

From: Patel, Swati <SwatiPatel@gov.sc.gov>
To: Pisarik, Holly <HollyPisarik@gov.sc.gov>
Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov>
CC: Smith, Austin <AustinSmith@gov.sc.gov>
Date: 6/28/2016 10:33:58 AM
Subject: FW: Thursday's Meeting at Hilton Head Plantation

Sen. Davis has asked our office to look into this DHEC issue. He has sent me several emails since last week which I will forward to you. After you have read them, let's discuss and then we can talk to DHEC.

From: Tom Davis [mailto:tdavis@harveyandbattey.com]
Sent: Thursday, June 23, 2016 10:15 AM
To: Briggs, Sean M.; vonkoleb@dhec.sc.gov; pageac@dhec.sc.gov; WILLIABN@dhec.sc.gov
Cc: David Mills; Bill Harkins; John J. Mc Cann; Peter Kristian; Steve (desimone.steve@gmail.com); Heigel, Catherine E.; Patel, Swati
Subject: RE: Thursday's Meeting at Hilton Head Plantation

Elizabeth, Sean, Adam and Blair:

See the email below I just received from Peter Kristian. OCRM's continued inaction in this matter is completely unacceptable. Since we met on the site a couple weeks ago, the remainder of the sand that provided access to the Pine Island Beach has eroded away. The beach was breached on several occasions and additional sand has been deposited in the marsh, destroying additional marsh grasses and opening up the homes and storm water management infrastructure of Hilton Head Plantation to the forces of the Port Royal Sound.

The OCRM's actions in this matter defy common sense; worse still, it has required the HHP POA to undo something that was expressly authorized by an OCRM official during an on-site visit several years ago. As I advised via email (see string below) after our recent on-site meeting, Kathleen Lamaker – the OCRM project manager charged with ensuring HHP POA's compliance with a June 2011 consent order pertaining to the revetment – provided Steve DeSimone, HHP POA's contractor, with specific instructions in regard to exactly the revetment could and could not be. Ms. Lamaker actually placed a pole in the ground to indicate precisely where the revetment could be. And then the HHP POA subsequently spent a considerable amount of time and money in reliance upon what Ms. Lamaker said could be done.

At this point my advice to the HHP POA is to hire an attorney to hold the OCRM accountable for its actions. HHP POA has lost money and access to incredibly valuable amenity. Given the obvious lack of attention the OCRM is providing to this matter, I am bringing Catherine Heigel, the director of DHEC, and Swati Patel, Gov. Nikki Haley's chief of staff, into this email loop. As Mr. Kristian states in this email below, the current request is that the OCRM allow the HHP POA to replace the revetment expressly authorized by Ms. Lamaker and further allow the sand fence that was permitted in 1999 to remain in place. These common sense interim action will allow the HHP POA to at least stop the bleeding pending the Army Corps' approval of a longer-term solution.

Tom Davis
State Senator for District 46

From: Peter Kristian [mailto:PKristian@hhppoa.org]
Sent: Thursday, June 23, 2016 9:43 AM
To: Tom Davis
Subject: RE: Thursday's Meeting at Hilton Head Plantation

Senator Davis- Thank you for your follow up. Since your visit the remainder of the sand that provided access to the Pine Island Beach has eroded away. The beach was breached on several occasions and additional sand has been deposited in the marsh destroying additional marsh grasses and opening up the homes and storm water management infrastructure of Hilton Head Plantation to the forces of the Port Royal Sound. (See attached photo taken last Friday,

June 17, 2016)

Since your visit Hilton Head Plantation has been advised that as a condition of an amendment to their present permit additional revetment needs to be removed and the sand fence that was permitted in 1999 also needs to be removed. An evaluation is taking place as to the replacement of the revetment that was ordered to be removed however no time frame has been placed on this "study" meanwhile erosion continues at an accelerated rate.

We have already seen the devastating effects of the removal of the revetment from the area that we were advised previously by a DHEC representative was permitted. Due to the removal of the revetment we will need to fill that area with approximately 500 cubic yards of sand just to get back to the pre revetment removal conditions. The removal of the sand fence will eliminate one of the only remaining installations that will serve as an anchor to hold the meager amount of sand left in place.

The only item that was moved forward is a Permit Amendment from DHEC which has been forwarded to the Army Corps of Engineers for their concurrence. The problems with the DHEC Permit Amendment (attached) are with the conditions to remove or not cover the remaining revetment and the removal of the sand fence. Appealing these two conditions will be problematic as the situation at the beach is now beyond critical. (Appealing these items will hold up our ability to put sand on the beach now.) Emergency access has been totally cut off for EMS. The unabated wave action of the Port Royal Sound continues to destroy marsh which now is the sole barrier between the Port Royal sound the Homes that boarder the marsh and the Storm Water outfall system that drains a third of Hilton Head Plantation.

The Town just granted Hilton Head Plantation Emergency Funds in the amount of \$100,000 to apply sand to this area of beach in an effort to stabilize the area. Without an Army Corps of Engineers permit we cannot move any sand and if we could much of the funds will be used for sand that will just about replace the sand that was lost due to the removal of the subject revetment.

With regards to the revetment and the sand fence nothing has change, HHP is still being instructed by DHEC that the revetment not only cannot be replaced at this point additional revetment will need to be removed along with the sand fence as a condition of any amendment to our present permit which would allow sand placement during Turtle Nesting Season.

If regulations are the issue the regulations should be revised, if judgment is at issue such judgment needs to be reviewed, if a law needs to be revised that law needs to be reviewed for possible amendments. I along with all of the residents of Hilton Head Plantation would be happy to support whatever efforts need to be undertaken to make this process more practical, economical, and environmentally sensitive and user friendly. This is a clear example of one size does not fit all. By not protecting this beach with the revetment that was present and the removal of the sand fence we are exposing all of the homes along the marsh, over 1000 structures, to the Port Royal Sound. We are also compromising a multimillion dollar Storm Water Management system to siltation and a compromised functionality due to higher head pressures against all of the storm water outfalls that drain into the marsh. These two factors do not even cover the loss of the marsh and wild life habitat.

Apparently according to the present thought process it more economical to have 1000 + homes that boarder the marsh armored with revetment or bullheaded and a compromised Storm Water Management system that will cost millions to retro fit a more economical solution than protecting this small section of beach (1500 feet) with a small quantity of revetment and a sand fence for a fraction of the costs and environmental impact as noted above.

Senator Davis we are requesting that DEHC allow us to replace the revetment that was allowed by their representative previously, the sand fence that was permitted in 1999 should be able to remain provided it is installed according to their configuration guidelines.

Replacement of the revetment will at least stop the bleeding while we wait for the Army Corps approval.

Thank you again for your follow up on this critical matter.

Respectfully,

Peter

T. Peter Kristian, CMCA, LSM, PCAM
General Manager, Hilton Head Plantation POA
pkristian@hhppoa.org
(843) 681-8800

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From: Tom Davis
Sent: Wednesday, June 22, 2016 3:24 PM
To: 'Briggs, Sean M.'; 'vonkoleb@dhec.sc.gov'; 'pageac@dhec.sc.gov'; 'WILLIABN@dhec.sc.gov'
Cc: 'David Mills'; 'Bill Harkins'; 'John J. Mc Cann'; 'Peter Kristian'; Steve (desimone.steve@gmail.com)
Subject: RE: Thursday's Meeting at Hilton Head Plantation

Elizabeth, Sean, Adam and Blair:

What is the status of this matter? Thanks.

Tom

From: Tom Davis
Sent: Friday, June 10, 2016 12:13 PM
To: 'Briggs, Sean M.'; 'vonkoleb@dhec.sc.gov'; 'pageac@dhec.sc.gov'; 'WILLIABN@dhec.sc.gov'
Cc: David Mills; Bill Harkins; John J. Mc Cann; 'Peter Kristian'; Steve (desimone.steve@gmail.com)
Subject: RE: Thursday's Meeting at Hilton Head Plantation

Elizabeth, Sean, Adam and Blair:

Thanks for taking the time yesterday to meet on-site at Pine Island with me, Peter Kristian, Bill Harkins and Steve DeSimone. As you could see, the narrow strip of beach that provides access to Pine Island must be protected in order to:

- 1) provide access to the island by property owners, the public and emergency personnel and equipment;
- 2) ensure the viability of the existing stormwater plan for a major portion of the community; and
- 3) shield improved residential properties within the community from damage by tidal surges.

In his May 27 email to me (which appears in the email string below), Sean mentions "unauthorized revetment" at the site. This revetment was specifically authorized by an OCRM project director during a meeting on-site with Hilton Head Plantation officials. This is material to our discussion on how to address the current situation because, as the SC Supreme Court held in 2010 in *Quail Hill v. County of Richland* (see, <http://www.judicial.state.sc.us/opinions/displayOpinion.cfm?caseNo=26788>), estoppel is applicable against a government agency if the relying party proves:

- (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question;
- (2) justifiable reliance upon the government's conduct; and
- (3) a prejudicial change in position.

The relying party in this instance, Hilton Head Plantation POA ("HHP POA"), can prove those three elements of estoppel. Kathleen Lamaker – the OCRM project manager charged with ensuring HHP POA's compliance with a June

2011 consent order pertaining to the revetment – provided Steve DeSimone, HHP POA's engineer, with specific instructions in regard to exactly the revetment could and could not be. Steve has a picture of Ms. Lamaker placing a pole in the ground to indicate precisely where the revetment could be. (Steve will try to track down that photograph and I will forward it to you once I receive it.) And, of course, HHP POA subsequently spent a considerable amount of time and money in reliance upon what Ms. Lamaker said could be done.

In addressing the current situation, the first step would be allowing the HHP POA put the revetment back to where it was a few weeks ago – before the HHP POA, under threat of a fine of \$1,000 per day, removed revetment specifically authorized by Ms. Lamaker. Allowing HHP POA to put revetment back to where it was for a period of five years would go a long way toward meeting the objectives (i.e., ensuring access to Pine Island, protecting the stormwater plan, and shielding improved properties from tidal-surge damage). A second step would be authorizing HHP POA to use the less-expensive sand being offered to it by the Town of Hilton Head. And a third would be to allow HHP POA on a regular basis to move sand from one part of Pine Island to another.

I don't see how any of the three steps above would result in any damage whatsoever to the environment, whereas it would certainly benefit the Hilton Head Plantation community (for the noted reasons). I would appreciate you thinking of a resolution along the suggested lines and providing a suggested course of action; you understand the procedural issues and necessary interactions with and approvals from other agencies far better than I do. In any event, as you saw yesterday, time is of the essence.

Again, thanks for taking the time to meet with us yesterday. I truly appreciate your willingness to work with my constituents toward a resolution of this matter.

Tom Davis
State Senator for District 46

From: Briggs, Sean M. [<mailto:BRIGGSSM@dhec.sc.gov>]
Sent: Wednesday, June 01, 2016 4:24 PM
To: PKRISTIAN@HHPPOA.ORG
Cc: David Mills; Bill Harkins; John J. Mc Cann; Tom Davis
Subject: RE: Thursday's Meeting at Hilton Head Plantation

[Mr. Kristian,](#)

Thank you for your email. Adam Page is currently working with Sen Davis' office to find a time and date for the on-site meeting that is suitable for all parties; which I plan to attend. I look forward to our discussion

Respectfully,
Sean

Sean M. Briggs
Manager, Compliance and Enforcement Section
SCDHEC's Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
office 843.953.0218
cell 843.323.0247
briggssm@dhec.sc.gov

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From: Peter Kristian [<mailto:PKristian@hhppoa.org>]

Sent: Wednesday, June 1, 2016 3:49 PM

To: Tom Davis <tdavis@harveyandbattey.com>; Briggs, Sean M. <BRIGGSSM@dhec.sc.gov>

Cc: David Mills <DMills@hhppoa.org>; Bill Harkins <wdharkinsward2hhi@gmail.com>; John J. Mc Cann <jjmccann@roadrunner.com>

Subject: Thursday's Meeting at Hilton Head Plantation

Dear Mr. Briggs:

Senator Tom Davis shared your email with me regarding your account of the circumstances surrounding the Pine Island Beach in Hilton Head Plantation. We would like the opportunity to provide the community of Hilton Head Plantation's appraisal of circumstances that are outlined in your email.

We would also welcome the opportunity to have you and any of your colleagues with DHEC join us on the Pine Island Beach with Senator Davis to see firsthand the erosion that has taken place in just the few short weeks since the revetment that protected this area was ordered to be removed.

The narrow strip of beach that provides access to our property needs to be protected for access by property owners, the public, and for emergency personnel and equipment to reach a citizen in distress. If DHEC does not have the flexibility to allow us to protect that access, a political solution seems to be warranted to amend the present regulations to provide for such circumstances.

You noted in your email to Senator Davis that the Town of Hilton Head brought the fencing and the revetment that protected the access point to the Pine Island Beach to DHEC's attention. After speaking with Town of Hilton Head officials, no one within the Town has indicated that such a reporting or complaint was raised. Hilton Head Plantation has always had an excellent working relationship with the Town of Hilton Head. If such concerns were contemplated they would have been conveyed to us prior to any contact with DHEC. If you have the name(s) of an individual(s) that raised such a concern, please provide the information so we can address that relationship with the Town of Hilton Head Island.

As you are aware, one of your regulators over five years ago provided permission to place the revetment in its present location. We assumed she had the authority to grant such permission. This occurred after we had entered into the consent order and the subject revetment was removed as per the order. Once it became evident that the removal of this revetment was accelerating the erosion at the access point to Pine Island, we asked if the area could be protected. It was after this permission was granted, that part of the revetment was replaced. This provided pedestrian access for property owners and the public to access Pine Island. This protected area also served as a platform for emergency personnel to access Pine Island as well as a staging area for beach re-nourishment.

The sand fence you mentioned was authorized by the Town of Hilton Head as part of the permitting for the beach re-nourishment that was performed in 1999. That paperwork was provided to Adam Page with your office. It was not an unauthorized installation. We are dealing with three agencies claiming authority over the maintenance of this fragile access point to our property. If one agency has an issue with other agencies' requirements, Hilton Head Plantation should not be placed in the middle of such differing requirements. The original sand fence was damaged in the devastating storm the State suffered in October of 2015. We replaced what was there to try and preserve owner, public, and emergency access to our property.

We were given permission to reinstall the fence according to DHEC instructions by one of DHEC's representatives in April of 2016. We were subsequently advised by Adam Page that this individual should not have given such permission and we were only to take instruction from him.

Over the past few months three members of the Hilton Head Island Town Council have been working with us to solve this issue on both a long term and short term basis. Two of those Town Council members have visited the Pine Island Beach and expressed their grave concerns regarding the removal of the revetment that protected the entrance to the Pine Island Beach. We have cooperated with every representative that DHEC, the Town of Hilton Head and the Army

Corps has sent to meet with me, my staff and contractors under our authority. Unfortunately we have received direction that at times has either been contrary to other agencies directives or rescinded at a later date by the same or another agency's representative. We are struggling to protect access to our property while operating in a difficult regulatory environment influenced by three different agencies. Conflicting information only exacerbates our frustration and efforts to preserve access to our property further.

Mr. Briggs, as you can hopefully see, we are trying to preserve access to our property for property owners, the public and emergency equipment and personnel. As you indicated, we are presently working with the Town of Hilton Head Island to secure a less expensive "approved" sand source for a re-nourishment project for the fall of 2016. We are most appreciative that you and your department are anxious to assist us with this opportunity that will only occur during a short window of time. However, during the interim we need to preserve access as the Port Royal Sound continues to erode our once protected access point. We are presently working on an amended permit as you also indicated to allow us to place sand on the beach during turtle nesting season. Unfortunately, all of these procedures take time. In the meantime, our access is almost washed away due to the removal of the revetment that protected our access point for all of the reasons previously noted.

We have additional concerns such as storm water management, the effect a breach will have on the properties adjacent to the marsh as well as the effects on the marsh itself which is home to an abundance of wildlife. These additional concerns would be best addressed at our on-site visit with Senator Davis. Once again, we appreciate your willingness to work in a positive manner to address our long-term concerns. However, it is apparent that some flexibility needs to be available for situations such as ours which apparently do not meet DHEC's regulatory model. If such flexibility cannot be exercised without a change in the regulatory environment, I would strongly advocate that the regulations be modified to allow such flexibility.

We look forward to meeting Mr. Page and Senator Davis to discuss our situation in more detail and would be happy if you could join us once the date has been set.

Thank you again for all of your efforts.

Peter Kristian. GM

T. Peter Kristian, CMCA, LSM, PCAM
General Manager, Hilton Head Plantation POA
pkristian@hhppoa.org
(843) 681-8800

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From: Tom Davis [<mailto:tdavis@harveyandbattey.com>]
Sent: Monday, May 30, 2016 12:48 PM
To: Peter Kristian
Cc: Rebecca Wieseahn
Subject: FW: Friday's Meeting at Hilton Head Plantation

Peter – FYI.

Rebecca, have we set up a new onsite meeting with Adam Page?

Tom

From: Briggs, Sean M. [<mailto:BRIGGSSM@dhec.sc.gov>]
Sent: Friday, May 27, 2016 5:13 PM
To: Tom Davis
Cc: Page, Adam; Vonkolnitz, Elizabeth; rebeccawieseahn@scsenate.gov
Subject: RE: Friday's Meeting at Hilton Head Plantation

Senator Davis,

The Department would like to thank you for your interest in the erosional issues facing the community of Hilton Head Plantation. As I know you are aware, the Department has been in regular communication with Mr. Peter Kristian and representatives of the Hilton Head Plantation Property Owner's Association (HHP POA) regarding unauthorized structures that were placed in the critical area adjacent to Pine Island including portions of a rock revetment.

Since we were unable to meet onsite, I wanted to provide a brief history of the unauthorized revetment and sand fencing at the site and then summarize the options available to HHP POA that the Department has discussed with Mr. Kristian and their representatives.

In June 2011, HHP POA entered into a consent order with the Department and agreed to the removal of the unauthorized revetment from the above referenced site no later than March 31, 2012. Recently it was brought to our attention by the Town of Hilton Head Island that this revetment remained in the critical area. In addition, the town raised concerns over the condition of sand fencing that stretched across the beach. The Department conducted a site visit in mid-April and determined that HHP POA had not met the terms of the 2011 agreement by fully removing the unauthorized revetment. This information was communicated with Mr. Kristian and the HHP POA.

The current configuration of the sand fencing (i.e. shore parallel) is not consistent with applicable regulation and guidance meant to protect nesting sea turtles. The Department has communicated to the HHP POA that sand fencing may be install at the site, however, it must be authorized by a Department permit and constructed in a manner so as not to impede turtle nesting.

In an effort to assist the HHP POA, the Department has met with representatives on site to discuss other alternatives available to protect the beach and the access it provides to Pine Island. HHP POA currently has an active permit that allows for renourishment from an upland source. Under this existing permit, Mr. Kristian has estimated to have approximately 8,000 cubic yards of sand remaining that would be available for placement at the site. The permit currently does not allow for renourishment during the summer. However, an amendment to the permit may be considered if a request is submitted by the HHP POA.

The Department is aware of HHP POA's desire to utilize a less expensive source of sand from the larger Hilton Head Island renourishment project and has communicated to HHP POA that an application to do so would be evaluated as expeditiously as possible once it is received.

I hope this brief summary of the challenges at Pine Island is helpful to you. We will continue to work with HHP POA and look forward to a solution in this matter. Thank you very much and please feel free to contact me if we can be of any further assistance to you.

Respectfully,
Sean

Sean M. Briggs
Manager, Compliance and Enforcement Section
SCDHEC's Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
office 843.953.0218
cell 843.323.0247
briggssm@dhec.sc.gov

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From: Rebecca Wieseahn <RebeccaWieseahn@scsenate.gov>
Sent: Thursday, May 26, 2016 12:37 PM
To: Page, Adam
Subject: FW: Friday's Meeting at Hilton Head Plantation

Good afternoon Adam,

I apologize for any inconvenience, however Senator Davis has asked that we reschedule the meeting that was set for onsite tomorrow at Hilton Head Plantation. Due to some changes in his schedule, he will be unable to attend. I will contact you at a future time with more information regarding a rescheduling of this meeting. I again sincerely apologize for any inconvenience, and hope you have a great weekend.

Best,

Rebecca

Rebecca M. Wieseahn

Administrative Assistant
The Senate of South Carolina
P. O. Box 142
602 Gressette Building
Columbia, SC 29202
(803) 212-6008
rebeccawiesehahn@scsenate.gov

From: Tom Davis [<mailto:tdavis@harveyandbattey.com>]
Sent: Thursday, May 26, 2016 11:36 AM
To: Peter Kristian <PKristian@hhppoa.org>
Cc: Rebecca Wiesehahn <RebeccaWiesehahn@scsenate.gov>
Subject: Re: Friday's Meeting at Hilton Head Plantation

Rebecca, please reschedule the onsite meeting with Adam.

Tom

On May 26, 2016, at 10:28 AM, Peter Kristian <PKristian@hhppoa.org> wrote:

Tom Understand. I do not see the point in holding the meeting with out you. Can we reschedule? Adam has not been flexible on this situation so I see little value in meeting with Adam without you. Adam ordered the removal of the revetment that protected our access to the Pine Island Beach.

The situation grows more critical each day as the unprotected area is washed away by each cycle of the tides.

Please advise if you can reschedule.

Congratulations on your appointment.

Best regards Peter

Sent from my Verizon Wireless 4G LTE Droid

On May 26, 2016 10:14 AM, Tom Davis <tdavis@harveyandbattey.com> wrote:

I have been appointed to the six-member committee that is reconciling the house and senate versions of the budget, and we will be working on this all day tomorrow, so I won't be able to attend the meeting. I'm sorry to have to cancel, but didn't know I'd get this committee appointment, which is a coup for our county. Please let me know how the meeting goes and how I can follow up to assist with your renourishmenr efforts.

Tom

On May 23, 2016, at 3:28 PM, Peter Kristian <PKristian@hhppoa.org> wrote:

Tom- Thanks...let's meet at the POA office at 12:30 p.m. and we can drive down together if that is ok. - Peter

T. Peter Kristian, CMCA, LSM, PCAM
General Manager, Hilton Head Plantation POA
pkristian@hhppoa.org
(843) 681-8800

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From: Tom Davis [<mailto:tdavis@harveyandbattey.com>]
Sent: Monday, May 23, 2016 3:26 PM
To: Peter Kristian
Subject: Re: Friday's Meeting at Hilton Head Plantation

Ok, I will be there by 12:30.

Tom

On May 23, 2016, at 3:23 PM, Peter Kristian <PKristian@hhppoa.org> wrote:

Tom- Any chance we can meet down at Pine Island prior to Adam's arrival so I can give you the lay of the land ahead of the meeting at the POA Office? 12:30 would be plenty of time. I would like to explain the situation one on one with you.

Peter

T. Peter Kristian, CMCA, LSM, PCAM
General Manager, Hilton Head Plantation POA
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