

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Court of Appeals Appellate Case No. 2019-00074

Supreme Court Appellate Case No. 2019-00841

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South Carolina Coastal Conservation League ..... Appellant,

v.

South Carolina Department of Health and Environmental Control, KDP II, LLC; and  
Kiawah Development Partners, II ..... Respondents.

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**RETURN OF RESPONDENTS  
KDP, II, LLC AND KIAWAH DEVELOPMENT PARTNERS, II  
TO APPELLANT'S MOTION TO TRANSFER CASE TO SUPREME COURT**

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**RECEIVED**

**MAY 30 2019**

**SC Court of Appeals**

G. Trenholm Walker (SC Bar # 5777)  
Thomas P. Gressette (SC Bar # 14065)  
Walker Gressette Freeman & Linton, LLC  
P.O. Box 22167  
Charleston, SC 29413  
(843) 727-2200  
Attorneys for Respondents  
KDP, II, LLC and Kiawah Development Partners, II

May 28, 2019  
Charleston, South Carolina

## SUMMARY

After initiating this appeal and then requesting four extensions of the deadline for filing its initial brief, on May 17, 2019, the Appellant, South Carolina Coastal Conservation League (“the League”), filed a Motion to Transfer this appeal from the Court of Appeals to the Supreme Court. Mtn. to Transfer at 1 (“Appellant...hereby moves the Supreme Court, pursuant to SCACR 204(b), for an order certifying this case for review by the Supreme Court before it has been determined by the Court of Appeals.”).

The Respondents, KDP, II, LLC and Kiawah Development Partners (jointly “KDP”), agree that transfer to the Supreme Court is appropriate, but strongly disagree with the League’s justification for the transfer. The League’s Motion also improperly attempts to influence and taint the Supreme Court’s perspective of the case by inaccurately linking the issues in this appeal to prior appeals decided by this Court that involved an entirely different permit for an entirely different erosion control structure. Further, the Motion also improperly previews the League’s legal positions when it should be limited to presenting the narrow procedural issue of whether the appeal should be heard directly by the Supreme Court.

This Return explains that while transfer of the League’s appeal to the Supreme Court is appropriate because determination of KDP’s rights as a landowner are of significant public interest and time is of the essence, the case should not be transferred based upon the Motion’s hyperbole and selective culling of certain portions of the record and on arguments that were fully considered and rejected by the Administrative Law Court.

Given the delays that have already occurred, KDP further requests that if the Motion to Transfer is granted, the transfer be effective after the Appellant has filed its initial brief. The Motion to Transfer, which Appellant could have made at the outset of its appeal, should not serve

as yet another reason to extend the deadline for Appellant to file its initial brief that was originally due on February 13, 2019. Therefore, the Respondents respectfully request this Court:

1. Disregard the entire Statement of Facts and Argument portions of the Motion to Transfer as well as the characterizations of the case included in the Motion's discussion of Rule 204(b); and
2. Enter an Order pursuant to Rule 204, SCACR, certifying this case for review by the Supreme Court and transferring jurisdiction over the case to the Supreme Court after the League has filed its initial brief.

### **FACTS**

Respondent KDP is the owner of 150 acres on the southwestern end of Kiawah Island known as Captain Sam's Spit (the "Property"). A small portion of the Property is zoned by the Town of Kiawah Island ("the Town") for residential development. Under the terms of the zoning and a development agreement between the Town and KDP, KDP may subdivide up to 50 homesites on 20 acres of Property with the remaining portion of KDP's property to be forever preserved in its natural state through restrictions or a conservation easement. Cape Charles is the name of the limited residential development KDP intends to place on the KDP Property.

KDP first applied to Respondent South Carolina Department of Health and Environmental Control (the "Department") for the permits that are under appeal nearly eight years ago. On August 3, 2011, the Town's Planning Commission approved a preliminary subdivision plat that includes the roadway and the residential lots planned for Cape Charles, Phase 1. Cape Charles, Phase 1 is limited to only 26 residential homesites on 12.8 acres. See Am. Order at 5 and 9 (copy attached as Exhibit A to Appellant's Motion to Transfer).

The proposed development complies with all zoning ordinances of the Town of Kiawah Island and is also authorized by the Amended and Restated Development Agreement (Development Agreement) between the Town and KDP dated December 5, 2013, which

“specifically allows the development of up to fifty residential lots on twenty acres of the Spit.”

Am. Order at 8. By way of further explanation,

KDP obtained this right to develop a limited portion of the Spit in negotiations in 2005 associated with a prior development agreement in return for relinquishing the right to build a hotel on the west end of Kiawah Island near Captain Sam’s Spit, just to the east of Beachwalker Park. The Development Agreement specifies that the rights accorded KDP under its terms constitute vested rights for the development of the property.

Id.

Shortly after obtaining the Town’s approval, KDP applied on August 8, 2011, to the South Carolina Department of Health and Environmental Control (“the Department” or “DHEC”) for certain permits associated with the proposed subdivision construction. KDP sought the permits necessitated by pollution-related statutes that require DHEC to supervise construction projects that might redirect stormwater and/or sediments during construction. Under South Carolina’s Stormwater Management and Sediment Reduction Program, “a person may not undertake a land disturbing activity without first submitting a stormwater management and sediment control plan” for approval by permit. S.C. Code Ann. § 48-14-30 (2008). Also, a National Pollutant Discharge Elimination System (“NPDES”) permit is required “for the discharge of ‘pollutants’ from any ‘point source’ into ‘waters of the State’ and into ‘waters of the United States.’”<sup>1</sup> Because the parcel at issue is within Charleston County, which is part of the state’s designated coastal zone, KDP also applied to DHEC’s Office of Ocean and Coastal Resource Management (OCRM) for review of the construction project to determine consistency with the policies and procedures of the Coastal

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<sup>1</sup> The NPDES is implemented under the Clean Water Act (33 U.S.C.A § 1251, et seq.), and in conjunction with this South Carolina’s Pollution Control Act (S.C. Code Ann § 48-1-10 et seq. (2008 & Supp. 2017)). Compliance with the NPDES requirements and state stormwater management requirements is accomplished in one permitting action, the issuance of a “General Permit.” Am. Order at 24. Additional permits were required to extend and construct the planned water supply system; these permits were not challenged before the ALC.

Zone Management Program. See Am. Oder at 25 (citing S.C. Code Ann. § 48-39-80 (2008) and S.C. Code Ann. § 48-39-10(B) (2008) (listing the eight counties defining the coastal zone)). On April 1, 2013, KDP applied to the Department for a permit to install water and waste water systems within Cape Charles, Phase 1.

On May 28, 2015, nearly four years after the first submission for a permit, the Department granted the requested permits and issued its Coastal Zone Consistency Certification (“CZCC”). The CZCC confirms the Department’s findings that the Cape Charles project is consistent with the Coastal Zone Management Program (“CZMP”). See NPDES General Permit, CZCC, and Water and Sewer Permits (Joint Trial Exhibit 6, copy attached hereto as Exhibit 1).

As a condition of the permits and the CZCC, DHEC required installation of an in-ground steel sheet pile wall (“SSPW”) on the highland interior of the river shoreline near the road right of way. See Am. Order at 4 and 10-12. The purpose of the SSPW is to protect both the road and the underground utilities from the encroachment of future erosion. The SSPW was required by DHEC. DHEC required the SSPW to protect the permitted infrastructure associated with Cape Charles, Phase 1 and to protect the parking lot of Beachwalker Park, a popular public recreational site run by Charleston County Parks and Recreation Commission.

The League challenged the issuance of these permits and the CZCC. On June 12, 2015, the League requested the Department’s Board conduct a final review conference of the Department’s staff decision to issue the above-referenced permits and CZCC. On July 6, 2015, the Board declined to conduct a final review conference, making the staff decision the final agency decision pursuant to S.C. Code Ann. § 44-1-60(f) (2018). On August 5, 2015, the League filed a request for a contested case hearing.

Chief Administrative Law Judge Ralph King Anderson, III held the contested case hearing

from August 21-25, 2017, to August 28-29, 2017. On September 24, 2018, Judge Anderson entered a Final Order. The League filed a motion for reconsideration which the ALC granted in part by the issuance of an Amended Final Order on December 14, 2018. The League also filed a Motion to Stay requesting the ALC stay the effect of its Order until resolution of the League's appeals. The ALC reluctantly granted the Motion.<sup>2</sup> As such, despite filing for permits in 2011, Respondent KDP has not been able to exercise its vested rights with regard to the property. Transferring this appeal for Supreme Court determination is warranted.

### **DISCUSSION**

#### **I. TRANSFER OF THIS APPEAL TO THE SUPREME COURT IS APPROPRIATE BECAUSE THIS MATTER INVOLVES AN ISSUE OF SIGNIFICANT PUBLIC INTEREST AND LEGAL PRINCIPLES OF MAJOR IMPORTANCE.**

Over eight years have passed since August 8, 2011, when KDP first filed for the permits at issue in this case. Delays in the Department decision followed by extensive discovery and litigation with the League prolonged the matter. Now the League's appeal has halted a landowner's ability to exercise its vested property rights. As such, the matter involves an issue of significant public interest and legal principles of major importance. A timely determination of the appeal by the Supreme Court is in the best interest of the parties and the public.

South Carolina Appellate Court Rule 204(b), as cited by Appellant's motion, addresses transfer of cases for review by the Supreme Court. Specifically, the Rule states:

In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Certification is normally

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<sup>2</sup> See Order Granting Motion to Stay, December 14, 2015, at 13 at 13 ("Therefore, although overall the Court finds that with the issuance of an appropriate bond warrants the denial of a stay, without any guidance the Court can only recognize that Supreme Court has previously stayed development at this location under the same asserted facts.")

appropriate where the case involves an issue of significant public interest or a legal principle of major importance. The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.

Rule 204(b), SCACR.

The timely consideration and conclusion of all legal matters is of paramount concern to this Court and to the public. See Rule 1, SCRCRCP (explicitly stating this Court's commitment to securing "the just, speedy, and inexpensive determination of every action"). The need for a prompt and timely determination of a legal dispute is especially important when, as here, the rights of a property owner to use its land has been halted by a pending appeal. See Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1017, 112 S. Ct. 2886, 2894 (1992) (discussing "the extraordinary circumstance" that results "when no productive or economically beneficial use of land is permitted" and quoting 1 E. Coke, Institutes, ch. 1, § 1 (1st Am. ed. 1812) ("[F]or what is the land but the profits thereof[?]"). Additionally, in this case, the continued delay associated with the appeal has severe, irreversible consequences as KDP's valuable land along the bend in the river continues to erode.<sup>3</sup>

In this case, KDP finally received its permits and CZCC in May of 2015, but protracted litigation by the League including two years of discovery and now an appeal following trial, have prevented KDP from undertaking any of the permitted activity. The League's intent to oppose any activity on KDP's Property is clear, as are the impacts of these actions upon KDP.

It is also guaranteed that any Court of Appeals decision will result in an appeal to this Court. Therefore, the efficiency and importance of obtaining a final decision for the parties

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<sup>3</sup> The proof from the respective experts called by KDP and the League is that while the Kiawah River is eroding the backside of the Spit, the neck and the Spit have been steadily accreting on the oceanfront with a rate of accretion along the beach that is equal to or greater than the rate of erosion along the riverbank. See Am. Order at 7.

regarding the property rights at stake weigh heavily in favor of transfer.

The passage of time also has a unique and particular impact on KDP, because the Kiawah River is eroding the riverbank in the bend next to Beachwalker Park along the “neck” of the Property, immediately to the east of the 26 planned lots. See Am. Order at 7 (“Although the Kiawah River is eroding the backside of the Spit, the neck and the Spit have been steadily accreting on the oceanfront side, moving seaward. In fact, the rate of accretion along the beach is equal to or greater than the rate of erosion along the riverbank.”). The longer this appeal languishes, the more irreparable harm KDP suffers from the loss of its land in the “neck” of the Property.

As the Court observed following the trial of this matter, the record demonstrates:

In August 2006, the buildable width at the narrowest location on the neck was 97.52 feet. In contrast, in August 2010, this same location measured 64.43 feet; in June 2011 it measured 60.26 feet; in October 2014 it measured 39.41 feet; in June 2015 it measured 37.06 feet; and in May 2016, when the most recent Department critical line was certified, it measured 29.25 feet.

Am. Order at 7. Ongoing erosion continues to threaten the public’s use of Beachwalker Park. Id.

As Judge Anderson explained, the public’s interest is jeopardized by continuing erosion that the permitted inground SSPW would prevent:

- “The continued erosion of the riverbank caused by the Kiawah River is currently threatening the public’s use of Beachwalker Park.” Am. Order at 22.
- “[E]rosion caused by the Kiawah River is threatening the continued, safe public access at Beachwalker Park.” Am. Order at 32.
- “Considering the threat to public access that further erosion of the riverbank currently poses, the Court finds the installation of the SSPW will greatly benefit the public in that it will stop further erosion near the park and stabilize the area, protecting the public’s access to the Spit.” Am. Order at 32.
- “[T]he substantial benefit the public will gain by having continued, protected access to the Spit with the installation of the SSPW outweighs

the partial loss of a less-utilized riverbank in these limited circumstances.” Am. Order at 32.

- “Due to the significant erosion along the riverbank adjacent to Beachwalker Park, some parking for the general public has been lost resulting in fewer people having access to the beach.” Am. Order at 41.
- “The proposed project would greatly assist in preserving that important public benefit.” Am. Order at 41.
- “Moreover, the public’s access to this Spit and public trust lands will be enhanced and preserved by the SSPW, which will halt the erosion currently threatening the public’s access at Beachwalker.” Am. Order at 49.

Based upon this significant evidence that each day erosion causes the public to suffer damage, this Court should transfer this Appeal for immediate determination.

**II. THE MOTION TO TRANSFER INACCURATELY RELIES UPON THE COURT’S DECISION IN THE KIAWAH REVETMENT CASE AND IMPROPERLY ATTEMPTS TO ARGUE THE CASE WITHOUT A PROPER RECORD.**

This Court should disregard the entire Statement of Facts and Argument portions of the Motion to Transfer as well as the characterizations of the case included in the Motion’s discussion of Rule 204(b). The Motion’s assertions are inaccurate and incomplete.

Unlike the bulkhead and revetment that were the subject of the appeal in Kiawah Development Partners, II v S.C. Dep’t of Health and Envtl Control, 411 S.C. 16, 766 S.E.2d 707 (2014) and 422 S.C. 632, 813 S.E.2d 691 (2018) (the “Revetment Case”), the SSPW will not be installed in the critical area. It is an entirely different structure that is subject to a different regulatory scheme. Nevertheless, throughout its Motion to Transfer, the League repeatedly argues that this Court’s decision in the Revetment Case somehow predetermines the result in this case, even though the permits in this case are completely different than those at issue in the Revetment Case. The League’s Motion is simply incorrect in its assertion that the facts and legal issues regarding the stormwater approvals for this upland project are the same as those associated with

the critical area permit that addressed the bulkhead and revetment in dispute in the Revetment Case.

The buried SSPW will not be installed in the critical area. It will be installed in the upland outside the critical area. The in-ground SSPW serves as a line of protection in the event the erosion at a given location on the river shoreline advances to the right of way or further towards the southwest corner of the parking lot for Beachwalker Park or the vehicular beach access of the town of Kiawah Island.

Because the two projects are entirely different, the legal analysis is different. The principal regulations governing the approval of stormwater management and sediment control plans and approval under the NPDES general permit for stormwater discharges from construction activities are set forth in S.C. Reg. §§72-300 et. seq. and S.C. Reg. §§ 61-9.124 et seq., respectively. These extensive regulatory requirements are completely different from the regulatory requirements for critical area permits that pertained to the bulkhead and revetment in the Revetment Case. *See* S.C. Reg. §§ 30-1, et seq. and the Coastal Zone Management Act, S.C. Code Ann §§ 48-39-10, et seq. The only common test is both a stormwater project and a critical area project must be consistent with the Coastal Zone Management Program (“CZMP”).

Even though this Court’s decision on the critical area permit sought in the Revetment Case is not controlling of the regulatory issues in this totally distinct permit proceeding, the League opens its Motion by invoking the Revetment Case and citing to this Court’s holdings therein addressing activity in the critical area. Mtn. at 2. However, the majority’s foremost concern in the Revetment Case was the effect of the revetment that was to be installed on the sloping sandy riverbank located in the tidal range. Kiawah Development Partners, II v S.C. Dep’t of Health and Envtl Control, 411 S.C. at 44, 766 S.E.2d at 715 (“the basic premise undergirding our analysis

must be the public trust doctrine which provides that those lands below the high water line are owned by the State and held in trust for the benefit of the public.”). Again, the stormwater permits in this case are not critical area permits and therefore do not implicate the public trust doctrine. As such, the Court should disregard the Motion’s inaccurate and incomplete references to and assertions that the Revetment Case directs a result in this case.

Additionally, in Kiawah Development Partners, II v S.C. Dep’t of Health and Envtl Control, 422 S.C. 632, 813 S.E.2d 691 (2018), this Court found that the record lacked substantial evidence that the bulkhead allowed by the ALC would function in the absence of a revetment extending from its toe over the riverbank. In further contrast to the Revetment Case, in this matter the League does not challenge the engineering and structural sufficiency of the SSPW, as it did with the critical area structure in the Revetment Case. Here the League stipulated to the sufficiency of the engineering and design of the in-ground SSPW as well as all the other systems, improvements, and structures that the Department has permitted and are part of the project. See Am. Order at 11 (“Coastal does not challenge the engineering of the SSPW, but rather its placement in relation to the critical line and its effect on the environment.”).

Instead, the League’s primary objection is that the permitted improvements as well as the 26 residential lots they would facilitate are inconsistent with the Coastal Zone Management Program (“CZMP”) and that the CZCC should be vacated.

The League’s Motion also asserts public use of areas adjacent to or near the inland areas subject to the permits constitutes a public interest sufficient to justify transfer of this appeal to the Supreme Court. See Mtn. at 7-8 (citing fear that the permits will impact “the natural pristine feel of the whole place,” as described by one witness at trial). The Motion goes even further when it proclaims, “Despite this uncontroverted testimony, the ALC summarily dismissed this evidence

of significant use of the Kiawah River and its shoreline, concluding that the public's use of the river shoreline is merely "occasional." Mtn at 5 (citing Am. Order at 23, 32). The Appellant is presenting its issues on appeal and arguing the merits of its case in an improper attempt to bias the Court prior to submitting the actual briefs required in this case. It is not appropriate and should be disregarded. Additionally, the Motion fails to inform the Court that Judge Anderson fully addressed all of the testimony relied upon by the Appellant:

For instance, George Finly, a member of Coastal, testified that when he utilizes the Kiawah River for kayaking he "occasionally" uses the area of the riverbank of the Spit. However, he explained you cannot really use the riverbank at "high, high tide, but maybe low you can." Eiser also confirmed his previous observations that he observed public use of the open recreational space of "all of Captain Sam's Spit" but only "some, not a whole lot" in the area of the riverbank. From Coastal evidence, I thus find that the use of the riverbank in the area of the propose project is only occasional, e.g. for beaching kayaks, mostly at low tide when the bank is more accessible.

Am. Order at 23. Without a proper record and proper deference to the Court's findings, as is required by the applicable standard of review, the Motion as submitted impermissibly disregards appropriate appellate procedure and the protection Respondent relies upon in order to present its case.

### CONCLUSION

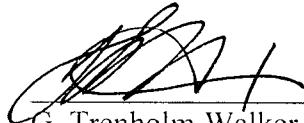
Having addressed the improprieties of Appellant's Motion to Transfer and having explained that while transfer of the League's appeal to the Supreme Court is appropriate because determination of KDP's rights as a landowner are of significant public interest and involve legal issues of major importance, KDP respectfully requests this Court:

1. Disregard the entire Statement of Facts and Argument portions of the Motion to Transfer as well as the characterizations of the case included in the Motion's discussion of Rule 204(b); and

2. Enter an Order pursuant to Rule 204, SCACR, certifying this case for review by the Supreme Court and transferring jurisdiction over the case to the Supreme Court after the League has filed its initial brief.

Respectfully submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



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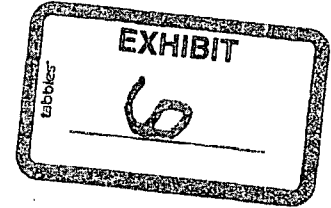
Charleston, SC 29413

(843) 727-2200

ATTORNEYS FOR RESPONDENTS,  
KDP II, LLC and KIAWAH DEVELOPMENT  
PARTNERS, II

May 28, 2019  
Charleston, South Carolina

Exhibit 1



Joint Trial Exhibit 6



W. Marshall Taylor Jr., Acting Director

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

CERTIFIED MAIL

9214 8969 0099 9790 1401 0998 50

May 29, 2015

Mr. Ray Pantlik  
KDP II LLC  
PO Box 12001  
Charleston, SC 29422

RE: Cape Charles Phase I, Charleston County  
NPDES Coverage Number: SCR100913  
Water Supply Construction Permit Number: 30395-WS  
Wastewater Construction Permit Number: 38828-WW

Dear Mr. Pantlik:

Enclosed are the NPDES General Permit Coverage for Stormwater Discharges from Construction Activities, the Water Construction Permit and the Wastewater Construction Permit for Cape Charles Phase I in Charleston County.

Sincerely,

John T. Litton, P.E., Assistant Chief  
Bureau of Water

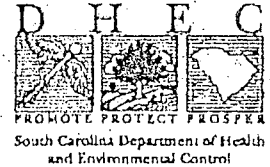
Cc: Tony M. Woody P.E. - Thomas and Hutton Engineering Co. - Via Certified Mail  
Amy E. Armstrong - S.C. Environmental Law Project - Via Certified Mail  
Amy E. Armstrong - Coastal Conservation League - Via Certified Mail

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 896-3432 • www.scdhec.gov

EXHIBIT 1  
KDP Return to Motion to Transfer

Exhibit 1

**Wastewater Construction Permit  
Bureau of Water**



PROJECT NAME: CAPE CHARLES PHASE 1	COUNTY: CHARLESTON
LOCATION: Near terminus of Beachwalker Drive, Kiawah Island, South Carolina	

PERMISSION IS HEREBY GRANTED TO: KRA DEVELOPMENT LP  
14 NORTH ADGEKS WHARF  
CHARLESTON SC 29401

for the construction of a sanitary sewer system in accordance with the construction plans, specifications, design calculations and the Construction Permit Application signed by Tony Woody, Registered Professional Engineer, S.C. Registration Number: 14545.

PROJECT DESCRIPTION: Approximately 1644 LF of 8" PVC gravity sewer, 11 manholes, one duplex pump station and 4651 LF of 4" force main to serve 26 residential lots and a community dock site.

TREATMENT FACILITY: The wastewater will be discharged to the KIAWAH ISLAND UTILITY INC (NPDES permit ND0017361) at a design flow rate of 8100 gallons per day (GPD).

STANDARD CONDITION:

NOTE: In accepting this permit, the owner agrees to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection. This is a permit for construction only and does not constitute DHEC approval, temporary or otherwise, to place the system in operation. An Approval to Place in Operation is required and can be obtained following the completion of construction by contacting the CHARLESTON EQC OFFICE at 843-953-0150. Additional permits may be required prior to construction (e.g., Stormwater).

SPECIAL CONDITIONS:

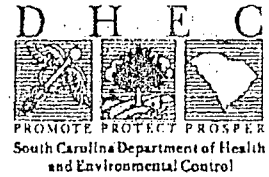
1. All construction/materials for this project must conform to the Standard Specifications for THOMAS & HUTTON ENGINEERING CO.
2. Design and construction of force mains shall be such that they satisfy a leakage test in accordance with AWWA C-600 (DIP) or AWWA C-605 (PVC).
3. The top elevation of all manholes must be equal to or greater than the ground level elevation.
4. A reduced pressure backflow prevention device must be provided for the water line at the pump station site.
5. See attached DHEC Office of Ocean and Coastal Resource Management certification issued May 28, 2015 for additional conditions related to the Coastal Zone Consistency determination. This Wastewater Construction Permit is only applicable for the permit application last revised May 26, 2015 that was submitted for this project. All modifications must be evaluated as detailed in R.61-67.300.A.1 to determine whether or not a modification or new construction permit is required.

PERMIT NUMBER:	38828-WW
ISSUANCE DATE:	May 28, 2015
EXPIRATION DATES:	Construction must be completed and the Approval to Place in Operation granted prior to May 28, 2018 or this permit will expire.

*Ann R. Clark*  
Ann R. Clark, Director  
Stormwater, Construction, and Agriculture  
Permitting Division

GBA (c)

# Water Supply Construction Permit Bureau of Water



Permission is Hereby Granted To: **KRA DEVELOPMENT LP  
14 NORTH ADGERS WHARF  
CHARLESTON SC 29401**

For the construction of a distribution system in accordance with the construction plans, specifications, design calculations and the SCDHEC Construction Permit Application signed by Tony M. Woody PE, Professional Engineer, S.C. Registration Number: 14545.

Project Name: **CAPE CHARLES PHASE 1** County: **Charleston**  
Location: **Near terminus of Beachwalker Drive, Kiawah Island, South Carolina**

Project Description: **Approximately 5000 LF of 10" PVC water line and 7 fire hydrants to serve 26 residential lots, a pump station service and one community dock site.**

Service By: **Water will be provided by the Kiawah Island Utility Inc. (System Number: 1010008).**

**Special Conditions:**

1. All construction and materials for this project must conform to the Standard Specifications for THOMAS & HUTTON ENGINEERING CO.
2. See attached DHEC Office of Ocean and Coastal Resource Management certification issued May 28, 2015 for additional conditions related to the Coastal Zone Consistency determination. This Water Supply Construction Permit is only applicable for the permit application last revised May 26, 2015 that was submitted for this project. All modifications must be evaluated as detailed in R.61-58.1.B to determine whether or not a modification or new construction permit is required.

In accepting this permit, the owner agrees to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection.

*NOTE: This is a permit for construction only and does not constitute State Department of Health and Environmental Control approval, temporary or otherwise, to place the system in operation. An Approval to Place in Operation is required and can be obtained following the completion of construction by contacting the CHARLESTON EQC OFFICE at 843-953-0150. Additional permits may be required prior to construction (e.g., stormwater).*

Permit Number: **30395-WS**  
Date of Issue: **May 28, 2015**  
Expiration Date: **Construction must be completed and the Approval to Place in Operation granted prior to May 28, 2018 or this permit will expire.**

**Ann R. Clark, Director  
Stormwater, Construction, and Agriculture  
Permitting Division**

GBA(c)



W. Marshall Taylor Jr., Acting Director

*Preserving and protecting South Carolina's public health and environment*

**VIA CERTIFIED MAIL**

May 28, 2015

RAY PANTLIK  
KDP II LLC  
PO BOX 12001  
CHARLESTON SC 29422

RE: CAPE CHARLES PHASE I, Charleston County  
File Number: 10-11-08-02  
NPDES Coverage Number: SCR100913

Dear Mr. Pantlik:

The Department of Health and Environmental Control (Department or DHEC) has approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on **May 28, 2015**. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Stormwater Discharges from Construction Activities SCR100000 (CGP), this project has been granted coverage under the CGP. This project's general permit coverage number is **SCR100913**. The total disturbed area for this site is **12.8 acres**.

See attached DHEC Office of Ocean and Coastal Resource Management (DHEC-OCRM) certification dated 5/28/15 for additional conditions related to the Coastal Zone Consistency determination.

Following is a table depicting the maximum amount of disconnected impervious area allowed per residential lot based upon the stormwater management design approved for this project. If any additional impervious surface will be added to a residential lot, you must notify the Coastal Stormwater Permitting Section in writing and receive approval before any of the additional impervious area is added to a specific lot.

## Exhibit 1

Lot #	Maximum Disconnected Impervious Area (sq. ft.)
101	4003
103	4114
105	4501
106	3550
108	3445
112	5501
114	5614
116	5519
120	6438
124	7482
128	9593
160	8697
107	4424
109	5040
111	4675
113	4290
115	4275
117	5400
119	4500
121	5180
123	5400
125	5208
127	5220
129	4300
131	5220
133	5220

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

The CGP can be downloaded at the following website:

<http://www.sedhec.gov/environment/water/swater/docs/CGP-permit.pdf> or you may request a copy from us via email ([stormwatercgp@dhec.sc.gov](mailto:stormwatercgp@dhec.sc.gov)). You are responsible for ensuring your contractor(s) complies with the approved SWPPP and the minimum requirements of the CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act), SC Pollution Control Act, and the Federal Clean Water Act (CWA). Failure to comply with the approved SWPPP or applicable statutes and regulations may result in enforcement actions.

## Exhibit 1

You must notify the manager of the Coastal Stormwater Permitting Section prior to starting any land disturbing activity at 843-953-0240. Written notification may also be provided and sent to the attention of the manager of the Coastal Stormwater Section at 1362 McMillan Avenue, Suite 400, Charleston, SC 29405.

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

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

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

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

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

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

You are responsible for obtaining any other federal, state, or local permit that may be required for this project. In particular, any permits through the U.S. Army Corps of Engineers for the placement of fill material in Waters of the United States. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

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

## Exhibit 1

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

If you have any questions or cannot access the referenced websites, please call me at 843-953-0240.

Sincerely,



Shannon Hicks, P.E., Manager  
Coastal Stormwater Permitting Section

cc: Tony M Woody PE---Thomas & Hutton Engineering Co. - Via Certified Mail  
Amy Armstrong - S.C. Environmental Law Project - Via Certified Mail  
Amy Armstrong - Coastal Conservation League - Via Certified Mail

cc: Region 7, Charleston EQC Office



South Carolina Department of Health and Environmental Control

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

For Official Use Only

File Number:
Permit Number: SCR10
Submittal Package Complete:

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

SOUTH CAROLINA
DEPT OF HEALTH AND ENVIRONMENTAL CONTROL
ENVIRONMENTAL QUALITY CONTROL
STORMWATER PERMITTING SECTION
APPROVED - FOR CONSTRUCTION ONLY
DHEC PERMIT: SCR100913
FILE: 10-11-08-02
DATE ISSUED: 5-28-15
BY: Shannon

Date: 05/28/2015

Project/Site Name: Capo Charles Phase 1

County: Charleston

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

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

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

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

- New Project (Initial Notification)
Ongoing Project: Permitted or Un-Permitted
Late Notification
Low Impact Development (LID) or Project Design Above Regulatory Requirements
New Owner/Operator or Company Name Change
Major Modification
MS4 Project Review
Ocean and Coastal Resource Management (OCRM) Review
Change of Information/Other (Specify):

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

II. Primary Permittee Information

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

A. Primary Permittee Name: KDP II LLC (Ray Pantlik)

Mailing Address: 14 North Adgers Wharf City: Charleston State: SC Zip: 29401
Phone: 843-768-3418 Fax: 843-768-8945 Email Address: rp@klawah.com

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

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

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

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

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

A. C-SWPPP Preparer Name: Tony Woody, PE

B. Registered Professional: Engineer Landscape Architect Tier B Land Surveyor S. C. Registration #: 14545

C. Company/Firm Name: Thomas & Hutton Engineering Co. S. C. COA #: 00285

Mailing Address: 682 Johnnie Dadds Blvd., Suite 100 City: Mt. Pleasant State: SC Zip: 29464
Phone: 843-849-0200 Fax: 843-849-0203 Email Address: woody.t@thomasandhutton.com

IV. Project/Site Information

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

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

B. Site Address/Location (street address, nearest intersection, etc.):

City/Town (if in limits): Zip Code:

Latitude: 32 ° 35 ' 3" N Longitude: - 80 ° 8 ' 6" W (Source): GPS Web Site: MAY 28 2015

Tax Map Number (s) (List all): 207-05-011-0011, 207-00-00-001

**Exhibit 1**

- C. Is this site located on Indian Land?  Yes  No
- D. Proposed Start Date: 09/15/2014 Proposed Completion Date: 09/15/2015
- E. Disturbed Area (nearest tenth of an acre): 12.8 Total Area (acres): 173.0
- F. Modification Only: (nearest tenth of an acre):                      Disturbed Area: Current (Approved) Area:                       
 Disturbed Area Change (Increase Only):                      Total Disturbed Area (After Change):
- G. Is this project part of a Larger Common Plan for Development or Sale (LCP)?  Yes  No  
 LCP/ Overall Development Name: Cape Charles Check here if this is the First Phase
- Previous State Permit/File Number:                      Previous NPDES Coverage Number: SCR10
- H. Any Flooding Problems exist downstream of or adjacent to this site?  Yes  No (If yes, provide detailed description of flooding problems and applicable floodway/flood zone information in the C-SWPPP).
- I. Active S.C. DHEC Warning Notice, Notice to Comply or Notice of Violation for this site or LCP?  Yes  No
- J. List Relevant State and Federal Environmental Permits or Approvals applied for or obtained for this site (e.g., RCRA, USACOE, Nationwide, etc.). If None, list None.  
None

- K. Any Waiver(s)/Variances/Exceptions Requested for this Project? (If yes, identify below and include Waiver Request and Justifications in the C-SWPPP for each proposed request).
- |  |   |
|--|---|
| 1. Small Construction Activity Waiver(s) From NPDES permitting (Section 1.4 & Appendix B)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                 |   |
| If yes, identify requested waiver: <input type="checkbox"/> Rainfall Erosivity Waiver <input type="checkbox"/> TMDL Waiver <input type="checkbox"/> Equivalent Analysis Waiver |   |
| 2. Detention Waiver (72-302(B))? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   | 3. Other (Specify): <u>                    </u> |

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

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

1. Name of Receiving Waterbodies (RWB)	2. Distance to RWB (feet)	3. Classification of RWB
a. Nearest: <u>Kiawah River</u>	0	SFH
b. Next Nearest: <u>Atlantic Ocean</u>		SFH
c. Coastal Zone ONLY: Coastal Receiving Water (CRW): <u>Kiawah River</u>	0	Not Applicable
d. Other Waterbodies: <u>                    </u>		

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

Waters of the U.S./ State	1. On the site?		2. Delineated/ Identified?		3. Impacts?		4. Amount of impacts
a. Jurisdictional wetlands	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No	___ Ac
b. Non-jurisdictional wetlands	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No	___ Ac
c. Other Water(s): <u>                    </u>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No	___ Ac ___ Feet
d. Coastal Zone ONLY: Direct Critical Area	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	___ Ac ___ Feet

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

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

1. Are S. C. Navigable Waters (SCNW) on the site: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
a. If no, do not complete this question. Proceed to Section D (Impaired Waterbodies).		
b. If yes, provide the name of S.C. Navigable Waters (SCNW) on the site: <u>                    </u>		
2. If yes for C.1, will construction activities cross over or occur in, under, or thru the SCNW? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, describe SCNW activities (e.g., road crossing, sub-aqueous utility line, temporary or permanent structures, etc.) and proceed to Section C.3: <u>                    </u>		
3. Identify permits providing coverage of SCNW activities proposed for your site. If NONE, list none. NONE		
Permits/Certifications	Permit or Certification No.	Corresponding Covered SCNW Activity(ies)
a. DHEC General/ Other DHEC Permit		
b. USACOE 404 Permit or 401 Certification		
c. SCNW Permit		<input type="checkbox"/> All Activities or <input type="checkbox"/> Some Activities (Describe):
If applied for or issued, identify Date applied for or Issued: <u>                    </u>		
d. If a SCNW Permit has <b>NOT</b> been applied for provide an additional plan sheet that shows plan and profile views (drawn to scale) of the SCNW and associated activities. Include a description of all proposed activities on this plan.		

**RECEIVED**  
MAY 20 2015

**Exhibit 1**

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

1. 303(d) Listed Impaired Waterbodies						
a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4 and the Name of the Corresponding Waterbody?		b. Is this WQMS(s) listed on the most current 303(d) List? If No, proceed to Section 2 of this table. If Yes, complete Items c thru f.		c. List the pollutant(s) identified as "CAUSES" of the impairment	d. Will any pollutants causing the impairment be present in your site's construction stormwater discharges?	e. If yes for d, list the "USE SUPPORT" impairment(s) affected by the pollutant(s) identified in c.
Nearest DHEC WQMS(s)	Corresponding Waterbody	Yes	No		Yes	No
11-23	Kiawah River	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
11-22	Kiawah River	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
MD-273	Kiawah River	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CU	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

2. TMDL Impaired Waterbodies						
a. Name of Nearest DHEC Water Quality Monitoring Stations (WQMS)(s) that receives stormwater from your construction site and/or thru an MS4?		b. Has a TMDL(s) been developed for this WQMS(s)? If No, identify as such below and proceed to Section VI. If Yes, complete Items c thru f of this table.		c. If yes for b, what pollutants are listed as "CAUSES" or causing the impairment?	d. If yes for b, has the standard been "ATTAINED" or "Fully Supported" for the impairment(s)?	e. If no for d (Not Attained), will any pollutants causing the impairment be present in your site's construction stormwater discharges?
Nearest DHEC WQMS(s)	Corresponding Waterbody	Yes	No		Yes	No
11-23		<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
11-22		<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
MD-273		<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

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

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

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

Tony Woody, PE 14545  
 Printed Name of C-SWPPP Preparer Signature of C-SWPPP Preparer S. C. Registration #

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

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

Ray Pantlik, PE Director of Development  
 Printed Name of Primary Permittee Title/Position 5-28-15  
 Signature of Primary Permittee Date Signed

**RECEIVED**  
MAY 28 2015


## Exhibit 1



W. Marshall Taylor Jr., Acting Director

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

### Coastal Zone Consistency Certification

To: Shannon Hicks, PE, Manager, EQC BOW Coastal Stormwater Permitting  
Gina Abbott, Project Manager, EQC BOW Construction Permitting  
From:  Curtis Joyner, Manager, OCRM Coastal Zone Consistency  
Cc: Rhea DiNovo, Director Regulatory Division  
Re: Cape Charles, Phase I  
Site location: Terminus of Beachwalker Drive, Kiawah Island, Charleston County  
Date: May 28, 2015  
CZC #: CZC-13-0336  
PN#: SCR100913 and Construction Permit Application - Water/Wastewater Facilities

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The staff of the Division of Ocean and Coastal Resource Management (OCRM) has reviewed the above referenced Coastal Zone Consistency request for 12.8 acres of land disturbance associated with the construction of a twenty-six (26) lot single-family residential development which includes a roadway, stormwater management system and water and sewer utility lines. The project is Consistent with the (1) Residential Development, (2) Transportation Facilities – Roads and Highways, (3) Recreation and Tourism (Public Open Spaces), (4) Public Services and Facilities – Sewage Treatment and Water Supply, (5) Stormwater Management Guidelines, (6) Activities in Areas of Special Resource Significance – Barrier Islands and Dune Areas, (7) Geographic Areas of Particular Concern – Threatened or Endangered Species Habitats, (8) Beach and Shoreline Access policies as well as the Guidelines for Evaluation of All Projects contained in the S.C. Coastal Zone Management Program provided the applicant adheres to the following conditions:

1. The permittee must submit an updated Critical Area Line for review and approval 30 days prior to initiation of construction. Impacts to tidelands critical area associated with any aspect of construction or construction related activities is not authorized.
2. The 2,380-linear feet of erosional riverbank of the Kiawah River must be stabilized by the construction of an in-ground steel sheet pile wall (SSPW). The sheet pile wall must be constructed in accordance with and per the phasing detailed in the construction drawings last revised April 10, 2015, and signed by Tony M. Woody, PE on April 13, 2015. The erosion control structure must be installed and the surrounding area stabilized before construction of any portion of the project (roadways, utilities, residential development, etc.) can occur.

## Exhibit 1

3. To ensure there are no impacts to the tidelands critical area, the developer/owner must construct the SSPW prior to any work commencing on any other aspect of the development. Temporary access to the SSPW site can be installed prior to the SSPW
4. The impact footprint of each home-site must conform to Low Impact Development (LID) practices during construction to ensure that long term, permanent low impact practices are instituted as agreed upon in the Planned Unit Development agreement between the Town of Kiawah and the developer/owner, signed December 5, 2013, and in the revised application and report dated April 13, 2015.
5. No pole mounted lighting is allowed within the development, including associated with habitable structures, and all landscape lighting must be shielded to direct illumination downward away from the beachfront.
6. The number of shared beach access walkways is limited to eight (8) as agreed to in the Planned Unit Development Agreement between the Town of Kiawah and the developer/owner, signed December 5, 2013, and also referenced in the NPDES Construction General Permit for Stormwater Discharges for Large and Small Construction Activities permit application dated April 13, 2015
7. A conservation easement must be placed on the 33.20 unimpacted upland acres<sup>1</sup> consistent with the agreed upon conditions in the Planned Unit Development agreement between the Town of Kiawah and the developer/owner, signed December 5, 2013. A copy of the recorded easement must be submitted to SCDHEC within 90 days of the issuance of the NPDES permit and prior to commencement of any construction activities.
8. In the event that any historic or cultural resources and archaeological or paleontological remains are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Code of Laws. Historic or cultural resources consist of those sites named to the National Register and those sites that are eligible for the National Register and other areas of special historic significance. Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (i.e., older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons

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<sup>1</sup> Acreage derived from letter William Fellers of Thomas & Hutton letter dated November 20, 2014.

# Exhibit 1

## South Carolina Board of Health and Environmental Control

### Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

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

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

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

#### I. Filing of Request for Final Review

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

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

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will respond to

## Exhibit 1

the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

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

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

### II. Final Review Conference Scheduling

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

### III. Final Review Conference and Decision

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

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true copy of the foregoing **RETURN OF RESPONDENTS KDP, II, LLC AND KIAWAH DEVELOPMENT PARTNERS, II TO APPELLANT'S MOTION TO TRANSFER CASE TO SUPREME COURT** by delivering copies to the following counsel/parties on **May 28, 2019**, by first class mail (postage prepaid, properly addressed) and/or by electronic mail to the following:

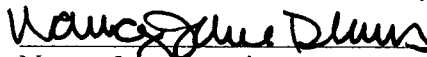
Amy E. Armstrong, Esq.  
Jessie Allison White, Esq.  
S.C. Environmental Law Project  
P.O. Box 1380  
Pawleys Island, SC 29585

Bradley D. Churdar, Esq.  
Chief Counsel, DHEC-OCRM  
1362 McMillan Ave., Suite 400  
Charleston, SC 29405

**RECEIVED**

**MAY 30 2019**

**SC Court of Appeals**



Nancy Jane Dennis  
Paralegal



G. Trenholm Walker  
Thomas P. Gressette, Jr.  
Ian W. Freeman  
John P. Linton, Jr.  
Charles P. Summerall, IV

THOMAS P. GRESSETTE, JR.  
Direct: 843.727.2249  
Email: Gressette@WGFLAW.com

May 28, 2019

U.S. MAIL [X] FASCIMILE [X]

Hon. Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**RECEIVED**  
MAY 30 2019  
SC Court of Appeals

Re: South Carolina Coastal Conservation League v. SCDHEC, et al.  
Supreme Court Appellate Case No. 2019-00841  
Court of Appeals Case No. 2019-00074

Dear Mr. Shearouse:

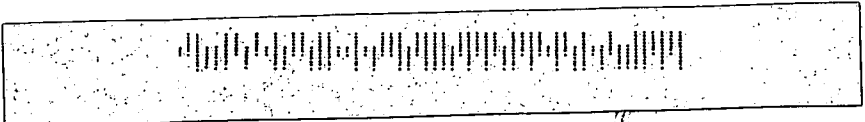
Enclosed for filing with the court please find the original and six copies of Return of Respondents KDP, II, LLC and Kiawah Development Partners, II, to Appellant's Motion to Transfer Case to Supreme Court. Also enclosed is the Proof of Service.

Sincerely,

Thomas P. Gressette, Jr.

Enclosure (Return)

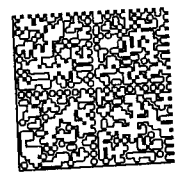
c: Hon. Jenny Abbott Kitchings  
Bradley D. Churdar, Esq.  
Amy E. Armstrong, Esq.  
Jessie Allison White, Esq.



**WALKER  
GRESSETTE  
FREEMAN  
LINTON LLC**

66 Hasell Street, Charleston, SC 29401  
PO Box 22167, Charleston, SC 29413

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MAY 30 2019  
SC Court of Appeals

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

