



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

MEMORANDUM

TO: All Interested Parties

FROM: *WCE* William C Eiser, Wetland Section Project Manager

RE: Kiawah Development Partners LLC
P/N# 2015-00516-1G

DATE: December 8, 2015

This is to inform you that the above-referenced permit application was denied on December 8, 2015. The proposed work consisted of constructing a community dock on the Kiawah River at 92 Trailing Vine Way, Seabrook Island, for recreational use by future property owners of the six homes sites within Cassique Phase 6 on Little Eagle Island, Seabrook Island.

A copy of the permit denial letter is enclosed.

Any person adversely affected by this decision has the right to appeal as outlined in the enclosed "Guide to Board Review."



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

December 8, 2015

Mr. Ray Pantlik
Kiawah Development Partners LLC
PO Box 12001
Charleston SC 29422

Re: P/N# 2015-00516-1G; 92 Trailing Vine Way, Kiawah Island, SC, Charleston County

Dear Mr. Pantlik:

In accordance with the provisions of the 1977 Coastal Zone Management Act, S.C. Code Ann. Sections 48-39-10 *et seq.*, a review of your permit application has been completed. The work as proposed consists of constructing a community dock. Specifically, the application requested to construct a 6' x 776' walkway, with handrails, leading to a 20' x 20' pierhead. On each side of the pierhead a 3' x 21' ramp will access a 10' x 62' floating dock. A 12' x 20' "by-pass" along the walkway is also proposed. The work as described is for the recreational use of the future property owners of the six homes sites within Cassique Phase 6.

The Office of Ocean and Coastal Resource Management (OCRM), through its Permitting staff, has determined that this permit request should be denied.

The following is a list of specific references from the Coastal Zone Management Act and the Office of Ocean and Coastal Resource Management's Regulations that the staff relied upon in denying your permit:

Sections 48-39-30 (A), (B)(1) and (B)(2): Legislature's policies for permitting structures in the critical area;

R.30-12(A)(1)(m): Requires that handrails shall be limited to a maximum height of 36" above the walkway decking. The proposed handrails are 42" above the walkway decking;

R.30-12(A)(1)(n): Requires that docks must extend to the first navigable creek that has a defined channel as evidenced by a significant change in grade with the surrounding marsh, or having an established history of navigational access or use. The proposed dock will cross a tributary creek that is 34' wide as measured from marshgrass to marshgrass, has a bottom depth that is 5' lower than the surrounding marsh, is 1.87' deep at mean low tide, and is used for navigation as documented in public comment letters;

R. 30-12(A)(5)(c): States that the ratio for determining community dock size in exchange for single-family docks will be 40' of community dock length for each private dock that is eliminated. Since the proposed subdivision consists of 6 waterfront lots where private docks will be eliminated, the maximum allowable moorage at the community dock is 6 x 40' or 240'. The proposed community dock has 248' of moorage when considering both sides of the two 62' floating docks;

R.30-12(A)(5)(f): Requires that walkways leading to community docks or piers shall not exceed 6' in width. The proposed 776' walkway is 6' wide over most its length, but includes a 20' long x 12' wide "passing" section.

Any applicant having a permit request denied or any person adversely affected by the granting of a permit has the right to appeal the agency's decision as outlined in the enclosed "Guide to Board Review." Any applicant having a permit denied may challenge the validity of any or all reasons given for denial.

If you would like a copy of the Coastal Zone Management Act or OCRM's Critical Area Permitting Regulations please contact this office. If I can be of any further assistance, please do not hesitate to call me at 843-953-0232.

Sincerely,

A handwritten signature in black ink, appearing to be 'BW' or 'Blair Williams', written in a cursive style.

Blair Williams, Manager
Wetland Permitting and Certification

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201
Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.