



South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

April 5, 2019

a 501c3
non-profit organization

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Clerk, S.C. Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29211

Re: Debordieu Colony Community Association,
P/N #2017-01795

Request for Contested Case Hearing

Dear Jana:

Enclosed for filing please find the Request for Contested Case Hearing, submitted on behalf of the South Carolina Coastal Conservation League, along with my Certificate of Service and \$500 filing fee.

Please return a clocked-in copy in the self-addressed, stamped envelope provided.

Thank you very much for your kind cooperation and assistance.

Yours very truly,

Leslie S. Lenhardt

cc: Bradley D. Churdar, Esq.
Randolph R. Lowell, Esq.
Laura Cantrell

South Carolina Coastal Conservation League,

Petitioner,

v.

South Carolina Department of Health and Environmental Control and Debordieu Colony Association,

Respondents.

CERTIFICATE OF SERVICE

Leslie S. Lenhardt

April 5, 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Coastal Conservation)
League,)
)
Petitioner,)
)
v.)
)
South Carolina Department of Health and)
Environmental Control and DeBordieu)
Colony Community Association,)
)
Respondents.)
_____)

Docket No. 19-ALJ-07-____-CC

**REQUEST FOR
CONTESTED CASE HEARING**

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

Petitioner, South Carolina Coastal Conservation League, pursuant to S.C. Code Ann. §44-1-60, S.C. Code Ann. §1-23-600, and Administrative Law Court Rule 11, hereby requests a Contested Case Hearing in connection with Respondent, South Carolina Department of Health and Environmental Control's ("DHEC" or "the Department"), decision to issue Critical Area Permit and Coastal Zone Consistency Certification #2017-01795 ("Permit") to Respondent DeBordieu Colony Community Association ("DCCA") authorizing beach renourishment and the construction of three groins at Debidue Beach in Georgetown County, South Carolina. A copy of the Permit, which was issued on January 24, 2019, is attached hereto as **Exhibit 1** to this Notice. Petitioner requested a Final Review Conference before the DHEC Board on February 7, 2019. On March 7, 2019, the DHEC Board notified the parties it was declining to hold a Final Review Conference in this matter. The DHEC Board notification is attached hereto as **Exhibit 2** to this Notice. Therefore, this request for contested case hearing is timely.

BACKGROUND

Debordieu Colony is adjacent to the Baruch Foundation property, which is home to the North Inlet/Winyah Bay National Estuarine Research Reserve (“NERR”) in Georgetown County. The Baruch Foundation property and this NERR contain one of the few pristine estuaries left in the United States, and the North Inlet/Winyah Bay NERR is one of only 29 NERRs in the country. The majority of the waters of North Inlet are classified as Outstanding Resource Waters – the highest water classification in the state. Scientists have been conducting long-term ecological studies at the NERR for decades because it is a test control site for the normal functions of estuaries.

On January 24, 2019, DHEC staff issued the Permit, which authorizes the placement of 650,000 cubic yards of beach-compatible material for beach renourishment, along with three groins constructed of aluminum sheetpile along the southern half of the project area varying in length from 300 to 400 feet. Armor stone scour aprons, consisting of approximately 1,500 tons of armor stone per apron will be placed around both sides of the seaward terminus of each groin. The southernmost groin is located on the property boundary between DCCA and the Baruch Foundation. The Petitioner’s request for review is limited to the three groins.

The South Carolina Coastal Conservation League (“League”) is a non-profit membership corporation organized and existing under the laws of the State of South Carolina. Members of the League enjoy the natural resources in and around Debidue Beach and the associated Outstanding Resource Waters of North Inlet for harvesting oysters, fishing, boating, beach-walking, observing wildlife and other recreational purposes. Some members of the League live in Debordieu Colony

and are also members of DCCA. In addition, members of the League have a special interest in preserving this pristine estuary, which is the site of scientific research that benefits these members.

GROUND'S FOR REVIEW

If the applicant proceeds with the proposed groin field, members of the League will be harmed because it will deprive the downdrift beaches of sand, thus adversely affecting their use and enjoyment of these resources.

The League submits that the DHEC staff's decision to issue the Permit was made in violation of applicable statutes, regulations and rules contained in the S.C. Coastal Zone Management Act ("CZMA"), S.C. Code Ann. §48-39-10, *et seq.*, OCRM Regulations 30-1, *et seq.*, the Coastal Management Program ("CMP"), and DHEC Regulations 61-101, *et seq.* Most specifically, the Permit was issued in spite of Respondent DCCA's multiple concessions that the permitted project will in fact have downdrift impacts in violation of applicable statutory and regulatory law.

The CZMA recognizes that the "coastal zone and the fish, shellfish, other living marine resources and wildlife therein, may be ecologically fragile and consequently extremely vulnerable to destruction by man's alterations," and that "[i]mportant ecological, cultural, natural, geological and scenic characteristics . . . are being irretrievably damaged or lost by ill-planned development that threatens to destroy these values." S.C. Code Ann. § 48-39-20(D). Upon information and belief, the proposed groins would harm the sensitive and ecologically fragile public beach and adjacent Baruch Foundation property, which is home to the North Inlet/Winyah Bay NERR.

The Permit also violates the CZMA policies of protecting resources of the coastal zone and the quality of the coastal environment in that they authorize a project that will place artificial steel and concrete structures on a natural beach, and likely will have significant downdrift impacts on the Baruch Foundation property. S.C. Code Ann. §48-39-30.

The Permit also contravenes the policies of the South Carolina Beachfront Management Act (“BMA”) in the following respects:

- A. The BMA recognizes that “without adequate controls, development unwisely has been sited too close to the system. This type of development jeopardized the stability of the beach/dune system, accelerated erosion, and endangered adjacent property. It is in both the public and private interest to protect the system from this unwise development.” S.C. Code Ann. § 48-39-250(4). The proposed groins will accelerate downdrift erosion and endanger the adjacent property of the Baruch Foundation and the North Inlet NERR, as well as public resources in that area, by trapping sand in the groin field and depriving the downdrift beach of sand.
- B. The BMA states that “[e]rosion is a natural process which becomes a significant problem for man only when structures are erected in close proximity to the beach/dune system. It is in both the public and private interests to afford the beach/dune system space to accrete and erode in its natural cycle. This space can be provided only by discouraging new construction in close proximity to the beach/dune system.” S.C. Code Ann. § 48-39-250(6). The proposed groins do not allow the beach/dune system to accrete and erode in a natural cycle because they interfere with sediment transport. In addition, the groins encourage construction built in close proximity to the beach while significantly altering the shoreline in a manner that will have adverse effects on downdrift areas. These policies become even more critical to adhere to given the incontrovertible evidence that sea levels are rising, and at a higher rate than once predicted.

- C. The BMA's policy is to "protect, preserve, restore and enhance the beach/dune system" S.C. Code Ann. § 48-39-260(A). Upon information and belief, the proposed groins violate this policy in that they will cause damage and degradation to the downdrift beach/dune system.
- D. The Permit is inconsistent with general considerations of the project's impact on the production of fish, shrimp, oysters, crabs, clams, other marine life, wildlife or other natural resources; the extent to which the activity could cause erosion; the extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state; and the extent to which the project will affect the value and enjoyment of adjacent owners. S.C. Code Ann. §48-39-150(A) and S.C. Code Ann. Regs. 30-11.B. The groins will exacerbate erosion downdrift of the project, altering a pristine beach/dune system and harming the marine and wildlife which are dependent upon it.

The regulation specifically applicable to groins provides that groins "may only be permitted after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas." S.C. Code Ann. Regs. 30-15.G(2). The proposed groins will cause a detrimental effect on adjacent and downdrift areas. Respondent DCCA has recognized that these negative downdrift impacts will occur, including through the submittal of their Downdrift Impacts Analysis, created in 2017 by Coastal Science and Engineering to be submitted as evidence in this case. Moreover, the United States Army Corps of Engineers' Coastal Engineering Manual describes groins as "...probably the most misused and improperly designed of all coastal structures...Over the course of some time interval, accretion causes a positive increase in beach width updrift of the groin. Conservation of sand mass therefore produces erosion and a decrease in beach width on the downdrift side of the groin." <http://psds.wcu.edu/4402.asp>. Citing USACE,

2002, available at http://www.publications.usace.army.mil/USACE-Publications/Engineer-Manuals/?udt_43544_param_page=4.

Upon information and belief, the Department erred in issuing the Permit by failing to consider the extent of the groins' impact on updrift or downdrift areas and by failing to promote the use of natural features of the beach/dune system, rather than through the use of artificial protections. CMP, IV-56 & 57.

Petitioner is informed and believes that the impacts of the proposed groins will cause significant degradation to the downdrift beach/dune system, as well as to other natural resources of the Baruch Foundation property and North Inlet; will reduce the value of surrounding property; and will have severe negative impacts on public trust beaches, wildlife, the pristine North Inlet and the research being conducted at the North Inlet-Winyah Bay National Estuarine Research Reserve.

As a direct and proximate result of these violations from the proposed groin project, the Petitioner and its members will suffer injury in fact in that the natural resources and environment of this area will be degraded, resulting in material harm to their recreational, environmental and aesthetic interests.

Petitioners reserve the right to present all relevant evidence and arguments pursuant to S.C. Code Ann. §1-23-320.

WHEREFORE, Petitioner requests the Court conduct a contested case hearing and issue an order reversing the decision to issue the Permit.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Amy E. Armstrong", is written over a horizontal line.

Amy E. Armstrong

Leslie S. Lenhardt

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PROJECT

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