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GUIDELINES FOR EVALUATION OF ALL PROJECTS

S.C. SUPREME COURT

- I. In review and certification of permit applications in the coastal zone, the Coastal Council will be guided by the following general considerations (apply to erosion control and energy facility projects, as well as activities covered under Resource Policies):
- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for the Coastal Council in implementation of its management program, these being:
 - a) "To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;
 - b) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations." (Sections 2(B)(1) and (2), S.C. Coastal Management Act of 1977).
 - 2) The extent to which the project will have adverse impacts on the "critical areas" (beaches, primary ocean-front sand dunes, coastal waters, tidelands).
 - 3) The extent to which the project will protect, maintain or improve water quality, particularly in coastal aquatic areas of special resource value, for example, spawning areas or productive oyster beds.
 - 4) The extent to which the project will meet existing State and Federal requirements for waste discharges, specifically point sources of air and water discharge, and for protection of inland wetlands.
 - 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities.
 - 6) The extent to which the project is in compliance with local zoning and/or comprehensive plans.
 - 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.
 - 8) The extent and significance of negative impacts on Geographic Areas of Particular Concern (GAPCs). The determination of negative impacts will be made by the Coastal Council in each case with reference to the priorities of use for the particular GAPC. Applications which would significantly impact a GAPC will not be approved or certified unless there are no feasible alternatives or an overriding public interest can be demonstrated, and any substantial environmental impact is minimized.
 - 9) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources:
 - i) unique natural areas — destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards;
 - i i) public recreational lands — conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas;
 - i i i) historic or archeological resources — ir retrievable loss of sites identified as significant by the S.C. Institute of Archeology and Anthropology or the S.C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.
 - 10) The extent to which the project is in the national interest.

11. "In critical areas of the coastal zone, it is Council policy that, in determining whether a permit application is approved or denied, the Council shall base its determination on the individual merits of each application, the policies specified in Sections 1 and 2 (of the Act), and be guided by the following general considerations:
- 1) The extent to which the activity requires a waterfront location or is economically enhanced by its proximity to the water.
 - 2) The extent to which the activity would harmfully obstruct the natural flow of navigable water. If the proposed project is in one or more of the State's harbors or in a waterway used for commercial navigation and shipping or in an area set aside for port development in an approved management plan, then a certificate from the South Carolina State Ports Authority declaring the proposed project or activity would not unreasonably interfere with commercial navigation and shipping must be obtained by the Council prior to issuing a permit.
 - 3) The extent to which the applicant's completed project would affect the production of fish, shrimp, oysters, crabs or clams or any marine life or wildlife or other natural resources in a particular area including but not limited to water and oxygen supply.
 - 4) The extent to which the activity could cause erosion, shoaling of channels or creation of stagnant water.
 - 5) The extent to which the development could affect existing public access to tidal and submerged lands, navigable waters and beaches or other recreational coastal resources.
 - 6) The extent to which the development could affect the habitats for rare and endangered species of wildlife or irreplaceable historic and archeological sites of South Carolina's coastal zone.
 - 7) The extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state.
 - 8) The extent of any adverse environmental impact which cannot be avoided by reasonable safeguards.
 - 9) The extent to which all feasible safeguards are taken to avoid adverse environmental impact resulting from a project.
 - 10) The extent to which the proposed use could affect the value and enjoyment of adjacent owners." (Section 15(A), S.C. Coastal Management Act of 1977)

RESOURCE POLICIES

On the following pages are the Resource Policies for each of the identified Activities Subject to Management. A brief statement of findings describes why each activity is of coastal management concern. These policies are organized in three separate sections:

- 1) Policies for the coastal zone, including that portion outside the critical area in which the Coastal Council has indirect authority (review and certification).
- 2) Policies for the critical areas, where the Coastal Council has direct permit authority. These policies are the Rules and Regulations for Permitting (R. 30-1 through 30-11, S.C. Code of Laws of 1976). Each policy or group of policies appears with a citation ("R. 30-___") for the corresponding regulation.
- 3) Recommended or enhancement policies which are endorsed by the Coastal Council.

Policies 1) and 2) are those which the Coastal Council is authorized to enforce through the authority of the coastal program and the S.C. Coastal Management Act of 1977. These policies are highlighted in the text with a bold outline along the margins.

Following the policies for each activity is a brief discussion of the management authority which will implement these policies. A matrix at the end of this section illustrates the network of implementation authorities. Chapter V(A) further documents the existing legal authorities.

1 engineering side, being responsive to what's on
2 the ground, trees, contours, and that type of
3 thing, the natural blessings of a site?

4 A: I would say more than responsive. I would say
5 they are insistent that we take special care
6 with the land. I mean, they've been the
7 driving force and have been a great client
8 because we've created some things that, quite
9 frankly, typical highway engineers just
10 wouldn't do and aren't allowed to do. They've
11 created some really special places.

12 Q: Since you've worked for so many of these
13 high-end developers, where would you rank KDP
14 in terms of insisting on environmental
15 sensitivity and then blending with engineering
16 design in comparison to others?

17 A: Oh, they're at top of the list.

18 Q: All right. Now, let's talk about Captain
19 Sam's. Do you recall when you were first
20 contacted by KDP about any issue dealing with
21 erosion on Captain Sam's?

22 A: I think it was late 2006, maybe early 2007.

23 Q: And what was your specific understanding of
24 what you were to look into?

25 A: Well, there was concern that Charleston County

1 PRC had applied for a permit and had gotten a
2 permit to do a bulkhead along Beachwalker Park.

3 Q: Now, I'm going to stop you. You're saying
4 they -- had they actually gotten the permit?

5 A: I'm not sure chronologically about that.

6 Q: I don't want you to testify to anything you
7 aren't sure about.

8 All right. So there's an application by
9 Charleston PRC.

10 A: Correct.

11 Q: Was there any -- did you have any understanding
12 about an access corridor? Were there any
13 discussions about an access corridor in the
14 neck of the spit?

15 A: I think there were, yes. In kind of developing
16 that ongoing conversation, that the access
17 corridor to the spit became one of the
18 considerations. We certainly didn't want
19 anything to happen -- we were really concerned
20 about end conditions on the PRC permit. If
21 they put a bulkhead, there would have been
22 probably -- there are usually some -- if you
23 don't design it correctly and don't take --
24 aren't really careful, you'll have some adverse
25 end conditions and we were worried that adverse

1 end conditions would contribute to increased
2 erosion in that area and actually narrow the
3 spit even more.

4 Q: Did you make any recommendation to KDP about
5 involving other consultants to work with you?

6 A: Oh, yes, certainly. Again, I had grave concern
7 about the PRC bulkhead and then when we were
8 asked to design the bulkhead/revetment, I said,
9 "What do we need to do to protect that?" I was
10 concerned what would happen in -- not only in
11 that area, but also other impacts.

12 Q: Did you make any recommendations about
13 involving other consultants?

14 A: Yes, I did. I suggested they hire Dr. Oertel
15 and Dr. Basco.

16 Q: Did they do that?

17 A: Yes, they did.

18 Q: Did your firm work in conjunction with
19 Drs. Oertel and Basco in addressing the issues
20 there near the neck at the river bend on
21 Captain Sam's?

22 A: Yes. Yes, we did.

23 Q: Did Drs. Oertel and Basco provide you certain
24 information and opinions related to what they
25 believed to be the processes at work out there

1 put in the application?

2 A: I don't remember when we had construction
3 drawings beforehand. I mean, I think -- there
4 may be a case, but it is more typical that we
5 submit these schematic drawings and then once
6 we get a permit, then we do the final design
7 and final construction drawings.

8 Q: When you do the final construction drawings, is
9 that done in conjunction with OCRM?

10 A: Well, we usually send them a set of plans so
11 they know what's going on, yes, so -- you know,
12 occasionally, they'll be a slight tweak on the
13 permit. In fact, it's probably -- in this kind
14 of environment, it's as much a rule as it is
15 the exception that when you get a final design,
16 you'll tweak something a little bit different
17 than what you anticipated.

18 Q: In this instance, after you submitted the
19 application to OCRM on February 29, 2008, did
20 OCRM ever come back to you and ask for more
21 clarification over your drawings or
22 construction drawings or anything like that?

23 A: No, they did not.

24 Q: Did you believe that what you were proposing
25 constituted a comprehensive solution?

1 **A:** Well, we did. You know, we looked at lots of
2 things and we felt like it was a good
3 comprehensive solution, protecting all the way
4 from the park down through the neck area where
5 the zone of erosion was occurring.

6 MR. WALKER: At this point, Your Honor -- well, let
7 me qualify a little bit more.

8 **Q:** Mr. Bohannon, you're a licensed engineer. Does
9 your license include or would you have the
10 authority under your license to design
11 structures like this revetment?

12 **A:** Yes.

13 **Q:** Do you have people in your office who also
14 design structures, revetment structures?

15 **A:** Yes, we do.

16 **Q:** Are these competent, capable people?

17 **A:** Very competent, very capable.

18 **Q:** Have you, in your career, evaluated designs for
19 structures like this to determine whether they
20 are sufficient for their intended purpose?

21 **A:** I've been the project manager, project
22 principal on a number of these where we
23 evaluate them, yes. Now, the detail design, I
24 have not done, but in general, to make sure it
25 meets the intended purpose and -- yes.

1 Q: Have you been out and walked the site, the
2 specific location where it's proposed?

3 A: I have, yes.

4 Q: In the specific location where proposed, do you
5 see oysters on the bank in any particular spot
6 where it's proposed?

7 A: There were a few there, a couple of old dead
8 trees and stuff, an old rusty pipe. There was
9 some oysters growing on those.

10 Q: Have you gone out and seen these ACB mats after
11 they've been in the intertidal zone for a good
12 bit of time?

13 A: Yes, sir, I have.

14 Q: Do oysters often cling to them?

15 A: Oh, they generally propagate in that intertidal
16 zone, yes. I say that, if they're not covered
17 with marsh -- with mud. But the areas where
18 the ACB is exposed, the oysters will propagate.

19 Q: There's been some discussion about the length
20 of the revetment. How is the length and the
21 location of the revetment determined?

22 A: Well, we went out in the field. I mean, we've
23 had survey data and a number of studies done.
24 We've actually been in the field and located
25 kind of the beginning and end the erosion zones

1 and that's where the revetment -- we're asking
2 to put a revetment. It's pretty clear when you
3 go in the field where it starts and stops.

4 Q: And when you scaled it out, did it come to
5 whatever the distance is, 2,763 or 83 feet?

6 A: I think it's 2,783.

7 Q: Is that what the scaled distance was?

8 A: That was the scaled distance.

9 Q: Within the last two weeks, did you go out and
10 walk the site, again?

11 A: Yes, sir, I did. In fact, I was out there last
12 week.

13 Q: Who did you go out with?

14 A: I went with Mark Permar.

15 Q: Did you go from one end to the other?

16 A: We walked from one end to the other end and
17 then some.

18 Q: Did Mark take a series of pictures?

19 A: Yes, he did.

20 Q: Have you seen those pictures?

21 A: I have.

22 Q: Do those pictures fairly and accurately depict
23 what you saw when you went out there?

24 A: Yes, they do.

25 Q: Do they fairly and accurately depict the