

STATE OF SOUTH CAROLINA                    )  
  )  
COUNTY OF CHARLESTON                    )

SETTLEMENT AGREEMENT

This agreement is made this 13<sup>th</sup> day of February, 2003.

This Settlement Agreement is entered by and between Tony Porter, Bennett McNeil, and Sherwood Fender, d/b/a McFee, LLP, and the South Carolina Department of Health and Environmental Control (SCDHEC).

**Recitals**

WHEREAS, Tony Porter, Bennett McNeil, and Sherwood Fender, d/b/a McFee, LLP ("McFee") are the owners of certain property located in Beaufort County on the Southeast side of Dunst Church Road, near its intersection with Highway 28.

WHEREAS, McFee applied for a stormwater permit with SCDHEC for development of their tract of land, which consisted of approximately 96 acres. The parties to this agreement disagreed concerning whether McFee's application included all required information.

WHEREAS, McFee commenced an action in Circuit Court seeking issuance of a permit and related relief. The case was captioned Tony Porter, Bennett McNeil and Sherwood Fender, d/b/a McFee, LLP v. South Carolina Department of Health and Environmental Control, Case No. 2001-CP-07-00944.

WHEREAS, The South Carolina Coastal Conservation League, Sierra Club, South Carolina Wildlife Federation, and League of Women Voters of Georgetown County ("the intervenors") were permitted to intervene in the litigation.

WHEREAS, The Honorable Thomas Kemmerlin Jr. issued an Order on May 2, 2002, ordering that SCDHEC issue the permit, along with other relief, including a declaration that the Coastal Zone Management Program was unenforceable as an improperly promulgated regulation.

WHEREAS, the case was appealed to the Court of Appeals, and the matter was certified to the South Carolina Supreme Court for decision on August 2, 2002.

WHEREAS, the parties to this agreement seek to reach a settlement of all their controversies, including a resolution of all claims and counterclaims in the above-referenced action; and

WHEREAS, this Settlement Agreement is intended to settle and compromise any and all claims which these parties may have among themselves or which may directly or indirectly arise out of the circumstances with respect to the above-referenced actions;

NOW, THEREFORE, for and in consideration of the mutual promises and undertakings contained herein, of the settlement of the above-referenced actions, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Recitals: The above preamble and "WHEREAS" clauses are hereby incorporated by reference as fully and effectively as if repeated verbatim herein.

2. OCRM stormwater permit: The OCRM Division of SCDHEC will issue a stormwater management permit to McFee, LLP, which will allow the permittee to impact 7.31 acres of isolated freshwater wetlands as shown on a drawing of the property, a copy of which is attached hereto and incorporated herein as Exhibit A.

3. Mitigation: McFee, LLP, and its partners, agree to preserve 7.33 acres of isolated freshwater wetlands for a total wetland preservation area of 8.77 acres, as more particularly shown on Exhibit A, attached hereto and incorporated herein. Additionally, McFee will provide off-site mitigation for the impact to the 7.31 acres of wetlands as shown on Exhibit A by placing a conservation easement or deed restriction on a 189.2 acre tract of land located in the Big Salkehatchie River basin and located in Hampton and Colleton Counties, which is known as the Richard B. Herndon tract and is more particularly shown on Exhibit B attached hereto and incorporated herein.

4. Stormwater Permit Restrictions: SCDHEC will not require any additional wetland buffers or setbacks outside of the 8.77 acre preservation boundary as shown on Exhibit A. SCDHEC further agrees that no additional conditions will be placed on the proposed development outside of the 8.77 boundary as shown on Exhibit A except that the proposed development of the overall tract containing 92.45 acres shall comply with SCDHEC's stormwater management and erosion control regulations.

5. Claims: McFee, LLP, and its partners, hereby withdrawn and affirmatively waives any claims and causes of action asserted in their Complaint. McFee and its partners also agree to waive any claims for costs or attorneys fees as a result of this controversy.



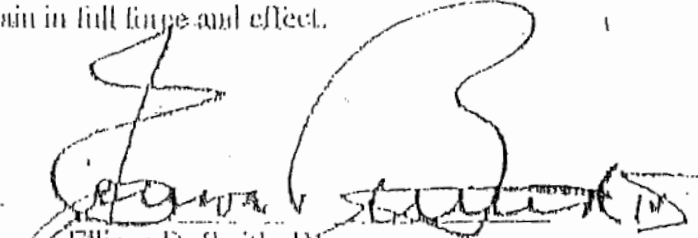
6. Lower Court Order: McFec, LLP, through its undersigned attorney, will also consent to any motion made by the parties to vacate the Order of Thomas Kemmerlin, dated May 4, 2002, from which the appeal was taken.

7. Dismissal of Action: at the execution of this Settlement Agreement, Appellant SCDHEC will move the South Carolina Supreme Court for an Order dismissing the appeal and vacating the lower decision of May 4, 2002.

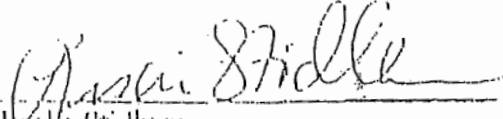
8. Enforcement: Notwithstanding the dismissal of the above-referenced civil action, upon any default hereunder, any party hereto shall be entitled to apply to the Beaufort County Circuit Court or the Administrative Law Judge Division and obtain an order against any other party or parties hereto requiring specific performance with the terms and conditions of this settlement agreement. The prevailing party shall be entitled to reasonable attorneys fees and costs in such action.

9. Miscellaneous: This Settlement Agreement shall be controlled by and interpreted in accordance with the laws of the State of South Carolina and may not be amended except in writing signed by the parties hereto.

10. Severability Provision: Should any separate part of this document be held contrary to law, the remainder shall remain in full force and effect.

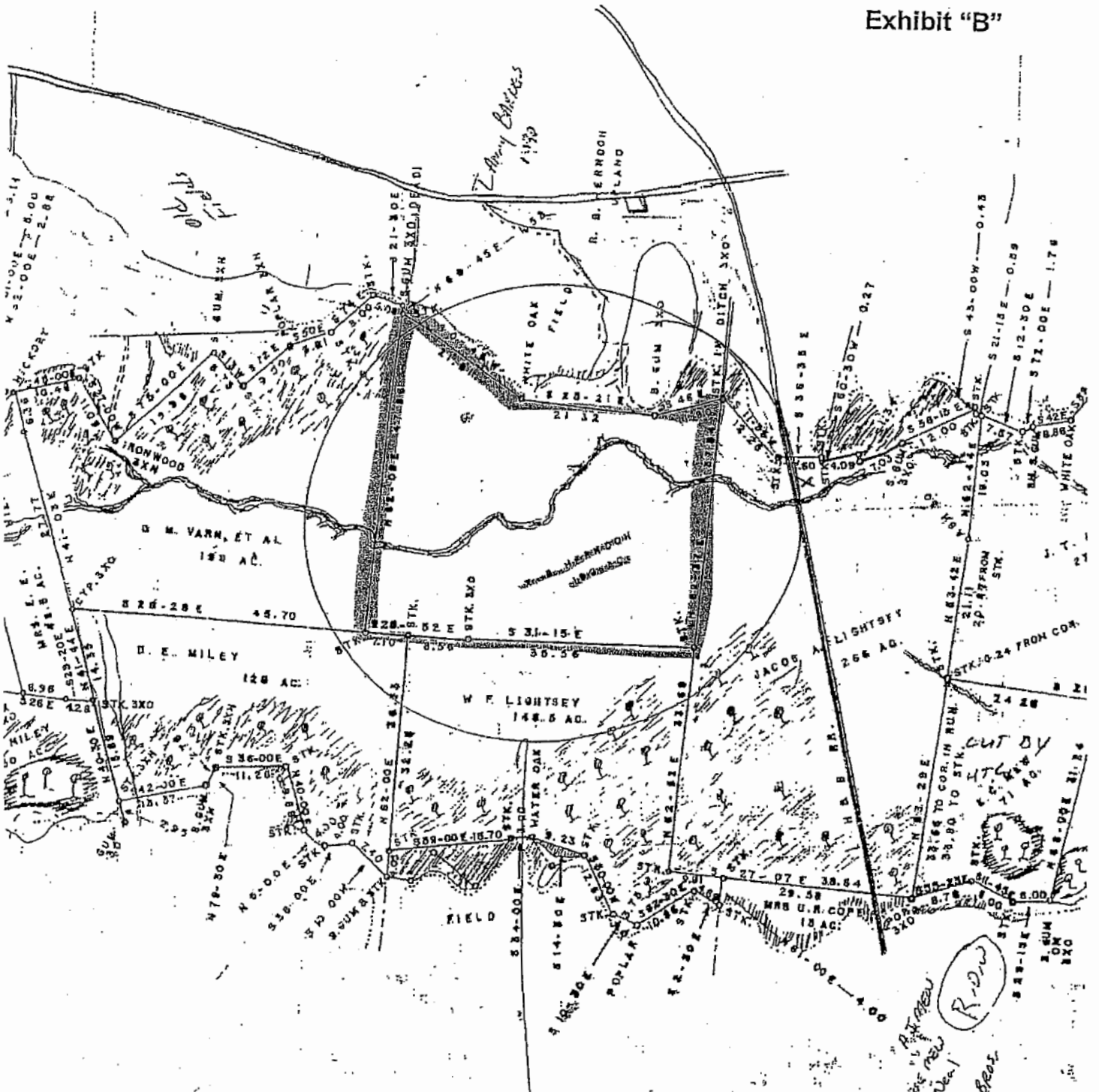
  
Ellison D. Smith, IV  
Attorney for Tony Porter, Bennett McNeil, and  
Sherwood Fender, d/b/a McFec, LLP

February 13<sup>th</sup> 2003

  
Leslie Stidham  
Attorney for SCDHEC

February 13, 2003

Exhibit "B"



The tract of land is identified as R.B. Herndon tract

H A M P T O N

Gen

AK Area  
Louisiana  
McNeal  
Lightsey Area  
R-DW

MEMBER:  
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Vice Chairman  
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C. Ed Hussey, Commissioner

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

BOARD:  
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Paul C. Augherty, III  
Glenn A. McCall  
Coleman F. Buckhouse, MD

October 27, 2005

VIA FAX & U.S. MAIL  
Sherwood Fender  
1509 King Street  
Beaufort, SC 29902

RE: Tony Porter et al. v. DHEC, settlement agreement

Dear Mr. Fender:

I have been unable to get in touch with Mr. Chandler. However, the agency will approve the restrictive covenant if the following changes are made:

Section 2, Property Uses: any activity on or use of the Property inconsistent with the terms and purposes of this Covenant is prohibited. No alteration of the property shall be allowed except for the following:

2.1 Transfer ...

2.2 Development. No development activity shall be permitted except for erection of one (1) residential house and a road to access the residence along with the installation of utilities to service one house. The total area of disturbance, not including the road, is limited to 0.5 acres. This includes landscaping and clearing.

2.3 Recreation ...

why do you need a "reserved rights" section?  
You will need to contact Jimmy Chandler as well.

Sincerely,

Leslie S. Riley  
Chief Counsel, OCRM

cc: Jimmy Chandler

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Office of General Counsel

Charleston Office • 1262 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 744-5838 • Fax: (843) 744-5847 • www.scdhec.gov

**FINGER, FRASER & ANDREWS, P.A.**  
**Northridge Professional Center**  
**11 Palmetto Parkway, Suite 101**  
**Post Office Box 24005**  
**Hilton Head Island, SC 29925-4005**  
**Telephone No.: (843) 681-7000**  
**Facsimile No.: (843) 681-8802**  
**E-Mail Address: mailbox@fingerlaw.com**

Terry A. Finger  
Denson H. Fraser, Jr.  
Anne C. Marscher

Arthur F. Andrews  
of counsel

**TELEFAX TRANSMITTAL COVER SHEET**

DATE: October 27, 2005

PAGES: 2 (includes cover)

FAX NO.: (203) 562-1240

MESSAGE TO: Steve Lopes, Esquire

MESSAGE FROM: Terry A. Finger, Esquire

RE: Franklin Construction, LLC

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***THIS FACSIMILE MAY CONTAIN CONFIDENTIAL OR PRIVILEGED INFORMATION AND IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. RECEIPT OF THIS TRANSMISSION BY ANY PERSON OTHER THAN THE INTENDED RECIPIENT DOES NOT CONSTITUTE PERMISSION TO EXAMINE, COPY, OR DISTRIBUTE THE ACCOMPANYING MATERIAL. IF YOU RECEIVE THIS FACSIMILE IN ERROR, PLEASE NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL TO US BY MAIL.***

BOARD:  
Elizabeth M. Hagood  
Chairman  
Edwin H. Cooper, III  
Vice Chairman  
Steven G. Kinser  
Secretary



C. Earl Hume, Commissioner

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

BOARD:  
Henry C. Scott  
Paul C. Aughtury, III  
Glenn A. McCall  
Colman R. Budhouse, MD

October 24, 2005

VIA FAX & U.S. MAIL

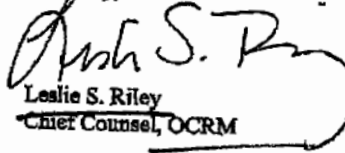
Sherwood Fender  
1509 King Street  
Beaufort, SC 29902

RE: Tony Porter et al. v. DHEC, settlement agreement

Dear Mr. Fender:

Thank you for your call on Friday. As we discussed, the Department is doing all it can to help you fulfill your obligations under the Settlement Agreement, which include the recording of a restrictive covenant. I have forwarded your most recent draft to Jimmy Chandler, counsel for the Coastal Conservation League, as I was unsure as to whether you had done so. I spoke with him last week and he is reviewing the draft. The Department will respond as quickly as possible with comments, hopefully in the next few days. Please give me a call should you have questions.

Sincerely,

  
Leslie S. Riley  
Chief Counsel, OCRM

cc: Jimmy Chandler  
Carl Roberts



SMITH, BUNDY, BYBEE & BARNETT, P.C.

ATTORNEYS AT LAW

1037 CHUCK DAWLEY BOULEVARD

SUITE 100, BUILDING F

POST OFFICE BOX 1542

MOUNT PLEASANT, SC 29465-1542

(843) 881-1623

FAX # (843) 881-4406

ELISON D. SMITH IV

C. H. BUNDY, JR.

RICHARD D. BYBEE

JAN BARNETT

ED. ID # 57-0980-087

P.O. BOX 1559

CAMDEN, SC 29020

(803) 425-1093

January 15, 2003

Leslie Slidham, Esq.  
Chief Counsel  
OCRM DIV. OF SCDHEC  
1362 McMillan Ave., S. 400  
Charleston, SC 29405

Re: Tony Porter, Bennett McNeil, Sherwood Fender, d/b/a McFee, L.L.P.,  
Respondents -vs- South Carolina Department of Health and Environmental  
Control and South Carolina Coastal Conservation League, Sierra Club, South  
Carolina Wildlife Federation, and League of Women Voters of Georgetown  
County, Appellants.  
Trial Court Case No. 2001-CP-07-944

Dear Leslie:

This letter will serve to confirm the terms and the conditions of the settlement reached between Tony Porter, Bennett McNeil, Sherwood Fender, d/b/a McFee, L.L.P. and the OCRM Division of SCDHEC.

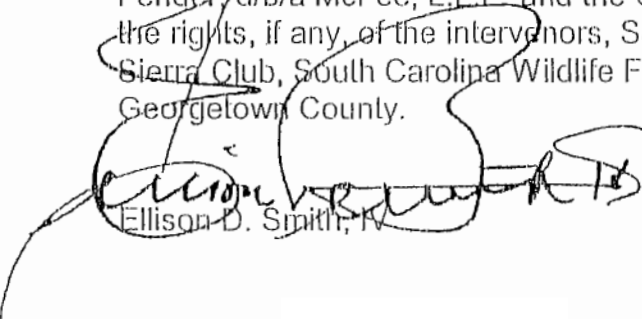
1. The OCRM Division of SCDHEC will issue a Stormwater Management permit to the plaintiffs which will allow the plaintiffs to impact 7.31 acres of isolated freshwater wetlands as shown on a drawing of the property prepared by Andrews Engineering Co., Inc. dated November 25, 2002, a copy of which is attached hereto and incorporated herein as Exhibit "A".
2. The plaintiffs, Tony Porter, Bennett McNeil, Sherwood Fender, d/b/a McFee, L.L.P. agree to preserve 7.33 acres of isolated freshwater wetlands and provide 1.44 acres of upland buffer around a portion of the preserved 7.33 acres of isolated freshwater wetlands for a total wetland preservation area of 8.77 acres, as more particularly shown on Exhibit "A" attached hereto.
3. The OCRM Division of SCDHEC will not require any additional wetland buffers or setbacks outside of the 8.77 acre preservation boundary as shown on Exhibit "A".

January 15, 2003

Page 2

4. The OCRM Division of SCDHEC agrees that no additional conditions will be placed on the proposed development outside of the 8.77 boundary as shown on Exhibit "A" except that the proposed development of the overall tract containing 92.45 acres shall comply with the SCDHEC's Stormwater Management and Erosion Control Standards.
5. The plaintiffs will provide off-site mitigation for the impact to the 7.31 acres of wellands as shown on Exhibit "A" by placing a conservation easement or deed restriction on a 189.2 acre tract of land located in the Big Salkehatchie River basin and located in Hampton and Colleton Counties which is known as the Richard B. Herndon Tract and is more particularly shown on Exhibit "B" attached hereto and incorporated herein.
6. The plaintiffs will waive any claim which they may have to attorneys' fees or any claim which they may have arising under the constitutions of the United States of America and the State of South Carolina for a temporary taking of the plaintiffs' property.
7. The plaintiffs will also consent to any motion of the OCRM Division of SCDHEC which seeks to vacate the Orders of the Honorable Thomas Kemmerlin, Jr., dated May 1, 2002 and June 14, 2002 from which the appeal was taken.

It is expressly agreed and understood that the terms and the conditions of the settlement as aforesaid is binding only on Tony Porter, Bennett McNeil, Sherwood Fender d/b/a McFee, L.L.P. and the OCRM Division of SCDHEC and does not affect the rights, if any, of the intervenors, South Carolina Coastal Conservation League, Sierra Club, South Carolina Wildlife Federation, and League of Women Voters of Georgetown County.



Ellison D. Smith, IV

EDSIV/pm  
Encs.

STATE OF SOUTH CAROLINA                    )  
  )  
COUNTY OF CHARLESTON                    )

SETTLEMENT AGREEMENT

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This Settlement Agreement is entered by and between Tony Porter, Bennett McNeil, and Sherwood Fender, d/b/a McFee, LLP, and the South Carolina Department of Health and Environmental Control (SCDHEC).

**Recitals**

WHEREAS, Tony Porter, Bennett McNeil, and Sherwood Fender, d/b/a McFee, LLP ("McFee") are the owners of certain property located in Beaufort County on the Southeast side of Durant Church Road, near its intersection with Highway 28.

WHEREAS, McFee applied for a stormwater permit with SCDHEC for development of their tract of land, which consisted of approximately 96 acres. The parties to this agreement disagreed concerning whether McFee's application included all required information.

WHEREAS, McFee commenced an action in Circuit Court seeking issuance of a permit and related relief. The case was captioned Tony Porter, Bennett McNeil and Sherwood Fender, d/b/a McFee, LLP v. South Carolina Department of Health and Environmental Control, Case No. 2001-CP-07-00944.

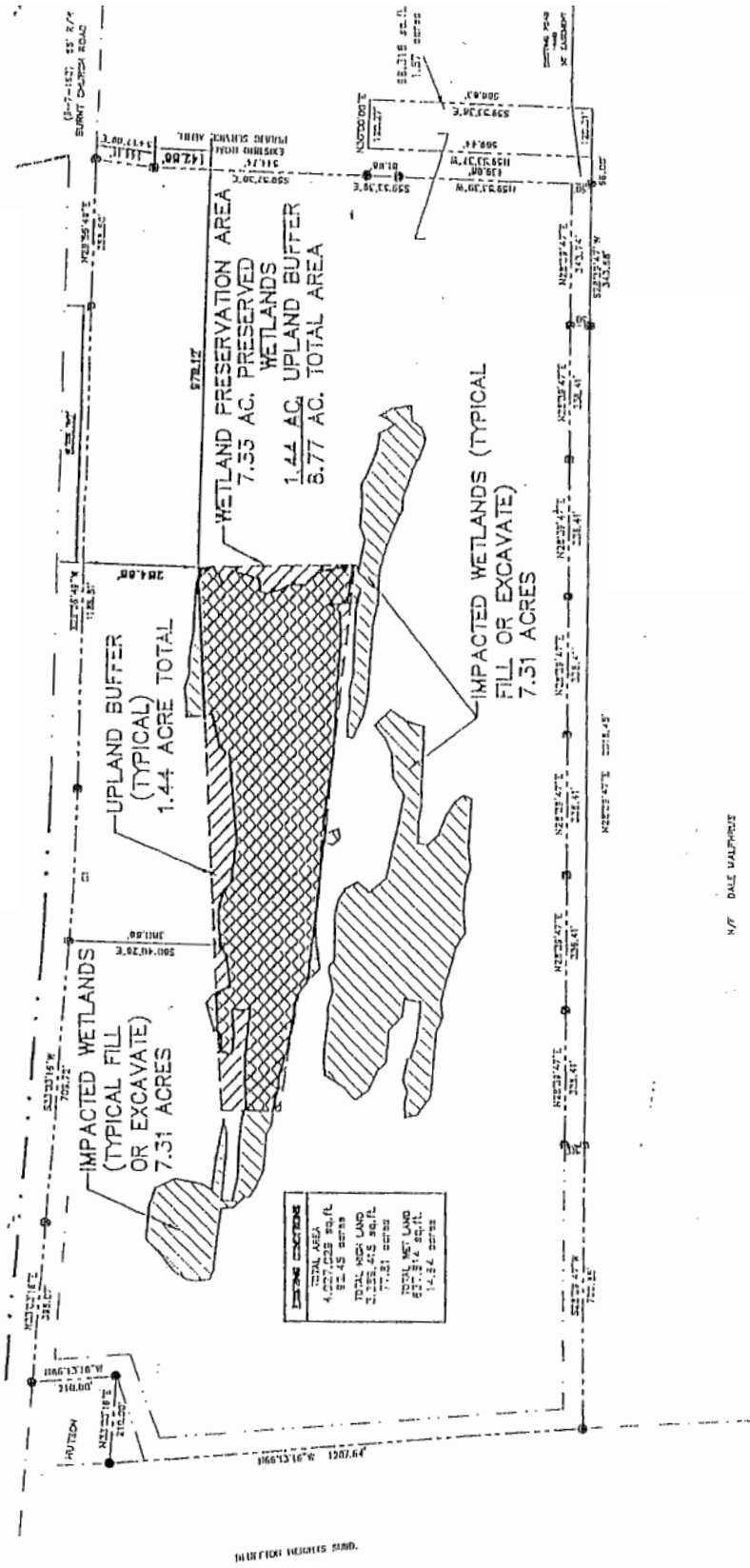
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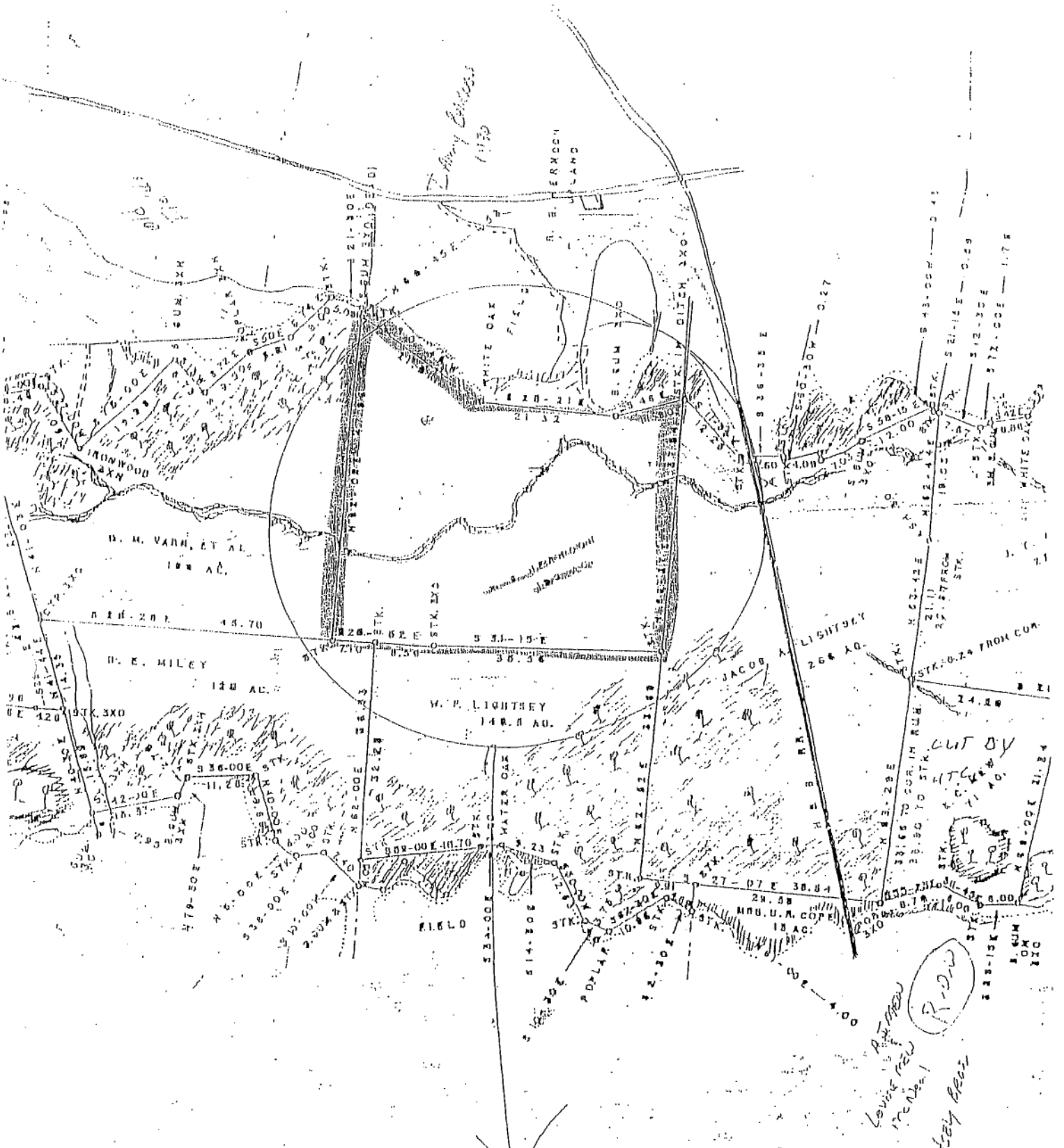
WHEREAS, The Honorable Thomas Kemmerlin Jr. issued an Order on May 2, 2002, ordering that SCDHEC issue the permit, along with other relief, including a declaration that the Coastal Zone Management Program was unenforceable as an improperly promulgated regulation.

WHEREAS, the case was appealed to the Court of Appeals, and the matter was certified to the South Carolina Supreme Court for decision on August 2, 2002.

WHEREAS, the parties to this agreement seek to reach a settlement of all their controversies, including a resolution of all claims and counterclaims in the above-referenced action; and

SCALE	1" = 100'
LENGTH	0' 0" 10' 20' 30' 40' 50' 60' 70' 80' 90' 100'
AREA	0' 0" 100' 200' 300' 400' 500' 600' 700' 800' 900' 1000'
PERIMETER	0' 0" 100' 200' 300' 400' 500' 600' 700' 800' 900' 1000'





The tract of land is identified as R.B. Steward Tract  
 Hampton New Jersey

H A M P T O N

Louise new  
 17c new  
 R-D  
 Lightsey Area



DEPARTMENT OF THE ARMY  
 CHARLESTON DISTRICT, CORPS OF ENGINEERS  
 88 A Hagood Avenue  
 CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO  
 ATTENTION OF

March 22, 2001

Regulatory Division

*Ellison Smith  
 expert atty for  
 Corps.*

Mr. Ken Smoak  
 Sabine & Waters, Incorporated  
 Post Office Box 1072  
 Summerville, South Carolina 29484

Re: Q-2000-263  
 Beaufort County

Dear Mr. Smoak:

In light of recent United States Supreme Court rulings regarding the limits of Army Corps jurisdiction in wetland areas, this letter is intended to inform you that this office has terminated action concerning your unauthorized placement of fill material on a 82.45-acre tract off Burnt Church Road, Beaufort County, South Carolina.

However, a file of all pertinent information relevant to this matter has been made a part of our permanent records, and you are cautioned that any future work in waters of the United States will require a Department of the Army permit. In the future, if you are uncertain as to which areas or types of work require Department of the Army permits, it is strongly recommended that you contact this office for any assistance it might offer.

A copy of this letter has been forwarded to the agencies listed below for their information.

If you have any questions concerning this matter, please contact Mr. Paul F. Hinchcliff of our Environmental Assessment and Enforcement Branch at 843-329-8044.

Respectfully,

Robert H. Riggs  
 Chief, Regulatory Division

Copies Furnished:

South Carolina Department of Health and Environmental Control  
 Office of Ocean and Coastal Resource Management  
 1382 McMillan Avenue, Suite 400  
 Charleston, South Carolina 29405

Mr. Michael Wylie  
 U.S. Environmental Protection Agency  
 Region IV, Wetlands Protection Section  
 61 Forsyth Street





November 30, 1998

Mr. Lewis Shaw  
Deputy Commissioner  
Environmental Quality Control  
SC Department of Health and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201

Dear Mr. Shaw:

My company, Sabine & Waters, Inc, in light of the recent Wilson Case and Tullock Ruling, has some questions concerning SCDHEC/OCRM jurisdiction over activities not regulated by the US Army Corps of Engineers (USACE).

It is our understanding that the Wilson Case ruling removed isolated wetlands from USACE jurisdiction. Under that ruling, the Charleston District USACE is no longer exerting jurisdiction over wetlands that are considered isolated, have no surface connection to a tributary, are greater than 800 feet from a tributary, and have no apparent interstate commerce connection. Areas that meet those basic conditions are considered not jurisdictional and activities conducted in non-jurisdictional areas are not subject to regulation by the USACE. In other words the USACE does not require and will not issue a permit for activities in areas they do not regulate. Additionally, under the Tullock Ruling, excavation in wetlands, as long as certain conditions are met, is not a regulated activity.

Discussions with OCRM in Charleston resulted in the conclusion that any activity, regulated or not regulated by the USACE, conducted in any wetland, jurisdictional or not jurisdictional, without proper authorization will be considered in violation of the Coastal Zone Management Program (CZMP). If OCRM deems the project in violation because of impacts to non-jurisdictional wetlands, then no state certification or permit will be issued for the project until it is considered in compliance with the CZMP. If the activity is conducted in a non-jurisdictional wetland and the USACE does not require a permit, then the activity will be reviewed by OCRM and a decision will be made if whether or not the activity would have previously been considered consistent under the CZMP. If the activity would have been considered consistent before the change in wetland jurisdictional status, but no USACE permit is required, then mitigation must still be provided before the project can proceed. If the project would not have been considered consistent before the change in wetland jurisdictional status, then no state permit or certification will be issued for the project

Mr. Lewis Shaw  
November 30, 1998  
Page 2

until it is considered in compliance with the CZMP. OCRM is conducting "business as usual" regardless of any decision by the USACE. Wetland impacts, regardless of current jurisdictional status, will require mitigation before any state permit will be issued by OCRM. After a conversation with DHEC in Columbia, we understood that if the USACE considers a wetland not jurisdictional, then DHEC will consider the wetland not jurisdictional and will not require mitigation for impacts to non-jurisdictional areas.

We are requesting guidance from your office on how to advise or explain to our clients why they have to provide mitigation for impacts to non-jurisdictional areas in the coastal counties but they do not have to provide mitigation for impacts to non-jurisdictional areas outside of the coastal counties. Our clients want to know if the USACE considers an area not jurisdictional and does not require and will not issue a permit, why and under what authority is OCRM requiring mitigation. If the area is not a jurisdictional wetland why is OCRM regulating it under the CZMP. Does the USACE decision and ruling only apply to areas outside the coastal counties or is it to be considered statewide? The USACE is not requiring a delineation or a survey of non-jurisdictional areas. The USACE only wants an approximation of non-jurisdictional areas on a plat. If the USACE does not require a delineation or survey of non-jurisdictional wetlands, is OCRM going to require a delineation and survey? Is OCRM going to verify the delineation of non-jurisdictional wetlands? If OCRM is not going to verify delineations of non-jurisdictional wetlands and the USACE is not requiring a delineation or survey, who makes the decision about project consistency under the CZMP. Finally, is OCRM going to require surveys of non-jurisdictional wetlands to determine mitigation requirements?

We appreciate your attention to this matter and look forward to your response so we can advise our clients.

Sincerely,

Kenneth Smoak  
Director, Environmental Services





PROMOTE PROTECT PROSPER

2600 Bull Street  
Columbia, SC 29201-1708

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Cyndi C. Mosteller

Brian K. Smith

Godney L. Grandy

OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Telephone (803)898-3900 Fax 898-3942

RECEIVED

JAN 29 1999

DHEC  
OFFICE OF GENERAL COUNSEL

January 27, 1999

Kenneth Smoak  
Sabine & Waters  
P.O. Box 1072  
Summerville, SC 29484

Re: Isolated wetlands

Dear Mr. Smoak,

You have asked about the basis for coastal zone consistency determinations where the Corps of Engineers declines to exercise jurisdiction. As you point out, the Corps of Engineers in South Carolina does not require Federal permits for activities impacting isolated wetlands more than one-half mile from surface waters of the United States.

After review of the cases you cited and discussion with staff, I can provide the following information. I would like to address your questions in two parts.

First, OCRM administers the Coastal Zone Management Plan pursuant to legislative directives set forth in SC Code Sections 48-39-10 *et seq.* The Corps of Engineers administers the Federal Clean Water Act pursuant to 33 U.S.C. Sections 1251 *et seq.* There is a fundamental difference between the source of the Corps' authority and that of OCRM. Although, as you point out, the Corps may not be requiring permits for activities in isolated wetlands because of the *Wilson* ruling, there are other permitting programs based solely on state law for which coastal zone consistency is required. Specifically, stormwater control is required by the South Carolina Stormwater Management and Sediment Reduction Act, Code Sections 48-14-10 *et seq.* Maintenance of water quality, including the narrative standards found in R.61-68, is required by the South Carolina Pollution Control Act, Code Sections 48-1-60 and -80. The Coastal Zone Management Plan requires a consistency determination for any activity impacting wetlands in the eight coastal counties, and this does not turn on

PLAINTIFF'S  
EXHIBIT  
16


TULLOCH, CIV. No. C94-713-CIV-5-BO (E.V.N.C. 1774)  
U.S. V. WILSON, 133 F.3d 251 (4th Cir. 1997)



Office of Ocean and Coastal  
Resource Management

1362 McMillan Avenue, Suite 400  
Charleston, SC 29405  
(843) 744-5838 FAX (843) 744-5847

MEMORANDUM

To: Engineers and Wetland Consultants  
From: Rob Mikell Manager Federal Certification Section   
Re: Impacts to wetlands determined to be non-jurisdictional by the Corps of Engineers  
Date: February 11, 1999

The purpose of this memo is to clarify the position of the Office of Ocean and Coastal Resource Management (OCRM), Department of Health and Environmental Control, regarding impacts to wetlands determined to be non-jurisdictional by the Corps of Engineers. Our desire is to assist you in advising your clients and to resolve problems before they occur.

As a result of two recent court rulings, the Corps of Engineers is no longer requiring 404 permits for filling or excavating certain types of wetland systems. The two recent court actions, commonly known as the Wilson and Tulloch decisions, relate only to Federal Section 404 permitting requirements. There appears to be a misconception that because of these court decisions no other approvals are required for alterations to federally-defined, but non-jurisdictional wetlands. Coastal zone management policies regarding impacts to wetlands have not changed since 1979; and many local development regulations may also govern activities in wetlands.

The South Carolina Coastal Zone Management Program, approved by the legislature in 1979, established policies that require all activities impacting salt, brackish and freshwater wetlands be evaluated based upon specific policies governing the activity. This authority to review impacts to freshwater wetlands existed well before the Corps of Engineers began requiring 404 permits for impacts occurring in isolated wetlands (1986). This authority is pursuant to the State and Federal Coastal Zone Management acts rather than Section 404 of the Clean Water Act, which is the authority the Corps uses to regulate "wetlands or waters of the U.S."

Coastal zone consistency certification is required for any development activity in the eight county coastal zone requiring a federal or state permit. All development permits issued by DHEC in the coastal zone require coastal zone consistency certification. These permits include land disturbance (stormwater and sediment control) permits, permits for

the construction of water supply and wastewater lines and facilities, landfills, alterations to the critical area, docks, larger septic systems, mining activities, and air quality. -

Federal permits requiring certification are mostly Corps of Engineers' Section 404 and Section 10 permits. Permits issued by the U.S. Coast Guard and the Federal Aviation Authority are other examples. Activities that use federal grants, funds or loan guarantees are also subject to certification and coastal zone consistency.

Please be certain to advise your clients that any activity subject to issuance of a federal or state permit will require that a consistency determination be issued by OCRM/DHEC. Any impact occurring on upland or directly in wetland areas is subject to this review. Our wetland policies have not changed, including our wetland master planning policy and mitigation policy. We appreciate your cooperation and assistance in getting this message out. Please feel free to contact Jeff Thompson or me if you have any questions.

cc: Mr. Lewis Shaw, P.E.  
Mr. Christopher L. Brooks  
Mr. Steve Snyder  
Mr. Joe Fersner, P.E.  
Mr. Jeff Thompson  
S. C. Department of Natural Resources  
U. S. Environmental Protection Agency  
U. S. Fish and Wildlife Services  
National Marine Fisheries Service  
U. S. Army Corps of Engineers

STATE OF SOUTH CAROLINA                    )  
  )  
COUNTY OF CHARLESTON                    )

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WHEREAS, The Honorable Thomas Kemmerlin Jr. issued an Order on May 2, 2002, ordering that SCDHEC issue the permit, along with other relief, including a declaration that the Coastal Zone Management Program was unenforceable as an improperly promulgated regulation.

WHEREAS, the case was appealed to the Court of Appeals, and the matter was certified to the South Carolina Supreme Court for decision on August 2, 2002.

WHEREAS, the parties to this agreement seek to reach a settlement of all their controversies, including a resolution of all claims and counterclaims in the above-referenced action; and

WHEREAS, this Settlement Agreement is intended to settle and compromise any and all claims which these parties may have among themselves or which may directly or indirectly arise out of the circumstances with respect to the above-referenced actions;

NOW, THEREFORE, for and in consideration of the mutual promises and undertakings contained herein, of the settlement of the above-referenced actions, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Recitals: The above preamble and "WHEREAS" clauses are hereby incorporated by reference as fully and effectively as if repeated verbatim herein.

2. OCRM stormwater permit: The OCRM Division of SCDHEC will issue a stormwater management permit to McFee, LLP, which will allow the permittee to impact 7.31 acres of isolated freshwater wetlands as shown on a drawing of the property, a copy of which is attached hereto and incorporated herein as Exhibit A.

3. Mitigation: McFee, LLP, and its partners, agree to preserve 7.33 acres of isolated freshwater wetlands for a total wetland preservation area of 8.77 acres, as more particularly shown on Exhibit A, attached hereto and incorporated herein. Additionally, McFee will provide off-site mitigation for the impact to the 7.31 acres of wetlands as shown on Exhibit A by placing a conservation easement or deed restriction on a 189.2 acre tract of land located in the Big Salkhatchie River basin and located in Hampton and Colleton Counties, which is known as the Richard B. Hendon tract and is more particularly shown on Exhibit B attached hereto and incorporated herein.

4. Stormwater Permit Restrictions: SCDHEC will not require any additional wetland buffers or setbacks outside of the 8.77 acre preservation boundary as shown on Exhibit A. SCDHEC further agrees that no additional conditions will be placed on the proposed development outside of the 8.77 boundary as shown on Exhibit A except that the proposed development of the overall tract containing 92.45 acres shall comply with SCDHEC's stormwater management and erosion control regulations.

5. Claims: McFee, LLP, and its partners, hereby withdrawn and affirmatively waives any claims and causes of action asserted in their Complaint. McFee and its partners also agree to waive any claims for costs or attorneys fees as a result of this controversy.

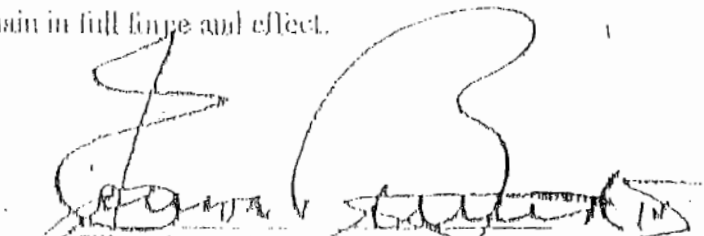
6. Lower Court Order: McFee, LLP, through its undersigned attorney, will also consent to any motion made by the parties to vacate the Order of Thomas Kemmerlin, dated May 1, 2002, from which the appeal was taken.

7. Dismissal of Action: at the execution of this Settlement Agreement, Appellant SCDHEC will move the South Carolina Supreme Court for an Order dismissing the appeal and vacating the lower decision of May 1, 2002.

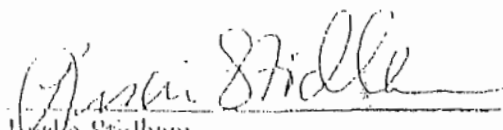
8. Enforcement: Notwithstanding the dismissal of the above-referenced civil action, upon any default hereunder, any party hereto shall be entitled to apply to the Beaufort County Circuit Court or the Administrative Law Judge Division and obtain an order against any other party or parties hereto requiring specific performance with the terms and conditions of this settlement agreement. The prevailing party shall be entitled to reasonable attorneys fees and costs in such action.

9. Miscellaneous: This Settlement Agreement shall be controlled by and interpreted in accordance with the laws of the State of South Carolina and may not be amended except in writing signed by the parties hereto.

10. Severability Provision: Should any separate part of this document be held contrary to law, the remainder shall remain in full force and effect.

  
Ellison D. Smith, IV  
Attorney for Tony Porter, Bennett McNeil, and  
Sherwood Fender, d/b/a McFee, LLP

February 13<sup>th</sup>, 2003

  
Leslie Stidham  
Attorney for SCDHEC

February 13, 2003

COUNTY OF BEAUFORT  
DEVELOPMENT REVIEW TEAM  
ACTION FORM

Members Present - Hillary (✓), Tony (✓), Arthur (✓), Robert (✓)

PROJECT NAME: Myrtle Park - Jasmine Park - Phase 1  
PROJECT TYPE: Multi Family

APPLICANT(DEVELOPER)NAME, ADDRESS, PHONE#: Wood & Partners, 7 Lafayette Place, Hilton Head Island

PROJECT LOCATION: Burnt Church Rd  
PIN: 600-40-451-143  
LAND AREA(ACRES): 18  
LOTS/UNITS: 118  
BLDG AREA(SQFT):

DATE OF REVIEW: 10-26-05  
OVERLAY DISTRICT:  
FIRE DISTRICT: Bluffton  
ZONING DISTRICT: Suburban

TYPE OF DRT REVIEW (X) CONCEPTUAL ( ) PRELIMINARY ( ) FINAL

APPROVED NO CONDITIONS \_\_\_\_\_

DISAPPROVED \_\_\_\_\_ REASONS: \_\_\_\_\_

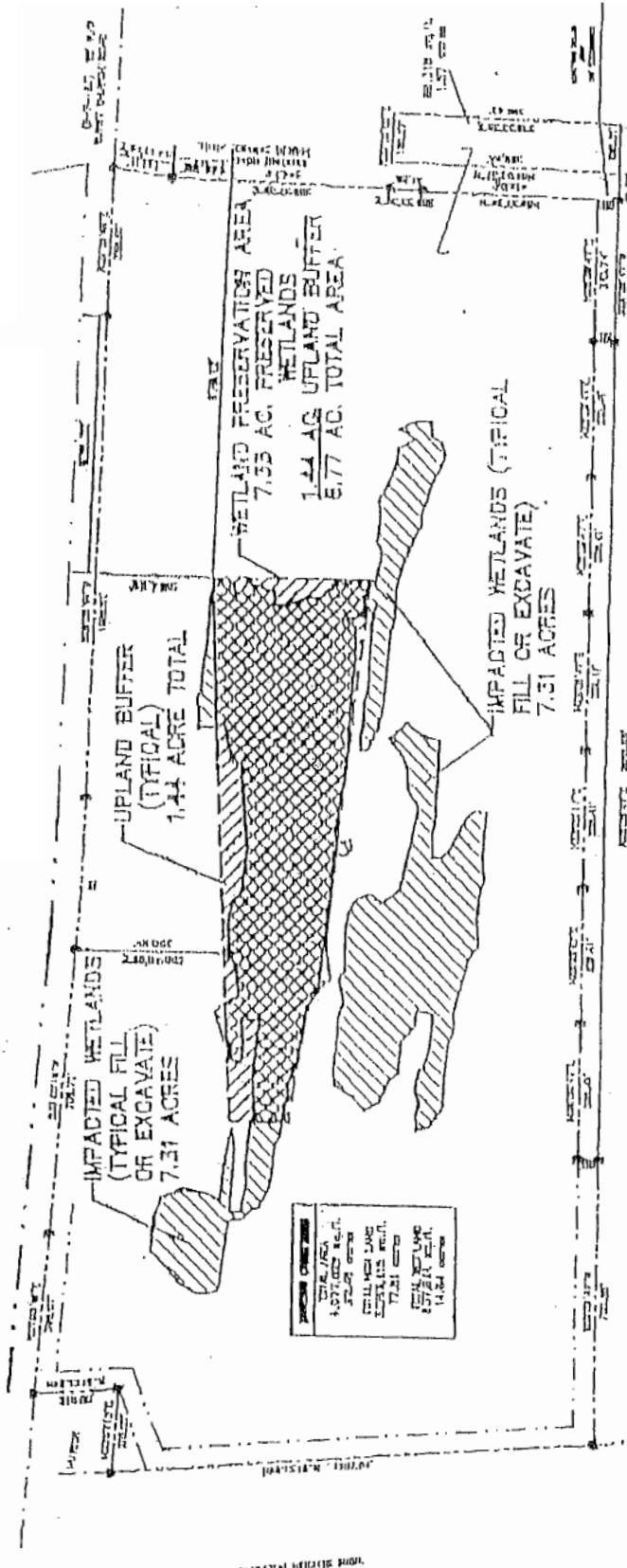
APPROVED WITH CONDITIONS \_\_\_\_\_ CONDITIONS: \_\_\_\_\_

APPROVED SUBJECT TO \_\_\_\_\_ CONDITIONS: \_\_\_\_\_

DEFERRED: (PLEASE SUBMIT THE FOLLOWING) DEFERRED UNTIL MYRTLE PARK AMENDMENT IS APPROVED BY THE DEVELOPMENT AGREEMENT COMMITTEE

*Hillary Austin*  
ZONING & DEVELOPMENT ADMINISTRATOR

10-26-05  
DATE



WETLANDS	
WETLAND AREA	14.64 ACRES
IMPACTED WETLANDS	7.31 ACRES
WETLAND PRESERVATION AREA	14.64 ACRES
WETLAND PRESERVATION AREA	14.64 ACRES
WETLAND PRESERVATION AREA	14.64 ACRES

NOT TO SCALE