



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

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January 5, 2022

VIA E-MAIL & U.S. MAIL

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Re: Final Review Conference, Requestors Price and Carol Sloan et al.,  
Docket No. 21-RFR-0031, OGC No. 2021-OCR-0031

Dear Members of the Board:

I am writing with regard to the Final Review Conference in the above-referenced matter, which is scheduled for January 13. On December 23, 2021, we filed a motion to intervene in the Final Review Conference process on behalf of the Coastal Conservation League, a copy of which is attached. In response to my inquiry as to when the Board would hear us on our motion, I received an e-mail from the Clerk of the Board on January 4, 2022, which states the following: "[t]he Board will not be hearing the Coastal Conservation League's motion to intervene. The Request for Final Review process does not allow for parties to intervene." I have attached a copy of this e-mail for the Board's reference.

We request that the Board reconsider its decision to refuse to hear us on the motion to intervene. This Board has been granted broad authority by the Legislature to process requests for final review and handle final review conferences, and we dispute that there are any procedures prohibiting intervention. S.C. Code Ann. § 44-1-60(F) provides a very limited number

of guidelines that the Board must follow in conducting a final review conference, but does not speak to motions at all. The statute clearly does not limit the participation at a final review conference to only the “applicant” or “affected person:” “[a]ny final review conference officer may request additional information and may question the applicant or affected party, the staff, **or anyone else providing information** at the conference.” [emphasis added]. Further, the lack of procedures for addressing motions does not in any way mean that the Board may not consider them. There are no formal rules that can be located governing Final Review Conference procedures other than the “Guide to Board Review” published on the DHEC website, and the Board has the discretion to consider a motion to intervene and also allow for intervention.

The lack of specificity in the statute does not prohibit the Board from hearing and ruling on a motion to intervene and in fact they have a history of doing so. This Board routinely decides motions, such as consent motions to extend the 60-day timeline to conduct a final review conference pursuant to 44-1-60. In fact, the Board has ruled on a motion to intervene on at least one occasion. I am attaching notification of a denial of a motion to intervene dated August 31, 2016.

However, if the Board refuses to rule on the motion, I am submitting comments on the RFR being considered by the Board, which are set forth below.

The staff decision on the proposal to permanently retain a sand bag wall illegally installed last year was thorough and well-reasoned. Their Initial Staff Response dated December 10, 2021 details the protracted enforcement discussions and negotiations the OCRM staff endured from September 2020 until October 2021, when Paul Gayes submitted a study request to attempt to keep the sand bag wall in place permanently.

The staff correctly noted that the bags installed on the beach are nothing more than “fabric containers that contain sand and are therefore sandbags.” Initial Staff Response at 5. The statutory and regulatory framework of the Beachfront Management Act contemplates the use of sand bags, but only as a temporary measure in an emergency situation. These clearly were never intended to be temporary, as they have been installed for over a year now and the Requestors pushed back against the staff that entire period of time from removing them. Neither are these sand bags addressing any sort of emergency situation. They are located behind the existing wooden bulkhead and while they may have assisted in addressing temporary overwash, that does not rise to the level of an emergency and, most critically, if the Requestors would do what the law requires and remove these bags, the beach renourishment that will without question address their erosional issues can commence.

Essentially, the Requestors are attempting to keep a permanent erosion control structure in front of their homes through the permit exemption process and get rewarded for ignoring the laws, ignoring the staff, and forcing them to engage in protracted enforcement matters for over a year. The “research” project, which was proposed by Dr. Paul Gayes with Coastal Carolina University initially (and who notably is not a party to this appeal), would not further research on alternative beachfront technologies. There is absolutely nothing new or experimental about

putting sandbags on the beach or covering up those sandbags. What is new is the attempt to evade clear regulatory prohibitions and to raise experimental arguments to avoid complying with them. This Request would set a damaging precedent for the State and would in no way further the state policy of beach preservation.

The staff further points out the obvious legal prohibition against even studying this sort of beach armoring. OCRM regulations provide the parameters under which sand bags may be used and under every circumstance they must meet the definition of emergency: "[e]mergency' means any unusual incident resulting from natural or unnatural causes which endanger the health, safety, or resources of the residents of the State, including damages or erosion to any beach or shore resulting from a hurricane, storm, or other such violent disturbance." S.C. Code Ann. § 48-39-10(U). Allowing this sand bag wall to be permanently covered "would be akin to a state educational institution requesting to build and study a new shore-parallel erosion control structure, such as a bulkhead, seawall, or revetment, to determine how well the structure protects beachfront houses landward of it." Initial Staff Response at 7.

The Department has wisely created the S.C. Beach Preservation Technical Advisory Committee (TAC), on which many stakeholders from different perspectives sit and volunteer their time, to explore the very issue of beach preservation techniques. The mission of this committee is to:

Inform the South Carolina Beach Preservation Committee by examining research and information related to specific beach preservation techniques, including shoreline stabilization, beach nourishment, and dune restoration, and land management, and evaluate existing and alternative shoreline policies. The outcome of the TAC will be a final report summarizing the deliberations and highlighting policy options for consideration.

The TAC is already holding meetings, the most recent of which occurred on December 6, 2021. The volunteer members are discussing these issues in good faith and recognize the need to do so. This activity proposed to be approved by DHEC, however, is not the type of project appropriate for study for the reasons discussed by the staff and highlighted above.

Requestors attempt to confuse the issue before this Board by repeatedly referring to the statutory policy of "beach preservation" as "coastal preservation" as support that they are entitled to preserve their buildings. The purpose of these misstatements is to try to broaden the scope of what the Department must consider and protect along the coast to include beachfront development. While a policy to preserve "the coast," could be construed to include high-dollar homes, South Carolina's policy is to preserve "the beach." The beach is defined by statute as "those lands subject to periodic inundation by tidal and wave action so that no nonlittoral vegetation is established." 48-39-10(H). Obviously, the State's definition is far more limited and excludes the Requestors' buildings. Similarly, Requestors intentionally and incorrectly refer to DHEC-OCRM's task force, of which Dr. Gayes is a member, as the "Beachfront Preservation Technical Advisory Committee," instead of the correct moniker "Beach Preservation Technical Advisory Committee." Similar to the intentional misstatements discussed above, the purpose of

this incorrect nomenclature is to mislead the Board as to the scope of what the Department is required to consider and protect along the coast to include beachfront development as opposed to the preservation of the natural beach system. This intentional error likely would have been cleared up if the applicant himself had requested final review, but he did not- only the property owners who would benefit from this "study" did.

Respectfully, this Board is not comprised of members who have the kind of experience, knowledge, and expertise that your staff has. The Board should rely on their expertise and support their decision.

Therefore, we beseech the Board to hear the League's Motion to Intervene. In the alternative, we are providing this information to the Board for consideration at its Final Review Conference in this matter.

Respectfully,



Leslie S. Lenhardt  
Staff Attorney

Enclosure

cc: Brad Churdar, Esq.  
J. Joseph Owens, Esq.  
Hon. Stephen L. Goldfinch, Jr., Esq.