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The Honorable William E. Sandifer, III, Chairman  
House Labor, Commerce and Industry Committee  
407 Blatt Building  
Columbia, S. C. 29201

RE: The House Labor, Commerce and Industry - Business and Commerce  
subcommittee

Dear Chairman Sandifer:

I am a shareholder in the McNair Law Firm, and practice in the Charleston office specializing in administrative and environmental law. I learned that the above-referenced subcommittee recently conducted a meeting entitled "*Public testimony on ways to improve the business climate by elimination of unnecessary, burdensome and redundant state and local government regulations and policies.*" It is my understanding that the subcommittee has invited written public comment and has kept the record of the meeting open to receive additional comments. I would appreciate your inclusion of these comments in the record of the meeting. If these comments are more appropriately directed to the Chairman of the subcommittee, I would ask that they be forwarded to the appropriate person.

I represent commercial and residential landowners and developers in the eight coastal counties in the process of obtaining permits from the S. C. Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management ("OCRM"). As you can imagine, many of my clients are not very active now, as they struggle with financing issues and a slow real estate market. However, between 2002, when I began my work with the McNair Law Firm, through the first six months of 2008, my clients were all economically viable and were working diligently to get through the various State, Federal, and Local Government approval processes in order to bring their product – commercial and residential development – to market. I have found, and have advised my clients accordingly, that the Federal permit process, through the U. S. Army Corps of Engineers, is a predictable process. The Corps has promulgated specific regulations and procedures. My clients know, when the process commences, what to expect and plan accordingly in their financing structure and their marketing plans. The same is true with the process of obtaining local government approvals – local ordinances are usually very specific and a client seeking local approvals can plan accordingly.

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The State permitting process, through OCRM, is not predictable. The time in obtaining permit approvals is an unknown, and the requirements are difficult to

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determine on the front end. The State permitting process slows many developments to a crawl, putting financing at risk, and, ultimately, contributing to the failure of many projects.

This condition has not been addressed, perhaps because of reluctance on the part of the regulated community to complain, out of a fear of the consequences. I have become so cynical about the issue that I have decided it may not be in my best interest to fix OCRM, since most of my business comes when folks are frustrated and about to give up!

However, during this economic crisis, the beneficial impacts of growth and development in a community have become very real. Each of my clients, who had the vision to see potential in vast acreage of undeveloped land and had the financial competence to structure a scheme to fund the development of the land, made substantial contributions to the economic health of our communities, and that contribution is now sorely missed. Many jobs, and wealth, were created through the construction industry – the roofers, the builders, the heavy equipment operators, the asphalt companies, the counter tops, the cabinetry, the roads, the landscaping, the real estate agents, the bankers. And, communities benefited from the donation of lands for beautiful new schools, the extension of water and sewer lines, funded by new development, and the growth in tax base.

Please understand that I don't expect an environmental permitting agency to approve every application it receives. We have stringent regulations in S. C. governing coastal development, and I'm not seeking to weaken or change the current regulatory regime. However, in the past that regime was implemented in a manner that welcomed new projects subject to certain conditions and revisions that reduced or eliminated environmental impacts. More recently however, OCRM has implemented its permitting responsibilities based on a policy of saying "no." I sincerely hope that this agency culture, or policy, can be changed. All economic predictions for S. C. indicate that we will (hopefully) begin pulling out of this recession by 2010. At that point, all State agencies should be working to encourage growth and prosperity in this State. OCRM, with its current leadership and mentality, may not be able to respond to the chance of renewed economic prosperity.

I can provide numerous examples of how my clients have suffered from regulatory delay and uncertainty. I do not have permission at this point (although I could probably obtain permission if necessary) to disclose the identity of my clients but I can generally describe their projects:

1. Local Construction Firm (family owned business) retained title to land adjacent to an existing development and the only access to this undeveloped land was through construction of a bridge over tidal wetlands. Permit process was initiated while economy was strong, and while there were many suitors seeking to purchase the land if owner was successful in obtaining a bridge permit. Permit process took over 2 years because OCRM refused to consider project under "Transportation" regulations and insisted that the land being developed was a "Coastal Island."

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The land being developed was at the tip of a long, narrow land mass that was part of Johns Island and was connected by a system of roads to Johns Island. By the time the permit process was concluded, all potential “suitors” seeking to buy and develop the property were lost, and the economic downturn was evident. This was a relatively uncomplicated permit – a vehicular bridge over tidal wetlands – hundreds of similar permits have been issued over the years, and there is no excuse for the permitting process dragging on as long as it did.

2. Beaufort County landowner and developer trying to develop an island struggled with OCRM for almost 5 years before obtaining a permit. At the time the permit application was submitted (2003) there was significant potential and economic return for development of a 10+ acre island. Once the process concluded, the market and the economic opportunity were lost. The process concluded with the issuance of a bridge permit, which the applicant had been clearly entitled to since 2003, but OCRM had worked hard for five years trying to find a way to say “no” to the application.

3. Florida resident who invested \$875,000.00 in a 15 acre island in Beaufort County, only to be told in 2005 by OCRM that even though she had a deed from her predecessor in title, and a chain of title dating back to 1865, OCRM did not believe that she owned her island and therefore the agency refused to process her dock permit application. This matter is still unresolved, four years later and I’m sure my client regrets ever investing money in S. C. coastal real estate.

4. Group of investors attempting to develop property in Georgetown County encountered significant delays in obtaining an OCRM stormwater permit based on archeological concerns. Clients were well aware of archeology on site and were committing hundreds of thousands of dollars to preserving site or performing data recovery. OCRM insisted on a separate Memorandum of Agreement with clients, consequently clients were required to negotiate and execute one MOA with the Corps of Engineers and the S. C. Department of Archives and History and then a separate MOA, basically saying the same thing, with OCRM and the S. C. Department of Archives and History. Process was time consuming and expensive and the failure to timely obtain OCRM’s stormwater approval delayed local government approval which put financing at risk. Eventually, as a consequence of the delays and the legal fees involved in the investors gave up on the project.

5. N. C. Mining Company with extensive holdings in S. C. proposing to mine in areas designated and permitted as “future reserves” that contained wetlands. Company met with OCRM to discuss mining in future reserves. OCRM staff stated they would respond to Company’s request. OCRM never responded, and after several months of hearing nothing from OCRM, Mining Company proceeded to mine in future reserves in accordance with its schedule and commitments to provide materials. Mining Company understands potential risk, but had no choice but to proceed when OCRM failed to respond or comment.

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I, along with other attorneys who represent clients before OCRM, can provide countless other examples of the financial hardship that a citizen suffers when an agency ignores regulatory deadlines for permit issuance, allows permit applications and requests for information to languish, and imposes requirements that aren't based in law or regulation. More importantly, the agency may have lost sight of its mission, which is reflected in the unnecessary road blocks that a permit applicant has to cross in order to obtain a permit. I hope that economic recovery is a reality by 2010, but recovery will be impeded in the State's coastal counties unless there is more certainty and predictability in the OCRM permit process.

Very truly yours,



Mary D. Shahid

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