



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

April 29, 2016

Office of the Governor
Attn: Holly Pisarik
South Carolina State House, First Floor
1205 Pendleton Street
Columbia, SC 29201

Dear Ms. Pisarik,

The South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (SCDHEC OCRM or Department) is providing this letter in response to correspondence received by the Governor's office from Mr. Michael Maucher. Specifically, Mr. Maucher requested the Governor investigate actions taken by the Department related to the issuance of permit OCRM-15-211-B to Peter J. Kuhns. The Department offers the following information.

The Department recently issued a permit for Peter J. Kuhns, OCRM-15-211-B, to construct a joint use dock at 1909, 1913 & 1917 Lone Oak Point, The Point at Rivertowne, Mount Pleasant, Charleston County, South Carolina. Mr. Maucher raised several concerns in his letter. Specifically, the letter questioned (1) the sufficiency of the Department's notification; (2) the Department's basis for accepting a new application; (3) consistency with the conceptual dock master plan, and (4) the Department's responsiveness.

NOTIFICATION

Notification under the Department's permit application review process is directed by the Coastal Division regulations (S.C Code of Regulations Chapter 30). Specifically, Regulation 30-2.B(7), states that the applicant shall publish notice at least once in a newspaper of local circulation in the county of the proposed activity. Additionally, the Department, under Regulation 30-2.C, shall within thirty days of receiving either a Joint Public Notice or SCDHEC OCRM permit application, notify in writing interested agencies, all adjoining landowners, local government units in which the land is located and other interested persons. This notice shall indicate the nature and extent of the applicant's proposal.

The applicant published a newspaper notice for this project in the Post and Courier Newspaper on July 8, 2015. The Department also notified in writing interested agencies, all adjoining landowners, local government units in which the land is located and other interested persons (in this case, the Parker Island Property Owners Association (POA)). Additionally, this notice was included on the SCDHEC Public Notice webpage. The public notice of this project

was based on the information provided in the application and in accordance with Regulation 30-2.C. Specifically, the Department notified Paul & Nancy Pisarski and Parker Island POA¹ which were identified by the applicant as adjoining property owners and interested persons, respectively. Notice was also provided on July 6, 2015 to the local government representatives including Eric DeMoura, Administrator for the Town of Mount Pleasant and Kurt Taylor, Administrator for Charleston County.

The Department has recently been made aware of the fact that the Pisarskis are no longer owners of the adjacent property. Notification of this permit decision has recently been provided to the new owners of the adjacent property, Michael and Lisa LaPlant. This notification affords the LaPlants appeal rights as described in the Guide to Board Review enclosed with the notice. See attached April 22, 2016 letter to Michael and Lisa LaPlant.

Permit applications are reviewed by the Department on a case-by-case basis. As noted in his letter, Mr. Maucher objected to a permit application that was submitted in 2003. Mr. Maucher requested to be notified of any permit applications in 2006 and 2008. The Department, however, has no current mechanism to ensure maintenance of a standing objection to any potential application that may be applied for in the future. This current permit application was applied for in 2015, seven years after the last correspondence from Mr. Maucher. Although Mr. Maucher did not receive *individual* notice, the application was publicly noticed through the Department's webpage and the local newspaper to provide the general public with an opportunity to express their comments and concerns.

BASIS FOR ACCEPTING NEW APPLICATION (Difference between original 2003 and 2015 permit applications)

As background, a permit application for a joint use dock was received by the Department on March 17, 2003 and denied on October 23, 2003. This application consisted of constructing a joint use dock for Lots 29, 30, 31, and 32. This proposed dock included a 4' by 953' walkway that led to two 15' by 30' covered pierheads. The walkway in this application would have accessed a hummock island before going out to the Wando River. On both flood side and ebbside of these two pierheads, two 15' by 30' floats were proposed along with four 4-pile boatlifts. This permit application was denied because Lots 29 and 32 were not considered waterfront to the Wando River at that time of the application and therefore were not included on the conceptual Dock Master Plan for Parkers Island.

The 2015 permit application proposes constructing a joint use dock for Lots 29, 30, and 31. Proposed in the application is a 4' by 952' walkway with an 8' x 10' wide-out area leading to one 10' by 30' covered pierhead with a ramp to a 10' x 30' floating dock on the channelward side. There are no boat lifts or any other boat storage structures proposed in this application. Importantly, the 2015 permit application included a new critical area line delineation. This new critical area line shows that the hummock island previously identified in the 2003 application is actually three very small upland islands surrounded by high marsh areas. The Department

¹ The notice of the decision was provided to the Parker Island POA as a courtesy and is not required by regulation.

determined Lot 29 meets the Regulatory definition of a waterfront property because the extended property lines for Lot 29 reach the navigable waterbody without crossing upland. In summary, the basis for accepting and processing the 2015 permit application included the following factors: (1) reduction in size of the proposed dock and the number of lots served; (2) Lot 29 is waterfront property; and (3) elimination of Lot 32, a non-waterfront lot.

DOCK MASTER PLANS

The Department recognizes two types of dock master plans; a dock master plan that is approved under a general permit and a conceptual dock master plan. In this instance, the dock master plan approved for the Point at Rivertowne is a conceptual dock master plan that was approved on November 4, 2003. A conceptual dock master plan does not guarantee or restrict issuance of any dock permit application. Rather, a conceptual dock master plan identifies waterfront properties and is used as a guideline in the individual permit application process. Furthermore, the Department's enforceable policies listed under the South Carolina Coastal Management Program (SCCMP) Document Chapter III, Section D(4)(c) states "the dock master plan shall be presumed to take precedence over applications inconsistent with such plan **unless new information is revealed in the application to address and overcome concerns identified in the Dock Master Plan** (emphasis added). Please see attached the approved conceptual Dock Master Plan letter for Rivertowne dated January 14, 2000. In this case, new information was received by the Department which addressed previous Department concerns.

Using the conceptual dock master plan as a guide in the 2015 permitting decision, the Department determined the following new information satisfied the Department's reasons for denial in the 2004 permitting decision.

- a new critical area line showing that the hummock island is actually three very small upland islands surrounded by high marsh areas,
- Lot 29 meets the regulatory definition of a waterfront property, and
- the elimination of the non-waterfront lot (Lot 32) from the permit application.

In contrast, a dock master plan general permit authorizes the construction of all future docks, piers, and boat ramps within the plan's development area. In both cases, a dock master plan must be prepared pursuant to SCCMP Document Chapter III Section. If the applicant decides to pursue a dock master plan general permit, then the Department's permitting procedures as outlined under Chapter 30 of the Department's Coastal Division Regulations must be followed.

The proposed activity in the 2015 permit application is consistent with the Department's Coastal Division Regulations and Policies. Therefore, in light of the above mentioned new information, the permit was issued.

UNRESPONSIVENESS

Lastly, Mr. Maucher states that his inquiries and letters to the Department in the last several months, since he learned of Mr. Kuhns' issued permit, have gone unanswered. Records show that SCDHEC OCRM staff responded to Mr. Maucher's February 25, 2016 Freedom of Information request for the Kuhns permit file the same day it was received by the Department (February 26, 2016). Mr. Maucher wrote the Department to express his concerns regarding the issued permit on February 4, 2016 and April 6, 2016. Given the complex nature of this permitting matter and the information needed to adequately respond to his concerns, staff contacted Mr. Maucher on April 1, 2016 to let him know his letter was received and a response would be forthcoming. Since receipt of this letter by the Governor's office, the Department has also received calls and letters from other members of this community and staff are preparing responses to these inquiries.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Elizabeth B. von Kolnitz', with a stylized, flowing script.

Elizabeth B. von Kolnitz
Chief, Office of Ocean and Coastal Resource Management
SC Department of Health and Environmental Control

cc: Michael A. Maucher, Law Office of Deluca & Maucher, LLP
Dana Beach, SC Coastal Conservation League
Sierra Club, Robert Lunz Group, SC Chapter