf of N. L. R. B. v. Local 1291, Intern. Longshoremen's Ass'n, 292 F.2d 182, 190 (3rd Cir. 1961); Heinold Hog Market, Inc. v. McCoy, 700 F.2d 611 (6th Cir. 1983) citing, Vertex Distributing, Inc. v. Falcon Foam Plastics, Inc., 689 F.2d 885, 889 (9th Cir.1982); N.L.R.B. v. Blevins Popcorn Co., 659 F.2d 1173, 1183 (D.C.Cir.1981); In re Irving, 600 F.2d 1027, 1037 (2^d Cir.), cert. denied, 444 U.S. 866, 100 S.Ct. 137, 62 L.Ed.2d 89 (1979); United States v. Rizzo, 539 F.2d 458, 465 (5th Cir.1976); Telling v. Bellows-Claude Neon Co., 77 F.2d 584, 585 (6th Cir.1935) ; Federal Practice and Procedure, Wright and Miller, Sec. 2960, Vol. 11, p. 591. Moreover, the mandate alleged to be violated

(1) Except as specified in paragraph (e)(3) of this section, the term fill material means material placed in waters of the United States where the material has the effect of:

(i) Replacing any portion of a water of the United States with dry land; or

(ii) Changing the bottom elevation of any portion of a water of the United States.

(2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.

(3) The term fill material does not include trash or garbage.

33 CFR Part 323.2(e).

As set forth in detail below, the only wetland identified by Plaintiffs as allegedly having been filled in violation of this Court's Order was filled by mechanized land clearing, an activity which changed the bottom elevation of the wetland and destroyed its wetland functions prior to the date the Order was issued on September 23, 2016. This was true of all of the other wetlands on the non-Lewis Ocean Bay side of the right of way. Offsite fill material was also placed into most of these wetlands prior to the date of the Order. (Exhibit 5, Declaration of Britt Feldner; and Exhibit 4, Declaration of David Gilreath). In the context of the Clean Water Act, therefore, all of these wetlands had been "filled" prior to the date of the Order.

County Work on the Project Involving Fill of Wetlands:

The declarations of Mike Wooten, David Gilreath and Britt Feldner explain that by the time this Court's Order was issued on September 23, with minor exceptions, all of the wetlands on the non-Lewis Ocean Bay side of the right of way had been filled by mechanized land

clearing and/or the addition of offsite fill material. All of the wetland functions had been destroyed by this alteration of the wetland. There is no competent evidence to contradict the testimony of these witnesses.

Plaintiffs make reference to an estimate the County's counsel in this case as to the percent to wetlands which had been filled. That estimate was prepared based on information days old by the time it was referenced to Plaintiffs' counsel and is not competent evidence, in any case. The only competent evidence of the areas of wetlands filled is that of the witnesses noted above. (Exhibit 4, Declaration of David Gilreath; Exhibit 5, Declaration of Britt Feldner; Exhibit 6, Declaration of Mike Wooten).

It is Not Possible to Identify Wetland Fill from an Aerial Fly Over:

As explained in the Declarations of Britt Feldner and Mike Wooten, both experts in the field of wetland identification and permitting, it is simply not possible to identify wetland fill from an aerial fly over. Only through an on the ground inspection of a site is it possible to determine if a wetland has been disturbed. Plaintiffs never asked for an onsite inspection. The only persons with knowledge of the onsite conditions and the chronology of work at the site are the County's employees and its consultant, Britt Feldner. Observation from an airplane, particularly at an oblique angle, provides only limited information regarding disturbance of a wetland. The Plaintiffs suggest that the water evident in the photographs taken from the air establish that a wetland was in existence. It does not. As explained by Britt Feldner and Mike Wooten, rainfall at the site was heavy for some period of time prior to the photographs being taken. That rainfall in conjunction with the low and flat topography of the site resulted in a condition of inundation that masked the discrete signature that would confirm the presence or absence of any land disturbance or the deposition of fill material. Neither the condition of the

investigate the facts before filing their motion. This sort of “gaming” the court system is unacceptable behavior and justifies that sanctions be imposed by the Court pursuant to F.R.C.P. 11(c) as the motion does not meet the test of Rule 11 (b).

CONCLUSION

For the reasons set out above, Horry County respectfully requests the Court to deny the Plaintiffs’ motion to hold the County in contempt and to impose sanctions on Plaintiffs for pursuing this motion without any competent evidence.

Respectfully submitted,

s/ Stan Barnett

Stan Barnett Fed ID # 5306
305 North Civitas Street
Mt. Pleasant, SC 29464
(843) 884-1031; (843) 881-1623
stan.barnett@yahoo.com

October 20, 2016
Mount Pleasant, South Carolina

Exhibit C

STAN BARNETT

Attorney at Law
305 North Civitas Street
Mount Pleasant, South Carolina 29464
(843) 884-1031
stan.barnett@yahoo.com

December 21, 2016

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:

I am writing on behalf of Horry County concerning the Order issued yesterday clarifying the Writ of Supersedeas issued by the Court last Thursday, December 15. The second Order made clear that the Supersedeas was intended to require the County to “halt all work on the road project, including the widening, paving, and realigning of the existing unimproved portion of International Drive....”

The County wants to emphasize that they did not understand the first Order to be a prohibition on continuing work authorized by the Army Corps of Engineers permit. This same understanding was expressed in the media by the Director of one of the Appellants, the S.C. Coastal Conservation League. I have attached the article in which Dana Beach noted that his organization intended to seek a restraining order after the Supersedeas was issued. This was consistent with the County’s interpretation of the December 15 Order and the County anticipated an immediate filing by Appellants. The County wants to make clear that in no way did its officials believe they were violating any prohibition by this Court.

At the time the December 15 Order was issued, all work on International Drive other than some clean up, or “dressing up”, was completed. The County had intended to award a contract today for the concrete and paving work and other details of completion of the road. That will not be done until the case is resolved, or by other direction of the Court.

However, there are some items of work that the County believes need to be done, to avoid pollution and to protect the public. These are placement of barricades for safety purposes,

work to comply the with the N.P.D.E.S. storm water general permit authorization (including some minor grading and grass seeding, which must be commenced within 14 days), and filling a trench some 100 feet long that the County is concerned is a hazard to hunters and others accessing the area. In addition, there is earth material stockpiled on the site the County would like to remove. Except for the barricade placement, the County will not undertake any of the above work without approval from the Court. All of this is consistent with the Court's ruling, as its result is not in furtherance of construction, will not alter the status quo that the Court is directing be maintained, but rather is necessitated to preserve the status quo and provide for the safety of the community. We request that the Court allow this small additional work to that end.

With kindest regards and appreciation, I remain

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Barnett", with a long horizontal flourish extending to the right.

Stan Barnett

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

Exhibit D

2016-001758 SC Coastal Conservation League v. SCDHEC

From: Stan Barnett <stan.barnett@yahoo.com>
To: Kitchings, Jenny <jkitchings@sccourts.org>
Cc: Amy Armstrong (amy@scelp.org) <amy@scelp.org>, jessie@scelp.org, amelia@scelp.org, habernm@dhec.sc.gov, traynhms@dhec.sc.gov, michaeltraynham@gmail.com, ameliat@alumni.unc.edu, stan.barnett@comcast.net
Subject: Re: 2016-001758 SC Coastal Conservation League v. SCDHEC
Date: Thursday, December 22, 2016 9:08 AM
Size: 17 KB

Ms Kitchings:

I apologize for the format of this message. I am out of town and am not able to prepare a letter. I thought it was important to respond to a couple of things Ms Armstrong said in her letter from yesterday.

The implication that the County has in any way been disrespectful of any court order is completely false. Ms Armstrong's motion to hold Horry County in contempt was denied because it was utterly baseless and I believe intended only to paint the County in a bad light as the District judge considered her motion for preliminary injunction. That appears to be what Appellants are doing now in their response to the County's reasonable request to be allowed to do a few things, two for public safety and one to avoid violating the NPDES permit intended to prevent water pollution. It is beyond ironic that two environmental groups who claim to be interested in clean water are openly opposing mandated measures designed by DHEC and EPA to prevent water pollution. The bare dirt must be seeded as per that permit if work is halted more than 14 days. The complaint that this work can't be policed ignores what Appellants are well aware of: DHEC polices compliance with the storm water permit. If the county is in any way prevented from following the requirements of that NPDES permit there will be sediment runoff which will pollute nearby streams and wetlands. The cost of this work is significant, some \$250,000, and is a cost necessitated only by the Court's order to halt further construction. The County absolutely is committed to following the Court's mandate. But it must also try and meet the obligation to prevent water pollution by complying with the NPDES permit. I suggest that DHEC is in the best position to monitor that compliance. In no way does the minor grading and grassing constitute furthering construction of the road.

Ms Armstrong's comments about protecting the public safety are also inappropriate. These actions have nothing to do with advancing construction. They are needed to keep people from being hurt.

The county has proceeded to try and build this road in strict compliance with the law. The chronology of the Appellants' state and federal challenges are set forth in our motion to dismiss.

Again please accept my apologies for the format of this message.

With kindest regards,

Stan Barnett

Sent from my iPhone

On Dec 21, 2016, at 5:07 PM, Kitchings, Jenny <jkitchings@sccourts.org> wrote:

Dear Counsel:

Attached please find my letter requesting a reply no later than 10:00 am tomorrow morning. Thank you.

Jenny Abbott Kitchings

Clerk of Court

South Carolina Court of Appeals

1220 Senate Street

Columbia, SC 29201

Ph: (803) 734-1891

Fax: (803) 734-1839

jkitchings@sccourts.org

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

<2016\_12\_21\_17\_04\_02.pdf>

# Exhibit E

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

Coastal Conservation League and )  
 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. )  
 \_\_\_\_\_ )

Civil Action No.: 4:16-CV-3008-RBH

**HORRY COUNTY’S  
RESPONSE IN OPPOSITION  
TO PLAINTIFFS’ MOTION FOR  
A PRELIMINARY INJUNCTION**

### INRODUCTION

This case involves challenges by Plaintiffs to a permit issued by the US Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, 33 U.S.C. Sec. 1344 authoring the discharge of dredged or fill material in to certain wetlands deemed to be jurisdictional “waters of the United States”, such fill being needed to construct a 5.6 mile section of a highway in Horry County by the County known as International Drive. The Plaintiffs seek relief pursuant to the Administrative Procedures Act, 5 U.S.C. Sec. 701-706, and the National Environmental Policy Act (NEPA) 42 U.S.C. Sec. 4321, asserting that the Corps did not follow its regulations in issuing the permit and that it did not comply with NEPA by failing to adequately evaluate the environmental effects likely to result from the project.

Plaintiffs are now moving for a Preliminary Injunction halting any further construction of the road, which has been under construction since August 22, 2016, since September 23 limited

Moreover, it is uncontested that DNR has the sole discretion to manage the Preserve. It was pursuant to that discretion that DNR contracted with Horry County to convey the southwest edge of the property to Horry County for the purpose of constructing the project. That contract specifically provides that DNR – not the County – has the right to harvest the timber in the road right of way. Therefore, those trees could be removed immediately, regardless of the status of the Corps permit, absent an action by Plaintiffs enjoining DNR from exercise of its proprietary control over the property. Such an action would be utterly without foundation.

d. Loss of Wildlife: The only species the Plaintiffs have addressed with evidence they claim indicates the road will harm is the black bear. The risk to the bear is from vehicle collisions. The contract between DNR and the County requires that a speed limit of 45 mph be imposed on the road. Plaintiffs' only bear expert, Joe Hamilton, admitted that no measure to prevent bears from crossing a road are particularly effective, at one point using a figure of 20 percent. "Bears will go where they want to go," he said. He also acknowledged that the 45 mph speed limit would greatly reduce the incidence of collisions, at one point suggesting "in most cases." Hamilton also agreed with DNR's director that the population of bears in Horry County is increasing so fast that measures to control their population are called for – such as a longer hunting season or more kills permitted per hunter. (Exhibit 12, Testimony of Joe Hamilton; Exhibit 15, Testimony of Alvin Taylor). The population of the black bear – which is neither threatened nor endangered – is not at risk in Horry County, despite significant collisions with vehicles that kill bears on existing roads. There is simply no evidence at all, much less clear and convincing evidence, of any irreparable harm to wildlife likely to result from the road.

4. Any damage to the wetlands impacted by construction of the road can be fully repaired through restoration of the wetlands. While it would entail considerable cost to the

County, should this Court rule in favor of the Plaintiffs in this matter, restoration of the wetlands impacted by the road could be ordered. Restoration of wetlands is not difficult. All that is required is removal of whatever has filled them so as to allow natural flow of surface or ground water into them. Restoration can be hastened by revegetation. (Exhibit 5, Declaration of Britt Feldner). Any harm to wetlands from construction of the road would, therefore, not be irreparable should this Court rule in favor of Plaintiffs and invalidate the Corps' permit.

**C. Balancing the Equities.**

While Plaintiffs have failed to clearly establish any irreparable harm to the environment from the project, the County will suffer substantial irreparable harm if the completion of the road is enjoined. That harm will be manifested in both financial and non-monetary forms.

1. Safety has been one of, and perhaps the foremost, purpose for the road. The uncontested evidence is that the road will alleviate a significant safety problem for a substantial number of Horry County residents. The communities along Highway 90 are currently without reliable quick access to emergency room care or to quick response time by EMS, police or fire services due to traffic congestion. While Plaintiffs disregard this conclusion by the County's experts, their own witnesses acknowledge that the County experts are in the best position to make this judgment. (Exhibit 11, Testimony of Steve Gilbert; Exhibit 12, Testimony of Joe Hamilton). The safety risks the people along Highway 90 now face are summarized in the testimony of the Emergency Management Director of the County, Randy Webster, the Chairman of County Council and Mark Lazarus. (Exhibit 19, Testimony of Randy Webster; Exhibit 2, Declaration of Randy Webster; Exhibit 1 Declaration of Mark Lazarus). Without quick access to emergency health care, life threatening conditions are more likely to result in death for many

### CONCLUSION

The Plaintiffs have failed to establish any of the four required criteria for a preliminary injunction. The International Drive project is a road which, the undisputed evidence proves, is needed for public health and safety for a substantial section of Horry County. Delay in its creation risks not only public funds but life and property. For the reasons set forth above, the County requests that the Plaintiffs' Motion be denied. In the alternative, the County respectfully requests that, should the Court decide to impose an injunction, the Plaintiffs be required to post a bond of \$1 million.

Respectfully submitted,

s/ Stan Barnett

Stan Barnett                      Fed ID # 5306  
305 North Civitas Street  
Mt. Pleasant, SC 29464  
(843) 884-1031; (843) 881-1623  
stan.barnett@yahoo.com

October 20, 2016  
Mount Pleasant, South Carolina

# Exhibit F

**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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COASTAL CONSERVATION LEAGUE and )  
SOUTH CAROLINA WILDLIFE )  
FEDERATION, )

Appellants, )

vs. )

Appellate Case No. 2016-001758

SOUTH CAROLINA DEPARTMENT OF )  
HEALTH AND ENVIRONMENTAL CONTROL )  
and Horry COUNTY PUBLIC WORKS, )

Respondents. )

---

**DECLARATION OF DANIEL TUFFORD**

I, Daniel Tufford, declare as follows:

1. I live at 4714 Meadowood Road, Columbia, South Carolina.
2. I have an undergraduate degree from Indiana University in Biological Sciences with an emphasis in Ecology. In 1996 I received my PhD from the University of South Carolina in Environmental Health Sciences where my dissertation research was related to hydrology and specifically water quality in South Carolina. Since that time, I've been on

the research faculty of the University of South Carolina, first in the Department of Environmental Health Sciences, then in the Department of Biological Sciences, and currently in the Baruch Institute. My research has focused on hydrology, water quality, aquatic system ecology, watershed ecology, and wetlands. A great deal of my research has been on various kinds of wetlands, mostly focused on the Coastal Plain of the Carolinas.

3. I was a co-investigator on a team grant from the US Environmental Protection Agency in which we studied several aspects at length of geographically isolated wetlands on the Coastal Plain of North and South Carolina. I've also done extensive work in tidal freshwater marshes along the coast of South Carolina, as well as Georgia and North Carolina. I have done significant watershed scale work in the Waccamaw River Watershed, where the disputed project is located, and the nearby Pee Dee River Watershed, looking at stream flow and hydrology, as well as evaluating climate impacts on both hydrology and water quality in those areas.
4. I have utilized aerial photography in my wetlands assessment research, as well as satellite imagery and geographic information system modeling. I have also undertaken quality assessments of the wetlands that I am studying, including looking at the subsurface hydrology and the related water quality as well as habitat issues for those wetlands.
5. I have reviewed Horry Count's Motion to Vacate the Stay and all attached exhibits.

6. Wetlands provide several valuable functions, including the filtering of water; supporting aquatic ecosystems; providing wildlife habitat, including for breeding, nesting, foraging and denning; and serving as a buffer for flooding during heavy rain and storms.
7. Hurricane Matthew was a strong reminder of the flood buffering functions of wetlands. Where wetlands are filled and replaced with impervious surfaces, as proposed for the paving of International Drive, flooding can be exacerbated in the area where such filling occurs. Impervious surfaces, such as a paved road, increase the risk of flooding during storm events because they do not buffer stormwater or allow it to be filtered into the groundwater system, instead causing it to runoff the impervious road surface. When such impervious runoff occurs, and specifically on a roadbed, the runoff carries pollutants associated with vehicular travel.
8. Horry County contains a significant amount of paved and impervious surfaces. During storm events, like Hurricane Matthew, Horry County experienced significant flooding along Highways 90 and 501 according the Declarations of Randall Webster. There is ample scientific basis to determine that the flooding in Horry County would have been lessened if more wetlands had been preserved rather than converted into impervious surfaces. Similarly, if 5.6 miles of 5-lane highway is paved, including the filling and elimination of 24 acres of wetlands and their attendant flood buffering functions, my opinion to a reasonable degree of scientific certainty is that flooding in that area would be exacerbated.
9. Contrary to the assertion that a wetland can easily be restored, the harm caused by filling in wetlands is extremely difficult to remedy. While the fill can be removed, the area

graded and vegetation replanted, it is extremely difficult to undo environmental damage of this sort and to completely restore a wetland to its pre-fill state of functions and values. Ecosystems take time to develop natural processes that give them their wetland characteristics and which help them provide their functions. Hydrology and habitat take time to develop. While one can reset the system to create the conditions that will allow a wetland to restore itself, it is a time consuming process that would almost certainly take greater than five years before coming close to performing pre-fill functions and values.

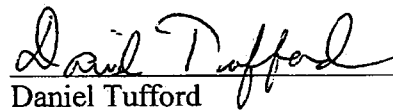
10. Paving over wetlands would make it more difficult to restore the wetlands than if the wetlands remain filled with dirt. Paving over the wetlands would further compact them, causing a complete loss of their functions and values. Thus, restoration of wetlands from beneath a paved road would take even longer than restoration of wetlands that have been filled with dirt.
11. Paving over wetlands also further degrades and pollutes adjacent wetlands. An unused dirt road may cause some sediment transport into adjacent wetlands. However, wetlands filter sediment when they are fully functioning. Once a road is paved, the use of the road causes more environmentally damaging pollutants to be introduced into adjacent wetlands from vehicular traffic sources such as gasoline, oil, and tires. Those pollutants are not addressed by Horry County's stormwater management plan for the road, which focuses on sediment runoff. Therefore, paving the road does not remove the risk of water pollution (Motion to Vacate p.5), but actually exacerbates water pollution.
12. Wetlands that have had either mechanized clearing and/or some fill would certainly be impacted wetlands and their functions impaired, but not all functions are necessarily

eliminated. The inquiry is dependent upon the nature of the specific wetland and the extent of the fill activity. For example, if wetlands are cleared but the elevation remains constant and they are left undisturbed they will revegetate over a period of time. Depending on magnitude of impact, some wetland functions may be completely destroyed, but it is impossible to say that a wetland is no longer a wetland simply because the County has taken some actions toward filling that wetland. Some activities that are less than a complete filling of the wetland may result in diminishing all functions or may result in complete loss of some functions (such as habitat), but retention of other functions (such as flood buffering).

13. While some small amounts of sediment may flow into adjacent wetlands, I observed minimal, if any, degradation of those wetlands as a result of sedimentation from the dirt road before construction activities. In fact, one of the important functions of wetlands is to filter sediments and other pollutants. Conversely, paving the road and the pollution associated with runoff from vehicular traffic poses a much more significant and serious threat to water quality than the dirt road.
14. Stabilization measures, when appropriately implemented for the specific site and when properly maintained, will largely eliminate water pollution for long periods of time.
15. There is no scientific basis upon which one could conclude that paving a 5 lane road, including filling and eliminating 24 acres of wetlands, would improve water quality. Water quality in the vicinity of the project has been harmed by the fill of those wetlands and will deteriorate further if the road is paved.

16. There is no scientific basis upon which to conclude that paving a highway does not harm the environment. Every time a natural or dirt area is converted to highway, that results in environmental degradation. That degradation is compounded in this case where the pavement is replacing wetlands and sensitive natural habitat, including Carolina Bays.
17. There is no scientific basis upon which to conclude that the risk of water pollution will be removed by paving a road. To the contrary, water pollution in the wetlands on either side of International Drive will happen if the road is paved.
18. Pursuant to 28 U.S.C. ' 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 17th of January, 2017.

  
Daniel Tufford

# Exhibit G

Print Form

| Joint Federal and State Application Form<br>For Activities Affecting Waters of the United States<br>Or Critical Areas of the State of South Carolina                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                     | This Space for Official Use Only                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| <p><i>Authorities:</i> 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. Seq. of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s).</p> <p><i>Drawings and Supplemental Information Requirements:</i> In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.</p> |                                     | <p>Application No. _____<br/>Date Received _____<br/>Project Manager _____<br/>Watershed # _____</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                          |
| 1. Applicant Last Name:<br>Gosnell                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                     | 11. Agent Last Name (agent is not required):<br>Feldner                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                          |
| 2. Applicant First Name:<br>Steve                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                     | 12. Agent First Name:<br>Britt                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                          |
| 3. Applicant Company Name:<br>Horry County Public Works                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                     | 13. Agent Company Name:<br>The Brigman Company                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                          |
| 4. Applicant Mailing Address:<br>4401 Privetts Road                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                     | 14. Agent Mailing Address:<br>P.O. Box 1532                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                          |
| 5. Applicant City:<br>Conway                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                     | 15. Agent City:<br>Conway                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                          |
| 6. Applicant State:<br>SC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 7. Applicant Zip:<br>29526          | 16. Agent State:<br>SC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 17. Agent Zip:<br>29526                  |
| 8. Applicant Area Code and Phone No.:<br>(843) 915-5160                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                     | 18. Agent Area Code and Phone No.:<br>(843) 248-9388                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                          |
| 9. Applicant Fax No.:<br>(843) 365-2170                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                     | 19. Agent Fax No.:<br>(843) 248-9596                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                          |
| 10. Applicant E-mail:<br>gosnells@horrycounty.org                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                     | 20. Agent E-mail:<br>bfeldner@thebrigmancompany                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                          |
| 21. Project Name:<br>International Drive Re-Alignment/Paving                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                     | 22. Project Street Address:<br>n/a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                          |
| 23. Project City:<br>Conway                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 24. Project County:<br>Horry        | 25. Project Zip Code:<br>29526                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 25. Nearest Waterbody:<br>Socastee Swamp |
| 26. Tax Parcel ID:<br>various                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 27. Property Size (acres):<br>72.81 | 28. Latitude:<br>33.821860                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 29. Longitude:<br>-78.913921             |
| 30. Directions to Project Site (Include Street Numbers, Street Names, and Landmarks and attach additional sheet if necessary):<br>From the intersection of SC-544 E and US-501 S travel east on US-501 for approximately 0.5 miles to the intersection of 501 and E Cox Ferry Road, turn left (northeast) onto E Cox Ferry Road and travel approximately 2 miles to the intersection of E Cox Ferry Road and SC-90, turn right (southeast) onto SC-90 E and travel approximately 4.1 miles to the intersection of SC-90 E and Environmental Parkway to the project beginning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                          |
| 31. Description of the Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas (attach additional sheets if necessary):<br>This project's proposed construction plan & methodologies are intended 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. International Drive will provide a direct link between S.C. 90, S.C. 31, and Carolina Forest Boulevard. The project construction will require impacts to 24.88 Acres of freshwater wetlands.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                          |
| 32. Overall Project Purpose and the Basic Purpose of Each Activity in or Affecting U.S. Waters (attach additional sheets if needed):<br>The purpose of the project is to re-align and pave a 5.6-mile portion of existing unimproved International Drive. The proposed construction will require impacts to 24.88 acres of freshwater wetlands.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                          |
| 33. Type and quantity of Materials to Be Discharged                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                     | 34. Type and Quantity of Impacts to U.S. Waters (including wetlands).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                          |
| <p>Dirt or Topsoil: 104,635 <input checked="" type="checkbox"/> cubic yards<br/>Clean Sand: _____ <input type="checkbox"/> cubic yards<br/>Mud: _____ <input type="checkbox"/> cubic yards<br/>Clay: _____ <input type="checkbox"/> cubic yards<br/>Gravel, Rock, or Stone: _____ <input type="checkbox"/> cubic yards<br/>Concrete: _____ <input type="checkbox"/> cubic yards<br/>Other (describe): _____ <input type="checkbox"/> cubic yards</p> <p>TOTAL: 104,635 cubic yards</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     | <p>Filling: 21.33 <input checked="" type="checkbox"/> acres <input type="checkbox"/> sq.ft. 104,635 <input checked="" type="checkbox"/> cubic yards<br/>Backfill &amp; Bedding: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq.ft. _____ <input type="checkbox"/> cubic yards<br/>Landclearing: 0.22 <input checked="" type="checkbox"/> acres <input type="checkbox"/> sq.ft. _____ <input type="checkbox"/> cubic yards<br/>Dredging: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq.ft. _____ <input type="checkbox"/> cubic yards<br/>Flooding: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq.ft. _____ <input type="checkbox"/> cubic yards<br/>Drainage/Excavation: 3.33 <input checked="" type="checkbox"/> acres <input type="checkbox"/> sq.ft. _____ <input type="checkbox"/> cubic yards<br/>Shading: _____ <input type="checkbox"/> acres <input type="checkbox"/> sq.ft. _____ <input type="checkbox"/> cubic yards</p> <p>TOTALS: 24.88 acres sq.ft. 104,635 cubic yards</p> |                                          |

Tanitra  
Rob Huff

2010-01157-3H(13)  
CZC-13-1136

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35. Individually list wetland impacts including mechanized clearing, fill, excavation, flooding, draining, shading, etc. and attach a site map with location of each impact (attach additional sheets if needed).

| Impact No.                    | Wetland Type          | Distance to Receiving Water body (LF) | Purpose of Impact (road crossing, impoundment, flooding, etc) | Impact Size (acres) |
|-------------------------------|-----------------------|---------------------------------------|---------------------------------------------------------------|---------------------|
| 1-35 (Appendix E)             | (page 4, section 7.0) | 9000'                                 | road crossing                                                 | 24.88               |
| Total Wetland Impacts (acres) |                       |                                       |                                                               | 24.88               |

36. Individually list all seasonal and perennial stream impacts and attach a site map with location of each impact (attach additional)

| Impact No.                         | Seasonal or Perennial Flow | Average Stream Width (LF) | Impact Type (road crossing, impoundment, flooding, etc) | Impact Length (LF) |
|------------------------------------|----------------------------|---------------------------|---------------------------------------------------------|--------------------|
| Total Stream Impacts (Linear Feet) |                            |                           |                                                         |                    |

37. Have you commenced work on the project site?  YES  NO If yes, describe all work that has occurred and provide dates.

38. Describe measures taken to avoid and minimize impacts to Waters of the United States: The project was designed to utilize existing roadway and upland areas to the maximum extent as possible. However, the majority of the areas between the two project termini contain large wetland complexes with little opportunity for avoidance. The alignment was planned along the existing earthen roadway as much as possible in an effort to avoid and minimize wetland impacts.

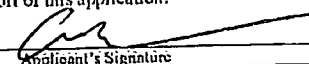
39. Provide a brief description of the proposed mitigation plan to compensate for impacts to aquatic resources or provide justification as to why mitigation should not be required (Attach a copy of the proposed mitigation plan for review).

Due to the lack of available credits, the applicant is proposing permittee responsible mitigation (Appendix G)

40. See the attached sheet to list the names and addresses of adjacent property owners.  
See Appendix B.

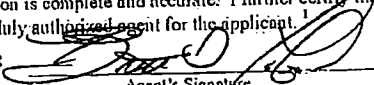
41. List all Corps Permit Authorizations and other Federal, State, or Local Certifications, Approvals, Denials received for work described in this application.

42. Authorization of Agent. I hereby authorize the agent whose name is given on page one of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application.

  
 Applicant's Signature

11-28-2013  
 Date

43. Certification. Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant.

  
 Agent's Signature

11-26-2013  
 Date

The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 41 and 42 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

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# Exhibit H



December 18, 2014

Mr. Rob Huff

Department of the Army  
Charleston District, Corps of Engineers  
1949 Industrial Park, Room 140  
Conway, South Carolina 29526

Re: Response to Comments  
Horry County Public Works;  
Project: International Drive Re-Alignment/Paving; (P/N 2010-01157-3H)

Dear Mr. Huff:

This letter provides our response to the questions and comments set forth by the March 11, 2014 United States Army Corps of Engineers' (USACE) letter following initial public notice for a Department of Army permit (P/N 2010-01157-3H) to re-align and pave a 5.6 mile portion of the existing unimproved International Drive near the Carolina Forest Community in Horry County, South Carolina. Outlined in this letter are our responses to the questions expressed by the USACE and other governmental agencies. Public comments from other special interest groups were similar to the USACE's comments and are also addressed at the end of this correspondence.

The purpose of the re-alignment/paving of International Drive 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. International Drive will provide a direct link between S.C. 90, S.C. 31 and Carolina Forest Boulevard. In addition to servicing the residents of the Carolina Forest Community, the proposed re-alignment/paving will provide an additional option to residents/commuters within the Myrtle Beach Community and a large workforce along the Highway 90 corridor through its direct connectivity to Robert M. Grissom Parkway. The proposed project is not expected to cause immediate or long term degradation within the proposed alignment or its adjacent natural communities. In fact, this project has gone through a rigorous review during the planning process that considered numerous alternative approaches, the pre-application process with all commenting agencies, as well as the current regulatory review. The intent of this project is to relieve current and anticipated traffic and provide an additional evacuation route within highly congested areas along the Grand Strand without sacrificing the integrity of the natural resources in the area.

Horry County Public Works has considered the comments received from all parties (regulatory and non-regulatory agencies, special interest groups, and the general public) and offers the following concessions to reduce disturbed wetland areas and minimize the cumulative effects of the proposed International Re-Alignment/Paving:

a no build alternative, and the final selected alternative illustrates a feasible development plan with minimal impacts to natural resources.

#### **No Build/Offsite Alternative**

Our intent was to consider those alternatives that are reasonable in terms of the overall scope/cost of the project. The "No Build" alternative is also considered the 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 road structure within the area including River Oaks Drive and Carolina Forest Boulevard creates bottlenecks and routine congestion throughout the year during the 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.

Due to the numerous traffic signals and high traffic volume on US Hwy 501, the current travel time between Conway and Myrtle Beach during the regular commuter weekday morning and evening peak travel periods is approximately 30 minutes. The travel time for the 14-mile trip can increase to 45 minutes or more during the busiest travel times of the peak tourist season. The draft version of the 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 one most congested corridor in the state of South Carolina when ranked against over 1,000 other strategic corridor segments (see attached Appendix from the SCDOT report. With motorists on US Hwy 501 currently experiencing over 245 vehicle-hours lost to delays daily (between 7AM and 7PM), it is more than 11 times more congested than the average highway of that type, and it is 15 percent more congested than the segment of roadway that ranked No. 2 on the list. Delays are expected to worsen exponentially with the continued growth in the Myrtle Beach area. A copy of this report is included in Appendix L.

In addition, an improved International Drive will provide a much more direct route to the Horry County Solid Waste Authority Landfill and Material Recycling Facility (MRF) for large trash trucks from the Cities of Myrtle Beach and North Myrtle Beach by cutting their travel time by 40 minutes in each direction. International Drive will effectively remove the daily fleet of the cities' trash trucks from US Hwy 501 and along most of the length of SC 90, which will help in reducing congestions on those roads.

Many of these residents travel into Myrtle Beach, a dedicated portion of these residents will access U.S. 501 at the terminus of Carolina Forest Boulevard and travel north along U.S. 501 towards Conway. The current road system within the Carolina Forest area fails

to support efficient and safe travel ways between the Carolina Forest community and inland areas. In the event of an approaching hurricane or another natural disaster, the existing travel ways are insufficient to support efficient and safe travel during evacuation procedures and during regular weekday commuter peak travel times. Due to the above reasons, the “No Build/offsite” alternative is not a feasible option and should not be considered as a valid alternative. This alternative will not meet project objectives or solve the growing travel issues for local and transient commuters.

#### **Alternative One - Riverstone Virgin Route**

During early evaluation of the project’s objectives, an alternative route called Alternative One- “Riverstone Virgin Route” was explored to avoid any impacts to S.C. Department of Natural Resources’ Lewis Ocean Bay Heritage Preserve and excessive roadway curvature. The route chose a series of large contiguous uplands in order to minimize wetland impacts to the maximum extent possible. 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 totaling 24.19 acres of slightly impaired wetlands (see Appendix F). Construction of this alternative would not result in an overall improvement to the current fragmentation of wetlands within the existing roadbed and further fragment a large undisturbed wetland complex and wildlife habitat. With the construction of this route, a substantial portion of the existing roadbed would be required to remain in place to provide adequate 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 extreme access restrictions and the acquisition of 100% of the right-of-way from private landowners. Right-of-way acquisition costs could increase by as much as 300% as Horry County is currently acquiring half of the required 125’ right-of-way from private landowners and 25’ of which is the portion of the right-of-way easement over the existing roadbed that is on private property. Construction costs would also increase due to the need for additional clearing. During avoidance and minimization efforts, this alternative was not considered the preferred route due to the excessive impacts to natural communities and additional right-of-way acquisitions and construction cost.

#### **Preferred Alternative**

The preferred alternate was chosen for its lowest impacts to natural communities. 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 existing road corridor. Based on the limits and distribution of wetlands adjacent to the current route, it is evident that the placement of this route over 70 years ago chose the path of least resistance, transecting upland communities as much as possible due to equipment and construction limitations at the

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2016-001758

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**SC Court of Appeals**

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

vs.

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


**CERTIFICATE OF SERVICE**

I hereby certify that on this date I served Respondents Horry County Public Works and  
SCDHEC with Appellants' Response to Horry County's Motion to Vacate Stay by placing copies  
of same in the U.S. Mail addressed to:

Stan Barnett, Esquire  
305 Noth Civitas Street  
Mt. Pleasant, SC 29464

Nathan Haber, Esquire  
DHEC/OCRM  
1362 McMillan Avenue, Suite 400  
Charleston, SC 29405

Michael Traynham, Esquire  
DHEC Office of Counsel  
2600 Bull Street  
Columbia, SC 29201

  
Amelia Thompson

Georgetown, South Carolina

January 18, 2016



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

a 501c3  
non-profit organization

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January 18, 2017

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**SC Court of Appeals**

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

RE: SC Coastal Conservation League and SC Wildlife  
Federation v. SCDHEC and Horry County Public  
Works  
Appellate Case No. 2016-001758

Dear Ms. Kitchings:

Enclosed for filing, please find the original and one copy  
each of the Appellants' Response to Horry County's Motion to  
Vacate, along with my certificate of service.

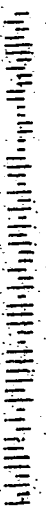
Please return a clocked-in copy in the enclosed, postage-  
paid envelop. Thank you for your assistance.

Yours very truly,



Amelia A. Thompson

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



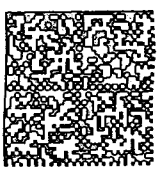
Pawleys Island, SC 29585

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SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
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