



Public Notice # DHEC NAV000182

Public Notice Date: May 3, 2024

**NOTICE OF DEPARTMENT DECISION
CONSTRUCTION IN NAVIGABLE WATERS PERMIT**

The Department, acting on an application for Construction in Navigable Waters Permit pursuant to R. 19-450. et. Seq., 1976 SC Code of Laws has reached a proposed decision for the project described below.

Mitch Kovitz
Construction of a residential development with associated amenities
Lake Greenwood
Greenwood County
NAV000182

After reviewing the project plans, Department Staff determined that there is a reasonable assurance that the proposed project will be conducted in a manner consistent with the permitting requirements of R. 19-450. et. Seq., 1976 SC Code of Laws. Accordingly, the Department proposes to permit the project with conditions as follows:

Navigable Waters Conditions:

1. The applicant must implement best management practices that will minimize erosion and migration of sediments on and off the project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, hay bales, silt fences, or other devices capable of preventing erosion, migration of sediments, and bank failure. All disturbed land surfaces and sloped areas affected by the project must be stabilized.
2. All necessary measures must be taken to prevent oil, trash, debris and other pollutants from entering the adjacent water or wetlands.
3. Construction activities must avoid and minimize, to the greatest extent practicable, disturbance of woody shoreline vegetation within the project area. Removal of vegetation should be limited to only what is necessary for construction of the proposed structures.

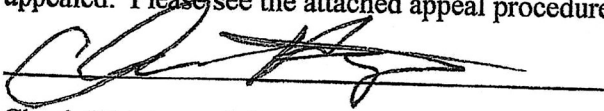
The SC Department of Health and Environmental Control reserves the right to impose additional conditions on this permit to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State standards.

A copy of plans submitted by the applicant is available for review in the office of the Division of Water Quality, Bureau of Water. Additional information about the technical aspects of this application is available from Morgan Amedee, the project manager, at (803) 898-4179.

The final Construction in Navigable Waters Permit will be issued unless there is a timely request for

review of the Department Decision based on water quality or water use impacts.

The issuance of this Notice of Department Decision represents a final staff decision that may be appealed. Please see the attached appeal procedures for details.

A handwritten signature in black ink, appearing to read 'Chuck Hightower', written over a horizontal line.

Chuck Hightower, Manager
Water Quality Certification,
and Wetlands Section

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 the 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.
2. RFRs should be filed on-line (scdhec.gov/FileRFR) or 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, RFRs may be filed with the Clerk by electronic mail (boardclerk@dhec.sc.gov).
3. 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
 - the name of the Requestor and the Requestor's mailing address, email address, if applicable, and phone number(s) at which the Requestor can be contacted. If the Requestor consists of a group of individuals, a representative of the group should be identified to receive all notices and communications related to the RFR for the group.

All information submitted is subject to release under the Freedom of Information Act. If the RFR and accompanying documentation contain information the Requestor believes should not be released, such information should be identified.

4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day. Credit card payments may be made by phone (803-898-3460, option 2) or on-line at scdhec.gov/FileRFR.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure or any other procedural question, 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.
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. Following any necessary redaction, the Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within ten (10) working days. If the Requestor is not the applicant, permittee, or licensee, the Clerk will email the RFR to the applicant, permittee, or licensee and give them the option of providing a response within ten (10) working days. Upon receipt of the Department Response and, if timely received, the applicant, permittee, or licensee response, the Clerk will forward the RFR and response(s) to all Board members for review, and all Board members will confirm receipt of the RFR package to the Clerk by email. The responses will also be provided by the Clerk to the Requestor and the applicant, permittee, or licensee if not the Requestor, when provided to the Board; however, questions by RFR Committee members notwithstanding, no subsequent submittals by the parties will be provided to the Board until and if a Conference is scheduled. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will attempt to 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 seventy-two (72) hours and will request further review. If no Board member requests further review of the RFR within the seventy-two (72) 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 in this provision end on a weekend or State holiday, the time is automatically extended to the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Board that further review is requested. The Board member(s) requesting further review will appear at the RFR Committee meeting to discuss the matter with the RFR Committee unless excused by the presiding member. ~~If time allows, an RFR Committee member may submit questions to the parties via the Clerk to be answered in writing prior to the RFR Committee meeting. RFR Committee meetings are open to the public and will be public noticed at least twenty-four (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 send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publicly noticed and the Notice 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 a committee other than the RFR Committee or a designee, include a copy of the Chairman's order appointing the committee or the designee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
3. Information submitted to the Clerk at least twenty-four (24) hours prior to the Conference will be provided to the Board for consideration prior to the Conference. Such information will also be provided to the parties. While parties may distribute handouts at the Conference, information received by the Clerk after this deadline will not be provided to the Board or the parties.
4. Slide presentations for the Conference must be provided to the Clerk at least twenty-four (24) hours prior to the Conference to allow time for uploading. Slide presentations will be provided to the Board and the parties prior to the Conference.
5. 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 [15 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. [20 minutes] *NOTE: The burden of proof is on the Requestor(s)*
- Rebuttal by Department staff [20 minutes]
- Rebuttal by applicant, permittee, or licensee, if not the Requestor [5 minutes]
- Rebuttal by Requestor(s) [15 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 thirty (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 to the parties 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.

STAFF ASSESSMENT
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (SCDHEC)
DIVISION OF WATER QUALITY
WATER QUALITY CERTIFICATION AND WETLANDS SECTION

I. Background Information

Applicant: Mitch Kovitz

P/N Number: NAV000182

P/N Date: January 25, 2024

P/N Close: February 26, 2024

Section of Applicable Federal Law: Section 10 Section 404 Section 401

Section of Applicable State Law: Coastal Zone Consistency Construction in Navigable Waters Permit

Brief explanation and purpose of activity:

The purpose of the activity is to construct a residential development with associated amenities.

Waterbody Name: Lake Greenwood

Water Classification: FW

Waterbody Location: The project is located on Backwater Road, Greenwood, South Carolina, 29649 (Latitude: 34.761289°N, Longitude: -82.949443° W).

Waterbody on 2020-2022 303(d) List/ have an approved TMDL?

Yes

No

II. Project Description

The proposed project will consist of a private 12' x 100' boat ramp with a courtesy dock. Approximately 43 cubic yards of impacted fill will be required for the construction of the boat ramp. In addition, the project will include a marina, with the capacity to provide 32 dedicated boat slips.

A. Fill

1. Is fill required?

Yes

No If no proceed to Section II. B.

Amount	Cubic Yards	Acres
Total	43	0.027
Wetlands	-	-
Open Waters of U. S.	43	0.027

2. Is the fill temporary?

Yes

No

B. Excavation

1. Is excavation required?

Yes

No If no proceed to Section II. C.

B. Are there feasible alternatives to the proposed activity?

Yes

No

Yes, based on the modifications received from the applicant, see Section II. D., Modification.

The proposed activity should not cause adverse impacts to water quality or change classified uses if the applicant adheres to the conditions listed in Section VIII; therefore, no alternatives were investigated.

C. Navigability Assessment

Does the activity affect the Navigability of the waterbody?

Yes

No

IV. Comments Received and Summary of Comments

A. S. C. Department of Natural Resources (SCDNR)

Date received: February 28, 2024

Does not object to project provided the applicant adheres to the conditions in Section VIII.

Hold in abeyance.

Objects to the proposed project, see discussion in Section VI, Conclusions.

No objection.

Has elected to not conduct an investigation nor provide any comments.

SCDNR offers no objections to the project provided it is found by Greenwood County Lake Management to be compliant with the Greenwood County Ordinances that serve as the Shoreline Management Plan (SMP) for Lake Greenwood.

B. Public Comment Letter

Date received: February 27, 2024

Does not object to project provided the applicant adheres to the conditions in Section VIII.

Hold in abeyance.

Objects to the proposed project, see discussion in Section VI, Conclusions.

No objection.

Has elected to not conduct an investigation nor provide any comments.

C. Public Comment Letter

Date received: February 21, 2024

Does not object to project provided the applicant adheres to the conditions in Section VIII.

Hold in abeyance.

Objects to the proposed project, see discussion in Section VI, Conclusions.

No objection.

Has elected to not conduct an investigation nor provide any comments.

V. Consistency with the Coastal Zone Management Program, R. 48-39-10 *et seq.*

Did the staff of the Office of Ocean and Coastal Resource Management (OCRM) find the project consistent with the S.C. Coastal Zone Management Program? Yes N/A

Per revisions

Per conditions included in Section VIII.

If no, provide Sections of Coastal Zone Management Program cited.

VI. Conclusions on Construction in Navigable Waters Permit

When evaluating the proposed work, SCDHEC followed procedures for implementing Regulation 19-450 et seq., 1976 Codes of Laws, Construction in Navigable Waters Permitting Program.

The Department received two public comment letters for the proposed project. The first comment letter was received from Mr. Robert Novak, an adjacent lot owner. Mr. Novak expressed concern that the site plan included in the public notice was limited in scope and did not show how far out into the lake the ramp would extend in reference to the opposite side of the waterway. According to Mr. Novak the project appears to be in the narrowest parts of the inlet and would be the longest projection into the waterway. Mr. Novak not only expressed his concern but also presented multiple questions to the applicant.

Question 1: Are you planning to remove soil, before filling in the 42 yards of stone? If not, how is the added mass of the stone/concrete going to displace the soil/mud around it?

Question 2: What is the plan for controlling the erosion/silting as the lake is lowered and raised over time?

Question 3: How much soil contamination will be added to the lake water during construction? How much mud will the 42 yards of gravel displace? Where will it go?

Question 4: Is there an Environmental impact statement on file for this proposal, particularly regarding the striped Bass in this inlet?

Question 5: What impact will increased boat traffic in this inlet have on water quality and fishing? What impact will increased wake turbulence from more boat traffic have on the high water level?

Mr. Novak concluded by requesting to see a more detailed plan of the project and a copy of the environmental statement. In addition, Mr. Novak is proposing for the applicant to shorten the ramp/dock to 60 feet and reorient it to 333 degrees north from the current 360 north.

The applicant submitted the following response:

According to the applicant, the permit application includes detailed drawings showing the dimensions and depth of the ramp and associated dockage. The applicant believes the proposed plans and dimensions are within Greenwood County Lake Management and the South Carolina Department of Health and Environmental Control (SCDHEC) requirements. According to the applicant, displaying nearby docks is not a requirement of the Permit Application for Construction in Navigable Waters.

Response 1: The applicant states, the soil will not be removed prior to placement of stone. Stone will be placed in accordance with Greenwood County Lake Management requirements.

Response 2: According to the applicant erosion control measures will be incorporated as part of the proposed project as mandated by Greenwood County and SCDHEC.

Response 3: The applicant states proper erosion control measures will be incorporated as part of the proposed project to minimize erosion as required by SCDHEC. In addition, the applicant believes associated stone will be placed in accordance with Greenwood County Lake Management requirements.

Response 4: According to the applicant, an environmental impact statement is not required as part of the Permit Application for Construction in Navigable Waters.

Response 5: The applicant states any boaters would be required to adhere to the South Carolina Department of Natural Resources (SCDNR) rules and regulations for the operation of a vessel in Lake Greenwood.

The applicant states detailed drawings including a Site Plan, Ramp Profile, and Ramp Section drawings were provided in the Navigable Waters Permit Application. In addition, the applicant believes the proposed dimensions and orientation of the ramp and associated dockage are within SCDHEC and Greenwood County Lake Management requirements while still providing access during low water level. According to the applicant, displaying adjoining docks and property boundaries is not a requirement of the Permit Application for Construction in Navigable Waters. In response to proposed dimension and orientation change, the applicant states the proposed dimensions and orientation of the ramp and associated dockage are within SCDHEC and Greenwood County Lake Management requirements while still providing access during low water level.

The second comment letter was received from Mr. Paul Trnka, an adjacent lot owner. Mr. Trnka states that he along with other adjacent property owners are responding to the notice as standing against the construction of the boat dock and ramp since it is in a "cove" that is unsuited for such heavy use, he also believes the water depth is not adequate for the use depicted. In addition, Mr. Trnka states the project will result in the depreciation of water quality and aquatic life in the area.

Mr. Trnka believes the construction is in direct violation of Greenwood County's Ordinance No. 18-04 – "Ordinance Amending Ordinance No 15-03 Regulating Activities within the Project Boundary of Lake Greenwood" per Section 4: Unlawful activities. Mr. Trnka also refers to Public Notice No. SC GP 95-001 (revised), in addition to "Greenwood County Policies and Procedure" Protected Zone Piers, Number 11.2, regarding "Shoreline Management Plan Background and Provisions. According to Mr. Trnka the proposed plan does not indicate any volumes for concrete. In addition, Mr. Trnka believes the area along the shore is a critical habitat area. Mr. Trnka states it is the collective opinion that the proposed construction of the docks and boat ramp is not compatible or feasible in the proposed area. According to Mr. Trnka, the proposed dock and boat ramp sit in the upper reaches of the cove and as such, the existing water levels get less and less as you move further in. Mr. Trnka believes in turn the activity would be harmful to any existing vegetation and life within the waters of the cove itself in addition to not taking into consideration the amount of increased boat traffic in and out of the cove.

The following response was submitted:

According to the applicant a very specific language was extracted from the ordinance without the full context of the document. The applicant believes the ordinance is clear to say that it is unlawful to do certain activities such as construct a dock, boat ramp, ext. without a permit from Greenwood County. The applicant states the entire reason for this process is to obtain the required permits. The applicant states this is a planned private residential development not for commercial use. According to the applicant, use of the boat ramp and associated dockage will be for residents of Project Oakley. According to the applicant proper erosion control measures will be incorporated as part of the proposed project as mandated by Greenwood County and SCDHEC. In addition, the applicant states that the permitting process will include submittals to Greenwood County, SCDHEC and FERC, as required. The applicant believes the placement of the planned ramp and associated dockage is in accordance with Greenwood County Lake Management requirements and was done in coordination with Greenwood County Lake Management officials. According to the applicant calculated concrete and rock quantities are provided in the Site Plan figure. The applicant states the quantity of 42.6 cubic yards does not exceed the 50.0 cubic yard limit.

The applicant states the green line shown in the Critical Habitat – Lake Mgt Lake Greenwood – New port Cove figure is zoned as "Future Commercial/Residential". According to the applicant the orange line depicts the "Impact minimization zone" for the critical habitat areas. The proposed location of the ramp avoids the "Impact minimization zone". The applicant believes the placement of the planned ramp and associated dockage is in accordance with Greenwood County Lake Management requirements and was done in coordination with Greenwood County Lake Management officials.

Information about the technical aspects of this application is available from Morgan Amedee, the project manager, by calling 803-898-4179 or by emailing amedeemd@dhec.sc.gov. SCDHEC reserves the right to impose additional conditions on this Certification/Permit to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with the Construction in Navigable Water Permitting Program.

VII. Staff Recommendation

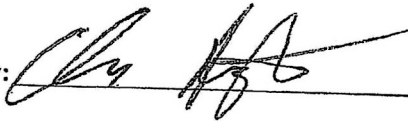
Issue State Construction in Navigable Waters Permit with conditions.

VIII. Conditions to be Placed on Construction in Navigable Waters Permit When Issued

Navigable Waters conditions:

1. The applicant must implement best management practices that will minimize erosion and migration of sediments on and off the project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, hay bales, silt fences, or other devices capable of preventing erosion, migration of sediments, and bank failure. All disturbed land surfaces and sloped areas affected by the project must be stabilized.
2. All necessary measures must be taken to prevent oil, trash, debris and other pollutants from entering the adjacent water or wetlands.
3. Construction activities must avoid and minimize, to the greatest extent practicable, disturbance of woody shoreline vegetation within the project area. Removal of vegetation should be limited to only what is necessary for construction of the proposed structures.

Prepared by: Morgan Amedee Date: 04/01/2024

Reviewed & Approved by:  Date: 4/30/24