



August 29, 2018

Carolina Dock and Marine via 9214 8969 0099 9790 1412 6684 58  
1355 River Road  
John's Island, SC 29455

RE: Seawall Construction- Piping Plover Road, Hilton Head Island, SC 29928  
Beaufort County Tax Map Nos.: R550 017 000 0079 0000, R550 019 000 0048 0000, R550 017 000  
0078 0000, R550 019 000 0049 0000, R550 019 000 0050 0000

Dear Sir or Madam:

The Department recently received concerns regarding the scope of construction activities occurring along properties numbered 15 through 19 Piping Plover Road on Hilton Head Island. These concerns are outlined in the attached letter. In an effort to assess these concerns, Departmental staff conducted an inspection on 8/17/2018. Based upon the results of that inspection, it appears that land disturbing activities were initiated on the referenced properties associated with the seawall construction that may collectively exceed 0.5 acre of disturbance. Submission of a Notice of Intent for storm water permit coverage is required if land disturbance exceeds 0.5 acre or more on site.

You are hereby requested to coordinate with the property owners to discontinue all work activity at this site other than the installation and maintenance of storm water, sediment and erosion control measures related to the construction activities. In addition, site stabilization should be initiated in accordance with the standards set forth in the NPDES General Permit for Storm Water Discharges from Construction Activities, effective January 1, 2013.

Upon your receipt of this letter and subsequent coordination with the owners, but no later than five (5) days after such receipt, please contact Ms. Shannon Hicks, Manager of the Coastal Storm Water Permitting Section, at 843-953-0240 or via electronic mail at [hickss@dhec.sc.gov](mailto:hickss@dhec.sc.gov) to set a date and time to discuss this matter, including appropriate next steps.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Stewart", is written over the word "Sincerely,".

Jill Stewart, P.E. Director  
Dam Safety and Storm Water Permitting Division  
Bureau of Water  
803-898-0439 (office)  
[stewarjc@dhec.sc.gov](mailto:stewarjc@dhec.sc.gov)

Distribution follows on page 2

cc: Mr. Ellis Bertram, Jr. via 9214 8969 0099 9790 1412 6685 26  
888 3<sup>rd</sup> Street NW STE A  
Atlanta, GA 30318

Mr. William S. Oberheim, Trustee via 9214 8969 0099 9790 1412 6685 57  
16 Piping Plover Road  
Hilton Head Island, SC 29928

David and Cynthia Garvey, Trustees via 9214 8969 0099 9790 1412 6685 95  
6520 Forest Park  
Signal Mountain, TN 37377

LTI Enterprises, Inc. via 9214 8969 0099 9790 1412 6686 25  
P.O. Box 312  
Cochran, GA 31014

Snow Family LLC via 9214 8969 0099 9790 1412 6686 49  
10 Green Brier Drive  
Allison Park, PA 15101

ec: Ms. Shannon Hicks, SCDHEC-Coastal Storm Water Permitting  
Mr. Brian Wisnewski, SCDHEC-BOW/Compliance  
Mr. Brian Eber, Town of Hilton Head  
Mr. Michael Corley, SCELPA

Attachment



**South Carolina Environmental Law Project**  
*Lawyers for the Wild Side of South Carolina*

August 10, 2018

501(c)3  
 non-profit organization

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**Shannon Hicks**  
 Coastal Stormwater Section Manager  
 1362 McMillan Avenue  
 Suite 400  
 Charleston, SC 29405

**Re: Seawall at Piping Plover Road, Hilton Head**

Dear Chris and Shannon:

I am writing on behalf of the Coastal Conservation League regarding the permitting status of the seawall that is under construction in front of the properties numbered 15 through 19, Piping Plover Road in Hilton Head. Particularly, we believe that such project is being constructed without the requisite stormwater permit and Coastal Zone Consistency Certification ("CZCC") and that DHEC should halt construction until such time as the property owners have obtained all necessary approvals. Through this letter, I intend to convey the factual and legal basis supporting the need for these additional approvals and to allow the Department a window to consider and address this shortcoming, prior to our initiation of litigation.

The seawall project requires coverage under the NPDES General Permit for Stormwater Discharges from Construction Activities ("the CGP"). Indeed, within the coastal counties, all soil disturbing construction activities require CGP coverage. (See CGP, p. 6). Through FOI request, I have determined (and then confirmed), that the Department has received no stormwater permitting documentation in relation to this seawall. Necessarily, then, the property owners undertaking this project either have completely neglected to obtain CGP coverage, or they are proceeding under the assertion that this is one of the small construction projects (0.5 acres or less), for which CGP coverage is automatic. (See CGP, p. 6). Under either scenario, the property owners are in violation of the law.

First of all, the soil disturbance footprint of this project is greater than 0.5 acres under any plausible calculation. Starting with the engineering drawings for the wall, the structure alone is 449' long by 40' deep, meaning that the physical structure is itself in excess of 0.4 acres. Of course, the structure itself is not, and has never been, the measure of soil disturbance for the CGP. Moving to the construction site, the active construction area presently bounded by silt fence is 449' long by 70' deep, or 0.73 acres in size. This bounded area is the logical minimum measurement for the disturbed soil construction site. All ground within this area has been turned over by equipment operation, shifted and piled for backfill, modified for materials storage, and/or excavated. Further, as is very often the case with construction sites, the soil disturbance in relation to this project goes beyond just the immediate construction zone. Here, heavy equipment is being moved and stored over an extended landward path, measuring approximately 0.2 acres. In addition, equipment has been run to the ocean, and water pumped from the ocean, throughout the course of this project.<sup>1</sup> Even putting all these specifics aside, the simplest of layperson eye tests belies the idea that this obtrusive wall extending along five separate residential lots could possibly be confined to the minor project category for stormwater permitting.

If the property owners are allowed to build this project without any stormwater submittals, such action will constitute a significant weakening of the CGP requirement. Indeed, my firm has been involved with projects in the past that specifically involved this type of shoreline-parallel construction, and even for much shorter structures, it has been beyond debate that the total disturbed area was in excess of 0.5 acres. More than an issue of some technicality, the requirement for individual stormwater submittals for a major project like this serves a publicly important environmental purpose. Accepting the constrained methodology required to measure this project at less than half an acre would set a new and dangerous precedent.

Secondly, however, whether or not the construction site is larger than 0.5 acres, this project requires a CZCC, which the property owners have not obtained. Even when CGP coverage is automatic for a small coastal project, an applicant must file with the Department in order to obtain a CZCC for the project. The Department has adopted a General Coastal Zone Consistency Determination for all projects 0.5 acres or less, but coverage under this general determination is not automatic. Rather, "SCDHEC OCRM must be notified of invocation of this GCZC by submitting the GCZC Request Form, applicable Bureau permit application, site/utility plan, a location map, digital project boundary and a detailed narrative including use of Best Management Practices." (GCZC, p. 1). In sum, all coastal projects that qualify for automatic CGP coverage must submit at least a notice of intent to secure CZCC coverage. Once again, through FOI request, I have determined (and then confirmed), that the Department has received no CZCC documentation in relation to this seawall. Consequently, under the best case scenario for the property owners, they are acting with automatic stormwater coverage but without a mandatory CZCC. This failure is particularly significant, given that the General Coastal Zone Consistency Determination for small projects gives the Department discretion to undertake individual review. (See GCZC, p. 1 ("This GCZC serves as the final staff coastal zone consistency decision associated with the following activities covered under Bureaus of Air, Land and Waste, and Water permits *unless* DHEC staff determines that an individual Coastal Zone Consistency Determination

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<sup>1</sup> I am in possession of photographs showing construction activities within and without the silt fenced area, including water pumping from the ocean, and I am happy to share those if needed.

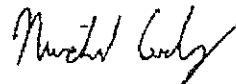
(certification) will be required.”)). Such individual review would certainly be warranted here in relation to the first new seawall in South Carolina in 30 years.

Realistically, though, the homeowners have failed to obtain both the requisite CGP for a construction project disturbing >0.5 acres and the individual CZCC that would need to attach to that CGP coverage. As a consequence, this structure, which flies in the face of decades of state coastal policy and sound science, has been almost fully constructed without any review from the Department. I perceive from DHEC's actions in relation to this seawall that the Department desires to assert jurisdiction and to apply regulatory standards to this project, but that the Department has viewed the project as wholly outside of its authority. My legal opinion is that such conclusion is incomplete or inaccurate. The standards and policies of the CZCC program provide an important opportunity to check this unprecedented structure and to curb what can reasonably be expected to be a new "wave" of oceanfront building. We urge the Department to assert the authority that it possesses over this wall and to uphold what is perhaps the brightest hardline in our coastal policies: the ban on new seawalls.

Under the Coastal Tidelands and Wetlands Act, stakeholders are empowered to act against those proceeding in contravention to our beachfront law. Likewise, citizens are empowered to enforce the Clean Water Act and to bring suit in order to remedy violations thereof. In the absence of Department action, our intent is to pursue all meritorious legal avenues to turn back this dangerous seawall. However, we certainly desire and support the Department's full and thorough execution of its authority. For that reason, we have decided to withhold legal action for three weeks from the mailing of this letter, in order to allow the Department an opportunity to consider whether to take action against this seawall. We are happy to cooperate with the Department in the interim and would welcome any update as to the Department's consideration of the issues presented herein.

Finally, please accept this letter as a request to be notified of any permitting/certification decisions issued in relation to this seawall project.

Respectfully,



Michael Corley

cc: Brad Churdar, SCDHEC OCRM

