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

**S.C. Board of Health and Environmental Control**  
2600 Bull Street, Columbia, SC 29201  
Telephone: (803) 898-3309 Fax: (803) 898-3393

BOARD:  
Henry C. Scott  
M. David Mitchell, MD  
Glenn A. McCall  
Coleman F. Buckhouse, MD

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**ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW  
AND NOTICE OF PROCEDURES**

**TO:** *Lorna Hattler, Requestor*  
*Samantha J. Siegel, Requestor*  
*Wm. Michael Gruenloh, Requestor*  
*Sea Island Phases 1A, 1B and 1C (Angel Oak Village -- AOD, LLC), Applicant*  
*Davis Whitfield-Cargile, Attorney for Department*

**FROM:** *Lisa Lucas Longshore, Clerk*

**RE:** **Docket No. 10-RFR-24** – Decision dated March 23, 2010, approving NPDES General Permit for Stormwater Discharge #SCR10J500.

**DATE:** *March 26, 2010*

Requests for Final Review of the above-referenced decision were filed on March 24 by Lorna Hattler and Samantha J. Siegel and on March 25 by Wm. Michael Gruenloh. Copies of the requests are attached.

**PROCEDURES FOR FINAL REVIEW CONFERENCE**

The Board of Health and Environmental Control has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair. If a final review conference is scheduled, all parties will be given at least 10 days' written notice of the conference.

Procedures for the final review conference are provided in S.C. Code Section 44-1-60. The final review conference is not a formal hearing. Final review conferences are open to the public. The burden of proof in a conference is on the Requestor.

During the final review conference, the Department must explain the Department decision and the materials relied upon in the administrative record to support the Department decision. The applicant or affected party shall state the reasons for protesting the Department decision. All parties may provide evidence to support affirming, amending, modifying, or rescinding the Department decision. All parties may rebut information and arguments presented by other parties. The officials conducting the final review conference may request additional information and may question the applicant or affected party, the Department, and anyone else providing information at the conference.

Any party may request a transcript of the proceedings of the final conference by mailing a request for a transcript to the Clerk of the Board at the above address within 30 days of the date of this memorandum, along with a statement that the party will pay all costs of the transcript.

The parties are encouraged to engage in mediation during the final agency review process. The terms of any mediation, including selection and payment of a mediator, must be agreed to by all parties. Any mediation must be completed in time to allow compliance with statutory time frames unless all parties agree to a waiver of such time limits.

**FURTHER APPEAL IF FINAL REVIEW CONFERENCE IS NOT CONDUCTED**

If a final review conference is not conducted within 60 days from the date of receipt of a Request for Final Review, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court (ALC) within 30 days after the deadline for the final review conference. A request for a contested case hearing before the ALC must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OGC # 21047

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**S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393**

**CERTIFICATE OF SERVICE**

I, Lisa Lucas Longshore, Clerk, S.C. Board of Health and Environmental Control, with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 26<sup>th</sup> day of March 2010 served the foregoing *Acknowledgement of Request For Final Review and Notice of Procedures – Docket No. 10-RFR-24* upon all parties and counsel of record by placing a copy of same in an envelope and depositing it in the U.S. Mail, as indicated below, with sufficient postage paid, at the address indicated below:

U.S. Mail

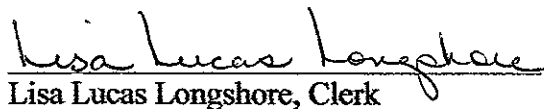
Lorna Hattler  
731 Sonny Boy Lane  
Johns Island, SC 29455

Samantha J. Siegel  
176A Broad Street  
Charleston, SC 29401

Wm. Michael Gruenloh, Esq.  
*Cone Gruenloh Law Firm*  
9 Broad Street, Suite C  
Charleston, SC 29401

Via Interagency Mail Delivery

Davis Whitfield-Cargile, Esq.  
*SCDHEC – Office of General Counsel*  
1362 McMillan Avenue, Suite 400  
Charleston, SC 29405

  
Lisa Lucas Longshore, Clerk

March 26, 2010  
Columbia, South Carolina

# Cone Gruenloh Law Firm

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## Facsimile Coversheet

Date: March 25, 2010

Recipient: Richard Geer  
Clerk of the Board

Fax Number: (843) 953-0201  
(803) 898-3393

From: Mike Gruenloh

Regarding: SEA ISLAND PHASES 1A, IB & 1C,  
Charleston County File Number: 10-05-11-  
07A NPDES Coverage Number: SCRI0J500

Notes: Please see the attached correspondence.

*The information contained in this facsimile is confidential and may be attorney client privileged information and/or work product. If you are not the recipient listed above please contact us at the number below. If you did not receive all 5 pages please contact us at the number below.*

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S.C. DEPT OF HEALTH  
& ENVIRONMENTAL CONTROL

2010 MAR 26 AM 8:19

OFFICE OF THE COMMISSIONER  
CHIEF OF STAFF  
CLERK OF SCDHEC BOARD

# Cone Gruenloh Law Firm

(843) 577-0027 (office)  
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9 Broad Street - Suite C  
Charleston, South Carolina 29401

P. Jay Cone II NC & SC  
Wm. Michael Gruenloh

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**Delivered via email [geerry@dhec.sc.gov](mailto:geerry@dhec.sc.gov) and facsimile (843) 953-0201 and 803-898-3393**

Clerk of the Board  
SC DHEC 2600  
Bull Street Columbia, SC 29201

Richard V. Geer  
Engineer Associate  
Regulatory Programs Division  
OCRM - DHEC

March 25, 2010

Re: SEA ISLAND PHASES IA, IB & IC, Charleston County File Number: 10-05-11-07A NPDES Coverage Number: SCRI0J500

Dear Clerk of the Board and Mr. Geer:

Please accept this letter as our request for a final review of this matter pursuant to 2006 Act No. 387. There are multiple procedural and substantive failures related to the application, public notice and determination in this matter. They have been previously communicated to OCRM but OCRM has failed to take any action to correct the problems. The following is an attempt to summarize some of the more pressing concerns. We reserve our right to add to this list and will provide any additional grounds for reversal of the above referenced approval prior to the final hearing in this matter.

## **LACK OF PUBLIC NOTICE**

The public notice for the storm water application for this project was published on August 1, 2008. However there was nothing in the public notice for this project indicating that the applicant is proposing to impact 4.23 acres of non-isolated wetlands. The only mention of the wetlands that we could find in OCRM's file was OCRM's Amended Approval of March 24, 2010 which indicates that OCRM took into consideration the fact that the Army Corps of Engineers has found that the subject property contains jurisdictional (non-isolated) wetlands. That Amended Approval was only issued after OCRM received complaints related to the approval and the applicants failure to provide correct information.

OCRM is responsible for identifying impacts to wetlands by including a specific reference to those impacts in the storm water public notice and by placing this reference to wetlands impacts in bold and underlined text. This was clearly not done and as a result of the defective notice, the public has been deprived of an essential right of notice that was specifically granted to them by the Federal and State legislatures. OCRM has indicated that it relied upon prior applications and notices and that when taken together all the applications comprehensively meet its duty to notice the public. That suggestion is absurd given the fact that the prior applications were made in different names and were years apart. Further, the fact remains that none of the applications related to this property provide full and accurate information. As a result, the public has never been given proper notice that OCRM's approval gives the applicant the right to fill over 4 acres of non-isolated wetlands.

The lack of proper notice is not just a procedural matter and it has real implications here. Even adjacent property owners were not given proper notice and are therefore unaware of the wetland and drainage impacts of the proposed development upon their property.

#### **FAILURE TO OBSERVE THE CZMP**

OCRM is charged with ensuring that any impacts to wetlands are consistent with the Coastal Zone Management Program (CZMP). Based upon our review of the Angel Oak Village project and the CZMP, the development is inconsistent with the CZMP. Our review is based in part upon the studies conducted by Dr. Jean Everett and Bridgett Lussier both of which were provided to OCRM in advance of its approval. In addition we carefully reviewed OCRM's file on this matter and found that some very important information, information essential to any comparison of the project to the CZMP, was missing. For example, OCRM's file does not provide details on any of the structures which the developer proposes to build. Indeed, the applicant does not have final approval for the structures so OCRM could not have possibly considered that information.

The guidelines for evaluation of all projects require the agency to consider the extent to which the project will further the policies of the CZMP which include "to protect and, where possible to restore or enhance the resources of the State's coastal zone for this and succeeding future generations. CMP at 111-14, citing S.C. Code Ann. 48-39-30(B)(2). The CZMP specifically addresses both residential and commercial developments. For residential developments, the CZMP states that: Residential development which would require filling or other permanent alteration of salt, brackish or freshwater wetlands will be prohibited, unless no feasible alternatives exist or an overriding public interest can be demonstrated, and any substantial environmental damage can be minimized. These wetlands are valuable habitat for wildlife and plant species and serve as hydrologic buffers, providing for the absorption of storm water runoff and aquifer recharge, and therefore, their destruction for residential purposes must be avoided whenever possible. CZMP at III-16(1)(b)

For commercial developments, the CZMP requires that: Commercial proposals which require fill or other permanent alteration of salt, brackish, or freshwater wetlands will be denied unless no feasible alternatives exist and the facility is water-dependent. Since these wetlands are valuable habitat for wildlife and plant species and serve as hydrologic buffers, providing for storm water runoff and aquifer recharge, commercial development is discouraged in these

areas. The cumulative impacts of the commercial activity which exists or is likely to exist in the area will be considered. CMP II-40(1)(b)

The CZMP indicates that feasibility is to be determined with respect to individual project proposals and is based on the best available information, including technical input from relevant agencies with expertise in the subject area, and considering factors of environmental, economic, social, legal and technological suitability of the proposed activity and its alternatives. Feasible alternatives include the no action alternative. CMP glossary at V. Whether the project is reviewed as commercial or residential the CZMP requires OCRM to deny certification of proposals to fill in wetlands when there are feasible alternatives, which includes the no action alternative. As indicated above, studies of the property which demonstrate the impact of the proposed development have previously been provided to OCRM and are available upon request.

#### **INACCURACIES BY THE APPLICANT**

There are numerous inaccuracies on the application for the permit. The applicant failed to notify OCRM that 1) there are non-isolated wetlands on the property, 2) that the storm water will run off into an already damaged water body (Church Creek) or that 3) a potentially historically significant archaeological site exists on the property. The misrepresentation led directly to the failure by OCRM of any proper notice to the adjacent land owners and the public in general.

#### **EVIDENCE OF BIAS/IMPROPER INFLUENCE IN THE APPROVAL PROCESS**

We have evidence that demonstrates OCRM was ready to approve this application long before it had the necessary information to issue such an approval. In fact, OCRM changed the status on its online system a full eight (8) months prior to the date the approval was issued. While there are other examples, changing the online status of the permit prior to approval is perhaps the most striking evidence of OCRM's pre-existing intent with respect to the approval of this permit.

Significantly, we were advised by a member of the OCRM staff that in the absence of the "politics" surrounding this issue the permit would have been summarily denied given some of the issues discussed above. As noted above, the public has never been given notice that this project affects over 4 acres of non-isolated wetlands and that the storm water runoff from this property flows directly into a damaged water body. The outright refusal of OCRM to require the applicant to resubmit his application when there are material inaccuracies on the application is indicative of a troubling pattern that has been observed during this process.

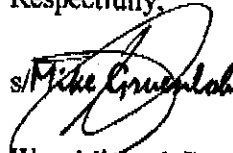
For these reasons and others which will be submitted in advance of the final hearing on this matter, we previously requested OCRM to start the application process over, require the applicant to submit correct and complete information and provide full and correct notice to the public. Despite the obvious discrepancies OCRM refused.

I have attempted to summarize some of our concerns. There are many residents of Johns Island who feel that they have been deprived of all process in this matter and who have additional issues and concerns related to this approval. For example, it has recently come to our attention (through OCRM and the Army Corps of Engineers) that the applicant has already filled a portion of the wetlands that forms the connection between the wetlands and Church Creek. That issue along with several other discrepancies is now being investigated.

Please let us know when the final hearing in this matter will be held so that we can participate and present both ours and the public's position on this matter. In the alternative we request that this approval be rescinded, that the applicant be required to submit a new application with complete and accurate information and that the public be properly noticed as required.

Thank you in advance for your attention.

Respectfully,

A handwritten signature in black ink, appearing to read "s/ Mike Gruenloh". The signature is written in a cursive style with a large, looping initial "M".

Wm. Michael Gruenloh



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S.C. DEPT OF HEALTH  
& ENVIRONMENTAL CONTROL

March 24, 2010

2010 MAR 24 AM 8: 53

Clerk of the Board

OFFICE OF THE COMMISSIONER  
CHIEF OF STAFF  
CLERK OF SCDHEC BOARD

I would like to submit my appeal to the approval by SCDHEC (OCRM) of permit number SCR10J500 for SWPPP for Angel Oak Village on Johns Island, SC.

There are several acres of wetlands on this site which developer Robert DeMoura wants to fill in as part of his development plans. He submitted a NOI for Stormwater Discharge with false information. Under section IV (Waterbody Information) part B. 1. a, he state there are no jurisdictional wetlands on site. Recently, the Army Corps of Engineers changed the classification of these wetlands from non-jurisdictional to jurisdictional due to a department oversight and new information. The ACE proved the wetlands discharge into Church Creek which leads to the Stono River. This will add to the pollution of Church Creek which is already impaired. Water quality for all of Johns Island will be further diminished.

This renders this application null and void. A current and correct application should be submitted by the developer and reviewed on the federal level by the ACE.

Please notify me of your decision.

Respectfully,

Lorna Hattler

731 Sonny Boy Lane

Johns Island, SC 29455

843-557-0230

lhattler@comcast.net

10/17/10  
2104

**Re: Sea Island Phases 1A, 1B & 1C (file #10-05-11-07A) ANGEL OAK VILLAGE**

**Cc:** Lord.Bob@epamail.epa.gov; Tom Welborn <Welborn.Tom@epa.gov>; Mike Gruenloh <mike@conegruenloh.com>; Charles Crosby <Charles.Crosby@usace.army.mil>; Richard Darden <richard.darden@usace.army.mil>; Jeff Thompson <thompsdj@dhec.sc.gov>; Jim Chaplin <jim.chaplin@hud.gov>; Rebekah Dobrasko <Dobrasko@SCDAH.STATE.SC.US>; Elizabeth Johnson <EMJOHNSON@SCDAH.STATE.SC.US>; Tera Baird <Tera\_baird@fws.gov>  
**Sent:** Wed, March 24, 2010 5:15:22 AM  
**Subject:** Re: Sea Island Phases 1A, 1B & 1C (file #10-05-11-07A)

To whom it may concern:

Pleased be advised that the Angel Oak Village stormwater application , as completed and approved , by the applicant and your organization, has false information which is misleading and contains information which is clearly untrue regarding the current status of the wetlands.

Under paragraph IV, water body information, item (A), the applicant has checked that the wetlands are not jurisdictional. (AS you are very much aware—the wetlands are NOT ISOLATED—I notified your office of this before this application was approved).

This wetland was declared jurisdictional by the U.S Army Corps of Engineers. (NOT ISOLATED)

Therefore, the application is false and either the applicant is committing perjury or your office has had a fairly large oversight. If this new information has not been conveyed to your office by the Corps, as I understand it, it would be the applicant's responsibility to notify you that the information in his application was false due to "significant changes" in the plans. Mr. Demoura signed his name to the application, saying that all information was true. As you know, there have been other significant changes to the plans since the 2008 stormwater application, which was NEVER publically noticed for wetland impacts, (isolated or non-isolated).

Additionally, it has just been proven that storm water runoff will flow into Church Creek and see no need for ANY land disturbance at this time, as it is still uncertain whether this development will happen at all. This permit should have been denied due to this project's proximity to the Angel Oak and the valuable jurisdictional wetlands on site.

This application should have been denied due to the fact that more archaeological work needs to be completed on the site before any ground disturbing activities occur anywhere, as this could potentially risk the destruction of important artifacts that could provide valuable insight into the history and cultural significance of this area. The State Dept. of History and Archives has received new information about a significant archeological find on the project site and this needs to be evaluated still.

Thanks.

**Samantha J. Siegel**  
**176A Broad St**  
**Charleston, SC 29401**  
**843-367-3664**

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