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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Jocelyn Newman, Circuit Court Judge

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Appellate Case No. 2024-000961

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Ryan McAvoy, .....Appellant,

v.

The Town of Hilton Head Island, South Carolina, ..... Respondent.

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**RECORD ON APPEAL**

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|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS |
|                                   | ) |                              |
| COUNTY OF BEAUFORT                | ) | CASE NUMBER 2022-CP-07-1625  |
| RYAN MCAVOY, Individually and on  | ) |                              |
| Of All Others Similarly Situated, | ) |                              |
|                                   | ) |                              |
| Plaintiff,                        | ) |                              |
|                                   | ) | ORDER DISMISSING COMPLAINT   |
| vs.                               | ) | RULE 41(b), SCRC             |
|                                   | ) |                              |
| THE TOWN OF HILTON HEAD           | ) |                              |
| ISLAND, SOUTH CAROLINA,           | ) |                              |
|                                   | ) |                              |
| Defendant.                        | ) |                              |

This case is before the undersigned as a Non-Jury matter by virtue of Ryan McAvoy's Complaint seeking Declaratory and Injunctive relief against the Town of Hilton Head Island, South Carolina. This case was tried on September 6, 2023, at the Beaufort County Courthouse. Present were James G. Carpenter, attorney for Ryan McAvoy, and Curtis L. Coltrane, attorney for the Town of Hilton Head Island, South Carolina (herein, the "Town").

#### COMPLAINT OF RYAN MCAVOY

In his Complaint, Ryan McAvoy alleged:

1. The Town is a municipality located in Beaufort County, South Carolina.
2. The Town has spent public money for the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek, which are private waterways located in Sea Pines in the municipal limits of the Town.
3. In the year 2022, the Town voted to spend \$600,000 in public money for dredging the Harbor Town Yacht Basin and Braddock Cove Creek in Sea Pines.

4. The expenditures of public money for the dredging is an expenditure of public money for private purposes in violation of S. C. Const, Art. X, § 5 and 11.

On these allegations Ryan McAvoy sought:

1. A declaration that the described expenditures by the Town have been expenditures of public money for private purposes in violation of S. C. Const, Art. X, § 5 and 11;
2. An injunction prohibiting the Town from spending public money for the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek; and,
3. An award of attorney's fees under S. C. Code Ann. § 15-77-300 (Supp. 2023).<sup>1</sup>

#### ANSWER OF THE TOWN

In its Answer, the Town denied the material allegations of the Complaint of Ryan McAvoy and asserted the following defenses:

1. The waters of the Harbour Town Yacht Basin, the entrance channels to it and Braddock Cove Creek are not private property. Rather, they are waters of the State of South Carolina and the United States and are tourism related recreational facilities.
2. The funding source for the Town's allocation to the cost of the dredging project is the Local Hospitality Tax.<sup>2</sup> The expenditure of local hospitality taxes on tourism related recreational facilities is authorized by both S. C. Code Ann. § 6-1-730 (Supp. 2023), and by § 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983).
3. To the extent that the Complaint alleges a claim brought as a class action against the Town, the same is barred by S. C. Code Ann. §12-60-80(C)(Supp. 2023).

---

<sup>1</sup> In his Complaint, Ryan McAvoy also challenged the Town's use of Stormwater Utility Fees for the improvement and maintenance of storm water infrastructure in gated communities in the Town. Mr. McAvoy withdrew this claim at a hearing on the Town's Motion for Summary Judgment that occurred prior to the commencement of the trial.

<sup>2</sup> Local Hospitality Taxes are authorized by S. C. Code Ann. § 6-1-720 (Supp. 2023).



### APPLICABLE LAW

The law that is applicable to the claims of Ryan McAvoy in this case is:

1. S.C. Const. art. X, § 5, which reads:

No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.<sup>3</sup>

2. S. C. Code Ann. § 48-39-10(A)(1)(a)(Supp. 2023), which reads:

#### A. Coastal Waters and Tidelands:

- (1) The Department has permit authority over the coastal waters and tidelands critical areas defined in Section 48-39-10 as follows:

(a) “Coastal waters” means the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark. Provided, however, that the Department may designate boundaries which approximate the mean extent of saline waters until such time as the mean extent of saline waters can be determined scientifically.

3. S.C. Code Ann. Regs. 30-10, reads:

#### A. Coastal Waters and Tidelands:

- (1) The Department has permit authority over the coastal waters and tidelands critical areas defined in Section 48-39-10 as follows:

(a) “Coastal waters” means the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark. Provided, however, that the Department may designate boundaries which approximate the mean extent of saline waters until such time as the mean extent of saline waters can be determined scientifically.

4. S. C. Code Ann. § 6-1-730 (Supp. 2023), which reads, in relevant part:

(A) The revenue generated by the hospitality tax must be used exclusively for the following purposes:

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<sup>3</sup> This text requires that all taxes levied must be used for a public purpose. *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 123, 804 S.E.2d 854, 861 (2017).

- ...  
 (2) tourism-related cultural, recreational, or historic facilities;  
 ...

5. § 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), reads, in relevant part:

(a) The town council is hereby authorized to utilize the funds collected from the imposition of the local hospitality tax and any other funds deposited into the town hospitality tax account for the following purposes, and no other:

(1) To pay, in whole or in part for the current and future construction, enhancement, preservation and maintenance of:

- ...  
 (b) Tourism-related cultural, recreational, or historic facilities;  
 ...

At the trial, Ryan McAvoy argued that the resolution of his claims were governed by *South Carolina Public Interest Foundation v. South Carolina Department of Transportation, supra*. For the reasons set out below, this case is inapplicable and does not dictate the result in this case.

#### FINDINGS OF FACT

Having heard the witnesses and reviewed the exhibits offered and received at trial, I find the following to be matters of fact applicable to Ryan McAvoy's claim.

1. On May 3, 2022, the Town Council for the Town adopted its Resolution 2022-11, which authorized Town Manager to execute a deliver an Agreement between the Town and an entity known as the South Island Dredging Association.<sup>4</sup>

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<sup>4</sup> See Exhibit 1. Exhibit 1 is the affidavit of Ms. Krista Wiedmeyer, Town Clerk. Exhibit A to the Wiedmeyer Affidavit is a certified true copy of Resolution 2022-11.

2. The findings supporting Resolution 2022-11 state that the Town budgeted an allocation of \$600,000.00 for the purpose of assisting with dredging of the Harbour Town Yacht Basin and Braddock Cove Creek.<sup>5</sup>
3. As authorized by Resolution 2022-11, the Town Manager executed the Agreement.<sup>6</sup>
4. Under the Terms of the Agreement, the Town agreed to allocate \$600,000.00 towards the cost of the dredging of the Harbour Town Yacht Basin, the entrance channels to it and Braddock Cove Creek.
5. The dredging of these areas is permitted by both the United States Army Corps of Engineers and the South Carolina Department of Health and Environmental Control.<sup>7</sup>
6. Both the Harbour Town Yacht Basin, its entrance channel and Braddock Cove Creek are open to Calibogue Sound, the water in them is saline and is affected by the tides.
7. The Harbour Town Yacht Basin and Braddock Cove Creek both have private boat slips or marinas in them, and both waterways are bordered by Sea Pines Resort, which is a private, gated community.<sup>8</sup>

---

<sup>5</sup> See Exhibit A to Exhibit 1.

<sup>6</sup> See Exhibit 1. Exhibit 1 is the affidavit of Ms. Krista Wiedmeyer, Town Clerk. Exhibit B to the Wiedmeyer Affidavit is a certified true copy of the Agreement.

<sup>7</sup> See Exhibits 11 and 18. These are the permits for the dredging work. Both authorize the dredging of the Harbour Town Yacht Basin, the entrance channel to it and Braddock Cove Creek, and that these are navigable waterways of the United States and the State of South Carolina.

<sup>8</sup> Hilton Head Island itself and the waters around it, and Harbour Town and South Beach Marina Village are areas of tourist activity. Harbour Town can be accessed via the Harbour Town Yacht Basin and South Beach Marina Village can be accessed via Braddock's Cove Creek. Both offer dock facilities for tourists entering on boats. Ryan McAvoy did not dispute this, and it was confirmed by the testimony of his witness Mare B. Deckard. Mare B. Deckard also testified that she observed recreational pleasure boats in the waters, and the photographs entered into evidence also showed this.

8. The Harbour Town Yacht Basin, its entrance channel and Braddock Cove Creek are navigable waterways open to the public.<sup>9</sup>
9. Ryan McAvoy did not challenge the specific funding source for the Town's contribution to the dredging project. Rather Ryan McAvoy's claim was the waterways were privately owned and the use of any public funds for the dredging of them is prohibited by S. C. Const. art. X, § 5.

THE TOWN'S MOTION UNDER RULE 41(b), SCRCF

At the conclusion of Ryan McAvoy's case, the Town moved for dismissal under Rule 41(b), SCRCF, which reads:

(b) Involuntary Dismissal: Non-suit; Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.

The Town's motion was that the only evidence in the record established that Harbour Town Yacht Basin, its entrance channel, and Braddock Cove Creek are public waterways. As is stated above, Ryan McAvoy's claim was that public funds would be spent to improve private property, in violation of S. C. Const. art. X, § 5, and having failed to establish that the waterways are private property, the claim failed.<sup>10</sup>

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<sup>9</sup> The Plaintiff's witness Mare B. Deckard testified that she was able to pilot her private boat the full length of Braddock Cove Creek and was able to pilot her boat through the entrance channel of the Harbour Town Yacht Basin and into and around the Harbour Town Yacht Basin, and that her navigation of the waterways was not impeded or restricted.

<sup>10</sup> The Town stated other grounds in its motion, which were denied.

Ryan McAvoy's argument was because the waterways are bordered by Sea Pines Resort, which is a private, gated community, and because the waterways have privately owned marinas or boat slips in them that were benefitted by the dredging, the expenditure of public funds on the dredging of the waterways violates S.C. Const. art. X, § 5. Ryan McAvoy also argued that S. C. Const. art. X, § 11 proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).

Ryan McAvoy's evidence on this point was in the form of photographs of "private property" signs in Sea Pines Resort, and the testimony of Mare B. Deckard who took some of the photographs.

This evidence, though, does not have any bearing on the question of the nature and ownership of the waterways. Whether one can drive on the roads in Sea Pines Resort or whether privately owned property abuts a public waterway does have any bearing on the nature of the waterway.<sup>11</sup> The existence of privately owned marinas or docks in the public

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<sup>11</sup> Ryan McAvoy argued that this case is the same as *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, *supra*. In *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, *supra*., the South Carolina Department of Transportation inspected bridges that were private property. In that case, The Supreme Court stated the facts to be:

(1) The bridges are neither part of the State highway system nor are they owned or maintained by the City of Aiken; (2) The request to inspect the bridges came from a city councilman, not from the City of Aiken; (3) Prior to the inspection, SCDOT personnel made a direct inquiry to the City of Aiken and verified that the bridges were private property; (4) SCDOT's employees warned Chief Engineer for Operations Clem Watson that it was against SCDOT's policy to inspect privately owned bridges; (5) SCDOT had no obligation to inspect the bridges; and (6) Walsh and Watson maintained their actions fell within a "grey area" of the law.

*South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, *id.*, at 421 S.C. 116, 804 S.E.2d 857 (2017). Here, the waterways are open to the public and are publicly owned. For that reason, *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, *supra*., is inapposite.

waterways does not change the nature or ownership of the waterways or prohibit the use of public funds to maintain the waterways.<sup>12</sup>

The witness Mare B. Deckard's testimony regarding her access to the waterways was unequivocal, and her testimony was that she was free to navigate the waterways of the Harbour Town Yacht Basin, its entrance channel, and all areas of Braddock Cove Creek with her boat.<sup>13</sup>

Also, the areas to be dredged are described in the permits issued by the United States Army Corps of Engineers and the South Carolina Department of Health and Environmental Control.<sup>14</sup>

### CONCLUSION

Because Ryan McAvoy failed to produce evidence to show that the Harbour Town Yacht Basin, the entrance channels to it and Braddock Cove Creek are private, as opposed to public, waterways, he has failed to show a right to relief in this case. For this reason, Ryan McAvoy's Complaint is dismissed under Rule 41(b), SCRPC.

(Signature Page Follows)

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<sup>12</sup> Private docks and marinas exist in the public waters of South Carolina, and South Carolina has a detailed statutory scheme for the permitting of such. See, e.g.: S.C. Code Ann. § 48-39-130 (Supp. 2023) and S.C. Regs 30-12. Ryan McAvoy offered no evidence or authority for the proposition that the existence of a private dock or marina in a public waterway has any effect on the ownership of the waterway. This is analogous to arguing that because private property fronting on public road benefits from a repaving of the road, such is prohibited.

<sup>13</sup> See also Exhibits 11 and 18, and the testimony of Jack Brinkley. The only evidence is that waterways in question are public.

<sup>14</sup> See Exhibits 8 and 11. Both permits describe the areas to be dredged as waters of the United States and the State of South Carolina and show the statutory authority for the permits arising under 33 USC 403, 33 USC 1344, S. C. Code Ann. § 43-39-10 and S. C. Code Ann. § 43-39-150. There is no evidence in the record to show that the waterways are not publicly owned. All of the evidence offered by Ryan McAvoy related to Sea Pines is for property abutting the waterways and roads and subdivisions existing in Sea Pines. This evidence does not address the ownership of the waterways.



Beaufort Common Pleas

**Case Caption:** Ryan Mcavoy VS Town Of Hilton Head Island , defendant, et al  
**Case Number:** 2022CP0701625  
**Type:** Order/Dismissal

So Ordered

Jocelyn Newman

Electronically signed on 2024-05-08 16:08:31 page 9 of 9

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
Ryan McAvoy, individually, and on )  
behalf of all others similarly situated, )  
Plaintiff, )  
v. )  
Town of Hilton Head Island, )  
Defendant. )  
\_\_\_\_\_ )

IN THE CIRCUIT COURT  
CASE NO: 2022-CP-07-\_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY JUDGMENT  
AND  
INJUNCTIVE RELIEF**

NOW COMES the Plaintiff, by his undersigned attorney, and as a Complaint against the Defendant, would show unto the Court:

1. Plaintiff Ryan McAvoy is a citizen, resident, taxpayer, and registered elector of the Town of Hilton Head Island and of Beaufort County, South Carolina. He brings this action individually and on behalf of all others similarly situated.
2. The Town of Hilton Head Island is a municipality in Beaufort County, South Carolina.
4. This Court possesses jurisdiction under S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act, and under the following decisions, which address public interest and taxpayer standing: *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas* , 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *American Petroleum Institute v. S.C. Dep't. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008),



*Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

5. This action raises issues of great public importance relating to whether the Town of Hilton Head Island follows the South Carolina Constitution in spending public funds for private purposes. Plaintiffs ask the Court to grant them standing based upon the great public importance of the Constitutional issues this action raises.
6. “The issue of whether SCDOT may inspect bridges within private, gated communities is one of public importance as it involves both the conduct of a government entity and the expenditure of public funds.” *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 119, 804 S.E.2d 854, 859 (2017).
7. Ryan McAvoy also possesses standing to bring this lawsuit as a citizen, resident, elector, and taxpayer of the Town of Hilton Head Island.
8. Article X, Section 5 of the State Constitution requires that taxes (public funds) be spent for public purposes.
9. Article X, Section 11 of the State Constitution provides that:

(t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association,

corporation, . . . except as permitted by Section 3, Article XI of this Constitution.

10. Article X, Section 11 of the State Constitution proscribes the expenditure of public funds “for the primary benefit of private parties.” *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).
11. The term “credit” has been construed as any “pecuniary liability” or “pecuniary involvement.” *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967).
12. In 2013-2014 and in 2017-2018, the Town of Hilton Head Island expended public funds for dredging services for the Harbour Town Yacht Basin, including its entrance and main channels, Gull Point, and the South Beach Marina, all of which are private waterways of the private, gated Sea Pines community (**Exhibits A, B, C, D, E**).
13. Harbour Town Yacht Basin is not a public marina. All the slips are privately owned. Upon entering the Dockmaster’s area, a watercraft is asked to state its purpose in entering the Marina.
14. Since at least as far back as 2018, Defendant Town of Hilton Head Island has repeatedly appropriated public funds for the benefit of private, gated communities within the Town of Hilton Head Island, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution. These expenditures of public funds for private gated communities since 2018 exceed \$2 million (**Exhibit F**).
15. These private, gated communities include Hilton Head Plantation, Indigo Run, Leamington, Long Cove, Palmetto Dunes, Palmetto Hall, Port Royal, Shipyard, Sea Pines, and Wexford. These private, gated communities do not allow the public free and open access (**Exhibit G, H**).

16. In 2022, the Town of Hilton Head Island has voted to spend \$600,000 in public funds for dredging the waterways and harbors of the private, gated Sea Pines community, including the Harbour Town Yacht Basin and Braddock Cove Creek (**Exhibit I**).
17. “In short, it is not the public’s responsibility to pay the . . . costs of [facilities] located within a gated community that seeks to exclude the public from enjoying the use of the [facilities]. *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 123, 804 S.E.2d 854, 861 (2017).
18. The Town of Hilton Head Island has violated and continues to violate the Constitutional provisions in spending public funds for private purposes.

**WHEREFORE**, Plaintiffs pray the Court to:

1. Declare that the Town of Hilton Head Island has unlawfully and unconstitutionally expended and voted to expend public funds for private purposes, for the benefit of private property in private, gated communities, in violation of Article X, §§ 5 and 11 of the South Carolina Constitution;
2. Enjoin the expenditure of \$600,000 in public funds for dredging the waterways and harbors of the private, gated Sea Pines community, including the Harbour Town Yacht Basin and Braddock Cove Creek;
3. Enjoin the Town of Hilton Head Island to follow Article X, §§ 5 and 11 of the South Carolina Constitution;
4. Grant the Plaintiff his attorneys’ fees and cost under S.C. Code Ann. § 15-77-300 ff.; and
5. Grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,  
**THE CARPENTER LAW FIRM, PC**

/S/ James G. Carpenter  
S.C. Bar No. 1136  
819 East North Street  
Greenville, SC 29601  
(864) 235-1269  
Attorney for the Plaintiff

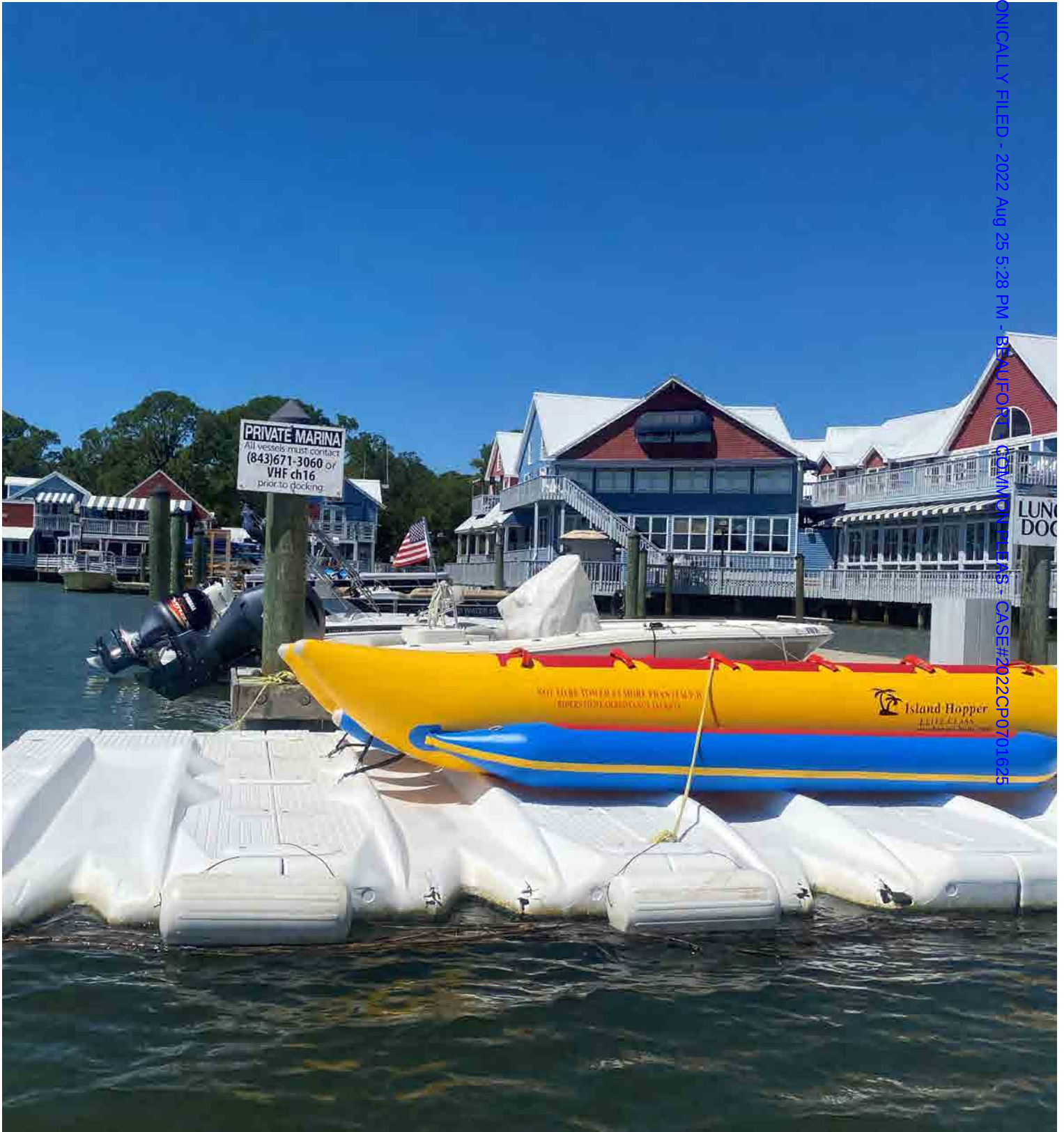
August 25, 2022















2018

ELECTRONICALLY FILED - 2022 Aug 25 5:28 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701625

| DESCRIPTION                    | AMOUNT            |
|--------------------------------|-------------------|
| <b>Hilton Head Plantation</b>  |                   |
| VIDEO INSP-HHP MAINT.          | 3,520.00          |
| PIPE REPLACEMENT-HHP MAINT.    | 4,397.10          |
| STRUCTURE REPAIR-HHP           | 3,250.00          |
| VIDEO INSP-HHP MAINT.          | 5,535.25          |
| PIPE CLEANING-HHP              | 1,580.00          |
| CONSTRUCTION-PINE ISLAND BEACH | 100,000.00        |
| CONSTRUCTION-PINE ISLAND BEACH | -100,000.00       |
| CHANNEL STABILIZATION-GLENMOOR | 13,441.80         |
| PIPE CLEANING-GLEENMOOR PL     | 1,437.50          |
|                                | <b>33,161.65</b>  |
| <b>Indigo Run</b>              |                   |
| PIPE CLEANING-IR DR/BRANFORD   | 2,060.00          |
|                                | <b>2,060.00</b>   |
| <b>Leamington</b>              |                   |
| PIPE CLEANING                  | 379.50            |
|                                | <b>379.50</b>     |
| <b>Palmetto Dunes</b>          |                   |
| VIDEO INSPECTION-SHELTER CV LN | 10,051.30         |
|                                | <b>10,051.30</b>  |
| <b>Port Royal</b>              |                   |
| POND DREDGING-TRUNK LINE PR    | 40,965.65         |
| POND DREDGING-TRUNK LINE PR    | 45,858.85         |
| PIPE CLEANING-PR TRUNK LINE    | 1,000.00          |
| POND DREDGING-TRUNK LINE PR    | 55,564.95         |
| PIPE CLEANING-PR TRUNK LINE    | 3,250.00          |
| POND DREDGING-TRUNK LINE PR    | 18,732.00         |
| POND DREDGING-TRUNK LINE PR    | 54,740.18         |
| PIPE CLEANING-PR TRUNK LINE    | 2,596.00          |
| SURVEY-PORT ROYAL TRUNK LINE   | 27,050.00         |
| STRUCTURE REPAIR-10 OUTPOST LN | 5,921.00          |
|                                | <b>255,678.63</b> |
| <b>Shipyard</b>                |                   |
| CHANNEL CLEANING-VALENCIA / CO | 1,500.00          |
| PIPE CLEANING-125 SHIPYARD DR  | 1,507.50          |
| POND DREDGING-125 SHIPYD DR    | 8,450.00          |
|                                | <b>11,457.50</b>  |
| <b>Sea Pines</b>               |                   |
| WEIR/OUTLET/GATE REPAIRS-LAWTN | 9,316.00          |
| CHANNEL CLEANING-CLUB COURSE   | 36,948.45         |

|                                |                  |
|--------------------------------|------------------|
| PIPE CLEANING-CLUB COURSE      | 1,872.50         |
| CHANNEL CLEANING (DEBRIS/ VEG) | 2,150.00         |
| CHANNEL CLEANING (DEBRIS/ VEG) | 20,440.88        |
|                                | <u>70,727.83</u> |

|                              |                 |
|------------------------------|-----------------|
| <b>Wexford</b>               |                 |
| STRUCTURE REPAIR-WEXFORD PUD | 2,200.00        |
| PIPE CLEANING-WEXFORD PLNTN  | 5,640.00        |
|                              | <u>7,840.00</u> |

2019

| DESCRIPTION                    | AMOUNT            |
|--------------------------------|-------------------|
| <b>Hilton Head Plantation</b>  |                   |
| CONSTRUCTION-PINE ISLAND BEACH | 100,000.00        |
| SURVEY                         | 2,955.00          |
| PIPE CLEANING                  | 6,289.13          |
| PIPE REPAIRS (JOINTS)          | 5,360.00          |
| VIDEO INSPECTION               | 12,813.27         |
| VIDEO INSPECTION               | 1,398.35          |
| VIDEO INSPECTION               | 2,719.93          |
| VIDEO INSPECTION               | 5,395.04          |
| VIDEO INSPECTION               | 10,932.41         |
| VIDEO INSPECTION               | 3,434.93          |
| VIDEO INSPECTION               | 992.90            |
| PIPE CLEANING                  | 6,961.19          |
| VIDEO INSPECTION               | 5,041.37          |
|                                | <b>164,293.52</b> |
| <b>Indigo Run</b>              |                   |
| CHANNEL CLEANING (DEBRIS/ VEG) | 1,860.00          |
|                                | <b>1,860.00</b>   |
| <b>Long Cove</b>               |                   |
| VIDEO INSPECTION               | 3,432.80          |
| STRUCTURE REPAIR-2 FIFE LN     | 3,625.00          |
| PIPE REPAIRS (JOINTS)          | 7,533.50          |
|                                | <b>14,591.30</b>  |
| <b>Palmetto Dunes</b>          |                   |
| STRUCTURE REP-7-9 JUNKET-MAINT | 3,409.00          |
| PIPE REPLACEMENT               | 9,016.21          |
| STRUCTURE REPAIR-DI CB MH ETC  | 4,465.00          |
| PIPE LINING                    | 2,615.34          |
| REPAIR                         | 3,892.00          |
|                                | <b>23,397.55</b>  |
| <b>Palmetto Hall</b>           |                   |
| PIPE CLEANING                  | 3,961.20          |
| PIPE REPAIRS-50 SEDGE FERN     | 31,764.44         |
| POND DREDGING                  | 2,620.00          |
| VIDEO INSPECTION-FT HOWELL     | 16,340.12         |
|                                | <b>54,685.76</b>  |
| <b>Port Royal</b>              |                   |
| POND DREDGING-TRUNK LINE PR    | 70,282.70         |
| SURVEY-PORT ROYAL TRUNK LINE   | 21,300.00         |
| POND DREDGING-TRUNK LINE PR    | 15,772.20         |
| PIPE CLEANING-PR TRUNK LINE    | 3,025.00          |

|                                |                   |
|--------------------------------|-------------------|
| POND DREDGING-TRUNK LINE PR    | 18,343.50         |
| PIPE CLEANING-PR TRUNK LINE    | 1,235.00          |
| PIPE CLEANING-PR TRUNK LINE    | 6,129.00          |
| POND DREDGING-TRUNK LINE PR    | 56,430.00         |
| POND DREDGING-TRUNK LINE PR    | 99,490.50         |
| CHANNEL CLEANING (DEBRIS/ VEG) | 8,965.00          |
|                                | <b>300,972.90</b> |

**Shipyard**

|        |                 |
|--------|-----------------|
| SURVEY | 1,465.00        |
|        | <b>1,465.00</b> |

**Sea Pines**

|                                |                  |
|--------------------------------|------------------|
| WEIR/OUTLET/GATE REPAIRS       | 5,960.00         |
| VIDEO INSPECTION-135 LIGHTHOUS | 2,913.76         |
| WEIR/OUTLET/GATE REPAIRS       | 4,163.00         |
| WEIR/OUTLET/GATE REPAIRS       | 9,154.00         |
| VIDEO INSPECTION               | 6,267.75         |
| VIDEO INSPECTION               | 1,644.80         |
| VIDEO INSPECTION               | 1,218.23         |
| PIPE REPAIRS-2 NIGHT HERON     | 11,984.51        |
|                                | <b>43,306.05</b> |

**Wexford**

|                                |                 |
|--------------------------------|-----------------|
| CHANNEL CLEANING (DEBRIS/ VEG) | 6,635.00        |
| PIPE CLEANING-WEXFORD PLNTN    | 2,340.00        |
|                                | <b>8,975.00</b> |



2020

ELECTRONICALLY FILED - 2022 Aug 25 5:28 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701625

| DESCRIPTION                    | AMOUNT            |
|--------------------------------|-------------------|
| <b>Hilton Head Plantation</b>  |                   |
| CONSTRUCTION-PINE ISLAND BEACH | 100,000.00        |
| WEIR/OUTLET/GATE REPAIRS       | 30,958.00         |
| VIDEO INSPECTION               | 37,486.32         |
| VIDEO INSPECTION               | 26,414.00         |
| VIDEO INSPECTION               | 4,809.60          |
| PIPE REPAIRS (JOINTS)          | 2,647.36          |
| STRUCTURE REPAIR-DI CB MH ETC  | 2,215.00          |
| PIPE REPAIRS-4 SARA COURT      | 4,930.97          |
| STRUCTURE REPAIR-DI CB MH ETC  | 3,090.00          |
| PIPE REPAIRS (JOINTS)          | 2,825.40          |
| VIDEO INSPECTION               | 14,136.71         |
|                                | <b>229,513.36</b> |
| <b>Indigo Run</b>              |                   |
| CHNL CLN (DEBRIS/ VEG)-SUNNIND | 15,624.00         |
| PIPE CLEANING                  | 7,300.00          |
| CHANNEL EXCAVATION             | 10,070.00         |
| SURVEY                         | 6,980.00          |
|                                | <b>39,974.00</b>  |
| <b>Leamington</b>              |                   |
| REPLACEMENT                    | 1,332.80          |
| REPLACEMENT                    | 2,127.20          |
| PIPE REPAIRS (JOINTS)          | 1,950.00          |
| PIPE REPAIRS (JOINTS)          | 870.00            |
| CHANNEL STABILIZATION          | 2,110.00          |
| CHANNEL STABILIZATION          | 285.00            |
|                                | <b>8,675.00</b>   |
| <b>Palmetto Hall</b>           |                   |
| PIPE REPAIRS (JOINTS)          | 2,609.48          |
| PIPE CLEANING                  | 7,112.40          |
| POND DREDGING                  | 9,450.00          |
| POND DREDGING                  | 13,525.00         |
|                                | <b>32,696.88</b>  |
| <b>Shipyard</b>                |                   |
| PIPE REPAIRS (JOINTS)          | 24,062.59         |
| PIPE CLEANING                  | 33,901.94         |
| CHANNEL EXCAVATION             | 11,550.00         |
| CHANNEL EXCAVATION             | 2,710.00          |
| SURVEY                         | 412.50            |
| SURVEY                         | 4,525.00          |
|                                | <b>77,162.03</b>  |



|                                |                   |
|--------------------------------|-------------------|
| <b>Sea Pines</b>               |                   |
| WEIR/OUTLET/GATE REPLACEMENT   | 34,374.60         |
| PIPE REPAIRS (JOINTS)          | 4,645.00          |
| VIDEO INSPECTION               | 720.75            |
| VIDEO INSPECTION               | 8,856.00          |
| PIPE CLEANING                  | 6,094.65          |
| CHANNEL EXCAVATION             | 28,759.50         |
| STRUCTURE REPAIR-DI CB MH ETC  | 4,454.50          |
| STRUCTURE REPLACEMENT/ADDITION | 12,003.41         |
| PIPE CLEANING                  | 13,152.61         |
|                                | <b>113,061.02</b> |

2021

ELECTRONICALLY FILED - 2022 Aug 25 5:28 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701625

| DESCRIPTION                    | AMOUNT            |
|--------------------------------|-------------------|
| <b>Hilton Head Plantation</b>  |                   |
| CONSTRUCTION-PINE ISLAND BEACH | 100,000.00        |
| CHANNEL EXCAVATION             | 31,220.28         |
| CHANNEL EXCAVATION             | 19,920.00         |
|                                | <b>151,140.28</b> |
| <b>Indigo Run</b>              |                   |
| CHANNEL EXCAVATION-29 PRIMROSE | 15,183.00         |
| STRUCTURE REPAIR-DI CB MH ETC  | 2,000.00          |
| POND DREDGING                  | 3,250.00          |
|                                | <b>20,433.00</b>  |
| <b>Long Cove</b>               |                   |
| STRUCTURE REPAIR-DI CB MH ETC  | 1,500.00          |
|                                | <b>1,500.00</b>   |
| <b>Leamington</b>              |                   |
| PIPE REPLACEMENT               | 4,603.60          |
|                                | <b>4,603.60</b>   |
| <b>Palmetto Hall</b>           |                   |
| POND DREDGING                  | 11,836.25         |
| POND DREDGING                  | 15,300.00         |
| STRUCTURE REPAIR-DI CB MH ETC  | 1,389.00          |
|                                | <b>28,525.25</b>  |
| <b>Port Royal</b>              |                   |
| CHANNEL STABILIZATION          | 15,676.50         |
| PIPE REPAIRS-61 S.PORT ROYAL D | 2,500.00          |
|                                | <b>18,176.50</b>  |
| <b>Shipyard</b>                |                   |
| CHANNEL CLN:SHIPYARD PLNT-MNT  | 626.00            |
| CHANNEL EXCAVATION             | 2,860.00          |
| CHANNEL EXCAVATION             | 33,715.17         |
| PIPE CLEANING-63 SHIPYARD DR   | 7,785.65          |
| PIPE REPAIRS (JOINTS)          | 8,727.80          |
| PIPE REPAIRS (JOINTS)          | 3,379.08          |
| POND DREDGING                  | 6,090.00          |
| PIPE CLEANING                  | 3,500.00          |
| CHANNEL EXCAVATION             | 26,808.60         |
|                                | <b>93,492.30</b>  |
| <b>Sea Pines</b>               |                   |
| STRUCTURE REPAIR-SEA PINES PLN | 350.00            |

|                                |                   |
|--------------------------------|-------------------|
| PIPE REPLACEMENT               | 23,845.07         |
| PIPE REPLACEMENT               | 15,637.28         |
| PIPE REPAIRS (JOINTS)-232 S.SE | 66,367.03         |
| PIPE REPAIRS (JOINTS)-232 S.SE | 21,250.74         |
| VIDEO INSPECTION-232 S.SEA PIN | 4,292.48          |
| VIDEO INSPECTION-232 S.SEA PIN | 9,750.00          |
| PIPE REPLACEMENT               | 17,077.16         |
| VIDEO INSPECTION-33 BATTERY RD | 4,993.61          |
| VIDEO INSPECTION-33 BATTERY RD | 1,227.45          |
| PIPE REPAIRS (JOINTS)          | 2,287.50          |
| CHANNEL EXCAVATION             | 8,050.00          |
|                                | <u>175,128.32</u> |

**Wexford**

|                    |                  |
|--------------------|------------------|
| CHANNEL EXCAVATION | 39,425.12        |
| CHANNEL EXCAVATION | 35,859.00        |
| CHANNEL EXCAVATION | 11,922.50        |
|                    | <u>87,206.62</u> |

2022

| DESCRIPTION                    | AMOUNT   |
|--------------------------------|----------|
| <u>Leamington</u>              |          |
| PIPE REPLACEMENT               | 2,250.00 |
| <br>                           |          |
| <u>Indigo Run</u>              |          |
| CHANNEL EXCAVATION-4 INDIGO RN | 1,500.00 |

ELECTRONICALLY FILED - 2022 Aug 25 5:28 PM - SEAFORT - COMMON PLEAS - CASE# 2022CP010165

**07-27-22**

**WELCOME TO SEA PINES**

**\$9.00 CAR PASS**

**7/27/2022**

**6:50:18 AM**

**597975**

**HWGO**

Pass is Valid for Direct Access to and from Harbour Town, Baynton  
Lawton Stables, Sea Pines Center, Sea Pines Forest Preserve,  
Marina Village, South Beach Racquet Club, and Sea Pines Res

Direct Access. No Exceptions.

Private Parking or Transportation or Private Property

is valid only. Please display pass at all times.









## TOWN OF HILTON HEAD ISLAND

### *Staff Report Memo*

TO: Mayor & Town Council  
 FROM: Joshua A. Gruber, Deputy Town Manager  
 VIA: Marc Orlando, Town Manager  
 DATE: April 27, 2022  
 SUBJECT: Agreement with the South Island Dredging Association to Provide Funding Assistance for the Dredging of the Harbour Town Yacht Basin & Braddock Cove Creek

#### **Recommendation:**

Consider a Resolution authorizing the Town Manager to enter into an agreement (Exhibit "A" to the Resolution) with the South Island Dredging Association to assist in the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek.

#### **Summary:**

The South Island Dredging Association seeks financial assistance from the Town for its program of periodically dredging the Harbour Town Yacht Basin and Braddock Cove Creek. Both are used by the public for docking, sightseeing, navigation, and provide access to public and other amenities and other tourism-related activities. The agreement shall include a term of two years and the funds provided by the Town shall not exceed a cumulative total of \$600,000 from collected Hospitality Taxes. At their April 19, 2022 meeting the Finance and Administrative Committee unanimously approved forwarding the Resolution to Town Council for review and consideration.

#### **Background:**

In the Town's previous fiscal year Budgets for FY 2019, FY 2020, and FY 2021, the Town set aside budget funds from collected Hospitality Taxes in the amount of \$200,000 per year for a total cumulative amount of \$600,000 for allocation to the Association for the purpose of assisting with dredging of the Harbour Town Yacht Basin and Braddock Cove Creek. These funds have not yet been used and have rolled over into the Town's reserve accounts. The Town and Association have negotiated an agreement by which the Town will provide funding assistance in an amount not to exceed the budgeted funds for the dredging of the Harbour Town Yacht Basin and Braddock Cove on a reimbursement basis. The Town took similar action in 2018, transferring reserved funds in the amount of \$600,000 to the Association for dredging purposes.

**Attachments:**

- Request from the South Island Dredging Association
- Draft Resolution
- Draft Agreement
- FY2019 Budget Ordinance
- FY2020 Budget Ordinance
- FY2021 Budget Ordinance

March 28, 2022

Jack Brinkley, President  
South Island Dredging Association  
46 Gull Point Rd.  
Hilton Head Island, SC 29928

Marc Orlando, Town Manager  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

Re: Dredge Funding

Dear Mr. Orlando,

The purpose of this letter is to confirm the request by South Island Dredging Association for funding assistance for the planned South Island dredge event scheduled for November this year. It is our understanding that the Town has reserved \$400,000 to date and will reserve another \$200,000 in it's fiscal 2023 budget. The requested Town's support of \$600,000 is approximately 12% of the expected project costs.

#### Background

In 2001 the South Island Dredging Association (SIDA) was formed by the Sea Pines property owners to work on a collaborative basis to preserve waterway access in that portion of Hilton Head and conduct dredging on a program basis. Working with DHEC-OCRM and the Army Corps of Engineers, new dredging permits were obtained in 2013 to allow inland open water disposal at a site near the mouth of Calibogue Sound via pipeline. These are the only permits allowing open water disposal in South Carolina and are based on Calibogue Sound's unique characteristics that disperse the dredged material with no adverse impacts. The practical impact is that this technique substantially reduces dredging costs and eliminates impacts on Hilton Head itself such as upland disposal and potentially 1000's of truck trips taking the sediment off island.

In 2013/14 and in 2017/18 dredging activities were successfully completed as designed and in accordance with all permit requirements. Harbour Town Yacht Basin was dredged, including the entrance channel, fuel docks, ship's store, restaurants, and inner basin. Braddock Creek was also dredged, including its entrance and main channels and Gull Point and South Beach Marina, as well as allowing the water-focused commercial operators at South Beach to continue to serve the public. Approximately 240,000 cubic yards were removed and successfully transported to the authorized open water disposal site.

In 2017/18 146,956 cubic yards were removed and transported. Post dredging testing and evaluation by state and federal permitting on both projects confirmed the viability of the overall inland open water approach and the specific placement site.

Current Project Scope

Maintenance dredging is now required in these same venues to preserve access and maintain safe navigation at all tides. A competitive bidding process was managed by project consultant GEL Engineering LLC and the low bidder was determined to be Waterfront Property Services, LLC located in Clearwater FL. In accordance with the dredge permits, final contractor selection is subject to review and approval by the Army Corps of Engineers and the Corps' acceptance of detailed Dredge Plan. Project management and oversight will be provided by GEL Engineering who supervised the previous two dredge events. Preliminary surveys indicate 194,266 cubic yards require removal. The increase from 2017/18 includes the addition of Baynard Creek (52,790 cubic yards) who were unable to participate in the previous dredges. Dredging is scheduled to commence November 1, 2022 at Harbour Town and be completed no later than April 30, 2023 at South Beach Marina.

Project Costs based on preliminary volumes total \$4,619,788 for the contractor with mobilization and demobilization accounting for \$465,000 regardless of volume. Project costs at final volumes and including costs for full time project oversight and management will exceed \$5,000,000. Unfortunately, costs have increased substantially reflecting fuel costs and inflation. The current permits expire during 2023 and must be renewed to support future dredges.

Economic and Community Benefit

The Sea Pines Waterways are an integral component in maintaining Hilton Head Island as a highly desirable community and resort destination. Similar to our beaches, routine maintenance is required to maintain this public attraction. In the case of these waterways, the maintenance takes the form of dredging to offset siltation which can restrict navigation 12+ hours each day and block access to Calibogue Sound.

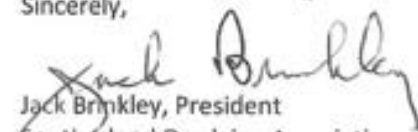
Conclusion

SIDA members will fund the remaining project costs (est. \$4,500,000) and proof of funds will be provided to ensure project completion. SIDA requests disbursement of \$600,000 which can be linked to staged completion. The 2017/18 dredge and Town disbursement of \$600,000 was managed as follows:

1. Pay \$180,000 after the first month of work after mobilization
2. Pay \$180,000 after the second month of work
3. Pay \$180,000 after the third month
4. Pay \$ 60,000 upon certification of the completed project from the project engineer.

We appreciate your consideration of this request. Please contact me with any questions.

Sincerely,



Jack Brinkley, President  
South Island Dredging Association

CC: John McCann, Mayor  
Thomas Lennox, Council Member, Ward 5, Hilton Head Island



**TOWN OF HILTON HEAD ISLAND**

**RESOLUTION NO. 2022-**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH THE SOUTH ISLAND DREDGING ASSOCIATION TO PROVIDE FUNDING ASSISTANCE FOR THE DREDGING OF THE HARBOUR TOWN YACHT BASIN AND BRADDOCK COVE CREEK.**

**WHEREAS**, the South Island Dredging Association (hereinafter, the "Association") has a maintenance program of dredging the Harbour Town Yacht Basin and Braddock Cove Creek located within the municipal limits of the Town of Hilton Head Island, South Carolina (hereinafter, the "Town"); and

**WHEREAS**, routine dredging is necessary in order to maintain navigability for vessels traveling to and from the Harbour Town Yacht Basin and Braddock Cove Creek; and

**WHEREAS**, the general public utilizes the Harbour Town Yacht Basin and Braddock Cove Creek for docking, sightseeing, navigation, access to public and other amenities and other tourism related activities and the routine dredging of these waterways is necessary to support this tourism related activity; and

**WHEREAS**, the Harbour Town Yacht Basin is utilized by, players, spectators, and corporate sponsors during the RBC Heritage Golf Tournament, which brings in over \$100 million in tourism related expenditures to the State of South Carolina's economy each year; and

**WHEREAS**, in the Town's previous fiscal year Budgets for FY2019, FY2020 and FY2021, the Town set aside budgets funds from collected Hospitality Taxes in the cumulative amount of \$600,000 Dollars for allocation to the Association, for the purpose of assisting with the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek, and those funds have not yet been used and have rolled over into the Town's reserve accounts; and

**WHEREAS**, the Town and the Association have negotiated an Agreement by which the Town will provide funding in an amount not to exceed the budgeted funds for the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek on a reimbursement basis along with other express terms and conditions and a copy of which is attached hereto as Exhibit "A" (hereinafter, the "Agreement"); and



**WHEREAS**, the Town Council for the Town of Hilton Head Island finds that the proposed Agreement is in the best interest of and will provide benefits to the general health, safety, and welfare of the citizens of the Town of Hilton Head Island, South Carolina,

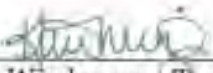
**NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Town Manager is hereby authorized to execute the attached Agreement between the Town of Hilton Head Island, South Carolina, and the South Island Dredging Association in a form and substance similar to the document attached hereto as Exhibit "A."
2. The Town Manager is hereby authorized to take all other and further actions as may be necessary to complete the obligations of the Town as set out in the Agreement, which is authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL ON THIS \_\_\_\_\_ DAY OF MAY 2022.**

  
\_\_\_\_\_  
John J. McCann, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Krista M. Wiedmeyer, Town Clerk

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Curtis L. Coltrane, Town Attorney

Introduced by Council Member: \_\_\_\_\_

STATE OF SOUTH CAROLINA                     )  
                                                               )  
 COUNTY OF BEAUFORT                         )                     AGREEMENT

The South Island Dredging Association (hereinafter, the "Association") and the Town of Hilton Head Island, South Carolina (hereinafter, the "Town") make this Agreement (hereinafter, the "Agreement") on this \_\_\_\_ Day of \_\_\_\_\_, 2022.

#### RECITALS

Whereas, the Association has historically undertaken a program of periodically dredging the Harbour Town Yacht Basin which includes areas of the entrance channel, fuel docks, and inner basin, and Braddock Cove Creek which includes the Gull Point and South Beach Marinas to ensure the safe public access and navigability of these waterways and the public amenities that are associated within these areas; and

Whereas, the Harbour Town Yacht Basin and Braddock Cove Creek are used by the general public for docking, sightseeing, navigation, access to public and other amenities and other tourism related activities; and

Whereas, the Town has historically provided funding to support these dredging activities through the identification of Hospitality Tax funds; and

Whereas, unless periodic dredging and maintenance of these waterways continues to occur, then the internationally recognized Harbour Town Marina and Braddock Cove Creek will lose their usefulness, reputation, and ability to generate significant tourism related economic activity for Hilton Head Island; and

Whereas, the Town Council has budgeted and set aside funding to support the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek in the Fiscal Year 2019, the Fiscal Year 2020 and Fiscal Year 2021 budgets in the amount of \$200,000 per year for a total set aside of funding in the amount of \$600,000; and

Whereas, the Town and Association desire to enter into this Agreement by which the Association will undertake the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek as described in this Agreement, and the Town will provide funding to assist in that work under the terms and conditions set out in this Agreement.

Now, therefore, for and in consideration of the sum of One Dollar, and the exchange and performance of the mutual promises, undertakings and covenants described in this Agreement, the receipt and sufficiency of which is acknowledged, the Town and the Association agree as follows:

1. The Association shall undertake a program of dredging the Harbour Town Yacht Basin including the areas of the entrance channel, fuel docks, and inner basin. Additionally

dredging may occur in Braddock Cove Creek including its entrance and main channels and the Gull Point and South Beach Marinas.

- (a) The funds to be delivered under this Agreement from the Town to the Association are public funds, and the Association must comply with the competitive sealed bidding requirements of the Town's procurement code [§ 11-1-111, *Municipal Code of the Town of Hilton Head Island* (1983)], for all contracts related to the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek..
  - (b) The Association must deliver documentation to the Town to verify that it has complied with the requirements of Article 11 of the Town procurement code [§ 11-1-111, *Municipal Code of the Town of Hilton Head Island* (1983)], including:
    - (i) A copy of the notice to bidders,
    - (ii) A copy of the log showing receipt of bids,
    - (iii) A copy of the document showing evaluation of the bids,
    - (iv) A copy of the notification and award to the successful bidder.
  - (c) The Association must also deliver documentation to the Town to verify that the public funds were used only for the dredging of the above-described areas including the invoices to which any public funds were applied, and proof of payment of the invoices. All funding to be provided to the Association under this Agreement shall be made on a reimbursement basis with sufficient documentation described above first being submitted to the Town prior to any payments being made.
  - (d) All documentation to be delivered to the Town under this Article 1 must be delivered to to Mr. John Troyer, Finance Director for the Town of Hilton Head Island, One Town Center Court, Hilton Head Island SC 29928, within thirty (30) days following:
    - (i) the award of any contract for all or any part of the dredging activities identified herein; or,
    - (ii) the payment of any invoice to which all or any part of the public funds will be applied.
2. The funds delivered by the Town to the Association as described and conditioned in this Agreement shall not exceed the total sum of Six Hundred Thousand (\$600,000.00) Dollars. The Association acknowledges that the funds delivered under this Agreement must be used by the Association solely for purposes of performing the dredging activities described herein.
3. The Term of this Agreement shall commence on the date this Agreement set out above, and the Term shall end on the date which is two (2) years from the date this Agreement set out above.



4. Any payments to be made by the Town under the terms of this Agreement shall be made from funds that were budgeted by the Town during prior fiscal years occurring prior to the Term of this Agreement and which have been rolled over into the following fiscal years' budgets. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.
5. The Association shall be responsible for providing both a cost-effective design and project schedule that are acceptable to the Town and that are permissible by all applicable regulating agencies.
7. The Association shall be responsible for obtaining and complying with all necessary local, state, and federal permits for the work associated with and to be completed with the public funds to be provided pursuant to this Agreement.
8. Should any part of this Agreement be rendered void, invalid, or unenforceable by any court of law, such a determination shall not render void, invalid, or unenforceable any other part of this Agreement.
9. This Agreement has been made and entered into in the State of South Carolina, and the laws of South Carolina shall govern the validity and interpretation of this Agreement in the performance due hereunder.
10. This Agreement may not be modified unless such modification is in writing and signed by both parties.
11. The Association may not assign this contract without the prior written approval of the Town.
12. The Association shall defend, indemnify, and hold harmless the Town, its officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses, and/or damages, including attorney's fees, whether incurred prior to the institution of litigation, during litigation, or on appeal arising out of or resulting from the conduct of any activity hereby authorized or the performance of any requirement imposed pursuant by this Agreement, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.
13. The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by this Agreement. Nothing contained herein creates any relationship between the Town and the Association other than that which is expressly stated herein. The Town is interested only in the results to be achieved under this Agreement, and the conduct and control of the agents and employees of the Association and the methods utilized by the Association in

fulfilling its obligations hereunder shall lie solely and exclusively with the Association and its agents and employees shall not be considered agents or employees of the Town for any purpose. No person employed by the Association shall have any benefits, status, or right of employment with the Town.

14. The Association, by signing this Agreement, hereby certifies that Association shall comply with all applicable requirements of the South Carolina Illegal Immigration Reform Act, S.C. Code Ann. §41-8-10, *et seq.* (2021) (the "Act"), and that Association covenants and agrees as follows:

14.1. Association shall not knowingly or intentionally employ any unauthorized alien and, unless excluded from coverage of the "Act", shall verify the work authorization of all newly hired employees performing work under the contract by either:

(a) registering and participating in the Federal Work Authorization Program (E-verify) and verifying the work authorization of every new hired employee within five (5) business days after employing employee; or

(b) employing only workers who, at the time of said employment:

(i) possess a valid South Carolina driver's license or identification card; or are eligible to obtain a South Carolina driver's license or identification card by providing proof of name, social security number and date and place of birth;

or,

(ii) possess a valid driver's license or identification card from another state deemed by the Executive Director Department of Motor Vehicles to have requirements at least as strict as those in South Carolina.

The Association may choose either option 1 (a) or option 1 (b) but acknowledges that the Association cannot use both.

14.2. The Association agrees to provide to the Town all documentation requested by it to establish either:

(a) the applicability of the South Carolina Illegal Immigration Reform Act to the Association,

or,

(b) compliance with the South Carolina Illegal Immigration Reform Act by the Association.

14.3. Association agrees to include in any contracts with its sub-contractors, language requiring its sub-Associations to:

(a) comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code



of Laws,

and.

- (b) include in their contracts with the sub-contractors, language requiring the sub-contractors to comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws.

14.4. The Association acknowledges and agrees that it shall comply with requirements of the Immigration Reform and Control Act of 1986 including the non-discrimination provisions thereof and shall complete all required I-9 documentation for all workers employed by it.

14.5. The Association certifies it shall comply with all state, federal, and local laws, rules, regulations, and orders applicable to it in performance of work under the contract.

In Witness whereof, the parties hereto have affixed their signatures hereto the date first written hereinabove.

WITNESSES:

SOUTH ISLAND DREDGING ASSOCIATION

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
Marc A. Orlando

\_\_\_\_\_

Its: Town Manager

ORDINANCE NO. 2018-05PROPOSED ORDINANCE NO. 2018-05

AN ORDINANCE TO RAISE REVENUE AND ADOPT A BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2019; TO ESTABLISH A PROPERTY TAX LEVY; TO ESTABLISH FUNDS; TO ESTABLISH A POLICY FOR ACQUISITION OF RIGHTS OF WAY AND EASEMENTS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 5-7-260(3) of the Code of Laws for South Carolina 1976, as amended, and Section 2-7-20 of the Municipal Code of the Town of Hilton Head Island, South Carolina, require that the Town Council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

WHEREAS, Town Council also desires to set aside funds for an Operating Reserve to provide for emergency-related expenditures and to offset fiscal year tax revenue income stream deficiency; and

WHEREAS, Town Council finds that it would be more economical and efficient to authorize the Town Manager to move forward with construction contract modifications, change orders, contract price adjustments, and execution of contracts for supplies, services, and construction where the contract amount involved does not exceed the budget line item or project budget as approved by Town Council in the Consolidated Municipal Budget.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:

NOTE: Underlined and bold-face typed portions indicate additions to the Ordinance. Stricken Portions indicate deletions to the Ordinance.

Section 1. Adoption of the Budget. The prepared budget of estimated revenues and expenses, a copy of which is attached hereto and incorporated herein, is hereby adopted as the budget for the Town of Hilton Head Island for the fiscal year ending June 30, 2019.

Proposed Ordinance No. 2018-05  
Page Two

**Section 2. Establishment of Property Tax Levy.** A tax to cover the period from July 1, 2018 through June 30, 2019, inclusive, for the sums and in the manner hereinafter mentioned, is and shall be, levied, collected and paid into the treasury of the Town of Hilton Head Island for its uses at a rate of mills on assessed value of real estate and personal property of every description owned in the Town of Hilton Head Island, except such property as is exempt from taxation under the Constitution and laws of the State of South Carolina. Calendar 2018 is a property reassessment year. The Town's property values increased by 2.72% between 2013 and 2018 because of reappraisal. Therefore, in accordance with South Carolina law the Town must roll-back its millage rate by the percentage increase in property values (revenue neutrality). The exception is the disaster recovery millage rate which will remain the same. The Town's rolled-back millage rate was calculated by Beaufort County officials and approved by the State. It should be noted that the disaster recovery millage override is in the second year of a planned five years. The table below reflects the pre and post assessment millage rates.

| Fund                               | Millage Rate Pre-Reassessment | Millage Rate Post-Reassessment |
|------------------------------------|-------------------------------|--------------------------------|
| General Fund                       | 16.38                         | 15.93                          |
| Debt Service Fund                  | 6.14                          | 5.97                           |
| Capital Projects Fund              | 0.84                          | 0.82                           |
|                                    | <b>23.36</b>                  | <b>22.72</b>                   |
| Disaster Recovery millage override | 5.00                          | 5.00                           |
| <b>Total</b>                       | <b>28.36</b>                  | <b>27.72</b>                   |

**Section 3. Establishment of Funds.** To facilitate operations, there shall be established and maintained a General Fund, a Capital Projects Fund, a Debt Service Fund, a Stormwater Fund and other appropriate funds in such amounts as are provided for in the aforesaid Budget, as hereby adopted or as hereafter modified pursuant to law.

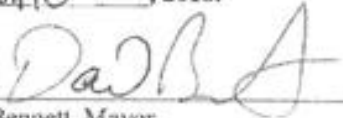
**Section 4. Acquisition of Rights of Way and Easements.** The Town Manager is charged with the duty of executing all necessary documents to obtain rights of way, easements, and other property interests necessary to complete duly authorized Capital Improvement Projects. Capital Improvement Projects based on the ownership and life expectancy of the assets or improvements or based on the funding source authorized may be budgeted in the General, Capital Projects or Stormwater Funds. If expenditures are expressly authorized for an approved Capital Improvement Project in any of the budgeted funds, then the Town Manager is hereby authorized to execute all necessary documents and to expend such funds as are approved pursuant to the Capital Improvement budgets. Provided, however, in the event that the costs of an acquisition of such real property interests materially exceeds the amount budgeted in the approved Capital Improvement Project and the Town Manager is unable to shift additional funds from other authorized sources, the Town Manager shall be required to obtain the approval of Town Council for such additional expenditures. Nothing herein shall obviate the requirement that no condemnations shall be commenced without the appropriate approval of the Town Council for the Town of Hilton Head Island.

Proposed Ordinance No. 2018-05  
Page Three

**Section 5 Severability.** If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 6. Effective Date.** This Ordinance shall be effective upon its enactment by the Town Council for the Town of Hilton Head Island.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF  
HILTON HEAD ISLAND ON THIS 19th DAY OF June, 2018.

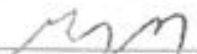
  
\_\_\_\_\_  
David Bennett, Mayor

ATTEST:

  
\_\_\_\_\_  
Krista Wiedmeyer, Town Clerk

First Reading: May 1, 2018  
Public Hearing: June 2, 2018  
Revised First Reading: June 2, 2018  
Second Reading: June 19, 2018

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Gregory M. Alford, Town Attorney

Introduced by Council Member:

Kimberly W. Atkins



## General Fund - FY 2019 Budget Summary

|                               | 2018       |            |            | 2019           |                  | Changes        |                     |
|-------------------------------|------------|------------|------------|----------------|------------------|----------------|---------------------|
|                               | 2017       | 2016       | 2015       | Adopted Budget | Estimated Actual | FY 2018 Budget | FY 2018 Est. Actual |
| <b>Revenues</b>               |            |            |            |                |                  |                |                     |
| Property Taxes                | 11,834,184 | 11,647,166 | 11,971,590 | 12,472,000     | 11,703,690       | 11,840,888     | 3%                  |
| ATAF Local 1%                 | 3,058,339  | 3,425,849  | 3,410,379  | 3,313,968      | 3,483,591        | 3,332,550      | 7%                  |
| <b>Business Licenses:</b>     |            |            |            |                |                  |                |                     |
| Business Licenses - Town      | 3,941,593  | 3,866,698  | 3,919,881  | 4,600,576      | 4,555,079        | 4,600,000      | 0%                  |
| Business Licenses - MASC      | 4,399,806  | 4,337,603  | 4,404,070  | 4,405,790      | 4,407,419        | 4,404,000      | 0%                  |
| <b>Franchise Fees:</b>        |            |            |            |                |                  |                |                     |
| Cable                         | 848,708    | 890,697    | 913,151    | 926,681        | 920,944          | 920,000        | -1%                 |
| Booth Fee                     | 27,354     | 18,430     | 31,588     | 30,000         | 35,086           | 35,000         | 18%                 |
| Recycling                     |            |            |            |                |                  |                | 0%                  |
| <b>Permit Fees:</b>           |            |            |            |                |                  |                |                     |
| Construction                  | 552,728    | 1,189,244  | 564,969    | 552,076        | 581,905          | 560,000        | -5%                 |
| Development                   | 15,104     | 10,902     | 11,344     | 12,803         | 12,181           | 12,500         | 3%                  |
| Other                         | 805,013    | 852,196    | 1,113,531  | 838,300        | 981,006          | 925,000        | 10%                 |
| <b>Intergovernmental</b>      | 812,085    | 812,322    | 849,905    | 812,000        | 838,980          | 840,000        | 3%                  |
| <b>Grants:</b>                |            |            |            |                |                  |                |                     |
| Beaufort County - Hanesat     | 11,677     | 11,677     | 11,677     | 11,677         | 11,677           | 11,680         | 0%                  |
| Beaufort County - Epi         | 132,041    | 135,083    | 128,799    | 132,000        | 132,000          | 132,000        | 0%                  |
| EMHC                          |            |            | 10,666     | 5,000          |                  |                | -100%               |
| Other                         |            |            | 20,198     |                | 27,084           |                | 0%                  |
| SC Regional                   |            |            |            |                |                  |                | 0%                  |
| <b>Miscellaneous Revenue:</b> |            |            |            |                |                  |                |                     |
| Beach Services                | 250,358    | 229,643    | 229,655    | 250,000        | 251,130          | 250,000        | 0%                  |
| Donations                     | 1,419      | 140        | 100        | 200            |                  |                | -100%               |
| Municipal Court               | 998,948    | 100,343    | 245,816    | 220,000        | 183,140          | 190,000        | -14%                |
| Other                         | 223,915    | 268,140    | 433,674    | 267,070        | 252,611          | 270,000        | -1%                 |
| Public Safety - EMS           | 1,401,752  | 1,385,400  | 1,408,391  | 1,490,000      | 1,455,345        | 1,490,000      | -4%                 |
| Public Safety - County D/T    | 33,721     | 33,721     | 51,511     | 50,000         | 51,095           | 52,000         | -4%                 |
| Town Cider                    | 46         | 10         | 10         | 100            | 30               | 30             | -85%                |
| Fund Balance                  |            |            |            | 900,642        |                  | 900,642        | 0%                  |
| Prior Year Funds              |            |            |            | 167,190        |                  |                | 100%                |
| Veteran's Assistance          | 14,399     | 37,134     | 18,545     | 18,000         | 10,348           | 35,000         | -8%                 |
| <b>Transfers In:</b>          |            |            |            |                |                  |                |                     |
| EDC                           |            |            |            |                |                  |                | 0%                  |
| Beach Fees                    | 1,101,258  | 1,101,138  | 1,101,138  | 1,360,138      | 1,360,138        | 1,360,140      | 0%                  |
| Special Revenue Federal       |            |            | 12,064     |                |                  |                | 0%                  |
| CIP - Ad Valorem              |            | 1,413,000  | 453,000    | 333,000        | 433,000          | 433,000        | 0%                  |
| CIP - Sunday Liquor           | 408,150    | 37,300     | 50,000     | 30,000         | 40,000           | 30,000         | 0%                  |
| CIP - Land                    | 550,000    | 686,254    | 175,000    | 175,000        | 175,000          | 175,000        | 0%                  |
| CIP - Road Usage              |            |            | 658,135    |                |                  |                | 0%                  |
| Hospitality Fee               | 4,381,925  | 3,170,669  | 3,391,345  | 3,991,345      | 3,093,245        | 3,100,135      | 0%                  |
| TH                            | 169,378    | 169,378    | 175,000    | 180,000        | 180,000          | 180,000        | 0%                  |
| ATAF                          | 1,338,188  | 1,396,097  | 1,696,120  | 1,565,900      | 1,565,900        | 1,565,900      | 0%                  |
| Electric Franchise Fee        | 30         | 87,878     | 90,000     | 90,000         | 100,000          | 90,000         | 0%                  |
| Stormwater                    | 94,358     | 94,358     | 95,000     | 115,000        | 121,000          | 115,000        | 0%                  |
| Lease/Other                   | 11,000     | -          | -          | 600,000        |                  |                | 0%                  |
| Investment                    | 1,347      | 2,454      | 3,600      | 1,500          | 173,004          | 173,000        | 3900%               |
| <b>Total Revenues</b>         | 36,799,493 | 38,956,303 | 38,776,891 | 40,319,036     | 39,818,470       | 40,197,849     |                     |
| <b>Increase/Decrease</b>      |            | 2,156,800  | (181,619)  | 1,548,962      | 1,047,796        | 178,359        |                     |
| <b>%</b>                      |            | 5.86%      | -0.48%     | 3.99%          | 2.70%            | 1.30%          |                     |

## General Fund - FY 2019 Budget Summary

|                                       |                  |                  |                  | 2018             |                  | 2019             |                |                     |
|---------------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|----------------|---------------------|
|                                       | 2015             | 2016             | 2017             | Adopted Budget   | Estimated Actual | Budget           | % change       |                     |
|                                       |                  |                  |                  |                  |                  |                  | FY 2018 Budget | FY 2018 Est. Actual |
| <b>Expenditures</b>                   |                  |                  |                  |                  |                  |                  |                |                     |
| <b>General Government:</b>            |                  |                  |                  |                  |                  |                  |                |                     |
| Town Council                          | 426,860          | 427,765          | 504,083          | 526,646          | 524,396          | 540,904          | -3%            | 3%                  |
| Town Council - Initiative             |                  | 122,255          | 170,064          | 740,000          | 740,000          | -                | -100%          | 100%                |
| Town Manager                          | 638,030          | 652,768          | 640,165          | 666,224          | 655,216          | 660,833          | -2%            | -2%                 |
| Human Resources                       | 537,389          | 555,812          | 540,506          | 664,216          | 660,871          | 651,330          | -5%            | 3%                  |
| <b>Total General Government</b>       | <b>1,584,179</b> | <b>1,739,601</b> | <b>1,954,865</b> | <b>2,597,086</b> | <b>2,580,343</b> | <b>1,792,067</b> | <b>-31%</b>    | <b>-24%</b>         |
| <b>Management Services:</b>           |                  |                  |                  |                  |                  |                  |                |                     |
| <b>Finance</b>                        |                  |                  |                  |                  |                  |                  |                |                     |
| Administration                        | 290,907          | 290,019          | 320,332          | 119,757          | 541,990          | 729,264          | 3%             | -2%                 |
| Accounting                            | 606,567          | 606,998          | 544,740          | 695,405          | 630,248          | 724,589          | 4%             | 15%                 |
| Procurement                           |                  |                  |                  |                  |                  | 206,347          | 100%           | 100%                |
| Revenue Services                      | 606,206          | 600,840          | 606,211          | 844,274          | 745,045          | 717,210          | -2%            | 8%                  |
|                                       | <b>1,504,680</b> | <b>1,502,857</b> | <b>1,471,283</b> | <b>1,659,436</b> | <b>1,917,283</b> | <b>2,077,310</b> | <b>17%</b>     | <b>17%</b>          |
| <b>Administrative Services</b>        |                  |                  |                  |                  |                  |                  |                |                     |
| Records Management                    | 264,885          | 220,500          | 253,343          | 157,168          | 254,860          | 300,323          | 17%            | 18%                 |
| Legal                                 | 495,858          | 465,709          | 470,813          | 545,908          | 479,105          | 553,154          | 11%            | 15%                 |
| Office of Cultural Affairs            |                  |                  |                  | 184,833          | 140,807          | 179,894          | -2%            | 14%                 |
| Communications                        |                  |                  |                  |                  |                  | 209,207          | 100%           | 100%                |
| Municipal Court                       | 404,944          | 413,908          | 380,734          | 308,870          | 380,474          | 380,930          | -1%            | 1%                  |
| Information Technology                | 2,066,095        | 1,939,433        | 2,014,334        | 2,262,329        | 2,215,146        | 2,022,774        | -8%            | -7%                 |
|                                       | <b>3,131,682</b> | <b>3,039,650</b> | <b>3,119,224</b> | <b>3,657,270</b> | <b>3,105,354</b> | <b>3,822,870</b> | <b>5%</b>      | <b>7%</b>           |
| <b>Total Management Services</b>      | <b>4,636,362</b> | <b>4,542,507</b> | <b>4,590,507</b> | <b>5,316,706</b> | <b>5,160,817</b> | <b>5,899,180</b> | <b>5%</b>      | <b>12%</b>          |
| <b>Community Services:</b>            |                  |                  |                  |                  |                  |                  |                |                     |
| <b>Community Development</b>          |                  |                  |                  |                  |                  |                  |                |                     |
| Administration                        | 469,753          | 479,077          | 328,333          | 503,050          | 499,650          | 636,906          | 14%            | 17%                 |
| Comprehensive Planning                | 503,154          | 510,290          | 509,473          | 704,185          | 618,980          | 687,327          | 11%            | 8%                  |
| Development, Review and Zoning        | 613,314          | 688,858          | 609,454          | 815,183          | 778,740          | 784,407          | -1%            | 6%                  |
| Building                              | 653,044          | 754,959          | 587,485          | 720,380          | 640,001          | 798,575          | 10%            | 14%                 |
| CD Services                           | 303,408          | 329,020          | 325,453          | 376,693          | 381,097          | 408,904          | 8%             | 7%                  |
|                                       | <b>2,537,774</b> | <b>2,773,797</b> | <b>2,553,319</b> | <b>3,119,401</b> | <b>2,919,008</b> | <b>3,316,116</b> | <b>6%</b>      | <b>17%</b>          |
| <b>Public Projects and Facilities</b> |                  |                  |                  |                  |                  |                  |                |                     |
| Administration                        | 254,805          | 269,379          | 150,534          | 180,604          | 264,989          | 292,095          | 1%             | 10%                 |
| Engineering                           | 914,937          | 905,612          | 1,235,129        | 1,070,992        | 1,075,650        | 1,049,966        | -5%            | -5%                 |
| Facilities Management                 | 1,000,049        | 1,015,660        | 1,741,616        | 2,162,051        | 2,188,813        | 2,422,480        | 1%             | 1%                  |
|                                       | <b>2,170,791</b> | <b>2,190,651</b> | <b>3,127,279</b> | <b>3,013,647</b> | <b>3,629,452</b> | <b>3,764,541</b> | <b>1%</b>      | <b>1%</b>           |
| <b>Total Community Services</b>       | <b>7,138,603</b> | <b>7,668,668</b> | <b>7,780,338</b> | <b>8,600,454</b> | <b>8,960,480</b> | <b>9,079,437</b> | <b>2%</b>      | <b>6%</b>           |

**General Fund - FY 2019 Budget Summary**

|                                          | 2017              | 2018              | 2019               | 2018              |                   | 2019              |                |                     |
|------------------------------------------|-------------------|-------------------|--------------------|-------------------|-------------------|-------------------|----------------|---------------------|
|                                          |                   |                   |                    | Adopted Budget    | Estimated Actual  | Budget            | Budget         |                     |
|                                          |                   |                   |                    |                   |                   |                   | FY 2018 Budget | FY 2018 Est. Actual |
| <b>Public Safety:</b>                    |                   |                   |                    |                   |                   |                   |                |                     |
| <b>Fire Rescue</b>                       |                   |                   |                    |                   |                   |                   |                |                     |
| Administration                           | 321,583           | 300,870           | 346,709            | 378,605           | 381,271           | 386,403           | 2%             | 1%                  |
| Operations                               | 9,501,008         | 9,559,600         | 9,611,700          | 9,950,135         | 9,881,400         | 9,983,368         | 1%             | 2%                  |
| E-911 Communications                     | 1,088,894         | 1,067,696         | 1,086,980          | 1,060,990         | 1,145,890         | 1,193,655         | 12%            | 13%                 |
| E-911 Communications Support             | 132,640           | 184,158           | 186,041            | 234,419           | 234,201           | 249,199           | 6%             | 7%                  |
| Emergency Management                     | 133,138           | 146,944           | 137,341            | 158,023           | 152,487           | 162,861           | 3%             | 7%                  |
| Fire Prevention                          | 574,146           | 599,699           | 576,709            | 611,991           | 581,793           | 603,968           | -3%            | 4%                  |
| Fleet Maintenance                        | 378,316           | 347,136           | 313,105            | 595,463           | 300,708           | 600,493           | 1%             | 10%                 |
| EMS Training                             | 197,348           | 204,384           | 108,964            | 333,784           | 298,487           | 408,335           | 27%            | 37%                 |
| Support Services                         | 6,346,866         | 991,155           | 1,556,081          | 711,911           | 661,200           | 765,935           | 7%             | 16%                 |
| Safety and Professional Development      | 713,435           | 716,866           | 713,781            | 654,192           | 649,073           | 681,710           | 3%             | 6%                  |
| <b>Total Fire Rescue</b>                 | <b>14,686,484</b> | <b>16,433,313</b> | <b>18,947,344</b>  | <b>14,806,142</b> | <b>14,487,177</b> | <b>15,195,094</b> | <b>2%</b>      | <b>3%</b>           |
| <b>Public Safety - Police Services</b>   | <b>3,330,413</b>  | <b>3,443,343</b>  | <b>3,534,798</b>   | <b>3,728,316</b>  | <b>3,678,316</b>  | <b>3,895,871</b>  | <b>4%</b>      | <b>6%</b>           |
| <b>Townwide (non-departmental):</b>      |                   |                   |                    |                   |                   |                   |                |                     |
| Personnel                                | 114,011           | 167,117           | 453,159            | 331,010           | 348,067           | 318,516           | 48%            | -5%                 |
| Operating                                | 1,780,033         | 1,402,599         | 1,443,181          | 2,017,881         | 1,690,731         | 2,176,344         | 3%             | 37%                 |
| Capital                                  | 41,615            | 30,001            | 31,000             | 789,000           | 789,000           | 704,000           | -74%           | -74%                |
| Transfers Out                            | -                 | 986,732           | 2,888,000          | -                 | -                 | -                 | -              | -                   |
| Grants                                   | 2,287,747         | 2,786,366         | 1,607,711          | 1,708,105         | 1,562,338         | 1,806,110         | 9%             | 4%                  |
| <b>Total Townwide (non-departmental)</b> | <b>3,223,406</b>  | <b>5,362,815</b>  | <b>10,723,051</b>  | <b>6,836,196</b>  | <b>6,390,196</b>  | <b>6,924,960</b>  | <b>-6%</b>     | <b>9%</b>           |
| <b>Total Expenditures</b>                | <b>35,485,477</b> | <b>37,354,198</b> | <b>43,618,884</b>  | <b>40,345,036</b> | <b>39,004,246</b> | <b>40,217,510</b> | <b>0%</b>      | <b>7%</b>           |
| <b>Net change in fund balances</b>       | <b>1,311,926</b>  | <b>1,601,105</b>  | <b>(4,848,140)</b> |                   | <b>613,714</b>    |                   |                |                     |
| <b>Fund balance - beginning</b>          | <b>18,035,129</b> | <b>19,349,125</b> | <b>20,991,430</b>  | <b>16,895,320</b> | <b>18,101,129</b> | <b>19,315,911</b> |                |                     |
| <b>Use of Fund Balance</b>               |                   |                   |                    |                   |                   |                   |                |                     |
| <b>Fund balance - ending</b>             | <b>19,347,055</b> | <b>20,950,230</b> | <b>16,143,290</b>  | <b>16,895,320</b> | <b>18,714,843</b> | <b>19,915,944</b> |                |                     |

**Debt Service Fund - FY 2019 Budget Summary**

|                                    | 2018              |                   |                   |                   |                   | 2019               |                |                    |
|------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|----------------|--------------------|
|                                    | 2015              | 2016              | 2017              | Adopted Budget    | Estimated Actual  | FY 2019 Budget     | Change         |                    |
|                                    |                   |                   |                   |                   |                   |                    | FY 2018 Budget | FY 2018 Est Actual |
| <b>GOVERNMENTAL ACTIVITIES</b>     |                   |                   |                   |                   |                   |                    |                |                    |
| <b>Revenues</b>                    |                   |                   |                   |                   |                   |                    |                |                    |
| Property Taxes                     | 5,084,193         | 5,136,344         | 5,229,228         | 5,337,600         | 5,175,874         | 5,429,633          | 1.7%           | 1.0%               |
| Bonds Issued                       | -                 | -                 | 17,885,000        | -                 | -                 | -                  | 0.0%           | 0.0%               |
| Bond Premium                       | -                 | -                 | 1,574,351         | -                 | -                 | -                  | 0.0%           | 0.0%               |
| BABS Subsidy                       | 168,051           | 161,656           | 79,889            | 169,870           | 163,000           | -                  | -100.0%        | -100.0%            |
| Investment Income                  | 37,374            | 36,913            | 30,351            | 36,000            | 40,225            | 90,000             | 150.0%         | 123.7%             |
| <b>Transfers In:</b>               |                   |                   |                   |                   |                   |                    |                |                    |
| Beach Preservation Fees            | 4,386,225         | 1,531,437         | 2,536,913         | 5,686,168         | 3,037,326         | 5,395,444          | -11.4%         | 74.7%              |
| Disaster Fund                      | -                 | -                 | -                 | 4,200,000         | 4,375,000         | 3,536,585          | 0.0%           | 0.0%               |
| Hospitality Fees                   | 1,616,437         | 1,633,032         | 1,627,113         | 2,324,350         | 2,544,348         | 1,635,300          | -29.0%         | -35.7%             |
| Tax Increment Financing            | 4,122,476         | -                 | -                 | 5,515,000         | 3,318,840         | 3,926,392          | -29.1%         | 0.0%               |
| Real Estate Transfer Fees          | 2,269,578         | 2,243,681         | 2,193,515         | 2,260,163         | 1,926,665         | 1,928,300          | -15.1%         | -9.4%              |
| Hospitality Tax Bond               | -                 | -                 | -                 | -                 | -                 | -                  | 0.0%           | 0.0%               |
| Series 2003 GO Bonds               | -                 | -                 | -                 | -                 | -                 | -                  | 0.0%           | 0.0%               |
| Lease Revenue                      | 10,889            | 61,116            | 61,116            | 61,000            | 61,000            | -                  | -100.0%        | -100.0%            |
| <b>Total Revenues</b>              | <b>17,690,313</b> | <b>11,800,379</b> | <b>41,229,589</b> | <b>25,914,371</b> | <b>20,846,278</b> | <b>21,811,434</b>  | <b>-15.7%</b>  | <b>4.8%</b>        |
| <b>Expenditures</b>                |                   |                   |                   |                   |                   |                    |                |                    |
| Administrative                     | 11,024            | 11,025            | 17,125            | 10,000            | 13,675            | 100,000            | 150.0%         | 691.3%             |
| Payment to Escrow Agent            | -                 | -                 | 28,966,152        | 50,000            | -                 | 100,000            | 100.0%         | 100.0%             |
| Contribution to Refunding          | -                 | -                 | -                 | -                 | -                 | -                  | 0.0%           | 0.0%               |
| Transfers                          | 1,900,110         | -                 | -                 | -                 | 298,930           | -                  | 0.0%           | -100.0%            |
| Debt Issue Costs                   | -                 | -                 | 471,186           | 759,000           | -                 | 760,953            | 0.0%           | 100.0%             |
| Principal                          | 12,995,000        | 7,430,000         | 8,040,000         | 7,595,000         | 11,830,000        | 17,530,000         | 130.8%         | 48.2%              |
| Interest                           | 1,142,272         | 1,278,421         | 2,432,746         | 15,769,000        | 4,521,301         | 5,701,024          | -63.8%         | 26.6%              |
| <b>Total Expenditures</b>          | <b>18,608,406</b> | <b>10,789,450</b> | <b>39,028,309</b> | <b>24,301,000</b> | <b>18,664,816</b> | <b>24,200,000</b>  | <b>0.0%</b>    | <b>-45.3%</b>      |
| <b>Net change in fund balances</b> | <b>(918,193)</b>  | <b>1,100,929</b>  | <b>1,201,280</b>  | <b>1,714,371</b>  | <b>4,192,382</b>  | <b>(2,398,566)</b> |                |                    |
| <b>Fund balance - beginning</b>    | <b>8,404,034</b>  | <b>7,486,821</b>  | <b>8,586,770</b>  | <b>10,886,110</b> | <b>10,586,110</b> | <b>14,178,112</b>  |                |                    |
| <b>Fund balance - ending</b>       | <b>7,485,841</b>  | <b>8,586,770</b>  | <b>9,786,110</b>  | <b>12,599,481</b> | <b>14,778,492</b> | <b>11,790,546</b>  |                |                    |



## Capital Improvement Plan by Funding Source - FY 2019 New Projects

| THOUSANDS OF DOLLARS                                                   |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
|------------------------------------------------------------------------|------------------------|------------------------------|-----------------------|--------------|-------------------------|------------|--------------------------|----------------|--------------------|--------------|------------|
| FY 2019 Budget                                                         | FY 2019 Projects Total | Funding Source as Identified | Beach Band Beach Fees | GO Bond      | Wapitash Tax Tranche In | ID         | Varies Upper Permit Fees | Road Usage Fee | County / Donations | Sale of Land |            |
| <b>PATHWAY IMPROVEMENTS</b>                                            |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
| Pathway Accessibility & Safety Enhancement Projects                    | 100                    |                              |                       |              | 200                     |            |                          |                |                    |              |            |
| <b>TOTAL</b>                                                           | <b>100</b>             | <b>-</b>                     | <b>-</b>              | <b>-</b>     | <b>200</b>              | <b>-</b>   | <b>-</b>                 | <b>-</b>       | <b>-</b>           | <b>-</b>     | <b>-</b>   |
| <b>ROADWAY IMPROVEMENTS</b>                                            |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
| Intersection Improvements - W.R. 3rd Lane at Square Pope - Impact fees | 500                    | 500                          |                       |              |                         |            |                          |                |                    |              |            |
| Extension of Lighter Road                                              | 675                    |                              | 175                   |              |                         |            |                          |                |                    |              |            |
| Reconstruction of Nantuxy River                                        | 400                    |                              | 400                   |              |                         |            |                          |                |                    |              |            |
| South Forks Reach Drive Improvements                                   | 400                    |                              | 400                   |              |                         |            |                          |                |                    |              |            |
| Private Det Roads - specific                                           | 175                    |                              |                       |              |                         |            |                          | 175            |                    |              |            |
| Private Det Roads - driving projects TBD                               | 175                    |                              |                       |              |                         |            |                          | 175            |                    |              |            |
| Private Det Roads                                                      | 300                    |                              |                       |              |                         |            |                          | 300            |                    |              |            |
| Topic Avenue Resurfacing - County Grant/Impact fee                     | 850                    |                              |                       |              |                         |            |                          |                | 850                |              |            |
| <b>TOTAL</b>                                                           | <b>3,125</b>           | <b>-</b>                     | <b>900</b>            | <b>1,475</b> | <b>-</b>                | <b>-</b>   | <b>-</b>                 | <b>900</b>     | <b>850</b>         | <b>-</b>     | <b>-</b>   |
| <b>PARK DEVELOPMENT</b>                                                |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
| Cascade area improvements - Park Impact fees                           | 400                    | 400                          |                       |              |                         |            |                          |                |                    |              |            |
| Park, Openness Impact Fees / Tuesday League fees                       | 300                    |                              | 150                   |              |                         |            | 150                      |                |                    |              |            |
| <b>TOTAL</b>                                                           | <b>700</b>             | <b>-</b>                     | <b>550</b>            | <b>-</b>     | <b>-</b>                | <b>-</b>   | <b>150</b>               | <b>-</b>       | <b>-</b>           | <b>-</b>     | <b>-</b>   |
| <b>PUBLIC FACILITIES</b>                                               |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
| Town Hall Remodeling                                                   | 100                    |                              |                       |              | 200                     |            |                          |                |                    |              |            |
| Food Truck Shed                                                        | 55                     |                              |                       |              | 55                      |            |                          |                |                    |              |            |
| <b>TOTAL</b>                                                           | <b>155</b>             | <b>-</b>                     | <b>-</b>              | <b>-</b>     | <b>255</b>              | <b>-</b>   | <b>-</b>                 | <b>-</b>       | <b>-</b>           | <b>-</b>     | <b>-</b>   |
| <b>FACILITY IMPROVEMENTS</b>                                           |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
| Sewer Service Projects                                                 | 3,220                  |                              |                       | 3,220        |                         |            |                          |                |                    |              |            |
| Fire Hydrant Expansion - Project H1A1X                                 | 100                    | 45                           |                       |              | 57                      |            |                          |                |                    |              |            |
| Remediation / Operation Center Modification - Project                  | 150                    |                              | 150                   |              |                         |            |                          |                |                    |              |            |
| <b>TOTAL</b>                                                           | <b>3,470</b>           | <b>-</b>                     | <b>195</b>            | <b>3,220</b> | <b>67</b>               | <b>-</b>   | <b>-</b>                 | <b>-</b>       | <b>-</b>           | <b>-</b>     | <b>-</b>   |
| <b>BEACH MAINTENANCE</b>                                               |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
| Beach Management & Monitoring                                          | 500                    |                              | 500                   |              |                         |            |                          |                |                    |              |            |
| <b>TOTAL</b>                                                           | <b>500</b>             | <b>-</b>                     | <b>500</b>            | <b>-</b>     | <b>-</b>                | <b>-</b>   | <b>-</b>                 | <b>-</b>       | <b>-</b>           | <b>-</b>     | <b>-</b>   |
| <b>LAND</b>                                                            |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
| Undeveloped Projects / Legal Fees                                      | 20                     |                              |                       |              |                         |            |                          |                |                    |              | 20         |
| <b>TOTAL</b>                                                           | <b>20</b>              | <b>-</b>                     | <b>-</b>              | <b>-</b>     | <b>-</b>                | <b>-</b>   | <b>-</b>                 | <b>-</b>       | <b>-</b>           | <b>-</b>     | <b>20</b>  |
| <b>OTHER CAPITAL EXPENDITURES</b>                                      |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
| Fire Reserve Capital Outlay - from Reserve funds                       | 802                    |                              | 802                   |              |                         |            |                          |                |                    |              |            |
| Cost of Issues                                                         | 300                    |                              |                       | 300          |                         |            |                          |                |                    |              |            |
| Res Center CIP - Impact fees                                           | 271                    |                              | 271                   |              |                         |            |                          |                |                    |              |            |
| Reserve from CIP - Park Impact fees                                    | 55                     |                              | 55                    |              |                         |            |                          |                |                    |              |            |
| Transfer to General Fund                                               | 678                    | 453                          |                       |              |                         |            | 50                       |                |                    |              | 175        |
| <b>TOTAL</b>                                                           | <b>1,296</b>           | <b>453</b>                   | <b>428</b>            | <b>300</b>   | <b>-</b>                | <b>-</b>   | <b>50</b>                | <b>-</b>       | <b>-</b>           | <b>-</b>     | <b>175</b> |
| <b>TOTAL BUDGET BY FUNDING SOURCE</b>                                  |                        |                              |                       |              |                         |            |                          |                |                    |              |            |
| <b>TOTAL FY 2019 BUDGET</b>                                            | <b>9,874</b>           | <b>453</b>                   | <b>3,661</b>          | <b>1,075</b> | <b>3,320</b>            | <b>122</b> | <b>-</b>                 | <b>240</b>     | <b>900</b>         | <b>850</b>   | <b>155</b> |

\*Beginning in FY 2018, Det Road Projects funded by the Community Development Block Grant (CDBG) are separate from the Capital Improvement Plan Budget.

\*The remainder of the Beaufort River funding would be reflected in the Fire Reserve Capital Outlay, the Fire Hydrant project and the ROC project.

Stormwater Fund - FY 2019 Budget Summary

|                                   | 2015             | 2016             | 2017             | 2018             |                  | 2019             |                |                    |
|-----------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|----------------|--------------------|
|                                   |                  |                  |                  | Adopted Budget   | Estimated Actual | FY 2019 Budget   | FY 2018 Budget | FY 2018 Est Actual |
| <b>Revenues</b>                   |                  |                  |                  |                  |                  |                  |                |                    |
| Stormwater Fees                   | 3,559,386        | 3,551,400        | 3,583,005        | 4,800,000        | 4,769,396        | 4,775,000        | -0.52%         | 0.12%              |
| Fund Balance/Prior Year Funds     | -                | -                | -                | -                | -                | 335,000          | 100.00%        | 100.00%            |
| Federal Grant                     | 25,764           | 44,472           | -                | -                | -                | -                | 0.00%          | 0.00%              |
| Bond Proceeds                     | -                | -                | -                | 3,100,000        | 3,100,000        | -                | 0.00%          | 0.00%              |
| Interest                          | 450              | 452              | 1,302            | 450              | 3,928            | 1,000            | 122.22%        | -66.12%            |
| <b>Total Revenues</b>             | <b>3,577,600</b> | <b>3,596,314</b> | <b>3,584,307</b> | <b>7,900,450</b> | <b>7,872,324</b> | <b>5,311,000</b> | <b>-32.78%</b> | <b>-32.54%</b>     |
| <b>Expenses</b>                   |                  |                  |                  |                  |                  |                  |                |                    |
| Personnel                         | 317,575          | 358,106          | 283,155          | 544,000          | 544,043          | 563,000          | 3.49%          | 3.48%              |
| Operating                         | 226,661          | 319,567          | 340,896          | 390,000          | 453,747          | 374,000          | -4.10%         | -17.58%            |
| Projects                          | 1,909,697        | 1,072,181        | 799,316          | 5,653,000        | 5,381,113        | 2,619,000        | -53.67%        | -50.31%            |
| Capital                           | -                | 23,764           | -                | 32,000           | 32,000           | 32,000           | 0.00%          | 0.00%              |
| Transfers                         | 94,258           | 94,258           | 1,095,000        | 125,000          | 125,000          | 125,000          | 0.00%          | 0.00%              |
| Debt Service/Other                | (96,760)         | 96,510           | 1,433,596        | 1,754,000        | 1,584,000        | 1,598,000        | 38.47%         | 5.55%              |
| <b>Total Expenses</b>             | <b>3,416,431</b> | <b>2,849,396</b> | <b>3,951,963</b> | <b>7,898,000</b> | <b>8,049,903</b> | <b>5,311,000</b> | <b>-32.76%</b> | <b>-34.01%</b>     |
| <b>Net Change in Fund Balance</b> | <b>1,161,169</b> | <b>746,918</b>   | <b>(367,656)</b> | <b>2,150</b>     | <b>(177,579)</b> | <b>-</b>         |                |                    |
| <b>Beginning Fund Balance</b>     | <b>5,294,577</b> | <b>6,407,745</b> | <b>7,154,464</b> | <b>6,786,748</b> | <b>6,789,198</b> | <b>6,611,669</b> |                |                    |
| <b>Ending Fund Balance</b>        | <b>6,407,746</b> | <b>7,154,663</b> | <b>6,786,748</b> | <b>6,789,198</b> | <b>6,611,669</b> | <b>6,611,669</b> |                |                    |

ORDINANCE NO. 2019-14PROPOSED ORDINANCE NO. 2019-15

**AN ORDINANCE TO RAISE REVENUE AND ADOPT A BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2020; TO ESTABLISH A PROPERTY TAX LEVY; TO ESTABLISH FUNDS; TO ESTABLISH A POLICY FOR ACQUISITION OF RIGHTS OF WAY AND EASEMENTS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, Section 5-7-260(3) of the Code of Laws for South Carolina 1976, as amended, and Section 2-7-20 of the Municipal Code of the Town of Hilton Head Island, South Carolina, require that the Town Council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

**WHEREAS**, Town Council also desires to set aside funds for an Operating Reserve to provide for emergency-related expenditures and to offset fiscal year tax revenue income stream deficiency; and

**WHEREAS**, Town Council finds that it would be more economical and efficient to authorize the Town Manager to move forward with construction contract modifications, change orders, contract price adjustments, and execution of contracts for supplies, services, and construction where the contract amount involved does not exceed the budget line item or project budget as approved by Town Council in the Consolidated Municipal Budget.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

**NOTE:** Underlined and bold-face typed portions indicate additions to the Ordinance. ~~Stricken~~ Portions indicate deletions to the Ordinance.

**Section 1. Adoption of the Budget.** The prepared budget of estimated revenues and expenses, a copy of which is attached hereto and incorporated herein, is hereby adopted as the budget for the Town of Hilton Head Island for the fiscal year ending June 30, 2020.

Proposed Ordinance No. 2019-15  
Page Two

The General Fund budgetary authority is adopted at the Departmental level as follows:

| Expenditure Type               | 2020 Budget          | 2021 Budget          |
|--------------------------------|----------------------|----------------------|
| Town Council                   | \$ 479,224           | \$ 493,601           |
| Town Manager                   | 846,440              | 871,833              |
| Human Resources                | 687,766              | 648,424              |
| Administrative Services        | 3,957,269            | 4,073,649            |
| Finance                        | 1,992,406            | 2,052,125            |
| Community Development          | 3,553,997            | 3,601,547            |
| Public Projects and Facilities | 5,642,043            | 5,911,304            |
| Fire Rescue                    | 15,499,346           | 15,897,377           |
| Sheriff/ Other Public Safety   | 3,813,237            | 3,927,634            |
| Townwide                       | 2,823,316            | 3,289,036            |
| Community / Grants             | 1,813,273            | 1,791,917            |
|                                | <u>\$ 41,108,317</u> | <u>\$ 42,558,447</u> |

The Debt Service Fund and the Stormwater Fund are adopted at the Fund level. Capital Improvement Projects are adopted at the Project level. The Town Manager is authorized to transfer amounts up to \$100,000; larger transfers require Town Council approval.

**Section 2. Establishment of Property Tax Levy.** A tax to cover the period from July 1, 2019 through June 30, 2020, inclusive, for the sums and in the manner hereinafter mentioned, is and shall be, levied, collected and paid into the treasury of the Town of Hilton Head Island for its uses at a rate of mills on assessed value of real estate and personal property of every description owned in the Town of Hilton Head Island, except such property as is exempt from taxation under the Constitution and laws of the State of South Carolina. Said tax levy shall be paid into the Town Treasury for the credit of the Town of Hilton Head Island for its corporate purposes, for the purpose of paying current operational expenses of the said municipality 17.13 mills, Debt Service 5.97 mills, and Disaster Recovery (millage override) 5.00 mills making the total levy of 28.10 mills.

**Section 3. Establishment of Funds.** To facilitate operations, there shall be established and maintained a General Fund, a Capital Projects Fund, a Debt Service Fund, a Stormwater Fund and other appropriate funds in such amounts as are provided for in the aforesaid Budget, as hereby adopted or as hereafter modified pursuant to law.

**Section 4. Acquisition of Rights of Way and Easements.** The Town Manager is charged with the duty of executing all necessary documents to obtain rights of way, easements, and other property interests necessary to complete duly authorized Capital Improvement Projects. Capital Improvement Projects based on the ownership and life expectancy of the assets or improvements or based on the funding source authorized may be budgeted in the General, Capital Projects or Stormwater Funds. If expenditures are expressly authorized for an approved Capital Improvement Project in any of the budgeted funds, then the Town Manager is hereby authorized to execute all



Proposed Ordinance No. 2019-15  
Page Three

necessary documents and to expend such funds as are approved pursuant to the Capital Improvement budgets. Provided, however, in the event that the costs of an acquisition of such real property interests materially exceeds the amount budgeted in the approved Capital Improvement Project and the Town Manager is unable to shift additional funds from other authorized sources, the Town Manager shall be required to obtain the approval of Town Council for such additional expenditures. Nothing herein shall obviate the requirement that no condemnations shall be commenced without the appropriate approval of the Town Council for the Town of Hilton Head Island.

**Section 5 Severability.** If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 6. Effective Date.** This Ordinance shall be effective upon its enactment by the Town Council for the Town of Hilton Head Island.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF  
HILTON HEAD ISLAND ON THIS 4th DAY OF June, 2019.

John McCann, Mayor

ATTEST:

Krista Wiedmeyer, Town Clerk

First Reading: MAY 7, 2019

Public Hearing: JUNE 4, 2019

Revised First Reading:

Second Reading: JUNE 4, 2019

APPROVED BY THE TOWN COUNCIL

CURTIS C. COOPER, Town Attorney

Introduced by Council Member:

William Harkins



**ORDINANCE NO. 2020-15****PROPOSED ORDINANCE NO. 2020-12**

**AN ORDINANCE TO RAISE REVENUE AND ADOPT A BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2021; TO ESTABLISH A PROPERTY TAX LEVY; TO ESTABLISH FUNDS; TO ESTABLISH A POLICY FOR ACQUISITION OF RIGHTS OF WAY AND EASEMENTS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, Section 5-7-260(3) of the Code of Laws for South Carolina 1976, as amended, and Section 2-7-20 of the Municipal Code of the Town of Hilton Head Island, South Carolina, require that the Town Council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

**WHEREAS**, Town Council also desires to set aside funds for an Operating Reserve to provide for emergency-related expenditures and to offset fiscal year tax revenue income stream deficiency; and

**WHEREAS**, Town Council also desires to give the Town Manager authority to adjust revenue estimates as necessary to account for the economic impact of the COVID-19 Pandemic, without changing the total adopted budget. Any changes made under this section will be reported to Town Council on a quarterly basis; and

**WHEREAS**, Town Council finds that it would be more economical and efficient to authorize the Town Manager to move forward with construction contract modifications, change orders, contract price adjustments, and execution of contracts for supplies, services, and construction where the contract amount involved does not exceed the budget line item or project budget as approved by Town Council in the Consolidated Municipal Budget.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL;**

**NOTE:** Underlined and bold-face typed portions indicate additions to the Ordinance. ~~Stricken~~ Portions indicate deletions to the Ordinance.

**Section 1. Adoption of the Budget.** The prepared budget of estimated revenues and expenses, a copy of which is attached hereto and incorporated herein, is hereby adopted as the budget for the Town of Hilton Head Island for the fiscal year ending June 30, 2021.

Proposed Ordinance No. 2020-12  
Page Two

The General Fund budgetary authority is adopted at the Departmental level as follows:

|                                | 2020<br>Budget       | 2021<br>Budget       |
|--------------------------------|----------------------|----------------------|
| Town Council                   | 479,224              | 493,601              |
| Town Manager                   | 846,440              | 871,833              |
| Human Resources                | 687,766              | 648,424              |
| Administrative Services        | 3,957,269            | 4,073,649            |
| Finance                        | 1,992,406            | 2,052,125            |
| Community Development          | 3,553,997            | 3,601,547            |
| Public Projects and Facilities | 5,642,043            | 5,911,304            |
| Fire Rescue                    | 15,499,346           | 15,897,377           |
| Sheriff/Other Public Safety    | 3,813,237            | 3,927,634            |
| Townwide                       | 2,823,316            | 3,289,036            |
| Community/Grants               | 1,813,273            | 1,791,917            |
| <b>Total</b>                   | <b>\$ 41,108,317</b> | <b>\$ 42,558,448</b> |

The Debt Service Fund and the Stormwater Fund are adopted at the Fund level. Capital Improvement Projects are adopted at the Project level. The Town Manager is authorized to transfer amounts up to \$100,000; larger transfers require Town Council approval.

**Section 2. Establishment of Property Tax Levy.** A tax to cover the period from July 1, 2019 through June 30, 2020, inclusive, for the sums and in the manner hereinafter mentioned, is and shall be, levied, collected and paid into the treasury of the Town of Hilton Head Island for its uses at a rate of mills on assessed value of real estate and personal property of every description owned in the Town of Hilton Head Island, except such property as is exempt from taxation under the Constitution and laws of the State of South Carolina. Said tax levy shall be paid into the Town Treasury for the credit of the Town of Hilton Head Island for its corporate purposes, for the purpose of paying current operational expenses of the said municipality 17.2 mills, Debt Service 5.9 mills, and Disaster Recovery (millage override) 5.00 mills making the total levy of 28.1 mills.

**Section 3. Establishment of Funds.** To facilitate operations, there shall be established and maintained a General Fund, a Capital Projects Fund, a Debt Service Fund, a Stormwater Fund and other appropriate funds in such amounts as are provided for in the aforesaid Budget, as hereby adopted or as hereafter modified pursuant to law.

**Section 4. Acquisition of Rights of Way and Easements.** The Town Manager is charged with the duty of executing all necessary documents to obtain rights of way, easements, and other property interests necessary to complete duly authorized Capital Improvement Projects.

Proposed Ordinance No. 2020-12  
Page Three

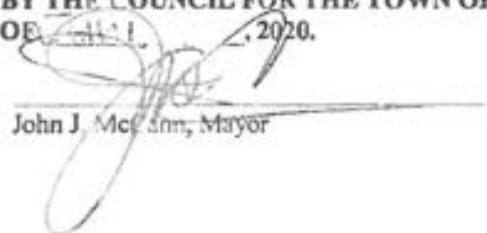
Capital Improvement Projects based on the ownership and life expectancy of the assets or improvements or based on the funding source authorized may be budgeted in the General, Capital Projects or Stormwater Funds. If expenditures are expressly authorized for an approved Capital Improvement Project in any of the budgeted funds, then the Town Manager is hereby authorized to execute all necessary documents and to expend such funds as are approved pursuant to the Capital Improvement budgets. Provided, however, in the event that the costs of an acquisition of such real property interests materially exceeds the amount budgeted in the approved Capital Improvement Project and the Town Manager is unable to shift additional funds from other authorized sources, the Town Manager shall be required to obtain the approval of Town Council for such additional expenditures. Nothing herein shall obviate the requirement that no condemnations shall be commenced without the appropriate approval of the Town Council for the Town of Hilton Head Island.

**Section 5. Assignment of Funds for Future Use.** Town Council continues to assign and reserve funds for its future dredging projects in the amount of \$200,000 of Hospitality Tax and \$100,000 for Pine Island renourishment from Stormwater funds in accordance with Town practice.

**Section 6. Severability.** If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 7. Effective Date.** This Ordinance shall be effective upon its enactment by the Town Council for the Town of Hilton Head Island.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS 16 DAY OF June, 2020.**

  
John J. McElann, Mayor

ATTEST:

  
Krista M. Wiedmeyer, Town Clerk

First Reading: May 12, 2020  
Public Hearing: June 16, 2020  
Revised First Reading: N/A  
Second Reading: June 16, 2020

APPROVED AS TO FORM

  
Curtis L. Coltrane, Town Attorney

Introduced by Council Member:

Bill Harkins

|                                          |   |                              |
|------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                  | ) | IN THE COURT OF COMMON PLEAS |
|                                          | ) |                              |
| COUNTY OF BEAUFORT                       | ) | CASE NUMBER 2022-CP-07-1625  |
|                                          | ) |                              |
| RYAN MCAVOY, Individually and on         | ) |                              |
| behalf of all others similarly situated, | ) |                              |
|                                          | ) |                              |
| Plaintiff,                               | ) |                              |
|                                          | ) | ANSWER OF THE TOWN OF        |
| vs.                                      | ) | HILTON HEAD ISLAND           |
|                                          | ) |                              |
| TOWN OF HILTON HEAD ISLAND,              | ) |                              |
|                                          | ) |                              |
| Defendant.                               | ) |                              |

The Town of Hilton Head Island (hereinafter, the “Town”), files its Answer to the Complaint of Ryan McAvoy, and says:

BY WAY OF A FIRST DEFENSE

1. Each and every allegation of the Complaint is denied, unless hereinafter admitted, qualified or explained.
2. In response to the allegations of Paragraph 1 of the Complaint, the Town admits, on information and belief, that Ryan McAvoy is a resident in The Town of Hilton Head Island, South Carolina. The Town is without sufficient information to admit or deny any other allegation of Paragraph 1 of the Complaint, and therefore denies the same. To the extent any allegation of Paragraph 1 of the Complaint alleges a claim brought or to be brought as a class action against the Town, the same is barred by S. C. Code Ann. § 12-60-80(C)(Supp. 2022).
3. The Town admits the allegations of Paragraph 2 of the Complaint.
4. The allegations of Paragraph 4 of the Complaint state only legal conclusions that do not require a response from the Town. To the extent that any allegation in Paragraph 4 of



the Complaint is deemed to be an allegation of fact requiring a response from the Town, the same is denied.

5. The Town denies the allegations of Paragraph 5 of the Complaint.

6. The allegations of Paragraph 6 of the Complaint state only legal conclusions that do not require a response from the Town. To the extent that any allegation in Paragraph 6 of the Complaint is deemed to be an allegation of fact requiring a response from the Town, the same is denied.

7. The allegations of Paragraph 7 of the Complaint state only legal conclusions that do not require a response from the Town. To the extent that any allegation in Paragraph 7 of the Complaint is deemed to be an allegation of fact requiring a response from the Town, the same is denied.

8. The allegations of Paragraph 8 of the Complaint state only legal conclusions that do not require a response from the Town. To the extent that any allegation in Paragraph 8 of the Complaint is deemed to be an allegation of fact requiring a response from the Town, or an allegation that the Town's expenditure of funds was in any way unlawful, the same is denied.

9. The allegations of Paragraph 9 of the Complaint state only legal conclusions that do not require a response from the Town. To the extent that any allegation in Paragraph 9 of the Complaint is deemed to be an allegation of fact requiring a response from the Town, or an allegation that the Town's expenditure of funds was in any way unlawful, the same is denied.

10. The allegations of Paragraph 10 of the Complaint state only legal conclusions that do not require a response from the Town. To the extent that any allegation in Paragraph

10 of the Complaint is deemed to be an allegation of fact requiring a response from the Town, or an allegation that the Town's expenditure of funds was in any way unlawful, the same is denied.

11. The allegations of Paragraph 11 of the Complaint state only legal conclusions that do not require a response from the Town. To the extent that any allegation in Paragraph 11 of the Complaint is deemed to be an allegation of fact requiring a response from the Town, or an allegation that the Town's expenditure of funds was in any way unlawful, the same is denied.

12. In response to the allegations of Paragraph 12 of the Complaint, the Town denies that the main channels and entrance of Braddock Creek and the Harbour Town Yacht Basin private waterways. The Town affirmatively alleges that its expenditure of local hospitality taxes on these tourism related recreational facilities is authorized by S. C. Code Ann. § 6-1-730 (Supp. 2022), and § 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983).

13. On information and belief, the Town admits only that boat slips in the Harbour Town Yacht basin are privately owned, and that the waters in the Harbour Town Yacht Basin are waters of the State of South Carolina. Any other or further allegation of Paragraph 13 of the Complaint is denied.

14. The Town denies the allegations of Paragraph 14 of the Complaint. The Town affirmatively alleges that its expenditure of local hospitality taxes on these tourism related recreational facilities is authorized by S. C. Code Ann. § 6-1-730 (Supp. 2022), and § 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983). The Town affirmatively alleges that the use of Stormwater Fees collected under the authority of § 99-

101, Beaufort County Code of Ordinances, creating a Stormwater Utility, for the purpose of improving drainage infrastructure that the Town has legal access to, is an authorized and legal use of Stormwater Utility Fees collected from property owners in the municipal limits of the Town.

15. In response to the allegations of Paragraph 15 of the Complaint, the Town affirmatively alleges that the use of Stormwater Fees collected under the authority of § 99-101, Beaufort County Code of Ordinances, creating a Stormwater Utility, for the purpose of improving drainage infrastructure that the Town has legal access to, is an authorized and legal use of Stormwater Utility Fees collected from property owners in the municipal limits of the Town.

16. In response to the allegations of Paragraph 16 of the Complaint, the Town affirmatively alleges that its expenditure of local hospitality taxes on tourism related recreational facilities is authorized by S. C. Code Ann. § 6-1-730 (Supp. 2022), and § 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983). Any contrary allegation of Paragraph 16 of the Complaint is denied.

17. The allegations of Paragraph 17 of the Complaint state only legal conclusions that do not require a response from the Town. To the extent that any allegation in Paragraph 17 of the Complaint is deemed to be an allegation of fact requiring a response from the Town, or an allegation that the Town's expenditure of funds was in any way unlawful, the same is denied.

18. The Town denies the allegations of Paragraph 18 of the Complaint.

BY WAY OF A SECOND DEFENSE

19. Each and every allegation of Paragraphs 1 through 18 of the Complaint is re-alleged,

as if fully repeated herein.

20. S. C. Code Ann. § 6-1-730 (Supp. 2022), and § 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), authorize the expenditure of Local Hospitality Taxes on tourism related recreational facilities.

21. The Town's expenditure of Local Hospitality Taxes on tourism related recreational facilities is consistent with both S. C. Code Ann. § 6-1-730 (Supp. 2022), and § 4-13-80, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983).

22. The waters in Braddock Creek and the Harbour Town Yacht Basin are not privately owned, but are public waters of the State of South Carolina.

23. The use of Stormwater Fees collected under the authority of § 99-101, Beaufort County Code of Ordinances, creating a Stormwater Utility, for the purpose of improving drainage infrastructure that the Town has legal access to, is an authorized and legal use of Stormwater Utility Fees collected from property owners in the municipal limits of the Town.

24. The Town has legal access to the stormwater drainage infrastructure that Stormwater Fees have been used to maintain and improve, and the use of Stormwater Fees for maintenance and improvement of such infrastructure is legal and authorized use.

#### BY WAY OF A THIRD DEFENSE

25. Each and every allegation of Paragraphs 1 through 24 is re-alleged, as if fully repeated herein.

26. To the extent that the Complaint alleges a claim brought as a class action against the Town, the same is barred by S. C. Code Ann. §12-60-80(C)(Supp. 2022).



## CONCLUSION

Wherefore, having fully answered the Complaint of the Ryan McAvoy, the Town prays that the same be dismissed, with costs, and for all other and further relief as this Court may deem just and proper.

Respectfully Submitted:

COLTRANE & WILKINS, LLC

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Curtis L. Coltrane  
S. C. Bar Number 1344  
Post Office Box 6808  
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(843) 785-5551  
(843) 785-5552 (facsimile)  
[curtis@coltraneandwilkins.com](mailto:curtis@coltraneandwilkins.com)

Hilton Head Island, South Carolina

September 1, 2022.

1 STATE OF SOUTH CAROLINA  
2 IN THE COURT OF COMMON PLEAS  
3 COUNTY OF BEAUFORT

4 Ryan Mcavoy,

5 Plaintiff,

6 vs.

Transcript of Record  
2022-CP-07-01625

7 Town of Hilton Head Island,

8 Defendant.

9  
10  
11 September 9, 2023  
12 Beaufort, South Carolina

13 B E F O R E:

14 The HONORABLE JOCELYN NEWMAN

15 A P P E A R A N C E S:

16 James G. Carpenter, Representing the plaintiff

17 Curtis L. Coltrane, Representing the defendant

18  
19  
20  
21  
22 SHARON G. HARDOON, CSR  
23 Official Circuit Court Reporter, III  
24  
25

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| 25 |                                         |     |    |

1                   THE BAILIFF: All rise. The Honorable  
2 Jocelyn Newman presiding.

3                   THE COURT: Good morning. You-all can be  
4 seated.

5                   All right. This is Ryan Mcavoy vs. Town of  
6 Hilton Head, 2022-CP-07-01625.

7                   Everybody ready for trial?

8                   MR. COLTRANE: Town is ready, Your  
9 Honor.

10                  MR. CARPENTER: Yes, Your Honor.

11                  THE COURT: All right. Do you want to do  
12 opening statements?

13                  MR. CARPENTER: I was going to take my  
14 cue from the Court. I think the Court has  
15 probably read a lot of things in the last day or  
16 two, and, if the Court would like an opening  
17 statement, I'll be happy to give one. If not, I'd  
18 be happy just to begin with my evidence.

19                  THE COURT: No. Let's do openings  
20 statements. Sure. And, because the Court is  
21 familiar, it doesn't have to be exceptionally  
22 lengthy, but for purposes of the record, let's do  
23 it.

24                  MR. CARPENTER: Thank you, Your Honor.  
25 If it please the Court, I'm Jim Carpenter. I

1 represent the plaintiff. We brought this action  
2 because we allege that the Town of Hilton Head  
3 Island is violating the South Carolina  
4 Constitution. The South Carolina Constitution  
5 prohibits spending public money for private  
6 purposes. This is Article 10, sections 5 and 11.  
7 Section 5 says: "Any tax which shall be levied  
8 shall distinctly state the public purpose to which  
9 the proceeds of the tax shall be applied."

10 Article 10, section 11 says: "The credit  
11 of neither the State or any of its political  
12 subdivisions shall be pledged or loaned for the  
13 benefit of any individual company, association,  
14 corporation, except as permitted by section 3,  
15 Article 11 of this constitution."

16 There was a recent Supreme Court case in  
17 2017 called *South Carolina Public Interest*  
18 *Foundation vs. South Carolina Department of*  
19 *Transportation*. In that case, the South Carolina  
20 Department of Transportation was pressured to  
21 inspect some bridges in a private gated community.  
22 They were pressured by a person who happened to be  
23 a member of the city council who put pressure on  
24 his legislatures, who put pressure on the  
25 department, and they sent inspectors out there to



1 inspect bridges in a private gated community. The  
2 South Carolina Public Interest Foundation brought  
3 an action contending that that inspection, the  
4 expenditure of public funds for that purpose was  
5 unconstitutional and the Supreme Court agreed.

6 The court concluded, "In short it's not  
7 the public's responsibility to pay for the  
8 maintenance cost of bridges located within a gated  
9 community that seeks to exclude the public from  
10 enjoying the use of the bridges." We would  
11 suggest that same analysis applies to the case at  
12 bar.

13 The Town of Hilton Head Island is  
14 expending or has expended \$600,000 from  
15 hospitality tax, which are public funds, for  
16 the -- to pay part of the cost of dredging  
17 waterways and dredging under privately owned docks  
18 and bridges and marinas and so on. We contend  
19 these are private areas which the public is not  
20 invited to or allowed to go to. And this  
21 inspection -- this dredging of these private  
22 waterways and private marinas violates the same  
23 constitutional provisions as did the inspection of  
24 the bridges in the private gated community in  
25 *South Carolina Public Interest Foundation vs.*

1     *Carolina Department of Transportation.* And our  
2     evidence would show that the entire Sea Pines  
3     Plantation is private, and all of its parts are  
4     private, and some of the parts are private within  
5     private, and, yet, they are using public monies to  
6     pay for the maintenance and improvement of what  
7     are essentially private areas. We would contend  
8     that is unconstitutional and would ask the Court  
9     to rule under declaratory judgment that is  
10    unconstitutional at the end of the case.

11           THE COURT: Thank you, sir.

12           MR. COLTRANE: Your Honor, please, my name  
13    Curtis Coltrane. I stand before you today  
14    representing the Town of Hilton Head Island. Seated  
15    with me at counsel table is Lequinn Andrews, a  
16    soon-to-be member of South Carolina bar, and  
17    Mr. Joshua Grooper, who is the deputy town manager for  
18    the town of Hilton Head Island.

19           In this case, the premise that is laid  
20    out by the plaintiff is wrong. The waterways that  
21    the Town has agreed to contribute funding to  
22    dredge of are waters of the United States and the  
23    State the South Carolina. The evidence that will  
24    be in the record today, Your Honor, will consist,  
25    in addition to other things, of the permits issued

1 by the Corp of Engineers, the permit issued by the  
2 South Carolina Department of Health and  
3 Environmental Control. And in each of them, they  
4 will say that the waterways to be dredged are  
5 waters of the United States and waters of the  
6 State of South Carolina. The existence in those  
7 waters of a private marina or private boat slips  
8 does not change the nature of the waterway. And  
9 you will see in the plans that are approved by the  
10 Corp of Engineers and DHEC that all of the water,  
11 including those upon which the private marina may  
12 float, are the waters of the State of South  
13 Carolina and waters of the United States of  
14 America.

15 Indeed, Your Honor, if you drive through  
16 Beaufort County, you will see a multitude of docks  
17 that stick out into rivers and into the sounds and  
18 everywhere else, all of them exist in public  
19 waterways. The existence of those structures does  
20 not change the nature of the waterway.

21 The State of South Carolina has adopted  
22 the local hospitality tax which allows for the use  
23 of local hospitality funds to, among other things,  
24 provide for the maintenance of areas that provide  
25 for recreation and access to the general public.

1                   The witness that will be offered by  
2       Mr. Carpenter will testify that she drove a boat  
3       down Braddock Cove Creek all the way, that she  
4       drove a boat into the Harbour Town Yaught Basin  
5       and no one stopped her.

6                   What she will also testify to is that  
7       there are signs along the edge of the waterways  
8       and signs within Sea Pines that say this property  
9       is private. And that may be, but it is irrelevant  
10      to the claim. Whether the public waterway that  
11      jets into the land mass of Sea Pines is not  
12      governed by what happens on the high ground. The  
13      nature of the waterway is not what is at issue  
14      here, not the nature of anything else happening in  
15      Sea Pines and not the nature of anything that may  
16      be happening on the boat docks.

17                  You will hear, though, that the boat  
18      docks are open to use by the public and that any  
19      member of the public may enter these waterways and  
20      make use of them for, you know, the pleasure  
21      boating, recreational functions that people use  
22      boats for. And so what you will find is that,  
23      number 1, not one dime is being spent on any  
24      private property, and that, two, the use of these  
25      funds for the contribution to the dredges

1 specifically authorized by the State of South  
2 Carolina.

3           It may not matter. You will also hear  
4 that no money has been spent yet because the  
5 dredge hasn't happened yet. But all that said,  
6 the premise of the case which is that public money  
7 is being put to a private use is just simply  
8 wrong. The only thing that public money will be  
9 used for here is the dredging of the public asset  
10 which are waters of the United States and the  
11 State of South Carolina.

12           Thank you, Your Honor.

13           THE COURT: Thank you.

14           Mr. Carpenter, call your first witness.

15           MR. CARPENTER: Your Honor, we have  
16 submitted a lot of things to the Court already.  
17 One of the things that the Town submitted was the  
18 affidavit of a Christa Wiedmeyer, who, at the  
19 time, was the municipal clerk of the Town of  
20 Hilton Head Island. I am informed that she is no  
21 longer the municipal clerk. But this has been  
22 admitted into the record already, and I think it  
23 has certain things in it that are important to the  
24 plaintiff's case. And I would offer as the first  
25 exhibit, a statement of party opponent, both the



1 affidavit and the two exhibits that are attached  
2 to the affidavit. I have copies here that, I  
3 don't know -- virtually, all of these exhibits  
4 have already been submitted to the Court and are  
5 in the record attached to one document or another.  
6 And maybe a housekeeping question is: Does the  
7 Court want more copies or is the Court content to  
8 simply refer to the copies already in the record?

9 THE COURT: I would like additional  
10 copies, but is there any objection to --

11 MR. COLTRANE: The affidavit is hearsay.  
12 I have advised Mr. Carpenter that I have certified  
13 true copies of the resolution and the agreement  
14 that are attached to the affidavit bearing the  
15 seal of town clerk which are self-authenticating  
16 documents, and if he wishes to offer those, he  
17 can.

18 THE COURT: Any response, Mr. Carpenter?

19 MR. CARPENTER: Well, like I said, the  
20 affidavit is a statement of party opponent. She  
21 is the municipal clerk. We're suing the Town. It  
22 was offered in court attached to their motion for  
23 summary judgment. It's already in the record, and  
24 I think the objection should be overruled. But if  
25 you wants -- that's my first position.

1           MR. COLTRANE: If I may, Your Honor, the  
2 statement of the party opponent says that the  
3 attached documents are certified true copies of  
4 the documents that are attached in the affidavit.  
5 There is no statement there other than to say that  
6 these are the verified true copies certified by  
7 the clerk.

8           THE COURT: So it really then is, sort  
9 of, a technical objection, Mr. Coltrane? I mean,  
10 it's not -- what's the prejudicial effect of the  
11 Court admitting the affidavit in its entirety?

12          MR. COLTRANE: There is no prejudice to  
13 that. However, we're going to do this a lot and  
14 there are things to which there will be prejudice  
15 and you simply can't say something was filed six  
16 months ago, and, therefore, it's admissible  
17 because it may not be.

18          However, again, to the extent you want to  
19 keep the record the way it is, I do have to  
20 certify true copies of the documents.

21          THE COURT: Yeah, I think the affidavit  
22 itself is not admissible. The attachments may be,  
23 but -- so the objection is sustained.

24          MR. CARPENTER: Well, then I offer the --  
25 if could, I offer the certified copies.

1 MR. COLTRANE: Without objection, Your  
2 Honor.

3 THE COURT: Perfect.

4 MR. CARPENTER: Thank you.

5 THE COURT: And if you have additional  
6 photo copies for me, I'd appreciate that.

7 MR. COLTRANE: I do, Your Honor.

8 MR. CARPENTER: These do not appear as  
9 thick as what I wanted to hand up, which is why  
10 I'm looking at them.

11 THE COURT: Yes, sir. Understood. I'm  
12 actually going to reverse myself very quickly and  
13 admit the affidavit in its entirety over the  
14 defendant's objection.

15 MR. CARPENTER: Thank you, Your Honor.

16 THE COURT: Do you have another copy? Is  
17 this the exhibit or is this for me?

18 MR. CARPENTER: That would be the  
19 exhibit.

20 THE COURT: Okay. If you don't have a  
21 copy, that's fine. I prefer it, just because I  
22 like to mark them up and highlight things.

23 THE CLERK: Do you want me to make a copy  
24 of it?

25 MR. CARPENTER: I have my copies that

1 have my highlighting on them. I thought she was  
2 going to be here and I was going to use this to  
3 examine her.

4 THE COURT: Right. No, it's fine.

5 THE CLERK: I can make a copy. It takes  
6 10 seconds.

7 THE COURT: The clerk will get me a copy  
8 of that. Let's proceed, Mr. Carpenter. What's  
9 next?

10 (PLF. EXH. 1, Affidavit; Mare Deckard, was  
11 marked and entered into evidence.)

12 MR. CARPENTER: Your Honor, we call Mare  
13 Deckard.

14 THE COURT: If you would turn to me and  
15 raise your right hand. Do you solemnly swear or  
16 affirm the testimony you give the Court will be  
17 the truth, the whole truth and nothing but the  
18 truth, so help you God?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: If you would give us your  
21 name and spell it for us.

22 THE WITNESS: M-a-r-e, Mare, B., Deckard  
23 D-e-c-k-a-r-d.

24 THE COURT: Thank you.

25 WHEREUPON:

1 MARE DECKARD,  
2 after having been sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. CARPENTER:

5 Q Miss Deckard, where do you live?

6 A I live in Port Royal, South Carolina.

7 Q And are you employed?

8 A Yes.

9 Q What do you do?

10 A I help manage my husband's fishing charter  
11 company, and I have a consulting firm.

12 Q Okay. And have you done things to help me with  
13 the investigation in this case?

14 A Yes.

15 Q Okay. And can you tell the Court a summary of  
16 what you've done?

17 A I went to see --

18 MR. COLTRANE: If Your Honor please, I'm  
19 going to object to this calling for this narrative  
20 answer because I have no idea what she's going to  
21 say or whether or not there's going to be anything  
22 I might have to object to. She's not answering a  
23 question. It's, *Give me a summary.*

24 THE COURT: I think it's a fair question.  
25 You just have to listen carefully for a



1 contemporaneous objection.

2 MR. COLTRANE: Thank you, Your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: I'm sorry. What was the  
5 question? I apologize.

6 MR. CARPENTER: I'll be happy to lead her if  
7 that's what counsel wants, but --

8 MR. COLTRANE: Well, no, Your Honor. I  
9 think he ought to ask her questions like you ask a  
10 person on direct examination.

11 MR. CARPENTER: Which is what I was  
12 doing.

13 THE COURT: Objection is overruled.  
14 Continue.

15 BY MR. CARPENTER:

16 Q Can you give a brief summary of the kinds of  
17 things you've done for me investigating this?

18 A I went to Sea Pines by car and drove to the  
19 plantation and took pictures of signage. And then  
20 I went to Sea Pines by boat and took pictures of  
21 signage and went throughout the plantation by  
22 boat, and then had lunch.

23 Q Okay, thank you.

24 A Oh, and I also did a Freedom of Information  
25 Act request after I went to the plantation.

1 Q Okay.

2 MR. CARPENTER: Your Honor, I thought I  
3 had arranged with the clerk to have my pictures  
4 from my computer put up on the screen.

5 THE CLERK: Sorry.

6 BY MR. CARPENTER:

7 Q Can you look at the picture on the screen and tell  
8 us what that is, please?

9 MR. COLTRANE: Objection, Your Honor. I  
10 think she has to authenticate this picture.

11 THE COURT: Are these being offered into  
12 evidence?

13 MR. CARPENTER: It will be, yeah.

14 THE COURT: Okay. You generally have the  
15 witness lay foundation, authenticate, offer it,  
16 before it's published. I mean --

17 MR. CARPENTER: I'm sorry.

18 THE COURT: -- obviously I sit here as  
19 the Court, but in this setting I'm also the finder  
20 of fact.

21 MR. CARPENTER: Okay, I'll do this.  
22 There are two ways to do it. She can hop up and  
23 down or I can pull it off of here, and I was going  
24 to pull it off of here so it wouldn't be up on the  
25 screen.

1 THE COURT: I just don't know what you're  
2 showing her and whether it's even admissible.

3 MR. CARPENTER: Okay.

4 THE COURT: I mean, obviously, in a bench  
5 trial, it's a little dicey because I would have to  
6 look at it to determine if it's admissible  
7 generally.

8 MR. CARPENTER: Okay.

9 THE COURT: But let's lay a foundation  
10 first and offer it.

11 BY MR. CARPENTER:

12 Q Miss Deckard, are you familiar with Hilton Head  
13 Island at Sea Pines plantation?

14 A Yes.

15 Q Are you familiar with the area known as the  
16 Harbour Town Basin and Marina?

17 A Yes.

18 Q Do you have a picture of the Harbour Town Basin  
19 and Marina?

20 A There is a picture of the -- an aerial view  
21 of the Harbour Town Marina, and that was  
22 on-line.

23 Q Okay.

24 MR. COLTRANE: Objection, Your Honor.

25 THE COURT: I don't know what the gesture

1 means. Are you offering now a photo?

2 MR. CARPENTER: I was wondering if I  
3 could put it up on the screen to ask her if this  
4 is the picture she was talking about.

5 THE COURT: Do you not have a copy to  
6 hand to her?

7 MR. CARPENTER: I do not, no.

8 MR. COLTRANE: And, Your Honor, she's  
9 testified it's a picture she pulled off the  
10 Internet.

11 MR. CARPENTER: It's a pretty common  
12 picture, Your Honor. It's background more than  
13 anything.

14 THE COURT: All right. Let's put it back  
15 up on the screen so I can see what it is.

16 BY MR. CARPENTER:

17 Q Miss Deckard, can you tell me what's in that  
18 picture there?

19 A Yes, that's the Harbour Town Marina and the  
20 lighthouse and the entrance to come into the  
21 marina.

22 Q All right. When you were in your boat and you  
23 described going into the Harbour Town --

24 MR. COLTRANE: Wait, Your Honor, we need  
25 to deal with the photograph first. Again, it's

1 something she pulled off the Internet. It's not  
2 her picture. She didn't take it. And if -- I  
3 don't think any foundation has been laid other  
4 than she said she's been to Harbour Town before.

5 MR. CARPENTER: I'm trying to lay the  
6 foundation.

7 THE COURT: Continue. It hasn't been  
8 offered yet.

9 MR. COLTRANE: Yes.

10 BY MR. CARPENTER:

11 Q When you testified earlier you had been to the  
12 Harbour Town Yaught Basin and Marina, is this the  
13 place where you went in?

14 A Yes.

15 Q All right.

16 MR. CARPENTER: Your Honor, I offer the  
17 picture as a representation of the Harbour Town  
18 Marina and Yaught Basin.

19 THE COURT: Any objection?

20 MR. COLTRANE: Again, Your Honor. It's  
21 something she pulled off the Internet. She didn't  
22 take the picture. She had nothing to do with it.  
23 It's something you pull off the Internet and I  
24 don't think that the foundation has been laid and  
25 it's not admissible.

1                   MR. CARPENTER: Your Honor, she knows  
2                   what it is. It's a fairly common picture and  
3                   it's --

4                   THE COURT: Your objection is as to  
5                   the -- we keep saying foundation, but is it  
6                   authenticity or --

7                   MR. COLTRANE: It's foundation. I don't  
8                   think that you make something admissible by  
9                   saying, oh, a witness knows what this is. There  
10                  are many things that a witness might know what  
11                  they are, but --

12                  THE COURT: Certainly.

13                  MR. COLTRANE: -- that doesn't make it  
14                  admissible.

15                  THE COURT: I think in this particular  
16                  instance having glanced at the photo it is, sort  
17                  of, harmless. It's not been authenticated in a  
18                  way that I probably would like, but I'm going to  
19                  admit this picture. Although I don't know how we  
20                  do that, if there are no hard copies. What is the  
21                  source of what's on the screen now? Where are  
22                  they coming from? Were they in an email?  
23                  Obviously, there are some digital --

24                  MR. CARPENTER: It was a -- it's a  
25                  publicity photo from the Harbour Town Marina



1       itself. It's something they -- that the Harbour  
2       Town puts on the Internet to advertise what they  
3       look like.

4               THE COURT: Right. You said you don't  
5       have printed copies. So my question is, what are  
6       you offering as an exhibit?

7               MR. CARPENTER: I guess the digital  
8       image. I don't know.

9               THE COURT: Exhibits are tangible things.  
10       Something the court reporter can put a sticker on.  
11       And if this were a jury trial, the jury could walk  
12       back there and look at it. As the finder of fact,  
13       something I can have in my hand and look at.  
14       Whether that's a flash drive or a CD or the hard  
15       copy of the picture or something along those  
16       lines, but it can't just be a Google search.

17               MR. CARPENTER: Okay. I withdraw.

18               THE COURT: Okay.

19       BY MR. CARPENTER:

20       Q     Miss Deckard, you mentioned that you had gone to  
21       the Harbour Town Marina and Yaught Basin?

22       A     Yes.

23       Q     And you said you took pictures there?

24       A     Yes.

25       Q     All right.

1                   (PLF. EXH. 2, Picture, was marked for  
2     identification.)

3     BY MR. CARPENTER:

4     Q     Let me show you a photograph that we've marked as  
5     Exhibit 2 for identification and ask if you can tell  
6     me what that is.

7     A     This is the signage at the entrance to the  
8     yaught basin.

9     Q     Is that a photograph you took?

10    A     I did, yes.

11    Q     All right. And where were you when you took  
12    that?

13    A     In a boat.

14    Q     Okay. Your boat?

15    A     Yes.

16               MR. CARPENTER: Now, we offer Exhibit 2.

17               THE COURT: Any objection?

18               MR. COLTRANE: I do object. It's not  
19    relevant to their claim. Again, the sign that she  
20    is referring to is on a structure that exists in  
21    the waterway. Whether or not the dock is private  
22    property is not relevant to the claim that the  
23    Town is using public money to dredge the public  
24    waterway.

25               THE COURT: Plaintiff's 2 is admitted

1 over the defendant's objection.

2 MR. COLTRANE: Thank you, Your Honor.

3 (PLF. EXH. 2, Picture, was entered into  
4 evidence.

5 MR. CARPENTER: Mark this as Exhibit 3,  
6 please.

7 (PLF. EXH. 3, Picture, was marked for  
8 identification.)

9 BY MR. CARPENTER:

10 Q I'll show you a picture that we marked for  
11 identification as Exhibit Number 3. Can you tell what  
12 that is, please?

13 A This is the close-up of the sign as you  
14 approach the entrance to the Harbour Town Yaught  
15 Basin.

16 Q Did you take that picture?

17 A I did.

18 MR. CARPENTER: I'd offer Exhibit 3 into  
19 evidence.

20 THE COURT: Same objection?

21 MR. COLTRANE: To which I make the same  
22 objection, Your Honor.

23 THE COURT: Overruled.

24 MR. COLTRANE: Thank you.

25 THE COURT: Plaintiff's 3 is admitted

1 over defendant's objection.

2 (PLF. EXH. 3, Picture, was entered into  
3 evidence.)

4 (PLF. EXH. 4, Picture, was marked for  
5 identification.)

6 BY MR. CARPENTER:

7 Q I'll show you a photograph we marked for  
8 identification as Exhibit 4. Can you tell me what  
9 that is, please?

10 A That is the Gull Point Marina.

11 Q Did you go by the Gull Point Marina as well in  
12 your boat?

13 A We did.

14 MR. CARPENTER: Your Honor, I offer  
15 Exhibit 4.

16 THE COURT: Same objection?

17 MR. COLTRANE: Yes, Your Honor.

18 THE COURT: Plaintiff's 4 is admitted  
19 over the defendant's objection.

20 (PLF. EXH. 4, Picture, was entered into  
21 evidence.)

22 (PLF. EXH. 5, Picture, was marked for  
23 identification.)

24 BY MR. CARPENTER:

25 Q I show you a photograph that we marked as Exhibit

1 5 for identification. Can you tell me what that is,  
2 please?

3 A This is the marina at -- this is the  
4 southeast marina, and that's the sign that's at  
5 the South Beach Marina.

6 Q Did you take that picture?

7 A I did. There is actually two signs in the  
8 picture here, yes.

9 Q Can you read the signs?

10 A Yes. One says "Private marina. All vessels  
11 must contact," and the phone number, "prior to  
12 docking. And then there's another sign that says  
13 lunch dock.

14 Q Okay.

15 MR. CARPENTER: I offer that into  
16 evidence, Your Honor.

17 MR. COLTRANE: At the risk of being  
18 overly redundant, yes, ma'am, it's the same  
19 objection. The signage on the dock and the  
20 existence of the dock doesn't address the claim  
21 that's actually made by the claim here.

22 THE COURT: Plaintiff's 5 is admitted  
23 over defendant's objection.

24 (PLF. EXH. 5, Picture, was entered into  
25 evidence.)

1 (PLF. EXH. 6, Picture, was marked for  
2 identification.)

3 BY MR. CARPENTER:

4 Q I'll show you a document that's marked as  
5 Plaintiff's 6 for identification. Can you tell me  
6 what that is?

7 A This is a close-up and an enlargement of the  
8 sign of South Beach Marina.

9 Q Okay.

10 MR. CARPENTER: I offer that into  
11 evidence.

12 THE COURT: Same objection?

13 MR. COLTRANE: Same objection, Your  
14 Honor.

15 THE COURT: All right.

16 MR. COLTRANE: For the reasons previously  
17 stated.

18 THE COURT: Plaintiff's 6 is admitted  
19 over defendants objection.

20 (PLF. EXH. 6, Picture, was entered into  
21 evidence.)

22 (PLF. EXH. 7, Picture, was marked for  
23 identification.)

24 BY MR. CARPENTER:

25 Q I show you a photograph that's marked as



1 Plaintiff's 7 for identification. Can you tell me  
2 what that is?

3 A This is the sign at the driver's side of the  
4 South Beach Marina that I took when I came in with  
5 my vehicle.

6 Q Okay.

7 MR. CARPENTER: I offer Exhibit 7 into  
8 evidence.

9 MR. COLTRANE: Your Honor, please, if you  
10 read the sign, it has no relevance of any kind to  
11 any claim that's been made by the plaintiff in  
12 this case.

13 THE COURT: All right. That objection is  
14 sustained. Plaintiff's 7 is not admitted.

15 You want it back? Do you want to try  
16 again? I don't know.

17 MR. CARPENTER: Yes.

18 THE COURT: I don't know where we're  
19 going with that one.

20 MR. CARPENTER: All right.

21 THE COURT: Actually, I don't want it to  
22 get lost, though, because it's been marked. If  
23 you'll leave it on the --

24 MR. CARPENTER: I was trying to decide if  
25 I wanted to make another proffer or ask to be

1 heard on, or something like that. I'll not --

2 THE COURT: I mean, you can if you'd  
3 like. I just didn't want it to get lost in the  
4 shuffle of your papers.

5 MR. CARPENTER: That's a wise decision.

6 BY MR. CARPENTER:

7 Q Now, when you were in your boat riding around on  
8 these waterways at Sea Pines, what happened when you  
9 came up to the marina at Harbour Town?

10 A Right past the signage that says you need to  
11 contact the dock master. Should I refer to -- I'm  
12 not sure which exhibit that was.

13 MR. CARPENTER: Your Honor, that first  
14 picture we had, I think would be helpful in  
15 illustrating her testimony. Could we use it for  
16 that? It will show where she was coming in and  
17 she could point out -- if I could put that back up  
18 on the screen, I think that would be helpful in  
19 illustrating her testimony.

20 THE COURT: Okay. Any objection?

21 MR. COLTRANE: He admitted it as Exhibit  
22 1.

23 THE COURT: No. 1 was the affidavit.  
24 That would have been two, but there is no  
25 tangible --

1 MR. COLTRANE: It's not in evidence.

2 THE COURT: Right. Any objection to him  
3 using it as a demonstrative aid?

4 MR. COLTRANE: Again, Your Honor, it's  
5 not in evidence.

6 THE COURT: Demonstrative evidence don't  
7 need to be. So if that's the sole basis for you  
8 objection, that is overruled.

9 MR. COLTRANE: Okay. Thank you, Your  
10 Honor.

11 THE COURT: All right. Let's put it back  
12 up.

13 BY MR. CARPENTER:

14 Q I'm trying to see if a pointer will help you.

15 THE CLERK: A laser on a TV screen won't  
16 work.

17 MR. CARPENTER: It doesn't work.

18 BY MR. CARPENTER:

19 Q Using the photograph that's up on the screen, can  
20 you explain to the Court how you approach the marina  
21 and the Harbour Town Yaught Basin?

22 A Well, we came in at the mouth of the channel,  
23 and actually to the left of the light house, just  
24 for directional purposes. And there is a dock to  
25 the left-hand side, which was, I guess, the dock

1 master's dock which is right at the entrance. And  
2 they asked us why we are there, and we said we  
3 were going to have lunch. And we came in, went  
4 around the boats that were at the marina. Some of  
5 the slips were empty. And then we came back out  
6 and we went to the South Beach Marina where we  
7 ended up having lunch.

8 Q When you approached the marina and the dock, you  
9 obviously saw the sign because you took a picture of  
10 it.

11 A Yes.

12 Q All right. So, what did you do in response to  
13 seeing the signs?

14 A I believe the captain, who's my husband, had  
15 tried to raise it on the channel which tells you  
16 -- there's a VHF channel. But then the dock  
17 master was right -- when we came in, was right to  
18 the left side of it, and we just approached, and  
19 that's when we were asked why we were there.

20 Q Okay. So you couldn't just sail in on your own  
21 accord with talking to the dock master?

22 MR. COLTRANE: Objection, Your Honor.

23 THE WITNESS: When we came in --

24 THE COURT: Hold on.

25 MR. COLTRANE: That isn't what she

1       said.

2                   THE COURT:   Your objection is sustained.  
3       It mischaracterizes her testimony.

4                   MR. CARPENTER:   I apologize, Your  
5       Honor.

6       BY MR. CARPENTER:

7       Q     All right.   When you came up to the entrance to  
8       the marina and saw the sign, were you-all free to go  
9       into the marina and the Harbour Town Yaught Basin  
10      without doing anything else?

11      A     That day when we came in, the dock master --  
12      or I should say the person who is at the dock  
13      master's dock right to the left of the entrance  
14      asked us why we were there, and we said we were  
15      going to lunch.

16      Q     Okay.   Did you initiate the contact or did he?

17      A     There was somebody already at the dock, and,  
18      kind of, leaned over and said, hello, and then  
19      asked us why we were there.   So I would say they  
20      initiated it.

21      Q     Okay.   Looking back at the photograph of the  
22      marina and the Harbour Town Yaught Basin, could you  
23      tell the Court where you went?   You went to the top  
24      where the opening is, and then can you tell the Court  
25      where you went with your boat?

1                   MR. COLTRANE: So the record is clear,  
2           Your Honor, I had the same objection to the use of  
3           this photograph because it is not in evidence.

4                   THE COURT: Overruled. You can answer  
5           that question.

6                   THE WITNESS: Thank you, Your Honor.

7                   We just literally did a half circle as the  
8           shape of that -- the yaught basin and came back out  
9           and went to the other marina.

10          Q     Okay. When you told the person at the dock  
11          master's dock what you were going to do, did he signal  
12          it was okay for you to go in and look around?

13          A     Yes.

14                  MR. COLTRANE: Calls for hearsay  
15          response, Your Honor.

16                  THE COURT: Overruled. Let's forge  
17          ahead.

18          BY MR. CARPENTER:

19          Q     You said you went down to the South Beach Marina  
20          then?

21          A     Yes.

22          Q     What did I do when you went to the South Beach  
23          Marina?

24          A     Well, we were going to have lunch, so we were  
25          looking for where we could put the boat, and we



1 saw the sign that's displayed in the picture up to  
2 the left that says "Private Marina," and then we  
3 saw a sign to the right that said "Lunch Dock."

4 Q All right.

5 A We were directed when somebody actually came  
6 by and said we could tie up at the lunch dock.

7 Q Did you make contact with the number there on the  
8 sign that says "Private Marina?"

9 A No, because we were told to tie up at the  
10 lunch dock. We said we were going to the Salty  
11 Dog. They said you can tie up over there.

12 Q Somebody --

13 A Some random person, yes.

14 Q All right. Did he appear to be in charge of the  
15 dock?

16 A He didn't identify himself, so we just went  
17 and tied up.

18 Q He told you where you could tie up?

19 A He just pointed and said the lunch dock.

20 Q Okay. Were you able to go to either the Gull  
21 Point Marina or the Braddock Cove Creek community  
22 docks?

23 A We cruised to the Gull Point and went into  
24 that other creek area. But there wasn't really  
25 anything, so we turned around.

1 Q I'm sorry. What?

2 A We turned around. There really wasn't  
3 anyplace to tie up.

4 Q You were not able to tie up at either the Gull  
5 Point Marina or the Braddock Community dock?

6 A We didn't see any signage like the "Lunch  
7 Dock" signage. We didn't see anything that said  
8 that, so we didn't.

9 Q Now, you said you made another trip into Sea Pines  
10 by car; is that right?

11 A Yes.

12 Q And when you approach the Sea Pines plantation or  
13 resort, what happened when you approached the gate?

14 MR. COLTRANE: Object to this entire line  
15 of testimony. What happens with the roads in Sea  
16 Pines is not relevant to the claims. He made no  
17 claim about the roads or any public money being  
18 spent on the roads in Sea Pines.

19 MR. CARPENTER: The argument is, the  
20 entirety of Sea Pines is private property and it's  
21 manifestly stated repeatedly throughout the Sea  
22 Pines area, both on land and in the water. The  
23 neighborhoods that are involved in this claim,  
24 Gull Point and Braddock Cove are private  
25 neighborhoods and they have signs in front of them

1       that say private. The Villas have a sign that say  
2       they're private. And the point is, everything in  
3       Sea Pines is private. The whole resort, the whole  
4       plantation, and then even within that, there are  
5       enclaves that are private within private and those  
6       enclaves that are private within private, Gull  
7       Point and Braddock Cove are two of the  
8       neighborhoods whose docks are being dredged in  
9       this action. And it's private within private, and  
10      we contend spending public money on these places  
11      is unconstitutional. That's the point we're  
12      getting to. But we're getting there by showing  
13      that Sea Pines as a whole is private, and then the  
14      private within the private.

15               THE COURT: I don't know that there's any  
16      dispute about that. And I'm not saying that the  
17      defense concedes that necessarily. I've not asked  
18      them, but that's not what this case is about,  
19      homes or roadways, or anything along those lines.  
20      It's about waterways, docks, and marinas, et  
21      cetera. So the objection is sustained.

22               MR. CARPENTER: Okay. But am I permitted  
23      to go into her trips into these -- or attempts to  
24      go into these private neighborhoods that do have  
25      the docks, that did get the dredgings, Gull Point

1 and Braddock Cove?

2 MR. COLTRANE: The problem with that,  
3 Your Honor, is that the testimony of this witness  
4 brought out by Mr. Carpenter on direct is that  
5 Miss Deckard was able, without hindrance, to pilot  
6 and navigate her boat the length of Braddock Cove  
7 Creek. She was able to navigate her boat in the  
8 area of the South Beach Marina in the area of the  
9 Gull Point Marina into the basis of Harbour Town.  
10 The only evidence is that these are navigatable  
11 waters that she could navigate in her boat.  
12 Whether or not she could drive her car into the  
13 Gull Point neighborhood is not relevant and has  
14 nothing to do with the claim.

15 THE COURT: Mr. Carpenter?

16 MR. CARPENTER: In opposition to his  
17 arguments, we will -- we intend to proffer  
18 evidence that shows that the docks and the marinas  
19 and so on are all privately owned by private  
20 parties and they got the public money to dredge  
21 those things that are privately owned.

22 The fact that they might be public waters  
23 under the definition by DHEC or the Army Corp of  
24 Engineers is not the question. The question is,  
25 are they using public money for private purposes,

1       and we will proffer evidence that these docks are  
2       privately owned. The marinas are privately owned.  
3       The boat slips in Harbour Town are privately  
4       owned. And all that dredging is taking place on  
5       land, which we will proffer evidence is privately  
6       owned. The land under the docks is privately  
7       owned and is being dredged using public monies in  
8       part, and that's the constitutional violation.

9               But these docks at Gull Point, South  
10       Beach Marina, and Braddock Cove, they are all  
11       privately owned. And this evidence that I'm  
12       proffering here tends to show the private nature  
13       of the ownership of all of those places.

14              MR. COLTRANE: If I may, Your Honor?

15              THE COURT: Yes, sir.

16              MR. COLTRANE: In the comments of Mr.  
17       Carpenter bring into sharp focus his  
18       misunderstanding of the nature of this case. The  
19       fact that the marina exists in a public waterway  
20       does not change the nature of the waterway.

21              Again U.S. Corp of Engineers and the  
22       State of South Carolina say that the waterways,  
23       including the waterways within which Harbor Town,  
24       South Beach Marina, and Gull Point Marina are  
25       public waterways. Whether or not one can drive

1       into the Gull Point neighborhood is simply  
2       irrelevant to the claim. The notion that  
3       existence of a private dock or a private marina in  
4       a public waterway, which I'm sure Your Honor has  
5       seen all over the state, doesn't change the nature  
6       of the waterway. The waterway is a public  
7       waterway.

8               What Mr. Carpenter would have to show,  
9       based on the comments he made, is that the town is  
10      paying for the maintenance of the marina or the  
11      maintenance of the dock. It is not. It is paying  
12      for the maintenance of public waterway within  
13      which these facilities sit. Those are two  
14      difference things.

15             So, again, back to the objection that is  
16      at hand, whether or not one can drive into Sea  
17      Pines is simply not relevant to the question. The  
18      public waterways extend into the land mass of Sea  
19      Pines. And the only evidence given by the  
20      plaintiff's witness herself is that she was free  
21      to go through.

22             MR. CARPENTER: The definitions that  
23      opposing counsel keeps using are definitions that  
24      are in -- opposite for purposes of our case. He  
25      is trying to argue the definition by the Army Corp

1 of Engineers, which extends the waters of the  
2 United States into private property. And their  
3 jurisdiction extends into private property if they  
4 are connected to some kind of lake or inlet or  
5 somewhat. That doesn't mean that the public --  
6 that that private property owner can take public  
7 money and improve his money at public expense.  
8 That's what the issue is here. That definition of  
9 public waters that he keeps trying to use is not  
10 one that relates to this case. It relates to a  
11 completely different set of litigation; the  
12 jurisdiction of the Army Corp of Engineers, the  
13 jurisdiction of DHEC. That has nothing to do with  
14 using public funds for private purposes, which is  
15 to improve a private dock, a marina dock, a  
16 neighborhood dock, a yaught slip that's privately  
17 owned, conceded privately owned, and that's the  
18 issue.

19 And then the point I'm trying to make is  
20 that the whole of Sea Pines is owned by private  
21 corporation, and these are in the Sea Pines. Sea  
22 Pines is a private, profit-making corporation.  
23 Sea Pines owns the marina at Harbour Town. The  
24 boat slips, yaught slips at Harbour Town are  
25 privately owned. They conceded that, I believe,



1 in their answer. They submitted an affidavit  
2 saying that the Harbour Town Marina is privately  
3 owned.

4 The South Beach Marina says this is a  
5 private marina.

6 The Gull Point community dock is for the  
7 Gull Point community. And we'll have  
8 documentation which we'll proffer that says, this  
9 is our dock and we own the dock and we certify  
10 that, as the owners, we make certain  
11 representations to the Army Corp of Engineers, and  
12 so on.

13 These are privately owned facilities that  
14 are being improved and dredged with public money  
15 to benefit the financial worth of the docks. If  
16 the docks are not dredged, they lose their value  
17 because the mud builds up and they are unusable.  
18 So they're taking public money to get the mud out  
19 of there to improve their private docks. That's  
20 what the evidence tends to show, the whole of Sea  
21 Pines is private including these privately owned  
22 docks.

23 THE COURT: I just referred back to the  
24 complaint. I'm going to overrule the objection.  
25 The complaint does ask the Court to enjoin the

1 expenditure of public funds in the gated Sea Pines  
2 community. Whether that's an appropriate claim, a  
3 valid claim, I don't know, but that is the claim  
4 though, and this evidence goes to that point. And  
5 -- you know.

6 MR. COLTRANE: If I may, Your Honor?

7 THE COURT: Yes, sir.

8 MR. COLTRANE: Any private ownership  
9 stops at the mean high water line.

10 THE COURT: I'm going to let him put on  
11 his case. I mean, it literally says, "Private  
12 gated communities." They claim that that's a  
13 constitutional violation. It may be inartfully  
14 drafted. Maybe that's not exactly what he means,  
15 but the objection is overruled.

16 We're going to pause here and take a  
17 10-minute break. You can step down. Do not  
18 discuss your testimony with anyone.

19 Be back in 10, maybe 15 minutes.

20 (A break was taken.)

21 THE BAILIFF: All rise. This court is  
22 back in session.

23 THE COURT: You-all can be seated.

24 Let's get the witness back up on the  
25 stand. Miss Deckard?

1 All right. You may continue.

2 BY MR. CARPENTER:

3 Q Before we broke, I think we were talking about  
4 what happened when you went up to the gate at Sea  
5 Pines. Can you tell us what happened when you went to  
6 the gate at Sea Pines?

7 A I had to purchase a pass, which I did, in  
8 order to get into the plantation. I think it was  
9 \$9.

10 Q Okay.

11 (PLF. EXH. 8, Picture, was marked for  
12 identification.)

13 BY MR. CARPENTER:

14 Q I'll show you what we've marked for identification  
15 as Exhibit 8. Can you tell me what that is?

16 A This is the pass that I purchased.

17 Q Okay. And is that the -- there are two images  
18 there. Can you tell me what the two images are, the  
19 first and second page?

20 A You mean read it out loud?

21 Q No. Can you just tell us what the two images are,  
22 the first page and the second page.

23 A The first is the pass, and then they also  
24 give you -- like a little map or representation of  
25 the plantation.

1 Q Is that the pass you purchased?

2 A Yes.

3 MR. CARPENTER: Your Honor, I move this  
4 exhibit into evidence.

5 THE COURT: Same objection?

6 MR. COLTRANE: Well, yes, Your Honor. It  
7 is the same objection. And I would also add that,  
8 again, the complaint, although there are  
9 statements in there about the Sea Pines being a  
10 private community, the claim is that the town's  
11 participation in the funding of the dredge is the  
12 problem. The funding of the dredge relates to  
13 nothing but the waterways. There is no claim that  
14 anything other than the waterways are being  
15 touched by the dredge.

16 There is a claim that permitted  
17 obstructions in the waterways somehow changed  
18 things, but they don't.

19 But Sea Pines itself, the roads in Sea  
20 Pines and the nature of the communities in  
21 Sea Pines is simply not at issue here because  
22 there's no claim that the town is spending any  
23 money on those places.

24 The only claim is that the town is  
25 funding a portion of the dredge, which is totally

1 in the public waterways.

2 THE COURT: So, at this point, and we've  
3 sort of gotten there but not quite, would you  
4 clarify, Mr. Carpenter, what the allegations are?  
5 I mean, prior to the break, I was reading from the  
6 complaint. That seems to suggest that there's an  
7 allegation that some of these funds are being  
8 spent on the communities. I know that that's not  
9 exactly what you mean. Let's clarify.

10 MR. CARPENTER: Okay. The cost of the  
11 dredging is about \$5 million this time. The Town  
12 of Hilton Head is providing -- has voted to  
13 provide \$600,000. That \$600,000, money is  
14 fungible, but it goes to the benefit of Sea Pines  
15 itself because Sea Pines owns the Harbour Town  
16 Marina. It goes to the benefit of Gull Point Home  
17 Owner's Association because it's dredging under  
18 the Gull Point dock. It goes to the benefit of  
19 the Braddock Cove Homeowner's Association because  
20 it's dredging under the Braddock Cove community  
21 dock. It goes to the benefit of South Beach  
22 Marina, which is a commercial establishment, an  
23 LLC because it's dredging under the South Beach  
24 Marina docks.

25 THE COURT: I guess the question is not

1       -- well, I don't want to tell you what your claim  
2       is, but, as I understand it, the question is not  
3       who necessarily benefits from it, although that  
4       may be an ancillary question, but what is the  
5       \$600,000 allegedly being spent on exactly? What  
6       would those funds be used for?

7               MR. CARPENTER: Well, like I said, I  
8       think money is fungible, and the entire -- and  
9       there is -- if you look at the first exhibit we  
10      put in there, which is the affidavit from the town  
11      clerk, they talk about spending \$5 million on the  
12      dredging project as a whole. I mean, they're  
13      going to make payments, periodic payments. Three  
14      payments of -- I've forgotten what the numbers  
15      are, but three payments of \$180,000, and then one  
16      payment of \$60,000 at completion. They're paying  
17      for the dredging, but it's an indiscriminate  
18      payment for the dredging. They don't say we're  
19      paying 60,000 for this dock and 80,000 for that  
20      dock. The entire cost is a little over \$5 million  
21      and they're putting in \$600,000 of that \$5  
22      million.

23             As I understand it from the documents  
24      I've read, they charge based on the cubic yard of  
25      dredge that's pulled out from underneath these

1 docks and from the waterways. It's a  
2 per-cubic-yard fee, in addition to mobilization  
3 and demobilization. And the \$600,000 in the  
4 documents I've read does not appear to be  
5 allocated toward will he say any particular  
6 function. It's just helping pay a portion.  
7 They're paying 12 percent of the \$5 million and  
8 the property owners are paying 88 percent.

9 THE COURT: Maybe my question wasn't  
10 clear. I'm asking you to interpret this portion  
11 of the complaint where the plaintiff prays that  
12 the court enjoined the expenditure of \$600,000 in  
13 public funds for dredging and waterways and  
14 harbours of the private gated Sea Pines community  
15 -- maybe I'm reading in the wrong place. Hold on.

16 Maybe that's the claim in this case.  
17 Maybe I misread it, because this is talking about  
18 historically. Expenditures of public funds for  
19 private gated communities. I'm asking you to  
20 interpret for me what you mean by "for private  
21 gated communities." For the community itself?  
22 For the waterways that abut the private community?  
23 For the docks? For the marina? What exactly do  
24 you mean?

25 MR. CARPENTER: All of this dredging is



1       within the private gated community of Sea Pines.  
2       And any public money that gets spent for the  
3       benefit of a private gated community is for a  
4       private purpose. I base that on the case that I  
5       cited at the beginning of the opening statement,  
6       *South Carolina Public Foundation vs. South*  
7       *Carolina Department of Transportation*. That was a  
8       case where DOT went in and did some inspections on  
9       private bridges in a private gated community.

10               THE COURT: I recall that, yes.

11               MR. CARPENTER: And the Supreme Court  
12       ruled that was a violation of the Constitution.

13               THE COURT: Right.

14               MR. CARPENTER: To spend public money --

15               THE COURT: For bridges. That's what I'm  
16       asking you in this case.

17               MR. CARPENTER: Right.

18               THE COURT: That was for bridges. What  
19       are we talking about here?

20               MR. CARPENTER: Paying for the  
21       dredging.

22               THE COURT: So it has nothing to do with  
23       any portion that's on land in the neighborhood.

24               MR. CARPENTER: Well, Your Honor, I would  
25       -- I think that's false dichotomy. Money is

1 fungible. Somebody has got to pay for dredging.  
2 Part of it comes from Sea Pines. Part of it comes  
3 from Gull Point. Part of it comes from South  
4 Beach Marina.

5 THE COURT: I'm asking about this  
6 \$600,000 that you're about.

7 MR. CARPENTER: It's being used for  
8 dredging.

9 THE COURT: Only dredging?

10 MR. CARPENTER: Yes.

11 THE COURT: Okay.

12 Now, I've lost where we were. We're on  
13 this pass and whether it should be admitted?

14 MR. COLTRANE: We are, Your Honor.

15 THE COURT: I feel like I keep getting  
16 lost in the sauce a little bit.

17 MR. CARPENTER: There are a couple of  
18 statements on that pass that I think are of  
19 particular importance, if I could tend to those or  
20 proffer them to the Court.

21 MR. COLTRANE: Then I object to the  
22 hearsay as well.

23 THE COURT: What hearsay?

24 MR. COLTRANE: What he wants to read off  
25 the pass. She didn't create that document. But I

1       also think it's inadmissible because it doesn't  
2       relate to his claim. He has admitted that the  
3       money that he complains about is to be used for  
4       the dredge.

5               THE COURT: Right.

6               MR. COLTRANE: The notion that -- and he  
7       keeps saying it's in Sea Pines. It's not in Sea  
8       Pines. Sea Pines stops for mean high water.

9               MR. CARPENTER: For whose definition,  
10      Your Honor? He keeps using the wrong definition.

11              MR. COLTRANE: The State of South  
12      Carolina's definition, Your Honor.

13              THE COURT: Right, and that's something  
14      for the Court to determine. And that's why I was  
15      trying to distinguish between the land and the  
16      waterway, because it sounded like we were talking  
17      about some portion of the land at some point.  
18      Maybe I got lost. That could be my fault. But  
19      with the clarification, if we are only talking  
20      about waterways and things in the water and those  
21      waters abut Sea Pines, or maybe are a part of  
22      Sea Pines, as far as plaintiff alleges, but it's  
23      still the waters and not the land, the gate,  
24      driving through, paying some money, all of that --  
25      so, Plaintiff's Exhibit 8 will not be admitted.

1 The defendant's objection is sustained.

2 MR. CARPENTER: A big part of our claim  
3 is that Sea Pines is a private gated community.  
4 You can't just get into it. This is helping a  
5 private gated community. That's essential to our  
6 claim, as it was in the case that I cited from the  
7 Supreme Court. It was a private gated community.

8 And this pass establishes that it's a private  
9 gated community.

10 THE COURT: Let's stop here. Is there  
11 any dispute that Sea Pines is private gated  
12 community?

13 MR. COLTRANE: No, Your Honor.

14 THE COURT: Okay.

15 MR. COLTRANE: The dispute is that.

16 THE COURT: About the waterways.

17 MR. COLTRANE: About the waterways.

18 THE COURT: Absolutely.

19 MR. COLTRANE: And the only evidence that  
20 he's offered is that Miss Deckard was free to  
21 navigate them at her will.

22 THE COURT: So, I hear you. Part of your  
23 claim is that Sea Pines is a private gated  
24 community. That is stipulated to. You don't need  
25 to prove it. Go on.

1 MR. CARPENTER: All right.

2 BY MR. CARPENTER:

3 Q Miss Deckard, if I could, I'd like to take you  
4 back to your stop at the South Beach Marina where you  
5 went and had -- I believe you said you had lunch at  
6 the Salty Dog. What we got up here is a copy of one  
7 of the exhibits we admitted in this case. You pointed  
8 earlier that there's a sign on the right side of the  
9 picture that says "Lunch Dock."

10 A Yes.

11 Q Is that where you had to park your boat?

12 A Yes.

13 Q And looking at that picture, can you tell me where  
14 in relation to the lunch dock is the Salty Dog  
15 restaurant where you ate lunch?

16 A Over the right where you can see the sign  
17 that says "Lunch Dock," if I recall, the  
18 restaurant, you walk straight up past that red  
19 building with the little half moon on top and you  
20 walk through and you go to the restaurants and  
21 shops, kind of adjacent to where the charter boat  
22 captains come in on.

23 Q So there are restaurants and shops there at the  
24 South Beach Marina?

25 A Yes.

1 Q And you mentioned a charter boat captain. Are  
2 there charter boats that come in and use the marina?

3 A While we were there, we ran into a charter  
4 captain, so -- getting supplies or something, yes.

5 Q What other kinds of boats are there that use the  
6 marina?

7 A The day that I was there, there were -- in  
8 this marina, there were some motor boats and a  
9 couple of shallow water vessels. It wasn't full.  
10 There were some open spaces.

11 Q But the only place you were allowed to park was  
12 the lunch dock?

13 A Yes.

14 Q After you left the South Beach Marina and had your  
15 lunch, did you continue on down Braddock Cove Creek?

16 A That was prior to us having lunch. We left  
17 after we had lunch.

18 Q Okay. Did you go further down Braddock Cove Creek  
19 beyond the South Beach Marina?

20 A As far as we were able to safely navigate.  
21 We have a shallow water draft.

22 Q What is in the creek down below the South Beach  
23 Marina?

24 A I believe that's the -- well, across was Gull  
25 Point. And there were a couple of neighborhoods

1       that sat on a bluff. Those were the ones I took  
2       pictures of when I was driving so I could orient  
3       myself to the communities.

4       Q     Did you see the Port Villas down there?

5       A     In a distance. Not up close.

6       Q     Was there a dock that was related to the Port  
7       Villas?

8       A     I don't actually recall seeing a dock there  
9       while we were on the water.

10      Q     All right. Now, you mentioned that you had taken  
11      a picture of the Gull Point Marina?

12      A     Yes.

13      Q     Did the Gull Point Marina appear to be a public  
14      dock?

15      A     Well, it was full, and I can only speak to  
16      the private nature of it because there was no  
17      sign. But when I was arriving in the  
18      plantation --

19               MR. COLTRANE: Well, I'm going to object  
20      then, Your Honor, she's speculating now.

21               THE COURT: Sustained.

22      BY MR. CARPENTER:

23      Q     Did the Gull Point Marina appear to be a public  
24      dock?

25      A     There weren't any signs that were -- there

1 was no type of a lunch dock or any kind of dockage  
2 to the side.

3 Q Did you also, when you were boating around and go  
4 to the Baynard Cove Creek?

5 A Part of the creek, we did.

6 Q Were you able to see the Baynard Cove community  
7 dock?

8 A In a distance. We didn't go up to the  
9 dock.

10 Q Okay. Did the Baynard Cove community dock appear  
11 to be a public dock?

12 A From my view point, I didn't see any signage  
13 at the dock.

14 Q Okay.

15 MR. CARPENTER: Your Honor, I would  
16 proffer something on the Sea Pines pass. I  
17 understand the Court's ruling, but if I could  
18 proffer what I was going to offer. I understand  
19 the Court's ruled, but if I could.

20 THE COURT: Certainly.

21 MR. CARPENTER: Okay. Well, I'll  
22 withdraw. Because of the stipulation that it's a  
23 private gated community, I'll withdraw that.

24 Can I have a couple minutes to look at my  
25 notes?



1 THE COURT: A couple minutes?

2 MR. CARPENTER: Yes.

3 THE COURT: Like you need a break or a  
4 moment?

5 MR. CARPENTER: A moment, yes.

6 (PLF. EXH. 9, Picture, was marked for  
7 identification.)

8 BY MR. CARPENTER:

9 Q Miss Deckard, I'm showing you what's been marked  
10 as Plaintiff's Exhibit 9. Can you tell me what that  
11 is?

12 A That's the sign to the Gull Point community.

13 Q And did you take that picture?

14 A I did.

15 Q Okay. And can you read the sign in the picture?

16 A It says, "Private Residential Community."

17 MR. CARPENTER: Your Honor, I move that  
18 into evidence.

19 MR. COLTRANE: We plowed this ground,  
20 Your Honor. I object. You know, Sea Pines is a  
21 private residential community, but it has nothing  
22 to do with this claim. It is not relevant.

23 THE COURT: Does the defense stipulate  
24 that Gull Point is, in fact, a private residential  
25 community?

1 MR. COLTRANE: Yes, Your Honor.

2 THE COURT: Okay. So Plaintiff's 9 is  
3 not admitted. Are there other communities? Can  
4 we take care of some stipulations right now?

5 MR. CARPENTER: We were going to proffer  
6 a sign that is at the front of the Baynard Cove  
7 community that says "Private."

8 THE COURT: Will the defense stipulate  
9 that Baynard Cove is a private community?

10 MR. COLTRANE: Baynard Cove is a private  
11 residential community within Sea Pines. Again, it  
12 is not relevant to the claim made out by the  
13 plaintiff in this case.

14 MR. CARPENTER: Would you also stipulate  
15 that the Port Villas is a private residential  
16 community within Sea Pines?

17 MR. COLTRANE: I mean, Your Honor,  
18 please. I'm sorry. This simply is not relevant  
19 to their claim. And you can go through every  
20 single community in Sea Pines, and they're all  
21 behind the gates in Sea Pines. They're all  
22 private. None of this has anything to do with the  
23 claim that the plaintiff makes in this case,  
24 though.

25 THE COURT: Right. There's a dispute,

1       though, as to whether it does which is why I keep  
2       asking, and he's trying to preserve certain things  
3       for the record because plaintiff contends that  
4       this is relevant. Therefore, I would ask about  
5       your stipulation once again.

6               MR. COLTRANE: I have already stipulated  
7       that Sea Pines is a private residential  
8       community.

9               MR. CARPENTER: Does he stipulate that  
10      this is a private residential community within a  
11      private residential community? That's the  
12      stipulation.

13              THE COURT: I don't know that that  
14      matters.

15              MR. COLTRANE: I would agree with Your  
16      Honor that it doesn't matter. Sea Pines is a  
17      private residential community.

18      BY MR. CARPENTER:

19      Q     You testified at the beginning that your husband  
20      has a business that involves boats?

21      A     Yes.

22      Q     All right. And in that boats that involves boats,  
23      have you had exposure to the benefits of dredging at  
24      docks where you might park your boats?

25      A     Well, we have slipped our boats at marinas

1 and we also trailered them. So I guess I would  
2 have to say that I've had the experience of having  
3 our boats at a properly navigatable marina.

4 Q And what's the effect on a marina if the silt and  
5 sand makes it so that you can't get your boat in  
6 there?

7 MR. COLTRANE: I would object. She  
8 hasn't been qualified as a person who can testify  
9 to such things.

10 THE COURT: Absolutely. Sustained.

11 BY MR. CARPENTER:

12 Q Okay. Have you had to move your boat from dockage  
13 because there wasn't sufficient depth of water?

14 A Not personally. Our boats have a shallow --  
15 a very shallow draft.

16 MR. CARPENTER: I think that's all the  
17 questions I have at this time.

18 THE COURT: Any cross-examination?

19 MR. COLTRANE: Yes.

20 CROSS-EXAMINATION

21 BY MR. COLTRANE:

22 Q Miss Deckard, my name is Curtis Coltrane. I  
23 represent the town in this matter.

24 What's the nature of the consulting business  
25 you run?

1 A I do research, mostly.

2 Q What sort of research?

3 A On governmental entities, mostly.

4 Q And just so I'm clear, what is your husband's  
5 business?

6 A He owns a fishing charter.

7 Q And so do you spend time on the fishing charter  
8 vessel with your husband?

9 A Well, we had it for over 20 years, so, yes.

10 Q Thank you.

11 And so, based on that, do you have some  
12 familiarity with the waters in and around Beaufort,  
13 South Carolina?

14 A Yes.

15 Q At your trip to the Harbour Town Marina and  
16 Braddock Cove Creek, were you able to navigate your  
17 boat into both of them freely?

18 A You mean was it navigatable?

19 Q Yes. Was it navigatable?

20 A For our boat. We have a very shallow draft.

21 Q And did anyone try to stop you from navigating  
22 your boat into the marinas, into Braddock Cove Creek  
23 or Harbour Town Marina?

24 A Well, as I testified earlier when we came  
25 into the -- we approach the Harbour Town Marina,

1 we were stopped by an individual that I don't know  
2 was the dock master but somebody at the, I guess,  
3 the dock at the -- by the front -- the mouth of  
4 the marina who asked us why we were there.

5 Q Is there a fuel dock there?

6 A I think so, yes.

7 Q Okay. So was that person simply inquiring whether  
8 or not you needed services?

9 A Well, they didn't ask us if we needed fuel or  
10 anything.

11 Q And you told him you were going to eat lunch at  
12 Harbour Town?

13 A I didn't say where we were going to have  
14 lunch. We weren't really sure where we were going  
15 to have lunch.

16 Q And then what did you do?

17 A We went through the half circle, came back  
18 out, and then went to the South Beach Marina  
19 through that Pope area.

20 Q You mean you navigated your boat into the yaught  
21 basin?

22 A Yes.

23 Q Did it appear to you that the yaught basin at the  
24 Harbour Town Marina, is it subject to the tides?

25 A I'm not a captain, so I can't answer that.

1 I'm sorry.

2 Q Are open bodies of water throughout Beaufort  
3 County subject to tides?

4 A Well, I'm sure they are, but I don't have any  
5 expertise in that.

6 Q Is there a locked gate at the entrance of the  
7 Harbour Town Marina?

8 A I actually don't know the answer to that. I  
9 mean, when we were there, there was an open  
10 waterway, but I can't answer.

11 Q Did you see any sort of a locked structure?

12 A No, I didn't.

13 Q And did you observe the walls of the yaught basin  
14 as you navigated to your boat into?

15 A The walls of the -- can you be more specific?

16 Q The walls of the yaught basin.

17 A You mean, the perimeter?

18 Q Yes, the walls of the yaught basin?

19 A I mean, we went into the interior.

20 Q Could you see the walls?

21 A Well, there was a lot of slips.

22 Q Could you see the piles that the docks are  
23 attached to?

24 A Well, I saw all the slips that are, in  
25 effect, a horseshoe-shaped area.

1 Q What holds them in place?

2 A Well, they're dock slips, so there would be  
3 pilings of some sort.

4 Q Vertical piles, right?

5 A Pardon me?

6 Q Vertical piles?

7 A Yes.

8 Q Did you see those?

9 A I imagine. I think I just saw the entirety  
10 of the slips themselves. There were actually more  
11 open slips that day than I have seen in the past.  
12 This is not my first time at Harbour Town.

13 Q Well, when you've been in Harbour Town -- how many  
14 times have been to Harbour Town?

15 A A handful.

16 Q Okay. And have you noticed that the tides change  
17 in Harbour Town?

18 A I literally was a passenger not as the  
19 captain. I don't really know anything about the  
20 tides. I'm sorry.

21 Q What did you observe?

22 A When I went to Harbour Town prior?

23 Q Any of the times you've been to Harbour Town?

24 A Well, the times that I've been there were  
25 just for commercial reasons, bringing guests there



1 on various boats that we've had over the years.

2 Q Were you there the same time of day every day?

3 A No. Not at night. During the day.

4 Q Does Harbour Town connect to the Calibogue  
5 Sound?

6 A I believe so, yes. I believe there is a  
7 sound there, yes. Again, I'm not -- I have no  
8 experience --

9 Q Didn't you have to navigate your boat through the  
10 Calibogue Sound to get to Harbour Town?

11 A I am not a captain. I have no boat  
12 licensure. I have never operated a boat  
13 physically. I was only there as a -- either  
14 assisting in my duties to help guests. I have no  
15 captain experience. I'm sorry.

16 Q I wasn't asking if you were a captain. I was  
17 asking you what you could see with your eyes?

18 A Well, I'm sure there are different tides, but  
19 I have no expertise in that, is what I'm saying.

20 Q And my question was simply: Is it subject to the  
21 tides?

22 A I would imagine. But I, again, don't have  
23 expertise in that.

24 Q And Braddock Cove Creek, is it built into the  
25 Calibogue Sound?

1       A     I don't actually know how to answer that.  I  
2       don't know that.

3       Q     Well, how did you get your boat into Braddock Cove  
4       Creek?

5       A     I believe that's the channel between Gull  
6       Point and the South Beach area.  Again, I wasn't  
7       captaining the vessel, so I can't speak -- I have  
8       no expertise in that.

9       Q     Okay.  Do you know what the body of water you  
10      navigated your boat through to get to Braddock Cove  
11      Creek is?

12      A     I can't speak to specificity about it.

13      Q     You don't know that that's Calibogue Sound?

14      A     Well, again, I'm not -- I wasn't piloting the  
15      boat, so I'm sorry.  I know we have to get through  
16      there to get to the -- obviously, the  
17      plantation.

18      Q     Have to get through where?

19      A     That sound area.

20      Q     Meaning Calibogue Sound?

21      A     Yes, sir.

22      Q     Okay.  And does Calibogue Sound itself connect to  
23      the Atlantic Ocean?

24      A     I would imagine at some point.

25      Q     And is the Atlantic Ocean subject to the tides?

1 A I would imagine it is.

2 Q And so is Braddock Cove Creek, which is connected  
3 to Calibogue Sound which is connected to the Atlantic  
4 Ocean subject to the tides?

5 A Again, I don't offer any professional  
6 experience in this area.

7 MR. CARPENTER: Your Honor, I would  
8 object to the relevance of all of this. It just  
9 seems like he's badgering the witness for no  
10 apparent reason.

11 THE COURT: Overruled.

12 BY MR. COLTRANE:

13 Q Do you dispute that Braddock Cove Creek is subject  
14 to the tides?

15 A Again, I would imagine that it is, but I  
16 don't speak with expertise. I apologize.

17 Q Are the waters of the Calibogue Sound the Atlantic  
18 Ocean, Baynard Cove Creek, and Harbour Town, are those  
19 saltly waters?

20 A I would imagine so.

21 Q And when you navigated your boat into the Harbour  
22 Town Yaught Basin, did you suffer any consequence for  
23 doing that?

24 A I'm not sure what you mean by that.

25 Q You were allowed to do that, were you not?

1 A When we approached them, they allowed us to,  
2 yes.

3 Q You were allowed to navigate your boat up Baynard  
4 Cove Creek, were you not?

5 A Yes.

6 Q You were allowed to navigate your boat in the  
7 vicinity of the Gull Point docks, were you not?

8 A Yes.

9 Q You were allowed to navigate your boat as far down  
10 as Baynard Cove Creek as you wished to, is that true?

11 A I would imagine, yes.

12 Q At the Gull Point docks, the boats that were  
13 parked there, did they appear to you to be pleasure  
14 boats?

15 A They looked high end. There were some pretty  
16 high end boats there. I don't know if that's a  
17 pleasure boat.

18 Q Did they appear to be commercial vessels or  
19 privately owned pleasure boats?

20 A I didn't see any signage on them or anything  
21 like that, so I don't know if I can even  
22 speculate. They were just boats in slips.

23 Q What was your picture of Gull Point Marina?  
24 Exhibit 4, can you pull that up?

25 THE COURT: Do you have the exhibits?

1 COURT REPORTER: Here, Your Honor.

2 THE COURT: He's just asking you to refer  
3 to it.

4 THE WITNESS: I'm looking at the photo,  
5 yes.

6 BY MR. COLTRANE:

7 Q And do those appear to be privately owned pleasure  
8 boats?

9 A I don't know these. You know, I guess, if  
10 one didn't know it, our boat would look like a  
11 pleasure boat but it's a commercial boat. So  
12 that's why I'm saying. I can't spec- -- I even  
13 say with certainty of that.

14 Q Okay. Did you see similar-looking boats tied up  
15 at the South Beach Marina and in Harbour Town?

16 A Boats that look like the ones at Gull Point?

17 Q Yes.

18 A There's weren't -- I don't think there were  
19 that many boats there that day.

20 Q Didn't ask how many there were. I asked if there  
21 were similar-type boats there?

22 A Pardon me. They were like power boats, yes.  
23 But I don't know what kind of boats they were.

24 Q Do you know whether or not Calibogue Sound is a  
25 part of the Intercoastal Waterway?

1 A I don't have the kind of experience to try to  
2 answer that question. I could say yes, but I  
3 don't know if that's true.

4 Q And when you ate lunch at the Salty Dog cafe --

5 A Yes.

6 Q --- did that appear to you to be an area that is  
7 frequented by tourists?

8 A It just really wasn't a very busy day.

9 Q That wasn't what I asked you.

10 A Right. There just weren't that many people  
11 there. I mean, it was actually just not very  
12 busy. There were a few people there. I don't  
13 know if they lived in Sea Pines is my point, or  
14 they were visiting. I couldn't tell you.

15 Q And when you have traveled to Harbour Town, does  
16 Harbour Town appear to you to be an area that's  
17 frequented by tourists?

18 A I mean, the times that we went there were for  
19 a commercial purpose to bring guests there. But  
20 we were renting slips there, so -- for our boats.

21 Q How long have you lived in Beaufort County, South  
22 Carolina?

23 A Almost 25 years.

24 Q And so you're telling me you don't know if Harbour  
25 Town is a tourism area?

1 A No, I didn't -- I wasn't answering your  
2 question that way.

3 Q Well, that is my question. Do you know if Harbour  
4 Town is an area that attracts tourism?

5 A Well, I think Hilton Head Island is marketed  
6 as a tourism area. And Sea Pines is in Hilton  
7 Head, so I know they market for tourism. They  
8 want tourists to come.

9 Q Do you know or not know whether or not Harbour  
10 Town is an area that attracts tourism?

11 A Well, I would imagine it does, but there's  
12 also a lot of residents there.

13 Q Same question for South Beach Marina. Do you know  
14 or not know if that is an area that attracts  
15 tourism?

16 A I have not been to South Beach Marina. That  
17 was my first visit there.

18 Q In the number of times that you have been to  
19 Harbour Town --

20 A Yes.

21 Q -- have you ever been refused access to the  
22 marina?

23 A Well, we rented a slip for our boat because  
24 we were slipping there, even for the day or  
25 overnight, so, we had reservations.

1 Q So the slips are available for rent by, fair to  
2 say, anyone?

3 A I don't know if it was anyone. I'm just  
4 saying that we weren't denied access because we  
5 had a reservation.

6 Q And were you denied access into Braddock Cove  
7 Creek?

8 A No.

9 Q And while you were on your trip to Harbour Town  
10 and Braddock Cove Creek, did you observe other vessels  
11 coming and going in those areas?

12 A No, not really. It was very slow. I didn't  
13 really see hardly any other boaters.

14 MR. COLTRANE: Thank you, ma'am.

15 THE COURT: Any redirect?

16 MR. CARPENTER: No, Your Honor.

17 THE COURT: Okay, thank you. You may  
18 step down. If you'll hand me all those, I'd  
19 appreciate it. Thank you very much.

20 THE WITNESS: Thank you.

21 THE COURT: Call your next witness.

22 MR. CARPENTER: We call John F.  
23 Brinkley.

24 THE CLERK: Stand right here. If you  
25 could just raise your right hand. Do you solemnly



1 swear or affirm to truthfully answer all questions  
2 asked of you by this court so help you God?

3 THE WITNESS: I do.

4 THE CLERK: You may have a seat right  
5 here. Once you get seated and settled, just speak  
6 clearly into the microphone and state your first  
7 name and spell your last name for the court  
8 reporter.

9 THE WITNESS: Okay. John Brinkley,  
10 Brinkley is spelled B-r-i-n-k-l-e-y.

11 WHEREUPON:

12 JOHN BRINKLEY,  
13 after having been sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CARPENTER:

16 Q Mr. Brinkley, I'm Jim Carpenter. I represent the  
17 plaintiff in this case.

18 Can you tell us where you live, please?

19 A I live in Sea Pines Plantation on Gull Point  
20 Road.

21 Q Is that in the Gull Point neighborhood?

22 A Gull Point neighborhood.

23 Q Are you associated with the South Island Dredging  
24 Association?

25 A Yes, I am.

1 Q Can you tell us what your association is?

2 A The association is a group formed about 23  
3 years ago to promote open aviation -- or  
4 navigation within the Sea Pines Plantation  
5 bringing together those that were interested and  
6 access to waterways.

7 Q Okay. Do you have an office with the South Island  
8 Dredging Association?

9 A Do I have an office? A physical office?

10 Q Are you an officer?

11 A I am.

12 Q What are you?

13 A I'm the president of the association.

14 Q How long have you been the president?

15 A I've been the president of the association  
16 about -- approaching 20 years.

17 Q Were you the first president elected to the South  
18 Island --

19 A No. No, I was not the first.

20 Q Who was the first?

21 A The first president was -- I'm trying to  
22 think of his last name. He actually formed the  
23 group was the first president. Dick Saunder was  
24 his name -- is his name.

25 Q Were you involved from the beginning?

1 A No.

2 Q And you got involved 20 years ago, you said?

3 A Yes.

4 Q So that would be about 2003?

5 A Somewhere. Maybe slightly before that.

6 Q Okay. 2002, maybe?

7 A Yeah.

8 Q Within a couple years of its founding?

9 A Right.

10 Q And what has been your function primarily with the  
11 South Island Dredging Association?

12 A Well, I have served as president. And, as  
13 president, I have focused on bringing the group  
14 together, forming a collective of when people  
15 needed and wanted and were able to dredge, and the  
16 need of their dredge. And I also was in a  
17 position where I brought in, to assist us, a  
18 consultant on the development of our dredge  
19 program. And then, ultimately, the consultants  
20 were used to obtain the permits necessary to do  
21 the proposed dredging.

22 Q Are there groups that are members of the South  
23 Island Dredging Association?

24 A Are there groups?

25 Q Homeowners groups.

1 A Yes.

2 Q Can you tell me, what homeowner groups or  
3 associations are members of the -- that make up the  
4 South Island Dredging Association?

5 A The Gull Point Association, the South Beach  
6 Property Owners Association, the South Beach  
7 Marina, the Baynard Property Owner Group, and  
8 then, of course, Harbour Town.

9 Q Now, would that be the Harbour Town Yacht Club?

10 A Well, the Harbour Town organization is --  
11 their membership is through -- I think,  
12 technically, the property owner group there. Or  
13 the boat slip -- I'm sorry. The boat slip  
14 owners.

15 Q There's a group of people that own slips?

16 A They own slips.

17 Q And they made an association similar to a  
18 homeowner's association but they're boat slip  
19 owners?

20 A I assume that's how they're structured. I  
21 cannot be precise.

22 Q Now, there's the Harbour Town Yacht Club and then  
23 there's also the Harbour Town Marina. Can you tell me  
24 the difference between the yacht club and the  
25 marina?

1 A Well, the difference? I'm struggling with  
2 your question, I'm sorry.

3 Q Okay.

4 A What's the point of your question?

5 Q Let me try again. Let me ask it a little  
6 differently.

7 Is the Harbour Town Marina a member of your  
8 group?

9 A The answer is, the marina is such -- is a  
10 member only through the slip owners.

11 Q Okay. Does the Sea Pines Resort own the Harbour  
12 Town Marina?

13 A I don't believe they own the full marina. I  
14 don't know. I'll have to --

15 Q Okay.

16 A I don't want to give an answer that I don't  
17 understand is correct.

18 Q All right. Now, had there been other groups that  
19 help make up this South Island Dredging Association?

20 A No.

21 Q Okay. Does the South Island Dredging Association  
22 have membership dues or any kind of fee that these  
23 groups pay to the association?

24 A No.

25 Q Okay. Is the association -- is the business

1 organization of the SIDA simply an informal  
2 association or does it have an LLC or any other kind  
3 of corporate entity?

4 A No, it's registered with the State of South  
5 Carolina. It's C3, I think is the designation.  
6 So it's a tax-free recognized organization.

7 Q So how was the organization formed?

8 A How was it formed?

9 Q Yes. How did the people get together?

10 A Well, the people got together because what  
11 was happening originally was individuals were  
12 arranging their dredging on an individual basis.  
13 So, part of the appeal of bringing the group  
14 together was, they had a common interest, they had  
15 a common need. Their common need was to maintain  
16 good navigational ability within the waterways of  
17 Sea Pines. So it was brought together on that  
18 basis because of the common interest, and the  
19 common need.

20 Q And you said before the formation of the SIDA --  
21 you call it SIDA or just use the initials? What do  
22 you call it?

23 A SIDA.

24 Q SIDA. So before the formation of SIDA, you said  
25 the individual groups did their own -- or arranged for

1       their own dredging.

2       A     Right. And some got dredged and some did not  
3       get dredged. Some had the need, but didn't have  
4       the capability.

5       Q     Okay.

6       A     Also, it was a time when there was starting  
7       to be a change of regulation on the part of the  
8       government on the management of waterways.

9       Q     Okay. So how long have you lived in Gull Point?

10      A     Twenty-five years.

11      Q     So did Gull Point do dredging prior to its  
12      association with SIDA?

13      A     Periodically, but not regularly.

14      Q     Okay. Were you a part of any dredging that was  
15      done by Gull Point?

16      A     No.

17      Q     Were you active in the homeowner's association?

18      A     Yes.

19      Q     Okay. Was there dredging done while you were in  
20      the home owner's association?

21      A     Well, everybody is a member of the home  
22      owner's association. It's a property owner's  
23      group there. Yes. The answer is yes.

24      Q     So Gull Point did its own dredging while you were  
25      a member and prior to its joining --

1 A No. I misunderstood your question.

2 Q Okay.

3 A While I've lived there, there's been no  
4 dredging done outside of working together with the  
5 SIDA organization.

6 Q Okay. Now, since you've been president in 2002 or  
7 2003, something like that, have other organizations  
8 done their own dredging apart from SIDA?

9 Organizations that are apart of SIDA done their own  
10 dredging --

11 A No.

12 Q -- since you've been the president?

13 A No.

14 Q Now, you said you've been president since 2003 or  
15 so?

16 A Somewhere in there, yes.

17 Q Okay. Now, the first dredging was done in 2012 or  
18 '13, right?

19 A That was the dredging done under the current  
20 permits that we have. We have permits from the  
21 Corp of Engineers and from DHEC, and those permits  
22 were dated -- I think it was 2013 is the current.

23 Q So between 2002, when you became the president,  
24 and 2012 or '13, when those permits authorized the  
25 dredging, was there dredging done during that 10-year



1 period by any of the members of SIDA?

2 A Well, there was a dredge attempted that was  
3 aborted.

4 Q Tell me about that.

5 A Well, that was back in -- I think it was 2006  
6 or '7.

7 Q Who was the organization that was attempting to do  
8 the dredge?

9 A Well, SIDA was attempting to do that  
10 dredge.

11 Q Okay. As a group for the five or six component  
12 members?

13 A Well, they were all -- SIDA was an  
14 organization that existed at that time with the  
15 same membership as it exists with today.

16 Q What caused the dredging to abort?

17 A Well, the dredging was stopped on the basis  
18 of -- I can't remember. I got to remember the  
19 technical name that was used. Oh, citizen  
20 complaints. It was a different form of dredging.  
21 It was a dredging that was being done where the  
22 material was put into barges and the barges were  
23 then taken to the ocean for discharge.

24 And the reason it was stopped is, that form  
25 of dredging, which was fully understood and

1 recognized, when you start putting water into barges,  
2 you're going to have overflow. The complaint was  
3 based on the observation of overflow. And, based on  
4 that series of complaints, that dredge was stopped.

5 Q Did SIDA incur charges for that aborted  
6 dredging?

7 A Charges?

8 Q Costs.

9 A Yeah, we have to pay the contractor for the  
10 work that was done.

11 Q About how much did you have to pay?

12 A I can't remember that. You're talking --  
13 maybe it was -- I mean, I don't know. I could  
14 tell you it was dollar a square foot, but I can't  
15 remember.

16 Q Was it over a \$1 million?

17 A No.

18 Q All right. Where did the money come from to pay  
19 those charges?

20 A Those monies were from the individual members  
21 of the SIDA organization.

22 Q And how --

23 A And the Harbour Town dredge got completed.  
24 There was no stoppage there.

25 Q So how did you allocate the charges for the

1 dredging that was done among the different members of  
2 SIDA?

3 A Well, our formula has always been the same.  
4 It's based on -- a cubic yard removed. So if you  
5 didn't get anything removed, you're only  
6 contribution was for the permitting aspect.

7 Q Okay. Now, prior to removal of dredging, there  
8 are charges for surveying and engineering; is that  
9 right?

10 A Yes.

11 Q Okay. How were those charges -- how are those  
12 charges divided among the different members?

13 A They're allocated on the basis of the usage.  
14 In other words, the cubic yards that are going to  
15 be discharged.

16 Q Are those charges put up up front or do they come  
17 after the dredging is over?

18 A Well, your preparation for dredging, which  
19 involves, first of all, obtaining permits. That's  
20 up front. Then you -- in the process of getting  
21 permits, you've engaged a contractor. The  
22 contractor is a specialist in that line of work in  
23 dredging. So that's -- those costs are all up  
24 front.

25 Q And how do you allocate those costs among your --

1 A Based on the same formula of cubic yards  
2 removed.

3 Q And you do an estimate of what you think the cubic  
4 yards to be removed would be, and then you all located  
5 that?

6 A Well surveys are done by the contractor that  
7 we engaged.

8 Q Okay.

9 A They do an interim survey, and they do a  
10 final survey right before the dredge is done. And  
11 that's to -- normally to satisfy, not only to make  
12 sure that the numbers are correct, but it's also  
13 usually required by the contractor.

14 Q Okay. And the individual groups pay their  
15 proportionate share based on the anticipated amount of  
16 removal?

17 A Exactly.

18 Q Okay. How does Gull Point Property Owner's  
19 Association get money from its members to pay for the  
20 dredging? Do they do it on a per house basis, or are  
21 they allocated more heavily toward those that have  
22 boats in the --

23 A They assess on the base as household.

24 Q A per-house basis?

25 A Right.

1 Q Whether you have a boat in the marina or not?

2 A Right. We have other amenities there.

3 Q Do you know how other organization in you SIDA  
4 assess those charges to their members?

5 A I'd have to answer, no, because I don't know  
6 exactly how each one -- and I know that it's  
7 different.

8 Q Do you know some of them?

9 A Do I know some of them?

10 Q Yes.

11 A I know that the South Beach Property Owner  
12 Group have done an estimate -- an assessment.  
13 They did not dredge this time. They were  
14 assessing on the basis of some form of -- formula  
15 based on proximity to the water, I believe. But I  
16 can't state that as a fact.

17 Q South Beach Marina, that's an LLC. SBM, LLC; is  
18 that right?

19 A I believe that's their designation, yes.

20 Q Does the South Beach Marina have members with the  
21 different stores that are there?

22 A South Beach Marina is South Beach Marina.

23 Q They're the property owner?

24 A No. The South Beach Marina is owned as a  
25 separate entity.

1 Q Okay. And what does the South Beach Marina  
2 include?

3 A Well, South Beach Marina, the way that works  
4 -- I think this is your question. They pay and  
5 share with the other participants on Braddock  
6 Creek. Again, on a shared basis.

7 Q Okay. There's a lot of Braddock Creek that runs  
8 between the Port Villas and South Beach Marina and  
9 South Beach Marina and Gull Point Marina and Gull  
10 Point Marina and the ocean, right?

11 A Right.

12 Q So there's a lot of dredging in that canal.

13 A Right.

14 Q How does that get assessed between Gull Point and  
15 South Beach Marina and Port Villas?

16 A If you take -- first of all, the Port Villas  
17 areas, which is referred to the upper creek area,  
18 did not participate.

19 MR. COLTRANE: Your Honor, please. I'm  
20 going to object to this line of testimony, at  
21 least this part of it. The first exhibit that  
22 Your Honor allowed in was the affidavit of  
23 Miss Wiedmeyer which includes the resolution of  
24 the town which states on the face of it that the  
25 town's contribution is for Harbour Town, Braddock

1 Cove Creek, and -- and Braddock Cove Creek.  
2 There's nothing in there about the Port Villas  
3 marina or the community dock and Baynard Cove, or  
4 anything like that.

5 THE COURT: Yes, sir.

6 MR. CARPENTER: Braddock Cove Creek is  
7 where the South Beach Marina is and the Port  
8 Villas and the Gull Point Marina. That's all  
9 Braddock Cove Creek. The other one is Baynard  
10 Cove Creek. That's where Baynard Cove community  
11 dock is. That's the other creek. So I'm on  
12 Braddock Cove Creek right now.

13 THE COURT: Okay.

14 MR. COLTRANE: And if you read the second  
15 exhibit to Miss Wiedmeyer's affidavit, it states  
16 specifically that the town's funds are to Braddock  
17 Cove Creek, Gull Point and South Beach marinas,  
18 the entrance channel, and the fuel docks in the  
19 basin of Harbour Town. It doesn't go down as far  
20 as Port Villas.

21 MR. CARPENTER: Well, the point that I'm  
22 interested in is all these charges and how they're  
23 allocated on members of South -- I'm sorry --  
24 SIDA. That would provide information on how this  
25 money may be allocated from the taxpayer. Up

1       until the taxpayer started chipping in money, you  
2       know, each individual entity paying for its own  
3       way. You paid your own cost, you paid for the  
4       benefit you got by having the dredging material  
5       taken out, you paid it on a proportionate basis.  
6       Now you got the taxpayer chipping \$600,000 and  
7       that's going to benefit these private entities  
8       financially by making it so that they don't have  
9       to pay as much to have their dredging material  
10      hauled away. It's taking public money and  
11      benefiting these private organizations. That's  
12      what I'm driving at here.

13               MR. COLTRANE: Again, Your Honor, he is  
14      conflating the ownership of property in Gull Point  
15      community with dredging a public waterway.

16               And, again, the agreement that provides  
17      for the contribution to the dredge is very  
18      specific about what the town is contributing to,  
19      and the dock at Port Villas isn't part of it.  
20      Nothing in Baynard Cove is part of it.

21               Again, there is an effort here to  
22      conflate two things; that being the ownership of  
23      the waterway and the ownership of property that's  
24      adjacent to the waterway, and they're not the same  
25      thing.



1                   THE COURT: Your objection is  
2    overruled.

3                   MR. CARPENTER: Thank you, Your Honor.

4    BY MR. CARPENTER:

5    Q    Did you write a letter to the Town of Hilton Head  
6    dated March 28, 2022, requesting the town's funding  
7    the dredging efforts?

8    A    I did.

9                   (PLF. EXH. 10, Letter to Town of Hilton  
10   Head; 3/28/23, was marked for identification.)

11   BY MR. CARPENTER:

12   Q    Let me show you what we marked as Exhibit 10 and  
13   ask if you can identify that, please.

14   A    Yeah, it's my letter. Yes, it is.

15   Q    All right. And you wrote that letter yourself?

16   A    I did, yes.

17   Q    Does this talk about the history of the South  
18   Island Dredging Association?

19   A    Well, I'd have to go back and reexamine the  
20   letter to make sure I can answer that question.

21   Q    I'm referencing the background paragraph.

22   A    Yes. Yes, it did.

23   Q    Okay. And it talks about the formation in 2001?

24   A    Yes.

25   Q    Okay. And this SIDA was formed by Sea Pines

1 property owners. It says, "To work on a collaborative  
2 basis to preserve waterway access in that portion of  
3 Hilton Head and conduct dredging on a program basis."

4 Is that right?

5 A Yeah.

6 Q And the different groups got together and formed  
7 this South Island Dredging Association?

8 A Yeah, that's what I said earlier.

9 Q And then you-all worked with the Army Corp of  
10 Engineers to obtain dredging permits?

11 A Yes, sir.

12 Q Okay. And in working with the Army Corp of  
13 Engineers, you-all had to front money, and you did  
14 that on a proportionate basis based on the amount of  
15 dredging that was anticipated would be taken out of  
16 the different sections that were going to be  
17 dredged?

18 A Yes.

19 Q Okay. There were dredgings in 2013 and '14; is  
20 that right?

21 A Yes.

22 Q And there were dredgings in 2017 and '18; is that  
23 right?

24 A Yes.

25 Q Okay. And you give statistics here that different

1 amounts of cubic yardage was taken out in the  
2 different dredgings; is that right?

3 A Yes, sir.

4 Q In each of those cases, all the different  
5 component groups of the SIDA paid their proportionate  
6 share; is that right?

7 A Yes.

8 Q Now, if you look at the top of page 2, you talk  
9 about the current project; is that right?

10 A Yes.

11 Q This would be the project that's supposed to start  
12 2022 and 2023; is that right?

13 A Yes.

14 Q All right. And it says maintenance dredging. So  
15 you're continuing the same project that you've been  
16 dredging in 2013 and 2017; is that right?

17 A We've been able to use the same permits,  
18 yes.

19 Q Okay. And you use the same consultant, GEL  
20 Engineering, LLC?

21 A We use the same consultant, that's correct.

22 Q Okay. Now, you comment toward the end of that  
23 paragraph about the increase in cubic yardage and you  
24 say, "The increase from 2017/18 includes the addition  
25 of Baynard Creek 52,790 cubic yards who were unable to

1 participate in the previous dredges; is that right?

2 A That's correct.

3 Q Why was Baynard Creek unable to participate in the  
4 previous dredges?

5 A Because they were unable to raise the money  
6 from their property owner group.

7 Q The property owners objected to giving money  
8 toward the dredging?

9 I don't know that they objected.

10 MR. COLTRANE: Objection, Your Honor.

11 THE WITNESS: They just didn't make the  
12 contribution.

13 THE COURT: Hold on, hold on, hold on.

14 MR. COLTRANE: He's not saying they  
15 objected to it. That was in the testimony.

16 THE COURT: Continue. I think he was  
17 clarifying that in his response.

18 BY MR. CARPENTER:

19 Q Go ahead.

20 THE COURT: Go ahead, sir.

21 MR. COLTRANE: I would also --

22 THE WITNESS: They were able to raise the  
23 money. There was no objection on the part of  
24 their owner group.

25 MR. COLTRANE: I will also point out that

1 the agreement that's in evidence as Plaintiff's  
2 Number 1 limits what the town funding can be used  
3 for, and Baynard Creek is not part of it.

4 THE COURT: Okay. I don't know that  
5 that's an objection so much as a disagreement or  
6 argument.

7 Continue, Mr. Carpenter.

8 BY MR. CARPENTER:

9 Q Why were they unable to raise the money?

10 MR. COLTRANE: I'm going to object to  
11 that.

12 THE WITNESS: I don't know.

13 MR. COLTRANE: Requires him to  
14 speculation.

15 THE COURT: Hold on. That's sustained.

16 Next question.

17 BY MR. CARPENTER:

18 Q All right. The next paragraph you talk about  
19 project cost based on preliminary volumes are 4.6  
20 million or so; is that right?

21 A That's right.

22 Q Okay. And how did you get those preliminary  
23 volumes?

24 A We went out -- we went out with an early bid  
25 process. So we were able to get an indication in

1 advance of -- as we always do, in advance of  
2 letting any contract. We could see, at that time,  
3 we were looking at a higher level of cost relative  
4 to previous dredges.

5 Q Okay. Did it cost money for you to get that  
6 preliminary assessment?

7 A Of course.

8 Q Okay. And how was that funded among the members  
9 of your group?

10 A Again, among the existing members.

11 Q And based on a proportionate share of the  
12 anticipated removal of the dredging material?

13 A Basically, we always used that same formula  
14 where we have to allocate costs.

15 Q Okay. Down at the bottom, you reach the  
16 conclusion and you're asking the town to contribute  
17 \$600,000. How is that \$600,000 going to be allocated  
18 among the five or six different component groups of  
19 the SIDA?

20 A Well, that decision -- at the time this  
21 letter was written, that decision had not been  
22 made relative to the allocation. Our allocation  
23 would have given weight to the entry channels  
24 because you have Braddock -- Braddock has a very  
25 pronounced entry channel. It goes out into the

1       sound.   Harbour Town has a very pronounced entry  
2       channel that goes out into the sound.

3       Q       Is the sound maintained by anybody?   Calibogue  
4       Sound, is there a channel out there that's being  
5       maintained by anybody?

6       A       No.

7       Q       Does the Army Corp of Engineers maintain a  
8       navigatable waterway in the sound?

9       A       I don't know.   The permit that we have, our  
10      present permit, and the one we had when we did the  
11      previous two dredges, is a unique permit which  
12      allows the dredge material to be moved from the  
13      point of exit through a pipeline system out  
14      into -- just beyond the tip of the island in a  
15      designated drop area.

16      Q       And it's the delivery methodology of using a  
17      pipeline instead of trucks or barges, or something  
18      like that?

19      A       Right.   This was a dramatic change that  
20      enabled this organization, the SIDA organization  
21      to move forward.   And, in fact, I think it still  
22      remains to be the case, that SIDA is the only  
23      private organization in the state that has this  
24      type of permit.

25      Q       So, is it true that from 2001 to 2022 all of the

1 dredging was paid for by the component members of  
2 SIDA?

3 A Well, the dredging -- we had participation  
4 from the town in the last dredge.

5 Q Which dredge are you talking about?

6 A The one that was done in 2017/18.

7 Q They did something similar then to what they're  
8 doing now?

9 A Yes.

10 Q But the one in '13, it was totally by the  
11 participating groups?

12 A That's correct.

13 Q In 2017, did they contribute \$600,000 then?

14 A Yes, they did.

15 Q All right. Do you know how that \$600,000 was  
16 allocated among the different component entities?

17 A I can't --

18 MR. COLTRANE: Your Honor, I'm going to  
19 object to the question.

20 THE COURT: Sustained.

21 BY MR. CARPENTER:

22 Q Do you know if the Town of Hilton Head Island  
23 makes financial contributions to other plantations to  
24 help them with their dredging?

25 MR. COLTRANE: Objection, Your Honor.



1 THE COURT: Sustained.

2 BY MR. CARPENTER:

3 Q Did you sign an affidavit in this case?

4 A I signed an affidavit that was an affidavit  
5 in relation to the current documents that we hold  
6 from the Corp of Engineers. In other words, the  
7 permits.

8 Q The two permits?

9 A Yeah.

10 Q Okay. In your affidavit, paragraph 3, you say,  
11 Harbour Town Marina was --

12 MR. COLTRANE: If, Your Honor, please, if  
13 he's going to cross-examine from the affidavit, he  
14 needs to elicit some different testimony before he  
15 does that.

16 THE COURT: Absolutely.

17 BY MR. CARPENTER:

18 Q Okay.

19 THE COURT: The affidavit is hearsay. It  
20 can be used to impeach him, if necessary, but you  
21 got to get to an impeachment point first.

22 MR. CARPENTER: Okay.

23 BY MR. CARPENTER:

24 Q Is the Harbour Town Marina a private marina  
25 existing in the waters of Harbour Town Yaught Basin?

1 A Yes.

2 Q Okay. You mention in your affidavit referenced to  
3 the two permits, one from DHEC and one from Army Corp  
4 of Engineers, right?

5 A Yes, sir.

6 Q I'd like to ask you about the DHEC permit.

7 (PLF. EXH. 11, Affidavit from Brinkley,  
8 was marked for identification.)

9 BY MR. CARPENTER:

10 Q I'm handing you a document we've marked for  
11 identification as exhibit 11. Can you tell me what  
12 that is, please?

13 A Exhibit A to the affidavit of John Brinkley.  
14 Is that what you want me to read?

15 Q Yes. I mean, is this -- can you look at the  
16 document and tell me what the document is?

17 A Are your -- is your reference to the letter  
18 to Larry Setzler?

19 Q Well, let me try it another way.

20 Does this appear to be the DHEC permit that  
21 was attached to your affidavit?

22 A No.

23 Q Okay. What does it appears to be?

24 A Well, this is a communication between  
25 Mr. Shaw of DHEC to Larry Setzler, not

1 addressed -- this was not addressed to me or not  
2 addressed to SIDA.

3 Q Okay. Is this something that was attached as an  
4 exhibit to your affidavit?

5 A Not to my knowledge.

6 MR. COLTRANE: If I could assist, if Your  
7 Honor will allow me, the document that  
8 Mr. Brinkley has, the top document is the  
9 extension letter to the permit and second, after  
10 the top letter, is his -- the DHEC permit, and  
11 that was attached to Mr. Brinkley's affidavit.

12 THE WITNESS: This is a totally different  
13 piece of correspondence.

14 MR. CARPENTER: Okay.

15 BY MR. CARPENTER:

16 Q All right. Let me ask you this: Aside from the  
17 letter, which is the second page of the exhibit, what  
18 does -- if you look at the third page, can you tell me  
19 what that is?

20 A Page 3 of 33 is water quality special  
21 conditions. Is that your reference?

22 Q No. The third page of the exhibit, which is 1 of  
23 33 at the bottom.

24 THE COURT: Let's take just a five-minute  
25 break here. Court will be at ease for five

1 minutes. You can step down if you need to, but  
2 don't discuss your testimony with anyone. Be back  
3 in five or maybe seven minutes.

4 (A break was taken.)

5 THE BAILIFF: All rise. Court is back in  
6 session.

7 THE COURT: Please be seated.

8 Continue, Mr. Carpenter.

9 BY MR. CARPENTER:

10 Q Mr. Brinkley, have you had a chance to look at the  
11 document that I handed you earlier so that you can  
12 tell me what it is and testify about it?

13 A Well, obviously, I don't have time to go  
14 through the document, but I do note that this  
15 document has expired. This was the first  
16 installment of DHEC. It's been superseded by --  
17 this expired on April 2018.

18 Q Okay. Would you glance back at the letter from  
19 Trent Shaw to Mr. Setzler? It references the permit  
20 that begins with number 2012, is that right, in the  
21 opening paragraph?

22 A The opening paragraph is reference to April  
23 29, 2013, with an original expiration of April  
24 29th.

25 Q Of 2018, right?

1 A Right.

2 Q Okay. Would you look down at the next-to-the-last  
3 paragraph?

4 A Yeah. The new expiration date, is that your  
5 reference?

6 Q Yes.

7 A Okay.

8 Q And the new expiration date is April 29 of 2023;  
9 is that correct?

10 A That's correct.

11 Q So the original permit was 2012. It was used in  
12 2017 and '18, and now it's been extended to 22/23; is  
13 that right?

14 A That's correct.

15 Q And that's what this letter is saying here, that  
16 the permit from 2012 has a new expiration date of  
17 2023; is that right?

18 A Right. Their permit was for five years. The  
19 Corp was for 10, so they had to renew -- or we had  
20 to renew with them that permit.

21 Q Okay. Did you have a role in securing the permits  
22 in 2012 from DHEC and from the Army Corp of Engineers?  
23 Did you have a role in helping get those?

24 A No. I didn't directly address that myself,  
25 no.

1 Q Okay.

2 A Those are done through the consultancy.

3 Q Did the component members of SIDA, write letters  
4 in support of the request for the permit in 2012 and  
5 2013?

6 A I don't recall writing letters for that.

7 MR. CARPENTER: Mark each of these.

8 (PLF. EXH. 12, Letter, was marked for  
9 identification.)

10 (PLF. EXH. 13, Letter, was marked for  
11 identification.)

12 (PLF. EXH. 14, Letter, was marked for  
13 identification.)

14 (PLF. EXH. 15, Letter, was marked for  
15 identification.)

16 (PLF. EXH. 16, Letter, was marked for  
17 identification.)

18 (PLF. EXH. 17, Letter, was marked for  
19 identification.)

20 MR. COLTRANE: While those are being  
21 marked, and maybe I missed it, and I don't object  
22 to it, but was Mr. Brinkley's letter ever offered  
23 in evidence?

24 THE COURT: It was not.

25 MR. CARPENTER: I offer it into evidence,

1 Your Honor.

2 THE COURT: We're talking about the March  
3 28, 2022, letter?

4 MR. CARPENTER: Yes.

5 THE COURT: It's already in evidence.  
6 Was it separately marked?

7 MR. CARPENTER: Yes, it's marked as 10.  
8 You're right. It's a copy from an earlier  
9 exhibit.

10 THE COURT: So no objection?

11 MR. COLTRANE: No objection.

12 THE COURT: So Plaintiff's 10 is admitted  
13 without objection.

14 (PLF. EXH. 10, Letter to Town of Hilton  
15 Head; 3/28/23, was entered into evidence.)

16 BY MR. CARPENTER:

17 Q Mr. Brinkley, I marked for identification Exhibit  
18 12 through 17. I want to ask if you recognize these.

19 A I don't recall seeing these. These are all  
20 letters from 2012.

21 Q Okay. Do you recall if -- you were president of  
22 SIDA at that time, right?

23 A Yes.

24 Q And do you recall if SIDA encouraged its component  
25 members to write letters in support of the petitions

1 for the permits to DHEC and to the Army Corp of  
2 Engineers?

3 A Do I recall that?

4 Q Yes.

5 A No.

6 Q Your testimony is, you don't recall seeing these  
7 letters before?

8 A No, I do not.

9 Q Do you have the -- I'll take those back then.

10 Do you have the exhibit we are talking about  
11 before, the Exhibit A to your affidavit?

12 A Yes.

13 Q All right. With the letter from Mr. Setzler -- to  
14 Mr. Setzler from Mr. Shaw that extended the expiration  
15 date to 2023?

16 A That's the letter of September 2017, right?

17 Q September 6, 2017, yes.

18 A Yeah, okay.

19 Q You see the next page which is entitled Critical  
20 Area Water Quality Certification Permit?

21 A Yes.

22 Q Is that the permit that DHEC issued for you-all to  
23 do your dredging?

24 A Well, I guess that's the content of it. I  
25 haven't -- it's 23 pages there. I haven't read



1 through it just to confirm. It is the  
2 confirmation of the permit.

3 Q Okay.

4 A From 2013 to 2018.

5 Q Okay. And the permittee is the South Island  
6 Dredging Association, is that right, there on the  
7 front of the permit?

8 A That is correct.

9 Q Okay. This was issued to SIDA to do dredging at  
10 that location listed there on the page 1 of 33; is  
11 that right?

12 A Yes.

13 Q Okay. I'll have you look at the next page, the  
14 middle of the page just above where it says Critical  
15 Area Permit Special Conditions --

16 A Yes.

17 Q -- there's a sentence that talks about the purpose  
18 of the proposed work; is that right? "The purpose of  
19 the proposed work is to maintain navigational access  
20 from certain Sea Pines waterways to the Calibogue  
21 Sound."

22 A I'm sorry. I don't know where you're reading  
23 from. I'm on page 2 of 33.

24 MR. CARPENTER: May I approach, Your  
25 Honor?

1 THE COURT: Yes, sir.

2 BY MR. CARPENTER:

3 Q All right.

4 A Starting here, "Dredging will be  
5 conducted . . . "?

6 Q Just below that. "The purpose."

7 A Yeah.

8 Q Do you see that?

9 A Yes.

10 Q "The purpose of the proposed work is to maintain  
11 navigational access for certain Sea Pines waterways to  
12 Calibogue Sound for recreational and commercial use."  
13 Is that right?

14 A Yes.

15 MR. CARPENTER: Your Honor, I move this  
16 exhibit into evidence.

17 THE COURT: Any objection?

18 MR. COLTRANE: No objection, Your  
19 Honor.

20 THE COURT: That's 11? Plaintiff's  
21 admitted without objection.

22 (PLF. EXH. 11, Affidavit from Brinkley,  
23 was entered into evidence.)

24 (PLF. EXH. 18, Exhibit B to Affidavit of  
25 John F. Brinkley, was marked for identification.)

1 BY MR. CARPENTER:

2 Q Mr. Brinkley, I'm showing a document I marked for  
3 identification purposes as Exhibit 18. It's also  
4 entitled Exhibit B to affidavit of John F. Brinkley.  
5 Do you recognize that document?

6 A I don't particularly recall it, but I read  
7 it.

8 Q Is that the permit from the Army Corp of  
9 Engineers?

10 A Well, it's pertaining to it.

11 Q There's a --

12 A This document relates to modifications that  
13 they have confirmed to us.

14 Q Okay. This will be a -- there's a letter dated  
15 November 4, 2016; is that right? The second page of  
16 the exhibit.

17 A The second page -- what was your reference?

18 Q There's a letter to you dated November 4, 2016,  
19 from the Department of Army?

20 A Yes.

21 Q All right. And is this a letter to you relating  
22 to the permit from the Army Corp of Engineers?

23 A Yes.

24 Q Okay. If you look at the first page of drawings,  
25 it's about the 5th page in there, do you see that it's

1 permitted plans relating to Braddock Cove Creek?

2 A Yes.

3 Q All right. And does this portray the dredging  
4 that is going to take place on Braddock Cove Creek?

5 A Braddock Cove Creek when? Are you talking  
6 about the one that was done back in 2016?

7 Q Yes.

8 A Yes.

9 Q And does that show Gull Point Marina on the upper  
10 part, on the right side of the creek?

11 A Yes.

12 Q And the South Beach Marina on lower part on the  
13 left?

14 A Yes.

15 Q And Port Villas is on the bottom?

16 A Yes.

17 Q The next page shows the Gull Point Marina in  
18 greater detail; is that right?

19 A Yes, it is.

20 Q Okay. And the next page shows South Beach Marina  
21 in greater detail?

22 A Yes.

23 Q All right. And the next page shows the Port  
24 Villas dock in greater detail; is that right?

25 A Yes.

1 Q And the dredging that was done in 2016 on Braddock  
2 Cove Creek is going to be just like the dredging  
3 that's going to be done in 2023, assuming this goes  
4 forward; is that right?

5 A I don't follow you, I'm sorry.

6 Q Okay.

7 A The dredging has been done for 2013.

8 Q I'm talking about -- these documents related to  
9 2016 and '17. My question is: The dredging that's  
10 coming up with the '22/'23 permit is going to be  
11 similar to the dredging that's done in the '16/'17  
12 permit; is that right?

13 A I would say similar, yes, but not totally  
14 because the Port Villas was not dredged this last  
15 time.

16 Q Okay. Looking at the next page, does that show  
17 detailed plans of the Gull Point Marina?

18 A Yes, it does.

19 Q And does it show --

20 MR. COLTRANE: I'm going to object to the  
21 form of the question. What it shows is detailed  
22 plans of what is going to be dredged from the  
23 waterway.

24 THE COURT: Overruled.

25 BY MR. CARPENTER:

1 Q Do you have the Gull Point Marina page there in  
2 front of you?

3 A I do.

4 Q There are a series of numbers there, right, that  
5 go all across the picture?

6 A Well, yes.

7 Q What do those numbers represent in general  
8 terms?

9 A Well, I'm going to presume that those all  
10 relate to the depth of the dredge that was done.

11 Q And that's done in and around the Gull Point  
12 Marina, right?

13 A Yeah.

14 Q If you look at the next page --

15 A They probably also could relate -- there are  
16 setbacks in that marina to make sure that spartina  
17 grass is not destroyed during the dredging  
18 process, so there has to be a 10-foot setback. So  
19 that may relate to that as well. I don't know.

20 Q Okay. Environmental concerns, in other words?

21 A Yes. This is -- in any of these permits they  
22 stipulate very carefully what you can and cannot  
23 do.

24 Q Skip forward a few pages. There appears to be a  
25 page I've shown up on the TV screen. If you can find

1       it in your exhibit there, it's entitled Department of  
2       Army Permit.

3       A     Well, do you have a page number or reference?

4       Q     I wish I did.

5       A     I wish you did too.

6       Q     Let me see if I can help you find it.

7       A     Okay.

8       Q     Starting at the top on Project Description: "The  
9       work consists of hydraulic maintenance, dredging  
10      approximately 300,000 cubic yards of material of  
11      existing marina basins and access channels with  
12      disposal of material and in shore waters near the  
13      mouth of Calibogue Sound, remove sediments from  
14      existing tidaled waterways associated with the  
15      Calibogue Sound with disposal at the mouth of the  
16      Calibogue Sound in order to provide adequate depths  
17      for recreational and commercial vehicles utilizing the  
18      waterways in accordance with the attached drawings."  
19      Is that project description there on this Department  
20      of Army permit?

21      A     Yeah, it relates to the disposal area?

22      Q     And it was to provide adequate depths for  
23      recreational and commercial vessels; is that right?

24      A     That's what it says, yes.

25      Q     All right.

1       A     That refers to elimination of any potential  
2     mounding.

3               THE COURT:   Mr. Carpenter, I really hate  
4     to disturb your flow, but we're getting to the  
5     time for lunch.

6               MR. CARPENTER:   I'll be happy it take  
7     lunch and restart up after lunch.

8               THE COURT:   Yeah, let's go ahead and take  
9     a lunch break, folks.   Be back at two o'clock.  
10    I'll see you then.   Again, you can step down, sir.  
11    Don't discuss your testimony with anyone over the  
12    lunch break.

13              THE WITNESS:   Thank you.

14              THE COURT:   Thank you, two o'clock.

15              (A break was taken from 12:55 to 2:15 p.m.)

16              THE BAILIFF:   All rise.

17              THE COURT:   You can be seated.

18              All right.   Mr. Carpenter.

19              MR. CARPENTER:   Thank you, Your Honor.

20     BY MR. CARPENTER:

21     Q     Mr. Brinkley, SIDA has been active for about 23  
22     years?

23     A     That's about right, yes.

24     Q     And you've been the president for about 20 years.

25     A     Right.



1 Q And you put in, I guess, a lot of time and effort  
2 in your work as president of the SIDA; is that  
3 right?

4 A Yes.

5 Q And the SIDA has raised and spent a lot of money  
6 over the course of the 23 years; is that right?

7 A That's correct.

8 Q And your members have come up with the money to  
9 pay for the dredging, right?

10 A Yes.

11 Q And dredging is all you do in the SIDA, right?

12 A That's correct.

13 Q So what I'd like to ask you is: What are your  
14 members getting for all their time, effort, and money  
15 by the dredging? What do they benefit from it? What  
16 keeps them doing it?

17 A Well, they do that to preserve navigation. A  
18 boat is pretty difficult to use if it's sitting in  
19 the mud, and they've all had that experience.

20 Q Okay. Anything else?

21 A Well, I think that's the principal thing, is  
22 the availability to use your boat frequently.

23 Q Okay.

24 A And not also get stranded out in the sound  
25 because you missed the tide change. And people

1 have experienced that too.

2 Q In other words, if the tide is out and the channel  
3 is full of muck and mud, they can't get the boat back  
4 into their --

5 A Exactly.

6 Q That's the immediate benefit. Are there related  
7 benefits, financial benefits to the dredging?

8 A Well, I think the principal reason is to  
9 utilize your boat.

10 Q The pleasures of boating?

11 A Right.

12 Q Access to the open waters, deep waters?

13 A Yes. A lot of people fish from there.

14 Q Fishing. And those people who are the yaught  
15 owners down in Harbour Town, the pleasures of taking  
16 their yaught out, would that be a benefit they get by  
17 the dredging?

18 A Well, certainly.

19 Q Okay. What about property values? Those people  
20 that bought the yaught slips had to pay for them,  
21 right?

22 A Yes.

23 Q And if the dredging doesn't happen, the value of  
24 those yaught slips goes down, right?

25 MR. COLTRANE: Your Honor, please. I'm

1 going to object because he's simply asking him to  
2 speculate on things that haven't happened and  
3 might not happen. And further, to be frank,  
4 raised by his complaint.

5 THE COURT: Sustained.

6 BY MR. CARPENTER:

7 Q Does having a boat help the property values of the  
8 houses in the neighborhood that have the docks and so  
9 on that are involved in the dredging?

10 MR. COLTRANE: Objection.

11 THE COURT: Sustained.

12 THE WITNESS: I can't --

13 THE COURT: Hold on. The objection is  
14 sustained. Next question.

15 BY MR. CARPENTER:

16 Q What do the marinas get out of the dredging?

17 A Well, they get the availability of the  
18 water.

19 Q Business interests, right? Business  
20 opportunities?

21 A Well, I don't know about business  
22 opportunities. I can't, you know, project that.

23 Q Okay. What about you? What benefits do you see  
24 from having kept up with the dredging?

25 A Well, the satisfaction of seeing that we're

1 maintaining the waterways.

2 Q Anything else?

3 A That's the reason we do it.

4 Q Okay. Is there a financial component to it?

5 A Not really.

6 Q Housing values aren't maintained and resale  
7 opportunities aren't improved by this?

8 MR. COLTRANE: Same objection as before,  
9 Your Honor.

10 THE COURT: Sustained.

11 MR. CARPENTER: All right.

12 I think that's all I have, Your Honor.

13 THE COURT: Cross-examination.

14 MR. COLTRANE: Not at this time, Your  
15 Honor.

16 THE COURT: Okay. Thank you. You can  
17 step down.

18 THE WITNESS: Thank you.

19 MR. CARPENTER: Your Honor, I think I  
20 moved all of my exhibits that we identified in.  
21 But if I haven't, I'd like to do that.

22 THE COURT: I don't know that 18 was  
23 moved into evidence. It may have been and maybe I  
24 missed it.

25 MR. CARPENTER: 18 would be exhibit B to

1 his affidavit?

2 THE COURT: Yes.

3 MR. CARPENTER: I moved that into  
4 evidence.

5 MR. COLTRANE: I have 17 -- since the  
6 other didn't come in --

7 THE COURT: That was 12 through 17 that  
8 didn't come in. 18 was this packet, Exhibit B to  
9 the affidavit.

10 MR. COLTRANE: Which is the Corp permit.  
11 What was the DHEC permit?

12 THE COURT: Is there any objection to  
13 Plaintiff's 18?

14 MR. COLTRANE: No. No objection. I'm  
15 trying to figure out what they are.

16 18, which I understand is the Corp of  
17 Engineers permit?

18 THE COURT: Yes.

19 MR. COLTRANE: And then immediately  
20 preceding which would be --

21 THE COURT: 12 through 17 were marked,  
22 but not admitted. They weren't even offered, I  
23 don't believe, because the witness couldn't  
24 identify them.

25 MR. CARPENTER: And 11 was the DHEC

1 permit.

2 MR. COLTRANE: 11 is DHEC. My apologies.  
3 Thank you.

4 MR. CARPENTER: Is 11 in, the DHEC in?

5 THE COURT: Yes. That's Exhibit A to the  
6 affidavit.

7 MR. CARPENTER: Is there any other  
8 exhibit that we haven't addressed that was marked  
9 and not admitted?

10 THE COURT REPORTER: 7, 8, and 9 and 12  
11 through 17.

12 MR. CARPENTER: Okay. With that, Your  
13 Honor, the plaintiff rests.

14 THE COURT: Okay.

15 Yes, sir, Mr. Coltrane.

16 MR. COLTRANE: Your Honor, please, the  
17 defendant moves for dismissal under Rule 41(b) of  
18 the South Carolina Rules of Civil Procedure and I  
19 have a number of points. We can take them one at  
20 a time, if I may.

21 The first one in paragraph 7 of the  
22 complaint for this case, there is an allegation  
23 that the plaintiff is a citizen and a lector of  
24 the town and has standing to bring this lawsuit.  
25 I denied that. There has been no evidence

1 presented as to anything about the plaintiff in  
2 this case.

3 THE COURT: You have other grounds?

4 MR. COLTRANE: Yes, Your Honor.

5 THE COURT: Let's pause there.

6 THE BAILIFF: Secondly --

7 THE COURT: No, no, no. Let's pause  
8 there and let me hear from Mr. Carpenter.

9 MR. CARPENTER: We also alleged public  
10 important standing. In Paragraph 5, we allege  
11 this issue raises issues -- this action raises  
12 issues of great public importance related to  
13 whether the Town of Hilton Head Island follows the  
14 South Carolina constitution, spending private  
15 funds for public purposes. The plaintiff asks the  
16 court to grant them standing based on the great  
17 public importance of the constitutional issues  
18 this action raises.

19 THE COURT: Where is that, sir?

20 MR. CARPENTER: Paragraph 5 of the  
21 complaint. If you'll look at the cases that talk  
22 about public importance standing, the recent ones,  
23 and it's evolved a little bit over the years, but  
24 the recent ones talk about when there's an  
25 allegation of misconduct on the part of the

1 government and the use of public funds, then  
2 that's generally sufficient to create an issue of  
3 great public importance, to grant standing to the  
4 plaintiff on the public importance.

5 It's not necessary that the -- that you  
6 have taxpayer's standing and public importance  
7 standing. One will be sufficient.

8 And when it comes to public importance  
9 standing, standing is granted not based on who the  
10 plaintiff is, but based on the importance of the  
11 issues that the plaintiff raises.

12 And this case, I think, raises issues of  
13 great public importance, meaning the  
14 unconstitutional conduct of the town of Hilton  
15 Head and the use of public funds in furtherance of  
16 that constitutional conduct; spending public  
17 monies for private purposes.

18 So I think the standing is covered of  
19 public importance standing, even though we didn't  
20 prove taxpayer standing.

21 THE COURT: Okay. Mr. Coltrane.

22 MR. COLTRANE: They haven't proved that  
23 the plaintiff exists. I mean, there is no  
24 evidence as to who this individual is, what  
25 standing he may have, and simply alleging that



1       this is a matter of great public importance does  
2       not relieve you of the obligation to have a party  
3       in interest bring the lawsuit.

4               And there's been no testimony from Mcavoy  
5       about anything. He has not appeared. Again, we  
6       have -- let me just look at one thing real quick. You  
7       know, again, denied that. And, indeed, the paragraph  
8       that he was reading from, number 4, was also denied to  
9       the extent that there's any factual allegation that  
10      required a denial. The rest of it is just a bunch of  
11      real conclusions that aren't proper allegations.

12              I mean, as we stand here right now, Your  
13      Honor, there's no plaintiff.

14              MR. CARPENTER: Public importance  
15      standing, it's pretty clear in the cases. It's  
16      granted not based on who the plaintiff is, but on  
17      the importance of the issues he raises. It's a  
18      concept that is different from traditional notions  
19      of standing, and you don't have to show that the  
20      plaintiff is more connected to the issues, or you  
21      don't have to show that he's the only one that can  
22      raise it, or that somebody else can't raise it in  
23      front of him.

24              THE COURT: That's not his argument,  
25      though. His argument is that we don't -- that

1       might as well be a John Doe, is what he's saying.  
2       We don't even know that the plaintiff exists. So  
3       let's talk about that.

4               MR. CARPENTER: Well, but that's under  
5       traditional notions of standing. But in notions  
6       of public importance standing, it's not granted  
7       based on who the plaintiff is. Standing is  
8       granted based on the importance of the issues that  
9       he raises.

10              THE COURT: So can a John Doe action be  
11       brought -- when I say a John Doe action, John Doe  
12       as the plaintiff.

13              MR. CARPENTER: Yes, because of the  
14       importance of the issues raised by the complaint.  
15       It's based on that, not on the identity of the  
16       plaintiff.

17              There are a lot of case that held that, I  
18       don't have them off the top of my head, but when  
19       the courts discuss public importance standing that  
20       point is made repeatedly.

21              THE COURT: Well, I don't know if it's so  
22       much the identity of the plaintiff, but what if  
23       there is no plaintiff? I mean, that's a weird  
24       phrase, right? Because, obviously, there is a  
25       name there, Ryan Mcavoy, but who is he? Is he a

1 citizen of America?

2 MR. CARPENTER: Well, yes, he's a citizen  
3 of Hilton Head Island.

4 THE COURT: But we don't -- but you've  
5 not proven that. You've not demonstrated that.

6 MR. CARPENTER: True.

7 THE COURT: Could Kim Jong Un file the  
8 same action?

9 MR. CARPENTER: In theory -- well, he's  
10 not a citizen of the U.S.

11 THE COURT: And I don't know that Ryan  
12 Mcavoy is either.

13 MR. CARPENTER: But, in theory, he could,  
14 yes. Because it's based on not who the plaintiff  
15 is, but on the importance of the issues that he  
16 raises. That's the case law, Your Honor.

17 THE COURT: Okay. Continue on that, or  
18 whatever else.

19 MR. COLTRANE: Well, again, I mean, as  
20 far as the public importance standing goes, again,  
21 while in a broad sense, while Mr. Carpenter says  
22 is correct, there still has to be a plaintiff.  
23 It's not a John Doe action.

24 The second point I would raise is that  
25 the plaintiff has made allegations to try and

1 certify a class here. There's been absolutely no  
2 evidence that is intended to demonstrate  
3 compliance with Rule 23. Further, this is a suit  
4 against the Town of Hilton Head Island, and under  
5 1260-80(c) of the South Carolina Code and the case  
6 of *Aiken vs. South Carolina Department of Revenue*,  
7 class actions against local governments or any  
8 political subdivision of the State are prohibited.  
9 I have a memo on that and a copy of that *Aiken*  
10 case, if you would like it.

11 THE COURT: Please. Thank you, sir.

12 Okay. Let me hear from you, Mr. Carpenter.

13 MR. CARPENTER: I'm familiar with that  
14 rule, but I understood it to be actions related to  
15 the collection of taxes. This is not an action  
16 related to the collection of taxes. You can't  
17 have a class action when it comes to taxes or the  
18 assessment of taxes or collection of taxes, but  
19 that's not what we have here.

20 I bring these kinds of cases on a pretty  
21 regular basis, and I always phrase it So And So,  
22 the plaintiff, on behalf of all that are similarly  
23 situated. It just means that he's acting in a  
24 representative capacity to raise this issue of  
25 great public importance. I'm not trying to get a

1 formal class action recognized here. It's just  
2 asserting that he's bringing it as a plaintiff  
3 representing people to raise issues of public  
4 importance.

5 MR. COLTRANE: And my response, Your  
6 Honor, if you look at page two of the memo, the  
7 Supreme Court directly addressed that question.  
8 There's some indented language about a third of  
9 the way down that reads -- and I hate being read  
10 to, but I'll go ahead and do it. This says: "We  
11 hold that subsection 12-60-80 indicates no intent  
12 to limit or restrict the general words 'any other  
13 class action' in the catch-all clause of  
14 subsection C to the specific subject of taxes set  
15 forth in the first portion of subsection C. To  
16 interpret the catch-all clause in this fashion  
17 would simply amount to an unnecessary  
18 re-recitation of the first portion of subsection C  
19 and would be an absurd and forced construction of  
20 the catch-all clause of subsection C." There's a  
21 further discussion of the catch-all clause in the  
22 *Aiken* case, but the 12-60-80(c) says precisely  
23 what it says. And there's no intent, according to  
24 what it says, to limit it to the subject of taxes.

25 MR. CARPENTER: Not read the *Aiken* case,

1 but the defendant was the Department of Revenue.  
2 But we're not seeking a formal class action here,  
3 so ....

4 THE COURT: Okay. Are there additional  
5 arguments?

6 MR. COLTRANE: Not on that point,  
7 although I may wish to go back to the previous one  
8 briefly. But, no, on this one, I think the text  
9 of 12-60-80(c) is plain.

10 Furthermore, Your Honor, as I said, there's  
11 been nothing to show that this case would qualify  
12 under Rule 23 anyway.

13 THE COURT: Right. And when I asked that  
14 question -- that's my fault -- I meant any other  
15 motions or arguments for dismissal, directed  
16 verdict, et cetera, either on this issue, the  
17 previous issue, or a third issue?

18 MR. COLTRANE: Yes, Your Honor. I would  
19 point out on the standing issue -- give me two  
20 seconds. I'm sorry. And, again, this is a quote  
21 from the case *Carolina Alliance for Fair*  
22 *Employment vs. The South Carolina Department of*  
23 *Labor Licensing and Regulation*. This takes the --  
24 it appears that -- this action raises the public  
25 importance exception does not apply here.

1 Plaintiff simply claims that this action raises  
2 constitutional issues of great public importance  
3 without warrant. On this basis alone, the  
4 plaintiff's complaint is subject to dismissal.

5 So, again, what you have here is a  
6 situation where right now there's no evidence at  
7 all about the plaintiff. You got some bare  
8 allegations in the complaint that claim there's  
9 some issue here, but I don't believe that is  
10 sufficient to get beyond the fact that we don't  
11 know anything about the plaintiff, or what the --  
12 what standing the plaintiff might have.

13 The next issue, Your Honor, relates to  
14 the claim that the Town is spending public money  
15 on private property. And, simply, no evidence to  
16 support that.

17 The only evidence in the record, and I'll  
18 start with the permits that were marked as, I  
19 think, 11 and 18. The South Carolina Department  
20 of Health and Environmental Control permits the  
21 dredging of the waters, which are waters of the  
22 State of South Carolina as defined in 48-39-10.  
23 And so that you don't have to listen to me talk  
24 about it, 48-39-10 -- I'm handing up a copy to  
25 Your Honor. In subsection that defines coastal

1       waters as the navigatable waters of the United  
2       States subject to the ebb and flow of the tide  
3       which are saline water shored to their high water  
4       mark, and that is precisely what we are talking  
5       about in terms of the dredging of all of the areas  
6       to which the town has authorized a contribution to  
7       the dredge.

8               Braddock Cove Creek is a saline tidaled body  
9       of water that is, in fact, navigatable. The Harbour  
10      Town Yaught Basin is a saline tidaled body of water  
11      that is, in fact, navigatable. They are waters of the  
12      State. They are also waters of the United States.

13             Directing your attention to Exhibit 18.  
14      On page 1 the Army Corp of Engineers describes the  
15      proposed work as existing of maintenance dredging  
16      of approximately 300,000 of cubic yards from  
17      existing basins and access channels with the  
18      disposal of the material and in-shore waters near  
19      the mouth of the Calibogue Sound. It says the  
20      project is located at Harbour Town Marina,  
21      Braddock Cove Creek, Gull Point Marina, South  
22      Beach Marina, Port Villas, Baynard Cove Creek  
23      community dock with open disposal in Calibogue  
24      Sound.

25             On page 2 of Exhibit 18 it says: "The permit



1        was issued under provisions of the federal laws for  
2        the protection and preservation of the navigatable  
3        waters of the United States."

4                And then further in, and actually I have  
5        one of these. It's tagged up if you'd like to see  
6        it, because the pages aren't numbered, but it's  
7        the permit letter dated July 3rd of 2013. It says  
8        exactly the same thing, which is, "The permit is  
9        issued under the provisions of federal laws for  
10       protection and preservation of the navigatable  
11       waters of the United States."

12               And then on -- further in on the document  
13       that Mr. Carpenter asked Mr. Brinkley about, it  
14       shows where the work is to occur, having already  
15       described it as being in the navigatable waters of  
16       the United States. And then on the follow page it  
17       says, "The work is authorized under section 10 of  
18       Rivers and Harbours Act of 1899," which is 33  
19       U.S.C 403 and section 404 of the Clean Water Act,  
20       which is 33 U.S.C 1344. If Your Honor would like  
21       to see those, I have copies of them.

22               The point is that the waters in question  
23       are waters of the United States and of the State  
24       of South Carolina. The fact that permitted marina  
25       structures or dock structures exist in them does

1 not change the nature of the waterways. The  
2 drawings that Mr. Carpenter had Mr. Brinkley  
3 comment on show the areas where the dredging is to  
4 occur. And it shows the dredging occurring in and  
5 around marinas in all cases. And, what that means  
6 is, is that the waters -- not the boat slips --  
7 the waters are public.

8 The fact that a marina sits in them via a  
9 permit, again, does not change the nature of the  
10 waters.

11 The only claim that has been made is that  
12 the town is violating the South Carolina  
13 Constitution by submitting -- or rather by  
14 dedicating public funding to private property, and  
15 that is simply -- there is no evidence to prove  
16 that.

17 The only evidence is that the waterways  
18 that will be dredged are waters of the United  
19 States and of the State of South Carolina, and  
20 there is no constitutional prohibition against  
21 public money on public assets, and, yet, that is  
22 the only evidence we have.

23 Thank you.

24 THE COURT: Yes, sir.

25 MR. CARPENTER: Well, the evidence that

1 we have is the boat slips that were dredged are  
2 privately owned. The marina in Harbour Town --

3 THE COURT: Where is that evidence?

4 MR. CARPENTER: It is -- one of them was  
5 in the answer and one of them was in the  
6 affidavit. Let me find it for you.

7 Paragraph 13 of the answer: "On  
8 information and belief, the Town admits that only  
9 the boat slips in the Harbour Town Yaught Basin  
10 are privately owned."

11 THE COURT: Okay.

12 MR. CARPENTER: And then in the affidavit  
13 of Mr. Brinkley, paragraph 3: "Harbour Town  
14 Marina is a private marina existing --

15 THE COURT: The affidavit is not in  
16 evidence.

17 MR. CARPENTER: Well, he testified to  
18 that. He testified in accordance with that  
19 statement, because I was going to ask him about it  
20 and I was prohibited from asking about the  
21 affidavit, so I just asked him the question.

22 THE COURT: Tell me again what you  
23 elicited from him.

24 MR. CARPENTER: That the Harbour Town  
25 Marina is a private marina.

1 THE COURT: Okay, he did say that.

2 MR. CARPENTER: And then we have the  
3 South Beach Marina, the sign there says, "This is  
4 a private marina."

5 And then we have the Gull Point Marina  
6 being affiliated with a private neighborhood.

7 We have the Baynard Cove community dock  
8 being affiliated with a private neighborhood  
9 within the private Sea Pines.

10 We have the Port Villas, which are  
11 private.

12 So all of the places that have been  
13 dredged are private. And that's the heart of the  
14 problem here, that they are using public money to  
15 dredge these private boat slips, private marinas,  
16 private docks, and they're using public monies for  
17 private purposes. The dredging adds value to  
18 functionality of all these docks and boat slips  
19 and marinas, and it's public money that benefits  
20 the private parties. That's the unconstitutional  
21 expenditure of public monies for private purposes.  
22 The fact that they are in the water is simply a  
23 fact of life. But the constitutional violation is  
24 they're doing it for the private boat slips and  
25 private marinas, and private docks.

1                   MR. COLTRANE: First, Your Honor, when  
2 Mr. Carpenter read from my answer, he did not read  
3 the entire response.

4                   THE COURT: Right.

5                   MR. COLTRANE: The entire response was  
6 that, yes, "On information and belief the town  
7 admits only that the boat slips in Harbour Town  
8 Yaught Basin are privately owned and that the  
9 waters in the Harbour Town Yaught Basin are waters  
10 of the State." So there was no admission that  
11 anything private was being maintained.

12                   The problem with the analogy that Mr.  
13 Carpenter is trying to draw here is that if an  
14 incidental benefit from a public project to a  
15 private piece of property is constitutionally  
16 prohibited, then you couldn't pave a road because  
17 every single road benefits some piece of private  
18 property somewhere. Under that analogy, the town  
19 could not nourish the beaches on Hilton Head  
20 Island because that benefits the ocean front  
21 property owners in some way.

22                   The mere fact that there is a benefit to  
23 some third party that arises from a public project  
24 does not render the public project  
25 unconstitutional.

1                   And in this case, Your Honor, again, the  
2                   only evidence is that the waters that are being  
3                   dredged are waters of the State and waters of the  
4                   United States, and there is no constitutional  
5                   prohibition against the town providing funding for  
6                   the maintenance of a public asset.

7                   MR. CARPENTER: This is not an incidental  
8                   benefit. This is not like paving a road that lies  
9                   in front of somebody's house. This is the whole  
10                  purpose of the expenditure. The whole purpose of  
11                  the expenditure is dredging those private docks.  
12                  And the analogy about the beach front nourishment  
13                  is not a good analogy because the beach is public  
14                  property. Anything below the high water mark is  
15                  public property, and they're doing it -- and  
16                  people can walk along there. It's not private.  
17                  You don't exclude the public from the beaches.  
18                  Anybody can walk along the beaches.

19                 THE COURT: The same way your witness was  
20                 able to pull into all these waterways with  
21                 unfettered access?

22                 MR. CARPENTER: Similar. But the benefit  
23                 here was the directly -- was the sole purpose of  
24                 the expenditure. There is one reason for this  
25                 expenditure, that's to dredge these private docks

1 and boat slips and marinas. It's not beach  
2 nourishment of a public piece of property. This a  
3 benefit -- a financial benefit to the private  
4 owners. They own the docks. They own the boat  
5 slips. They own the marinas. And they are  
6 benefiting by the dredging of those docks and boat  
7 slips and marinas. That's the whole purpose of  
8 this expenditure. It's not an incidental benefit  
9 like paving the road. And we're not talking about  
10 a trespass, or something like that.

11 This is an expenditure of public money  
12 for a private purpose, just like in the case from  
13 the Supreme Court. The Department of  
14 Transportation people went in there. They  
15 conducted inspections of these bridges in the  
16 private gated community. They gave some sort of  
17 incident benefit to the private gated community,  
18 but it was a direct benefit because it was spent  
19 to provide a benefit to those owners behind the  
20 gates where the public can't get to, and that's  
21 the same thing we have here.

22 THE COURT: But it's not behind gates  
23 where the public can't get to. It's in the same  
24 place that Miss Deckard was on the boat and parked  
25 her boat.

1                   MR. CARPENTER: Well, she can only park  
2     it in one place. She couldn't park it on all the  
3     parts of the South Beach Marina. They said, you  
4     got to park over here on a temporary basis while  
5     you're having lunch. That's providing a financial  
6     benefit to the marina. But she can't just pull  
7     her boat in there and park it where those slips --  
8     where all the commercial are being parked, because  
9     those boats are commercial boats that are being  
10    rented to customers of the marina. She can't pull  
11    her boat in at Harbour Town and pull into one of  
12    those boat slips unless she rents it herself.  
13    Those boat slips are owned by private people.

14                  And, you know, she can't pull into Gull  
15    Point Marina because those are all owned by the  
16    people of Gull Point.

17                  And this a benefit to all those private  
18    entities.

19                  And even though she can float in the water,  
20    she's not getting the benefit of the dredging, the  
21    private --

22                  THE COURT: But why isn't she?

23                  MR. CARPENTER: Well, because she's not  
24    pulling up to the marina at Gull Point. She's not  
25    pulling up to the dock slip at Harbour Town. She



1 can only park one place at South Beach. She can't  
2 pull up to the dock at Gull -- Port Villas or Gull  
3 Point. Those are all private places she can't go.  
4 Even though she can float in the water, she can't  
5 pull up and park her boat at those docks because  
6 they're privately owned docks and privately  
7 managed. They exclude the public from parking  
8 their boats at those docks.

9 THE COURT: Did she try to park there.  
10 Anything in her testimony about that?

11 MR. CARPENTER: She said there was no  
12 room at the Gull Point Marina. She said that all  
13 the dock slips are private. She said she had  
14 rented dock slips at Harbour Town before, but you  
15 got to rent the dock slip from the owner in order  
16 to park your boat there. And the marina handles  
17 the rental contract if you want to rent a boat  
18 slip at the Harbour Town Marina.

19 At the South Beach Marina, she couldn't  
20 pull into the commercial places on the dock, all  
21 those places that are being used by the businesses  
22 there. She had to park over here at the lunch  
23 dock and it was only a temporary thing, and then  
24 she had to leave.

25 So, she didn't benefit from the dredging.

1 The people who benefited from the dredging are the  
2 owners of the docks and the owners of marinas  
3 because -- they spent \$600,00 that those private  
4 groups have to pay because the public is coughing  
5 up \$600,000. So that doesn't come out of the  
6 pockets of these marinas. They're getting a  
7 direct cash benefit by having the public pay  
8 \$600,000 of the dredging costs instead of the  
9 private owners.

10 For 20 years, or for some period of time,  
11 I find out today this happened back in '17, but  
12 from 2000, at least up until '17, all the cost had  
13 been born by the private parties and been born  
14 proportionately Mr. Brinkley testified to. It was  
15 paid based on the number of cubic yards that were  
16 going to be pulled out in the dredging operation.  
17 South Beach Marina had to pay proportionately.  
18 Gull Point had to pay proportionately. Everyone  
19 had to pay proportionately based on how much mud  
20 was being pulled out the their marinas.

21 Now, instead of having the private  
22 parties pay for their private benefit, which they  
23 have been doing for years, millions and millions  
24 of dollars, now you got the public coming in and  
25 subsidizing this dredging of these private docks

1 that they have been very happy to pay for up until  
2 at least 2017. We thought it was up until this  
3 year. We found out it was 2017 in the testimony  
4 today. That's a direct benefit. \$600,000 that  
5 these dock owners don't have to pay because they  
6 are hitting the public for \$600,000 and they get a  
7 \$600,000 direct benefit because they don't have to  
8 pay for it. They would have to pay  
9 proportionately for every cubic yard of mud sucked  
10 out of there.

11 THE COURT: Well, that's not unusual.  
12 Contractors generally charge based on the scope of  
13 the work.

14 MR. CARPENTER: That's fine. That's my  
15 point. My point is, the \$600,000 they don't have  
16 to pay for because the public is paying for it.  
17 That's the direct expenditure for these private  
18 parties who would have paid for it and did pay for  
19 it up until 2017 when they talked the town into  
20 chipping in \$600,000 in '17, as well as '23. But  
21 until then, they had been happy to pay for it  
22 themselves. And right now, they're getting this  
23 \$600,000 benefit for no justification when you  
24 take public money for private purposes.

25 THE COURT: I don't know that that's

1       dispositive of the issue. I could be wrong, but I  
2       just keep thinking -- I'm trying to think of an  
3       analogy, a metaphor. I used to own a home, very  
4       small yard, sidewalk, and then public land, DOT  
5       land. For a considerable period of time, I paid  
6       my landscaper to cut the grass in that public  
7       land. That doesn't mean --

8               MR. CARPENTER: This is the reverse of  
9       that. This is DOT paying a landscaper to cut your  
10      lawn. That what we're talking about here.

11             THE COURT: Well, no. I mean, that's  
12      your argument, I guess.

13             MR. CARPENTER: Yes. The government is  
14      paying for something that a private party had been  
15      paying for and should be paying for, and now it's  
16      coming out of the public's pocketbook to the  
17      benefit the guy who had been paying for it, the  
18      people who had been paying for it for all those  
19      years on a proportionate basis.

20             THE COURT: I was going with your  
21      argument that because they pay it all this time,  
22      that that somehow suggests that DOT shouldn't.  
23      That they had been happy to pay for it all these  
24      years. And my point is simply, that's not  
25      necessarily dispositive of the issue. I was happy

1 to pay my landscaper for many years. That doesn't  
2 mean that that was my responsibility. In fact,  
3 ultimately, DOT came in, they tore down the tree  
4 that was there, they repaved the sidewalk,  
5 da-da-da-da because it's not my property, right,  
6 but that doesn't mean it was an inappropriate  
7 expenditure on the part of the government.

8 MR. CARPENTER: Well, you volunteered to  
9 pay the government debt right then. And there's  
10 nothing wrong with that, but this is the flip side  
11 of that. This is the government paying a private  
12 party's debt using public money. It would be like  
13 the government mowing your grass. That's the  
14 analogy.

15 THE COURT: Okay, I hear you. I'm going  
16 to give up on that. Okay.

17 MR. CARPENTER: Anything else? Do you  
18 have any questions for me?

19 THE COURT: I do not.

20 MR. CARPENTER: Okay, Your Honor.

21 THE COURT: Anything further, Mr.  
22 Coltrane?

23 MR. COLTRANE: Very briefly, Your Honor.  
24 The first comment is: I think that was a  
25 tremendous amount of specification about what the

1 testimony may or may not have been in Mr.  
2 Carpenter's argument, but what it boils down to is  
3 this: The only evidence as to the public benefit  
4 comes from Mr. Carpenter's witness. Miss Deckard  
5 was free to travel these waterways. The waterways  
6 are navigatable. The waterways are waterways of  
7 the State and the United States. The mere fact  
8 that the membership of SIDA had previously carried  
9 totaled freight does not make it illegal that the  
10 public is now paying a part of the freight for the  
11 maintenance of a public asset.

12 The only evidence is that it is a public  
13 asset, and there is no constitutional prohibition  
14 against the public paying the maintenance. It's a  
15 big public asset.

16 Thank you, Your Honor.

17 THE COURT: Just out of curiosity, did  
18 you follow my lawn analogy?

19 MR. COLTRANE: I did.

20 THE COURT: Okay. I was hoping somebody  
21 did. I mean, sometimes I'm a little off in my  
22 analogies.

23 MR. CARPENTER: But we're not just  
24 talking about, you know, pulling out -- digging  
25 out a channel. We're talking docks and marinas

1 and boat slips, so that's very private versus  
2 maintaining a public channel. There's a big  
3 difference.

4 THE COURT: Okay. Let's take a break.  
5 Let me mull this over and I'll be back with you  
6 shortly.

7 (A break was taken.)

8 THE BAILIFF: All rise.

9 THE COURT: Be seated, please.

10 As to defendant's motion to dismiss  
11 pursuant to Rule 41(b) that -- well, no. Let's  
12 got to the next one.

13 The class action thing, that motion is  
14 denied. This is really, sort of, in a  
15 representative capacity, not like a typical class  
16 action. I don't know that Rule 23 has any place  
17 here. This is really just declaring the rights of  
18 the parties, particularly in a case like this  
19 where it's alleged that this is a matter of public  
20 interest. So that's specifically denied.

21 The motion to dismiss under rule 41(b) is  
22 also denied. I was almost with you until -- I  
23 left my laptop back there, but in the answer the  
24 Town admits, upon information and belief, that  
25 Ryan Mcavoy is a citizen and resident of the Town

1 of Hilton Head, South Carolina. You don't even  
2 deny -- you don't deny his existence. I mean,  
3 your point is well taken. And, like I said, I was  
4 almost there, but there is an admission, on  
5 information and belief, that he exists and is a  
6 resident of Hilton Head. I forget. It said  
7 something -- I hate that I didn't bring it out  
8 here -- he's a citizen, resident, taxpayer, et  
9 cetera. There's a string of things. So, that is  
10 also denied.

11           However, as to the real issue in the  
12 case, I'm going to grant the defendant's motion  
13 for a direct verdict. I don't think the plaintiff  
14 has produced any evidence that public monies would  
15 be used for private properties, or private  
16 purposes. And I know it's the argument Mr.  
17 Coltrane has been making over and over and over  
18 again, but having heard the plaintiff's case,  
19 which I thought was important to do, that's why  
20 summary judgment was denied, having heard the  
21 plaintiff's case, I just -- I don't see it.  
22 There's no evidence there. In fact, Miss  
23 Deckard's testimony really contradicts the point  
24 that the plaintiff is -- was attempting to make.  
25 Her testimony really did not support plaintiff's



1 theory of the case. And what was needed to be  
2 shown was not obtained by Mr. Brinkley either.

3 So, with there not being any evidence to  
4 support that claim, the motion for directed  
5 verdict must be granted.

6 I don't know whether I need to do a  
7 written order. I don't think that I do. Do  
8 either of you, gentlemen, happen to know the  
9 answer to that?

10 MR. COLTRANE: If Your Honor please, I  
11 believe under the text of 41(b), which states that  
12 the Court is the trier of fact may then determine  
13 then and render judgment against the plaintiff or  
14 may decline. I believe there probably is a need  
15 for an order to state the facts as found by the  
16 Court and the basis for that, which -- I mean,  
17 Your Honor has said that, but -- and I may just be  
18 a creature of habit and I think there ought to be  
19 a written order.

20 MR. CARPENTER: I don't know if something  
21 the Court has already considered, but the rule  
22 says, "The Court shall make findings as provided  
23 under 52(a)."

24 THE COURT: And, actually, 52(a) is what  
25 I was looking at. It's just such an odd thing,

1 because I generally refer to 52(a) with respect to  
2 non-jury trials when the court becomes the  
3 ultimate fact finder and so there have to be  
4 findings of fact and conclusions of law.

5 But a motion for a directed verdict just  
6 seems to be a different animal because that has to  
7 do with the existence of evidence or the lack  
8 thereof.

9 Well, I will make that determination. I'll  
10 at least do a Form 4 and I'll maybe ask another judge  
11 or look it up or something. Something outside of the  
12 rule book. And, if necessary, we'll reach out to  
13 Mr. Coltrane via email to assist with the preparation  
14 of that order. Certainly, Mr. Carpenter will be  
15 copied on it, if that becomes necessary. Okay?

16 MR. COLTRANE: Thank you, Your Honor.

17 THE COURT: Thank you, gentlemen.

18 MR. CARPENTER: Thank you.

19 (The trial was concluded at 3:40 p.m.)  
20  
21  
22  
23  
24  
25

## CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Beaufort County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

October 16, 2023



-----  
Sharon G. Hardoon, CSR  
Official Circuit Court Reporter, III

|                                                                              |   |                                     |
|------------------------------------------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                                                      | ) | IN THE COURT OF COMMON PLEAS        |
| COUNTY OF BEAUFORT                                                           | ) | CASE NUMBER 2022-CP-07-1625         |
| RYAN MCAVOY, Individually and on<br>behalf of all others similarly situated, | ) |                                     |
| Plaintiff,                                                                   | ) |                                     |
| vs.                                                                          | ) | AFFIDAVIT OF<br>KRISTA M. WIEDMEYER |
| TOWN OF HILTON HEAD ISLAND,                                                  | ) |                                     |
| Defendant.                                                                   | ) |                                     |

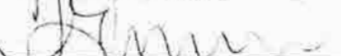
Personally appeared before me Krista M. Wiedmeyer, who, being duly sworn, says:

1. She is the Municipal Clerk for The Town of Hilton Head Island, South Carolina.
2. On May 3, 2022, the Town Council for The Town of Hilton Head Island, South Carolina, adopted Resolution 2022-11, at its regularly scheduled meeting.
3. A certified true copy of Resolution 2022-11 is attached hereto as Exhibit "A."
4. The Agreement authorized by Resolution 2022-11 was fully signed on October 5, 2022. A certified true copy of the Agreement is attached hereto as Exhibit "B."

The Affiant Further Saith Naught.

  
Krista M. Wiedmeyer

Sworn to Before Me this 10<sup>th</sup> Day  
of October, 2022.

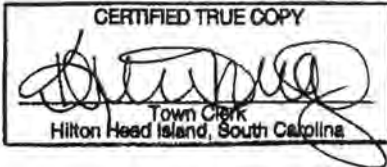
  
Notary Public for South Carolina  
My Commission Expires: 9/30/2030



Page 1 of 1



Exhibit "A" To Affidavit of Krista M. Wiedmeyer



## TOWN OF HILTON HEAD ISLAND

## RESOLUTION NO. 2022-

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH THE SOUTH ISLAND DREDGING ASSOCIATION TO PROVIDE FUNDING ASSISTANCE FOR THE DREDGING OF THE HARBOUR TOWN YACHT BASIN AND BRADDOCK COVE CREEK.**

**WHEREAS**, the South Island Dredging Association (hereinafter, the "Association") has a maintenance program of dredging the Harbour Town Yacht Basin and Braddock Cove Creek located within the municipal limits of the Town of Hilton Head Island, South Carolina (hereinafter, the "Town"); and

**WHEREAS**, routine dredging is necessary in order to maintain navigability for vessels traveling to and from the Harbour Town Yacht Basin and Braddock Cove Creek; and

**WHEREAS**, the general public utilizes the Harbour Town Yacht Basin and Braddock Cove Creek for docking, sightseeing, navigation, access to public and other amenities and other tourism related activities and the routine dredging of these waterways is necessary to support this tourism related activity; and

**WHEREAS**, the Harbour Town Yacht Basin is utilized by, players, spectators, and corporate sponsors during the RBC Heritage Golf Tournament, which brings in over \$100 million in tourism related expenditures to the State of South Carolina's economy each year; and

**WHEREAS**, in the Town's previous fiscal year Budgets for FY2019, FY2020 and FY2021, the Town set aside budgets funds from collected Hospitality Taxes in the cumulative amount of \$600,000 Dollars for allocation to the Association, for the purpose of assisting with the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek, and those funds have not yet been used and have rolled over into the Town's reserve accounts; and

**WHEREAS**, the Town and the Association have negotiated an Agreement by which the Town will provide funding in an amount not to exceed the budgeted funds for the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek on a reimbursement basis along with other express terms and conditions and a copy of which is attached hereto as Exhibit "A" (hereinafter, the "Agreement"); and

**WHEREAS**, the Town Council for the Town of Hilton Head Island finds that the proposed Agreement is in the best interest of and will provide benefits to the general health, safety, and welfare of the citizens of the Town of Hilton Head Island, South Carolina.

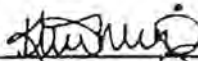
**NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA:**

1. The Town Manager is hereby authorized to execute the attached Agreement between the Town of Hilton Head Island, South Carolina, and the South Island Dredging Association in a form and substance similar to the document attached hereto as Exhibit "A."
2. The Town Manager is hereby authorized to take all other and further actions as may be necessary to complete the obligations of the Town as set out in the Agreement, which is authorized hereby.

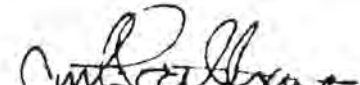
**PASSED AND APPROVED BY THE TOWN COUNCIL ON THIS 3rd DAY OF MAY 2022.**

  
John J. McCann, Mayor

**ATTEST:**

  
Krista M. Wiedmeyer, Town Clerk

**APPROVED AS TO FORM**

  
Curtis L. Coltrane, Town Attorney

Introduced by Council Member: William Harkins





dredging may occur in Braddock Cove Creek including its entrance and main channels and the Gull Point and South Beach Marinas.

- (a) The funds to be delivered under this Agreement from the Town to the Association are public funds, and the Association must comply with the competitive sealed bidding requirements of the Town's procurement code [§ 11-1-111, *Municipal Code of the Town of Hilton Head Island* (1983)], for all contracts related to the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek..
  - (b) The Association must deliver documentation to the Town to verify that it has complied with the requirements of Article 11 of the Town procurement code [§ 11-1-111, *Municipal Code of the Town of Hilton Head Island* (1983)], including:
    - (i) A copy of the notice to bidders,
    - (ii) A copy of the log showing receipt of bids,
    - (iii) A copy of the document showing evaluation of the bids,
    - (iv) A copy of the notification and award to the successful bidder.
  - (c) The Association must also deliver documentation to the Town to verify that the public funds were used only for the dredging of the above-described areas including the invoices to which any public funds were applied, and proof of payment of the invoices. All funding to be provided to the Association under this Agreement shall be made on a reimbursement basis with sufficient documentation described above first being submitted to the Town prior to any payments being made.
  - (d) All documentation to be delivered to the Town under this Article 1 must be delivered to Mr. John Troyer, Finance Director for the Town of Hilton Head Island, One Town Center Court, Hilton Head Island SC 29928, within thirty (30) days following:
    - (i) the award of any contract for all or any part of the dredging activities identified herein; or,
    - (ii) the payment of any invoice to which all or any part of the public funds will be applied.
2. The funds delivered by the Town to the Association as described and conditioned in this Agreement shall not exceed the total sum of Six Hundred Thousand (\$600,000.00) Dollars. The Association acknowledges that the funds delivered under this Agreement must be used by the Association solely for purposes of performing the dredging activities described herein.
3. The Term of this Agreement shall commence on the date this Agreement set out above, and the Term shall end on the date which is two (2) years from the date this Agreement set out above.

4. Any payments to be made by the Town under the terms of this Agreement shall be made from funds that were budgeted by the Town during prior fiscal years occurring prior to the Term of this Agreement and which have been rolled over into the following fiscal years' budgets. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

5. The Association shall be responsible for providing both a cost-effective design and project schedule that are acceptable to the Town and that are permissible by all applicable regulating agencies.

7. The Association shall be responsible for obtaining and complying with all necessary local, state, and federal permits for the work associated with and to be completed with the public funds to be provided pursuant to this Agreement.

8. Should any part of this Agreement be rendered void, invalid, or unenforceable by any court of law, such a determination shall not render void, invalid, or unenforceable any other part of this Agreement.

9. This Agreement has been made and entered into in the State of South Carolina, and the laws of South Carolina shall govern the validity and interpretation of this Agreement in the performance due hereunder.

10. This Agreement may not be modified unless such modification is in writing and signed by both parties.

11. The Association may not assign this contract without the prior written approval of the Town.

12. The Association shall defend, indemnify, and hold harmless the Town, its officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses, and/or damages, including attorney's fees, whether incurred prior to the institution of litigation, during litigation, or on appeal arising out of or resulting from the conduct of any activity hereby authorized or the performance of any requirement imposed pursuant by this Agreement, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.

13. The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by this Agreement. Nothing contained herein creates any relationship between the Town and the Association other than that which is expressly stated herein. The Town is interested only in the results to be achieved under this Agreement, and the conduct and control of the agents and employees of the Association and the methods utilized by the Association in

fulfilling its obligations hereunder shall lie solely and exclusively with the Association and its agents and employees shall not be considered agents or employees of the Town for any purpose. No person employed by the Association shall have any benefits, status, or right of employment with the Town.

14. The Association, by signing this Agreement, hereby certifies that Association shall comply with all applicable requirements of the South Carolina Illegal Immigration Reform Act, S.C. Code Ann. §41-8-10, *et seq.* (2021) (the "Act"), and that Association covenants and agrees as follows:

14.1. Association shall not knowingly or intentionally employ any unauthorized alien and, unless excluded from coverage of the "Act", shall verify the work authorization of all newly hired employees performing work under the contract by either:

(a) registering and participating in the Federal Work Authorization Program (E-verify) and verifying the work authorization of every new hired employee within five (5) business days after employing employee; or

(b) employing only workers who, at the time of said employment:

(i) possess a valid South Carolina driver's license or identification card; or are eligible to obtain a South Carolina driver's license or identification card by providing proof of name, social security number and date and place of birth;

or,

(ii) possess a valid driver's license or identification card from another state deemed by the Executive Director Department of Motor Vehicles to have requirements at least as strict as those in South Carolina.

The Association may choose either option 1 (a) or option 1 (b) but acknowledges that the Association cannot use both.

14.2. The Association agrees to provide to the Town all documentation requested by it to establish either:

(a) the applicability of the South Carolina Illegal Immigration Reform Act to the Association,

or,

(b) compliance with the South Carolina Illegal Immigration Reform Act by the Association.

14.3. Association agrees to include in any contracts with its sub-contractors, language requiring its sub-Associations to:

(a) comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code

of Laws,

and.

- (b) include in their contracts with the sub-contractors, language requiring the sub-contractors to comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws.

14.4. The Association acknowledges and agrees that it shall comply with requirements of the Immigration Reform and Control Act of 1986 including the non-discrimination provisions thereof and shall complete all required 1-9 documentation for all workers employed by it.

14.5. The Association certifies it shall comply with all state, federal, and local laws, rules, regulations, and orders applicable to it in performance of work under the contract.

In Witness whereof, the parties hereto have affixed their signatures hereto the date first written hereinabove.

WITNESSES:

SOUTH ISLAND DREDGING ASSOCIATION

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_  
Marc A. Orlando

\_\_\_\_\_

Its: Town Manager



March 28, 2022

Jack Brinkley, President  
South Island Dredging Association  
46 Gull Point Rd.  
Hilton Head Island, SC 29928

Marc Orlando, Town Manager  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

Re: Dredge Funding

Dear Mr. Orlando,

The purpose of this letter is to confirm the request by South Island Dredging Association for funding assistance for the planned South Island dredge event scheduled for November this year. It is our understanding that the Town has reserved \$400,000 to date and will reserve another \$200,000 in it's fiscal 2023 budget. The requested Town's support of \$600,000 is approximately 12% of the expected project costs.

**Background**

In 2001 the South Island Dredging Association (SIDA) was formed by the Sea Pines property owners to work on a collaborative basis to preserve waterway access in that portion of Hilton Head and conduct dredging on a program basis. Working with DHEC-OCRM and the Army Corps of Engineers, new dredging permits were obtained in 2013 to allow inland open water disposal at a site near the mouth of Calibogue Sound via pipeline. These are the only permits allowing open water disposal in South Carolina and are based on Calibogue Sound's unique characteristics that disperse the dredged material with no adverse impacts. The practical impact is that this technique substantially reduces dredging costs and eliminates impacts on Hilton Head itself such as upland disposal and potentially 1000's of truck trips taking the sediment off island.

In 2013/14 and in 2017/18 dredging activities were successfully completed as designed and in accordance with all permit requirements. Harbour Town Yacht Basin was dredged, including the entrance channel, fuel docks, ship's store, restaurants, and inner basin. Braddock Creek was also dredged, including its entrance and main channels and Gull Point and South Beach Marina, as well as allowing the water-focused commercial operators at South Beach to continue to serve the public. Approximately 240,000 cubic yards were removed and successfully transported to the authorized open water disposal site.

In 2017/18 146,956 cubic yards were removed and transported. Post dredging testing and evaluation by state and federal permitting on both projects confirmed the viability of the overall inland open water approach and the specific placement site.

**Current Project Scope**

Maintenance dredging is now required in these same venues to preserve access and maintain safe navigation at all tides. A competitive bidding process was managed by project consultant GEL Engineering LLC and the low bidder was determined to be Waterfront Property Services, LLC located in Clearwater FL. In accordance with the dredge permits, final contractor selection is subject to review and approval by the Army Corps of Engineers and the Corps' acceptance of detailed Dredge Plan. Project management and oversight will be provided by GEL Engineering who supervised the previous two dredge events. Preliminary surveys indicate 194,266 cubic yards require removal. The increase from 2017/18 includes the addition of Baynard Creek (52,790 cubic yards) who were unable to participate in the previous dredges. Dredging is scheduled to commence November 1, 2022 at Harbour Town and be completed no later than April 30, 2023 at South Beach Marina.

Project Costs based on preliminary volumes total \$4,619,788 for the contractor with mobilization and demobilization accounting for \$465,000 regardless of volume. Project costs at final volumes and including costs for full time project oversight and management will exceed \$5,000,000. Unfortunately, costs have increased substantially reflecting fuel costs and inflation. The current permits expire during 2023 and must be renewed to support future dredges.

**Economic and Community Benefit**

The Sea Pines Waterways are an integral component in maintaining Hilton Head Island as a highly desirable community and resort destination. Similar to our beaches, routine maintenance is required to maintain this public attraction. In the case of these waterways, the maintenance takes the form of dredging to offset siltation which can restrict navigation 12+ hours each day and block access to Calibogue Sound.

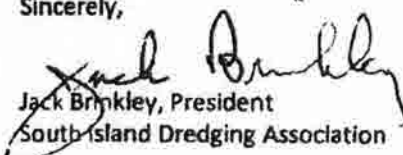
**Conclusion**

SIDA members will fund the remaining project costs (est. \$4,500,000) and proof of funds will be provided to ensure project completion. SIDA requests disbursement of \$600,000 which can be linked to staged completion. The 2017/18 dredge and Town disbursement of \$600,000 was managed as follows:

1. Pay \$180,000 after the first month of work after mobilization
2. Pay \$180,000 after the second month of work
3. Pay \$180,000 after the third month
4. Pay \$ 60,000 upon certification of the completed project from the project engineer.

We appreciate your consideration of this request. Please contact me with any questions.

Sincerely,

  
 Jack Brinkley, President  
 South Island Dredging Association

CC: John McCann, Mayor  
 Thomas Lennox, Council Member, Ward 5, Hilton Head Island

ORDINANCE NO. 2018-05PROPOSED ORDINANCE NO. 2018-05

**AN ORDINANCE TO RAISE REVENUE AND ADOPT A BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2019; TO ESTABLISH A PROPERTY TAX LEVY; TO ESTABLISH FUNDS; TO ESTABLISH A POLICY FOR ACQUISITION OF RIGHTS OF WAY AND EASEMENTS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, Section 5-7-260(3) of the Code of Laws for South Carolina 1976, as amended, and Section 2-7-20 of the Municipal Code of the Town of Hilton Head Island, South Carolina, require that the Town Council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

**WHEREAS**, Town Council also desires to set aside funds for an Operating Reserve to provide for emergency-related expenditures and to offset fiscal year tax revenue income stream deficiency; and

**WHEREAS**, Town Council finds that it would be more economical and efficient to authorize the Town Manager to move forward with construction contract modifications, change orders, contract price adjustments, and execution of contracts for supplies, services, and construction where the contract amount involved does not exceed the budget line item or project budget as approved by Town Council in the Consolidated Municipal Budget.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

**NOTE:** Underlined and bold-face typed portions indicate additions to the Ordinance. ~~Stricken~~ Portions indicate deletions to the Ordinance.

**Section 1. Adoption of the Budget.** The prepared budget of estimated revenues and expenses, a copy of which is attached hereto and incorporated herein, is hereby adopted as the budget for the Town of Hilton Head Island for the fiscal year ending June 30, 2019.

**Section 2. Establishment of Property Tax Levy.** A tax to cover the period from July 1, 2018 through June 30, 2019, inclusive, for the sums and in the manner hereinafter mentioned, is and shall be, levied, collected and paid into the treasury of the Town of Hilton Head Island for its uses at a rate of mills on assessed value of real estate and personal property of every description owned in the Town of Hilton Head Island, except such property as is exempt from taxation under the Constitution and laws of the State of South Carolina. Calendar 2018 is a property reassessment year. The Town's property values increased by 2.72% between 2013 and 2018 because of reappraisal. Therefore, in accordance with South Carolina law the Town must roll-back its millage rate by the percentage increase in property values (revenue neutrality). The exception is the disaster recovery millage rate which will remain the same. The Town's rolled-back millage rate was calculated by Beaufort County officials and approved by the State. It should be noted that the disaster recovery millage override is in the second year of a planned five years. The table below reflects the pre and post assessment millage rates.

| Fund                               | Millage Rate Pre-Reassessment | Millage Rate Post-Reassessment |
|------------------------------------|-------------------------------|--------------------------------|
| General Fund                       | 16.38                         | 15.93                          |
| Debt Service Fund                  | 6.14                          | 5.97                           |
| Capital Projects Fund              | 0.84                          | 0.82                           |
|                                    | <u>23.36</u>                  | <u>22.72</u>                   |
| Disaster Recovery millage override | 5.00                          | 5.00                           |
| Total                              | <u>28.36</u>                  | <u>27.72</u>                   |

**Section 3. Establishment of Funds.** To facilitate operations, there shall be established and maintained a General Fund, a Capital Projects Fund, a Debt Service Fund, a Stormwater Fund and other appropriate funds in such amounts as are provided for in the aforesaid Budget, as hereby adopted or as hereafter modified pursuant to law.

**Section 4. Acquisition of Rights of Way and Easements.** The Town Manager is charged with the duty of executing all necessary documents to obtain rights of way, easements, and other property interests necessary to complete duly authorized Capital Improvement Projects. Capital Improvement Projects based on the ownership and life expectancy of the assets or improvements or based on the funding source authorized may be budgeted in the General, Capital Projects or Stormwater Funds. If expenditures are expressly authorized for an approved Capital Improvement Project in any of the budgeted funds, then the Town Manager is hereby authorized to execute all necessary documents and to expend such funds as are approved pursuant to the Capital Improvement budgets. Provided, however, in the event that the costs of an acquisition of such real property interests materially exceeds the amount budgeted in the approved Capital Improvement Project and the Town Manager is unable to shift additional funds from other authorized sources, the Town Manager shall be required to obtain the approval of Town Council for such additional expenditures. Nothing herein shall obviate the requirement that no condemnations shall be commenced without the appropriate approval of the Town Council for the Town of Hilton Head Island.

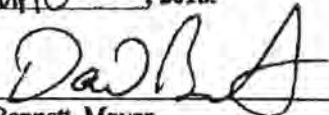


Proposed Ordinance No. 2018-05  
Page Three

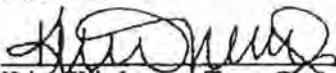
**Section 5 Severability.** If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 6. Effective Date.** This Ordinance shall be effective upon its enactment by the Town Council for the Town of Hilton Head Island.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF  
HILTON HEAD ISLAND ON THIS 19th DAY OF JUNE, 2018.

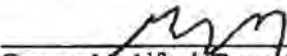
  
\_\_\_\_\_  
David Bennett, Mayor

ATTEST:

  
\_\_\_\_\_  
Krista Wiedmeyer, Town Clerk

First Reading: May 1, 2018  
Public Hearing: JUNE 12, 2018  
Revised First Reading: JUNE 12, 2018  
Second Reading: JUNE 19, 2018

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Gregory M. Alford, Town Attorney

Introduced by Council Member:

Kimberly W. Atkins

## General Fund - FY 2019 Budget Summary

|                               | 2015       | 2016       | 2017       | 2018           |                  | 2019       |                |                |
|-------------------------------|------------|------------|------------|----------------|------------------|------------|----------------|----------------|
|                               |            |            |            | Adopted Budget | Estimated Actual | Budget     | FY 2019 Budget | FY 2019 Actual |
| <b>Revenues</b>               |            |            |            |                |                  |            |                |                |
| Property Taxes                | 11,894,184 | 11,647,466 | 11,971,550 | 13,473,000     | 11,709,850       | 13,840,888 | 3%             | 1%             |
| ATAX Local (%)                | 3,058,339  | 3,215,849  | 3,430,379  | 3,328,968      | 3,483,593        | 3,731,590  | 7%             | 1%             |
| <b>Business Licenses:</b>     |            |            |            |                |                  |            |                |                |
| Business Licenses - Town      | 3,941,652  | 3,866,698  | 3,909,884  | 4,600,370      | 4,305,079        | 4,600,000  | 0%             | 1%             |
| Business Licenses - MASC      | 4,390,826  | 4,357,613  | 4,414,070  | 4,495,590      | 4,407,409        | 4,434,000  | 0%             | 0%             |
| <b>Franchise Fees:</b>        |            |            |            |                |                  |            |                |                |
| Cable                         | 848,708    | 890,697    | 913,141    | 926,686        | 922,944          | 922,000    | -1%            | 0%             |
| Beach Fee                     | 27,351     | 28,430     | 32,588     | 30,260         | 35,086           | 35,000     | 16%            | 0%             |
| Recycling                     |            |            |            |                |                  |            | 0%             | 0%             |
| <b>Permit Fees:</b>           |            |            |            |                |                  |            |                |                |
| Construction                  | 552,722    | 1,189,212  | 961,365    | 592,076        | 881,926          | 560,000    | -3%            | -37%           |
| Development                   | 15,201     | 20,902     | 12,344     | 12,803         | 12,181           | 22,500     | -3%            | 3%             |
| Other                         | 89,023     | 89,456     | 1,123,530  | 898,300        | 984,206          | 925,000    | 100%           | 2%             |
| <b>Intergovernmental</b>      | 821,085    | 810,322    | 849,905    | 821,000        | 838,982          | 840,000    | 3%             | 0%             |
| <b>Grants:</b>                |            |            |            |                |                  |            |                |                |
| Beaufort County - Haemat      | 11,677     | 11,677     | 11,677     | 11,677         | 11,677           | 11,680     | 0%             | 0%             |
| Beaufort County - Equip       | 132,041    | 135,083    | 128,729    | 132,000        | 132,000          | 132,000    | 0%             | 0%             |
| DHEC                          |            |            | 10,666     | 5,000          | -                | -          | -100%          | 0%             |
| Other                         |            |            | 20,298     |                | 27,082           |            | 0%             | 0%             |
| SC Regional                   |            |            |            |                |                  |            | 0%             | 0%             |
| <b>Miscellaneous Revenue:</b> |            |            |            |                |                  |            |                |                |
| Beach Services                | 239,358    | 229,643    | 249,688    | 234,000        | 251,321          | 190,000    | 5%             | -2%            |
| Donations                     | 2,429      | 146        | 200        | 200            | -                | -          | -100%          | 0%             |
| Municipal Court               | 198,948    | 220,143    | 245,826    | 220,000        | 267,146          | 100,000    | -14%           | 1%             |
| Other                         | 223,525    | 268,241    | 433,674    | 267,070        | 352,621          | 270,000    | 0%             | 7%             |
| Public Safety - EMS           | 1,409,782  | 1,383,496  | 1,428,311  | 1,490,000      | 1,455,343        | 1,400,000  | -6%            | -4%            |
| Public Safety - County D/T    | 55,711     | 53,781     | 52,521     | 54,000         | 51,995           | 52,000     | -4%            | 0%             |
| Town Codes                    | 46         | 10         | 20         | 200            | 30               | 30         | -85%           | 0%             |
| Fund Balance                  |            |            |            | 500,642        |                  | 504,851    | 2%             | 0%             |
| Prior Year Funds              |            |            |            | 291,250        |                  | -          | -100%          | 0%             |
| Victim's Assistance           | 54,399     | 37,134     | 38,505     | 38,000         | 30,346           | 35,000     | -8%            | 15%            |
| <b>Transfers In:</b>          |            |            |            |                |                  |            |                |                |
| EDC                           |            |            |            |                |                  |            | 0%             | 0%             |
| Beach Fees                    | 1,111,138  | 1,111,138  | 1,111,138  | 1,361,138      | 1,164,138        | 1,361,140  | 0%             | 0%             |
| Special Revenue Federal       |            |            | 12,364     |                |                  |            | 0%             | 0%             |
| CIP - Ad Valorem              |            | 1,413,000  | 453,000    | 653,000        | 653,000          | 453,000    | 0%             | 0%             |
| CIP - Sunday Liquor           | 418,150    | 57,500     | 50,000     | 50,000         | 90,000           | 50,000     | 0%             | 0%             |
| CIP - Land                    | 594,000    | 988,752    | 175,000    | 175,000        | 175,000          | 175,000    | 0%             | 0%             |
| CIP - Road Usage              |            |            | 658,135    |                |                  |            | 0%             | 0%             |
| Hospitality Fee               | 4,391,195  | 3,270,069  | 3,352,245  | 3,492,245      | 3,459,245        | 3,492,249  | 0%             | 0%             |
| TIP                           | 269,398    | 269,398    | 175,000    | 180,000        | 180,000          | 180,000    | 0%             | 0%             |
| ATAX                          | 1,338,188  | 1,396,057  | 1,696,220  | 1,595,900      | 1,565,900        | 1,565,900  | 0%             | 0%             |
| Electric Franchise fee        | 311        | 87,878     | 90,000     | 90,000         | 90,000           | 90,000     | 0%             | 0%             |
| Stormwater                    | 94,258     | 94,258     | 95,000     | 125,000        | 125,000          | 125,000    | 0%             | 0%             |
| Lease/Other                   | 12,000     |            |            | 600,000        |                  |            | 0%             | 0%             |
| Investments                   | 2,547      | 2,454      | 3,620      | 2,500          | 177,004          | 175,000    | -3000%         | -1%            |
| <b>Total Revenues</b>         | 36,799,403 | 38,496,303 | 38,779,674 | 40,230,036     | 39,828,470       | 40,257,849 |                |                |
| <b>Increase/Decrease</b>      |            | 2,296,900  | (183,829)  | 2,548,962      | 1,047,798        | 679,359    |                |                |
| <b>%</b>                      |            | 5.86%      | -0.48%     | 3.59%          | 2.70%            | 1.69%      |                |                |

## General Fund - FY 2019 Budget Summary

| Expenditures                   | 2018      |           | 2019      |                |                  |           |                |                     |
|--------------------------------|-----------|-----------|-----------|----------------|------------------|-----------|----------------|---------------------|
|                                | 2015      | 2016      | 2017      | Adopted Budget | Estimated Actual | Change    |                |                     |
|                                |           |           |           |                |                  | Budget    | FY 2018 Budget | FY 2018 Est. Actual |
| General Government:            |           |           |           |                |                  |           |                |                     |
| Town Council                   | 408,860   | 427,765   | 394,083   | 526,646        | 524,256          | 520,908   | -3%            | -3%                 |
| Town Council - Initiative      |           | 122,285   | 170,061   | 740,000        | 740,000          | -         | -100%          | -100%               |
| Town Manager                   | 898,090   | 853,768   | 641,965   | 666,124        | 695,226          | 649,813   | -7%            | -2%                 |
| Human Resources                | 357,289   | 353,814   | 349,476   | 662,266        | 600,871          | 613,331   | -6%            | -7%                 |
| Total General Government       | 1,564,239 | 1,738,633 | 1,555,585 | 2,595,036      | 2,560,353        | 1,784,052 | -32%           | -32%                |
| Management Services:           |           |           |           |                |                  |           |                |                     |
| Finance                        |           |           |           |                |                  |           |                |                     |
| Administration                 | 291,907   | 291,019   | 302,132   | 319,757        | 312,690          | 312,264   | 3%             | -2%                 |
| Accounting                     | 606,567   | 606,998   | 542,740   | 693,463        | 671,248          | 724,583   | 4%             | 15%                 |
| Procurement                    |           |           |           |                |                  | 200,347   | 100%           | 100%                |
| Revenue Services               | 606,126   | 604,859   | 606,193   | 844,274        | 741,035          | 797,151   | -8%            | 6%                  |
|                                | 1,504,600 | 1,502,876 | 1,451,065 | 1,857,494      | 1,695,263        | 2,034,346 | 21%            | 26%                 |
| Administrative Services        |           |           |           |                |                  |           |                |                     |
| Records Management             | 264,885   | 220,398   | 253,243   | 297,268        | 254,862          | 302,323   | 27%            | 18%                 |
| Legal                          | 493,858   | 463,789   | 470,845   | 345,948        | 470,205          | 553,354   | 2%             | 15%                 |
| Office of Cultural Affairs     |           |           |           | 182,638        | 144,887          | 179,393   | -2%            | 24%                 |
| Communications                 |           |           |           |                |                  | 304,207   | 100%           | 100%                |
| Municipal Court                | 494,921   | 413,926   | 386,754   | 398,872        | 381,474          | 386,950   | -3%            | -8%                 |
| Information Technology         | 2,466,009 | 2,029,472 | 2,024,334 | 2,262,397      | 2,309,146        | 2,022,674 | -8%            | -9%                 |
|                                | 3,729,673 | 3,127,601 | 3,129,256 | 3,687,270      | 3,565,574        | 3,822,671 | 5%             | 7%                  |
| Total Management Services      | 4,894,399 | 4,532,557 | 4,576,221 | 5,304,764      | 5,260,847        | 5,880,227 | 7%             | 12%                 |
| Community Services:            |           |           |           |                |                  |           |                |                     |
| Community Development          |           |           |           |                |                  |           |                |                     |
| Administration                 | 469,752   | 479,077   | 536,333   | 512,650        | 499,650          | 636,956   | 24%            | 27%                 |
| Comprehensive Planning         | 578,154   | 520,792   | 509,473   | 704,285        | 698,580          | 687,347   | -1%            | 8%                  |
| Development, Review and Zoning | 613,114   | 668,898   | 601,484   | 818,183        | 776,740          | 784,497   | -4%            | 1%                  |
| Building                       | 653,444   | 754,959   | 967,486   | 726,361        | 640,022          | 798,175   | 10%            | 25%                 |
| CD Services                    | 363,408   | 329,022   | 335,553   | 375,894        | 363,017          | 408,266   | 8%             | 7%                  |
|                                | 2,597,772 | 2,772,707 | 2,952,229 | 3,136,673      | 2,998,008        | 3,315,236 | 8%             | 13%                 |
| Public Projects and Facilities |           |           |           |                |                  |           |                |                     |
| Administration                 | 254,895   | 263,379   | 251,524   | 280,604        | 264,689          | 292,015   | 1%             | 10%                 |
| Engineering                    | 904,987   | 923,622   | 1,235,129 | 1,071,991      | 1,075,650        | 1,042,466 | -3%            | -3%                 |
| Facilities Management          | 3,980,999 | 3,858,960 | 3,741,645 | 4,962,154      | 4,288,813        | 4,622,281 | 1%             | 9%                  |
|                                | 4,880,881 | 5,045,961 | 5,228,302 | 5,724,750      | 5,629,152        | 5,736,666 | 0%             | 2%                  |
| Total Community Services       | 7,238,603 | 7,868,668 | 7,760,538 | 8,804,452      | 8,568,460        | 9,054,434 | 2%             | 6%                  |

**General Fund - FY 2019 Budget Summary**

|                                          | 2015              | 2016              | 2017               | 2018              |                   | 2019              |                |                             |
|------------------------------------------|-------------------|-------------------|--------------------|-------------------|-------------------|-------------------|----------------|-----------------------------|
|                                          |                   |                   |                    | Adopted Budget    | Estimated Actual  | Budget            | FY 2018 Budget | % change FY 2018 vs FY 2017 |
| <b>Public Safety:</b>                    |                   |                   |                    |                   |                   |                   |                |                             |
| <b>Fire Rescue</b>                       |                   |                   |                    |                   |                   |                   |                |                             |
| Administration                           | 320,583           | 310,870           | 340,709            | 376,095           | 381,172           | 386,493           | 2%             | 1%                          |
| Operations                               | 9,501,008         | 9,599,610         | 9,652,771          | 9,960,135         | 9,881,401         | 9,983,968         | -1%            | 1%                          |
| E-911 Communications                     | 1,008,894         | 1,067,696         | 1,081,980          | 1,060,950         | 1,143,890         | 1,293,695         | 12%            | 13%                         |
| E-911 Communications Support             | 257,640           | 284,138           | 286,042            | 254,439           | 234,201           | 249,490           | 10%            | 7%                          |
| Emergency Management                     | 133,138           | 140,944           | 157,342            | 158,023           | 151,487           | 180,865           | 3%             | 7%                          |
| Fire Prevention                          | 572,246           | 590,699           | 576,709            | 614,994           | 581,795           | 609,068           | -5%            | 4%                          |
| Fleet Maintenance                        | 338,326           | 347,598           | 313,905            | 399,453           | 300,708           | 600,495           | 1%             | 20%                         |
| EMS Training                             | 197,348           | 204,384           | 188,964            | 322,784           | 298,487           | 408,335           | 27%            | 37%                         |
| Support Services                         | 1,349,866         | 951,155           | 1,395,084          | 711,941           | 660,201           | 769,395           | 7%             | 10%                         |
| Safety and Professional Development      | 713,425           | 726,862           | 723,784            | 654,782           | 640,072           | 682,712           | 3%             | 6%                          |
| <b>Total Fire Rescue</b>                 | <b>14,684,484</b> | <b>14,433,313</b> | <b>14,947,244</b>  | <b>14,866,142</b> | <b>14,487,417</b> | <b>15,439,901</b> | 2%             | 5%                          |
| <b>Public Safety - Police Services</b>   | <b>3,220,413</b>  | <b>3,443,143</b>  | <b>3,654,798</b>   | <b>3,728,316</b>  | <b>3,678,316</b>  | <b>3,895,874</b>  | 4%             | 6%                          |
| <b>Townwide (non-departmental):</b>      |                   |                   |                    |                   |                   |                   |                |                             |
| Personnel                                | 214,044           | 167,127           | 452,259            | 332,080           | 348,067           | 348,538           | 48%            | -5%                         |
| Operating                                | 1,380,033         | 1,402,859         | 1,448,213          | 2,177,811         | 1,609,791         | 2,176,344         | 3%             | 35%                         |
| Capital                                  | 41,635            | 30,882            | 32,000             | 789,000           | 789,000           | 204,000           | -74%           | -74%                        |
| Transfers Out                            | -                 | 986,752           | 7,188,000          | -                 | -                 | -                 | -              | -                           |
| Grants                                   | 2,286,747         | 2,780,166         | 1,609,724          | 1,322,115         | 1,952,595         | 1,606,110         | 4%             | 4%                          |
| <b>Total Townwide (non-departmental)</b> | <b>3,922,459</b>  | <b>5,387,026</b>  | <b>10,720,296</b>  | <b>4,220,996</b>  | <b>6,700,353</b>  | <b>6,334,992</b>  | -6%            | 0%                          |
| <b>Total Expenditures</b>                | <b>35,485,477</b> | <b>37,354,198</b> | <b>45,668,854</b>  | <b>40,109,096</b> | <b>39,004,746</b> | <b>40,377,829</b> | 0%             | 3%                          |
| <b>Net change in fund balances</b>       | <b>1,353,926</b>  | <b>1,602,205</b>  | <b>(4,848,210)</b> |                   | <b>613,724</b>    |                   |                |                             |
| <b>Fund balance - beginning</b>          | <b>18,034,509</b> | <b>19,140,325</b> | <b>20,992,430</b>  | <b>16,103,220</b> | <b>16,209,220</b> | <b>16,986,944</b> |                |                             |
| <b>Use of Fund Balance</b>               |                   |                   |                    |                   |                   |                   |                |                             |
| <b>Fund balance - ending</b>             | <b>19,388,435</b> | <b>20,742,530</b> | <b>16,144,220</b>  | <b>16,203,220</b> | <b>16,822,944</b> | <b>17,321,944</b> |                |                             |

**Debt Service Fund - FY 2019 Budget Summary**

|                                | 2018       |            |            |                   |                     | 2019              |                   |                       |
|--------------------------------|------------|------------|------------|-------------------|---------------------|-------------------|-------------------|-----------------------|
|                                | 2015       | 2016       | 2017       | Adopted<br>Budget | Estimated<br>Actual | FY 2019<br>Budget | % change          |                       |
|                                |            |            |            |                   |                     |                   | FY 2018<br>Budget | FY 2018<br>Est Actual |
| <b>GOVERNMENTAL ACTIVITIES</b> |            |            |            |                   |                     |                   |                   |                       |
| <b>Revenues</b>                |            |            |            |                   |                     |                   |                   |                       |
| Property Taxes                 | 5,084,193  | 5,136,244  | 5,229,221  | 5,337,600         | 5,375,874           | 5,429,633         | 1.7%              | 1.0%                  |
| Bonds Issued                   | -          | -          | 27,885,000 | -                 | -                   | -                 | 0.0%              | 0.0%                  |
| Bond Premium                   | -          | -          | 1,574,350  | -                 | -                   | -                 | 0.0%              | 0.0%                  |
| BARS Subsidy                   | 168,051    | 163,696    | 79,889     | 169,870           | 163,000             | -                 | -100.0%           | -100.0%               |
| Investment Income              | 37,374     | 36,983     | 36,250     | 36,000            | 40,235              | 90,000            | 150.0%            | 123.7%                |
| <b>Transfers In:</b>           |            |            |            |                   |                     |                   |                   |                       |
| Beach Preservation Fees        | 4,383,225  | 2,531,437  | 2,536,943  | 5,986,188         | 3,037,326           | 5,305,444         | -11.4%            | 74.7%                 |
| Disaster Fund                  | -          | -          | -          | 4,300,000         | 4,375,000           | 5,536,965         | 0.0%              | 0.0%                  |
| Hospitality Fees               | 1,616,427  | 1,633,112  | 1,607,113  | 2,324,350         | 2,544,348           | 1,695,200         | -39.6%            | -35.7%                |
| Tax Increment Financing        | 4,122,476  | -          | -          | 5,535,000         | 3,318,840           | 3,906,392         | -39.1%            | 0.0%                  |
| Real Estate Transfer Fees      | 2,269,578  | 2,243,682  | 2,393,515  | 2,260,163         | 1,926,665           | 1,928,200         | -15.1%            | -0.4%                 |
| Hospitality Tax Bond           | -          | -          | -          | -                 | -                   | -                 | 0.0%              | 0.0%                  |
| Series 2013 GO Bonds           | -          | -          | -          | -                 | -                   | -                 | 0.0%              | 0.0%                  |
| Lease Revenue                  | 10,889     | 65,336     | 65,336     | 65,000            | 65,000              | -                 | -100.0%           | -100.0%               |
| Total Revenues                 | 17,690,233 | 11,800,379 | 41,227,929 | 25,914,371        | 20,846,278          | 22,840,434        | -15.7%            | 4.8%                  |
| <b>Expenditures</b>            |            |            |            |                   |                     |                   |                   |                       |
| Administrative                 | 11,024     | 11,025     | 17,125     | 40,000            | 13,675              | 100,000           | 190.0%            | 691.3%                |
| Payment to Escrow Agent        | -          | -          | 28,966,152 | 50,000            | -                   | 100,000           | 100.0%            | 100.0%                |
| Contribution to Refunding      | -          | -          | -          | -                 | -                   | -                 | 0.0%              | 0.0%                  |
| Transfers                      | 1,900,110  | -          | -          | -                 | 208,930             | -                 | 0.0%              | -100.0%               |
| Debt Issue Costs               | -          | -          | 472,186    | 750,000           | -                   | 760,953           | 0.0%              | 100.0%                |
| Principal                      | 12,995,000 | 7,420,000  | 8,040,000  | 7,595,000         | 11,830,000          | 17,530,000        | 130.8%            | 48.2%                 |
| Interest                       | 3,702,272  | 3,278,425  | 3,432,746  | 15,765,000        | 6,511,391           | 5,705,047         | -61.8%            | 26.6%                 |
| Total Expenditures             | 18,608,406 | 10,709,450 | 39,928,309 | 24,200,000        | 16,653,896          | 24,200,000        | 0.0%              | 45.3%                 |
| Net change in fund balances    | (918,193)  | 1,100,929  | 1,300,380  | 1,714,371         | 4,192,382           | (2,358,566)       |                   |                       |
| Fund balance - beginning       | 8,404,034  | 7,485,841  | 8,586,770  | 9,886,150         | 9,886,150           | 14,078,532        |                   |                       |
| Fund balance - ending          | 7,485,841  | 8,586,770  | 9,886,150  | 11,600,521        | 14,078,532          | 11,719,966        |                   |                       |

**Capital Improvement Plan by Funding Source - FY 2019 New Projects**

| THOUSANDS OF DOLLARS |                        |                              |                       |         |                        |    |                           |                  |                    |              |
|----------------------|------------------------|------------------------------|-----------------------|---------|------------------------|----|---------------------------|------------------|--------------------|--------------|
| FY 2019 Budget       | FY 2019 Projects Total | Funding Source as Identified | Beach Road Beach Post | GO Bond | Impairment Transfer In | TS | Sundry Liquor Permit Fees | Beach Charge Fee | Grants / Donations | Sale of Land |

**PATHWAY IMPROVEMENTS**

|                                                     |            |          |          |          |          |            |          |          |          |          |
|-----------------------------------------------------|------------|----------|----------|----------|----------|------------|----------|----------|----------|----------|
| Pathway Accessibility & Safety Enhancement Projects | 100        |          |          |          |          | 100        |          |          |          |          |
| <b>TOTAL</b>                                        | <b>100</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>100</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> |

**ROADWAY IMPROVEMENTS**

|                                                                        |              |          |            |              |          |          |          |            |            |          |
|------------------------------------------------------------------------|--------------|----------|------------|--------------|----------|----------|----------|------------|------------|----------|
| Intersection Improvements - W.R. 1st Lane at Squire Pope - Impact fees | 500          |          | 500        |              |          |          |          |            |            |          |
| Reconstruction of Lagoon Road                                          | 675          |          |            | 675          |          |          |          |            |            |          |
| Reconstruction of Nassau Street                                        | 400          |          |            | 400          |          |          |          |            |            |          |
| South Forest Beach Drive Improvements                                  | 400          |          |            | 400          |          |          |          |            |            |          |
| Private Driveways - specific                                           | 375          |          |            |              |          |          |          | 375        |            |          |
| Private Driveways - paving projects TBD                                | 175          |          |            |              |          |          |          | 175        |            |          |
| Paving improvements                                                    | 350          |          |            |              |          |          |          | 350        |            |          |
| Pope Avenue Resurfacing - County Grant/Impact fee                      | 850          |          |            |              |          |          |          |            | 850        |          |
| <b>TOTAL</b>                                                           | <b>3,725</b> | <b>-</b> | <b>500</b> | <b>1,475</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>900</b> | <b>850</b> | <b>-</b> |

**PARK DEVELOPMENT**

|                                               |            |          |            |          |          |          |            |          |          |          |
|-----------------------------------------------|------------|----------|------------|----------|----------|----------|------------|----------|----------|----------|
| Costume area improvements - Park Impact fees  | 400        |          | 400        |          |          |          |            |          |          |          |
| Park Upgrade Impact fees / Sundry Liquor fees | 300        |          | 150        |          |          |          | 150        |          |          |          |
| <b>TOTAL</b>                                  | <b>700</b> | <b>-</b> | <b>550</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>150</b> | <b>-</b> | <b>-</b> | <b>-</b> |

**PUBLIC FACILITIES**

|                      |            |          |          |          |            |          |          |          |          |          |
|----------------------|------------|----------|----------|----------|------------|----------|----------|----------|----------|----------|
| Town Hall Remodeling | 100        |          |          |          | 100        |          |          |          |          |          |
| Fuel Truck Shed      | 55         |          |          |          | 55         |          |          |          |          |          |
| <b>TOTAL</b>         | <b>155</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>155</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> |

**FACILITY IMPROVEMENTS**

|                                                     |              |          |            |          |              |           |          |          |          |          |
|-----------------------------------------------------|--------------|----------|------------|----------|--------------|-----------|----------|----------|----------|----------|
| Sewer Service Projects                              | 3,220        |          |            | 3,220    |              |           |          |          |          |          |
| Fire Hydrant Expansion - Flyover/HIAX               | 100          |          | 45         |          | 67           |           |          |          |          |          |
| Emergency Operations Center Modifications - Flyover | 150          |          | 150        |          |              |           |          |          |          |          |
| <b>TOTAL</b>                                        | <b>3,470</b> | <b>-</b> | <b>195</b> | <b>-</b> | <b>3,287</b> | <b>67</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> |

**BEACH MAINTENANCE**

|                               |            |          |          |            |          |          |          |          |          |          |
|-------------------------------|------------|----------|----------|------------|----------|----------|----------|----------|----------|----------|
| Beach Management & Monitoring | 500        |          |          | 500        |          |          |          |          |          |          |
| <b>TOTAL</b>                  | <b>500</b> | <b>-</b> | <b>-</b> | <b>500</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> |

**LAND**

|                                  |           |          |          |          |          |          |          |          |          |           |
|----------------------------------|-----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------|
| Undeveloped Project / Legal Fees | 28        |          |          |          |          |          |          |          |          | 28        |
| <b>TOTAL</b>                     | <b>28</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b> | <b>28</b> |

**OTHER CAPITAL EXPENDITURES**

|                                                 |              |            |            |          |            |          |          |           |          |            |
|-------------------------------------------------|--------------|------------|------------|----------|------------|----------|----------|-----------|----------|------------|
| Fire Rescue Capital Outlay - from Flyover funds | 102          |            | 102        |          |            |          |          |           |          |            |
| Cost of Issue                                   | 100          |            |            | 100      |            |          |          |           |          |            |
| Acc Order OIP - Impact fees                     | 271          |            | 271        |          |            |          |          |           |          |            |
| Heavy Maintenance OIP - Park Impact fees        | 55           |            | 55         |          |            |          |          |           |          |            |
| Transfer to General Fund                        | 678          | 453        |            |          |            |          |          | 50        |          | 174        |
| <b>TOTAL</b>                                    | <b>1,206</b> | <b>453</b> | <b>428</b> | <b>-</b> | <b>100</b> | <b>-</b> | <b>-</b> | <b>50</b> | <b>-</b> | <b>174</b> |

**TOTAL BUDGET BY FUNDING SOURCE**

|                             |              |            |              |              |              |            |          |            |            |            |            |
|-----------------------------|--------------|------------|--------------|--------------|--------------|------------|----------|------------|------------|------------|------------|
| <b>TOTAL FY 2019 BUDGET</b> | <b>9,876</b> | <b>453</b> | <b>1,441</b> | <b>1,975</b> | <b>3,320</b> | <b>322</b> | <b>-</b> | <b>200</b> | <b>900</b> | <b>650</b> | <b>174</b> |
|-----------------------------|--------------|------------|--------------|--------------|--------------|------------|----------|------------|------------|------------|------------|

\*Beginning in FY 2018, DOT Road Projects funded by the Community Development Block Grant (CDBG) are separate from the Capital Improvement Plan Budget.

\*The remainder of the Beaufort Flyover funding would be reallocated to the Fire Rescue Capital Outlay, the Fire Hydrant project and the EOC project.

Stormwater Fund - FY 2019 Budget Summary

|                                   | 2015             | 2016             | 2017             | 2018              |                     | FY 2019<br>Budget | 2019<br>% change  |                        |
|-----------------------------------|------------------|------------------|------------------|-------------------|---------------------|-------------------|-------------------|------------------------|
|                                   |                  |                  |                  | Adopted<br>Budget | Estimated<br>Actual |                   | FY 2018<br>Budget | FY 2018<br>Est. Actual |
| <b>Revenues</b>                   |                  |                  |                  |                   |                     |                   |                   |                        |
| Stormwater Fees                   | 3,554,386        | 3,550,400        | 3,583,005        | 4,800,000         | 4,769,396           | 4,775,000         | -0.32%            | 0.12%                  |
| Fund Balance/Prior Year Funds     | -                | -                | -                | -                 | -                   | 335,000           | 100.00%           | 100.00%                |
| Federal Grant                     | 25,764           | 44,272           | -                | -                 | -                   | -                 | 0.00%             | 0.00%                  |
| Bond Proceeds                     | -                | -                | -                | 3,100,000         | 3,100,000           | -                 | 0.00%             | 0.00%                  |
| Interest                          | 450              | 642              | 1,202            | 450               | 2,978               | 1,000             | 133.33%           | -66.42%                |
| <b>Total Revenues</b>             | <b>3,577,600</b> | <b>3,595,114</b> | <b>3,584,207</b> | <b>7,900,450</b>  | <b>7,872,374</b>    | <b>5,311,000</b>  | <b>-32.78%</b>    | <b>-32.54%</b>         |
| <b>Expenses</b>                   |                  |                  |                  |                   |                     |                   |                   |                        |
| Personnel                         | 317,575          | 358,016          | 283,155          | 544,000           | 544,043             | 515,000           | 3.49%             | 3.48%                  |
| Operating                         | 226,662          | 339,567          | 340,856          | 390,000           | 453,747             | 374,000           | -4.10%            | -17.58%                |
| Projects                          | 1,989,697        | 1,072,181        | 799,316          | 5,653,000         | 5,338,113           | 2,619,000         | -53.57%           | -52.33%                |
| Capital                           | -                | 23,764           | -                | 32,000            | 32,000              | 32,000            | 0.00%             | 0.00%                  |
| Transfers                         | 94,258           | 94,258           | 1,095,000        | 125,000           | 125,000             | 125,000           | 0.00%             | 0.00%                  |
| Debt Service/Other                | (96,761)         | 961,510          | 1,433,596        | 1,154,000         | 1,514,000           | 1,598,000         | 38.47%            | 5.55%                  |
| <b>Total Expenses</b>             | <b>2,460,431</b> | <b>2,849,396</b> | <b>3,951,923</b> | <b>7,898,000</b>  | <b>8,049,903</b>    | <b>5,311,000</b>  | <b>-32.76%</b>    | <b>-34.02%</b>         |
| <b>Net Change In Fund Balance</b> | <b>1,116,169</b> | <b>745,718</b>   | <b>(367,716)</b> | <b>2,450</b>      | <b>(177,529)</b>    | <b>-</b>          |                   |                        |
| <b>Beginning Fund Balance</b>     | <b>5,250,577</b> | <b>6,407,746</b> | <b>7,254,464</b> | <b>6,786,748</b>  | <b>6,789,198</b>    | <b>6,611,669</b>  |                   |                        |
| <b>Ending Fund Balance</b>        | <b>6,407,746</b> | <b>7,154,464</b> | <b>6,786,748</b> | <b>6,789,198</b>  | <b>6,611,669</b>    | <b>6,611,669</b>  |                   |                        |



ORDINANCE NO. 2019-14PROPOSED ORDINANCE NO. 2019-15

**AN ORDINANCE TO RAISE REVENUE AND ADOPT A BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2020; TO ESTABLISH A PROPERTY TAX LEVY; TO ESTABLISH FUNDS; TO ESTABLISH A POLICY FOR ACQUISITION OF RIGHTS OF WAY AND EASEMENTS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, Section 5-7-260(3) of the Code of Laws for South Carolina 1976, as amended, and Section 2-7-20 of the Municipal Code of the Town of Hilton Head Island, South Carolina, require that the Town Council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

WHEREAS, Town Council also desires to set aside funds for an Operating Reserve to provide for emergency-related expenditures and to offset fiscal year tax revenue income stream deficiency; and

WHEREAS, Town Council finds that it would be more economical and efficient to authorize the Town Manager to move forward with construction contract modifications, change orders, contract price adjustments, and execution of contracts for supplies, services, and construction where the contract amount involved does not exceed the budget line item or project budget as approved by Town Council in the Consolidated Municipal Budget.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

NOTE: Underlined and bold-face typed portions indicate additions to the Ordinance. ~~Stricken~~ Portions indicate deletions to the Ordinance.

**Section 1. Adoption of the Budget.** The prepared budget of estimated revenues and expenses, a copy of which is attached hereto and incorporated herein, is hereby adopted as the budget for the Town of Hilton Head Island for the fiscal year ending June 30, 2020.



Proposed Ordinance No. 2019-15

Page Two

The General Fund budgetary authority is adopted at the Departmental level as follows:

| Expenditure Type               | 2020 Budget          | 2021 Budget          |
|--------------------------------|----------------------|----------------------|
| Town Council                   | \$ 479,224           | \$ 493,601           |
| Town Manager                   | 846,440              | 871,833              |
| Human Resources                | 687,766              | 648,424              |
| Administrative Services        | 3,957,269            | 4,073,649            |
| Finance                        | 1,992,406            | 2,052,125            |
| Community Development          | 3,553,997            | 3,601,547            |
| Public Projects and Facilities | 5,642,043            | 5,911,304            |
| Fire Rescue                    | 15,499,346           | 15,897,377           |
| Sheriff / Other Public Safety  | 3,813,237            | 3,927,634            |
| Townwide                       | 2,823,316            | 3,289,036            |
| Community / Grants             | 1,813,273            | 1,791,917            |
|                                | <u>\$ 41,108,317</u> | <u>\$ 42,558,447</u> |

The Debt Service Fund and the Stormwater Fund are adopted at the Fund level. Capital Improvement Projects are adopted at the Project level. The Town Manager is authorized to transfer amounts up to \$100,000; larger transfers require Town Council approval.

**Section 2. Establishment of Property Tax Levy.** A tax to cover the period from July 1, 2019 through June 30, 2020, inclusive, for the sums and in the manner hereinafter mentioned, is and shall be, levied, collected and paid into the treasury of the Town of Hilton Head Island for its uses at a rate of mills on assessed value of real estate and personal property of every description owned in the Town of Hilton Head Island, except such property as is exempt from taxation under the Constitution and laws of the State of South Carolina. Said tax levy shall be paid into the Town Treasury for the credit of the Town of Hilton Head Island for its corporate purposes, for the purpose of paying current operational expenses of the said municipality 17.13 mills, Debt Service 5.97 mills, and Disaster Recovery (millage override) 5.00 mills making the total levy of 28.10 mills.

**Section 3. Establishment of Funds.** To facilitate operations, there shall be established and maintained a General Fund, a Capital Projects Fund, a Debt Service Fund, a Stormwater Fund and other appropriate funds in such amounts as are provided for in the aforesaid Budget, as hereby adopted or as hereafter modified pursuant to law.

**Section 4. Acquisition of Rights of Way and Easements.** The Town Manager is charged with the duty of executing all necessary documents to obtain rights of way, easements, and other property interests necessary to complete duly authorized Capital Improvement Projects. Capital Improvement Projects based on the ownership and life expectancy of the assets or improvements or based on the funding source authorized may be budgeted in the General, Capital Projects or Stormwater Funds. If expenditures are expressly authorized for an approved Capital Improvement Project in any of the budgeted funds, then the Town Manager is hereby authorized to execute all

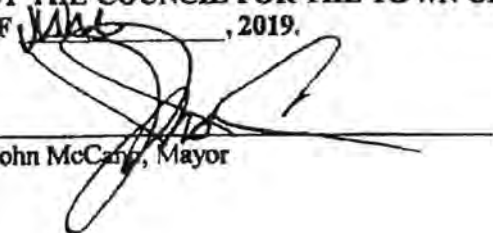
Proposed Ordinance No. 2019-15  
Page Three

necessary documents and to expend such funds as are approved pursuant to the Capital Improvement budgets. Provided, however, in the event that the costs of an acquisition of such real property interests materially exceeds the amount budgeted in the approved Capital Improvement Project and the Town Manager is unable to shift additional funds from other authorized sources, the Town Manager shall be required to obtain the approval of Town Council for such additional expenditures. Nothing herein shall obviate the requirement that no condemnations shall be commenced without the appropriate approval of the Town Council for the Town of Hilton Head Island.

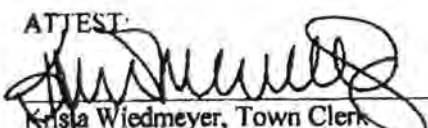
**Section 5 Severability.** If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 6. Effective Date.** This Ordinance shall be effective upon its enactment by the Town Council for the Town of Hilton Head Island.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF  
HILTON HEAD ISLAND ON THIS 4th DAY OF JUNE, 2019.

  
John McCann, Mayor

ATTEST:

  
Krista Wiedmeyer, Town Clerk

First Reading: MAY 7, 2019  
Public Hearing: JUNE 2, 2019  
Revised First Reading:  
Second Reading: JUNE 4, 2019

APPROVED AS TO FORM:

  
CURTIS L. COLTRANE, Town Attorney

Introduced by Council Member:

William Harkin

**ORDINANCE NO. 2020-15**

**PROPOSED ORDINANCE NO. 2020-12**

**AN ORDINANCE TO RAISE REVENUE AND ADOPT A BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2021; TO ESTABLISH A PROPERTY TAX LEVY; TO ESTABLISH FUNDS; TO ESTABLISH A POLICY FOR ACQUISITION OF RIGHTS OF WAY AND EASEMENTS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, Section 5-7-260(3) of the Code of Laws for South Carolina 1976, as amended, and Section 2-7-20 of the Municipal Code of the Town of Hilton Head Island, South Carolina, require that the Town Council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

WHEREAS, Town Council also desires to set aside funds for an Operating Reserve to provide for emergency-related expenditures and to offset fiscal year tax revenue income stream deficiency; and

WHEREAS, Town Council also desires to give the Town Manager authority to adjust revenue estimates as necessary to account for the economic impact of the COVID-19 Pandemic, without changing the total adopted budget. Any changes made under this section will be reported to Town Council on a quarterly basis; and

WHEREAS, Town Council finds that it would be more economical and efficient to authorize the Town Manager to move forward with construction contract modifications, change orders, contract price adjustments, and execution of contracts for supplies, services, and construction where the contract amount involved does not exceed the budget line item or project budget as approved by Town Council in the Consolidated Municipal Budget.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

**NOTE: Underlined and bold-face typed portions indicate additions to the Ordinance. ~~Stricken~~ Portions indicate deletions to the Ordinance.**

**Section 1. Adoption of the Budget.** The prepared budget of estimated revenues and expenses, a copy of which is attached hereto and incorporated herein, is hereby adopted as the budget for the Town of Hilton Head Island for the fiscal year ending June 30, 2021.

## Proposed Ordinance No. 2020-12

## Page Two

The General Fund budgetary authority is adopted at the Departmental level as follows:

|                                | 2020<br>Budget       | 2021<br>Budget       |
|--------------------------------|----------------------|----------------------|
| Town Council                   | 479,224              | 493,601              |
| Town Manager                   | 846,440              | 871,833              |
| Human Resources                | 687,766              | 648,424              |
| Administrative Services        | 3,957,269            | 4,073,649            |
| Finance                        | 1,992,406            | 2,052,125            |
| Community Development          | 3,553,997            | 3,601,547            |
| Public Projects and Facilities | 5,642,043            | 5,911,304            |
| Fire Rescue                    | 15,499,346           | 15,897,377           |
| Sheriff/Other Public Safety    | 3,813,237            | 3,927,634            |
| Townwide                       | 2,823,316            | 3,289,036            |
| Community/Grants               | 1,813,273            | 1,791,917            |
| <b>Total</b>                   | <b>\$ 41,108,317</b> | <b>\$ 42,558,448</b> |

The Debt Service Fund and the Stormwater Fund are adopted at the Fund level. Capital Improvement Projects are adopted at the Project level. The Town Manager is authorized to transfer amounts up to \$100,000; larger transfers require Town Council approval.

**Section 2. Establishment of Property Tax Levy.** A tax to cover the period from July 1, 2019 through June 30, 2020, inclusive, for the sums and in the manner hereinafter mentioned, is and shall be, levied, collected and paid into the treasury of the Town of Hilton Head Island for its uses at a rate of mills on assessed value of real estate and personal property of every description owned in the Town of Hilton Head Island, except such property as is exempt from taxation under the Constitution and laws of the State of South Carolina. Said tax levy shall be paid into the Town Treasury for the credit of the Town of Hilton Head Island for its corporate purposes, for the purpose of paying current operational expenses of the said municipality 17.2 mills, Debt Services 5.9 mills, and Disaster Recovery (millage override) 5.00 mills making the total levy of 28.1 mills.

**Section 3. Establishment of Funds.** To facilitate operations, there shall be established and maintained a General Fund, a Capital Projects Fund, a Debt Service Fund, a Stormwater Fund and other appropriate funds in such amounts as are provided for in the aforesaid Budget, as hereby adopted or as hereafter modified pursuant to law.

**Section 4. Acquisition of Rights of Way and Easements.** The Town Manager is charged with the duty of executing all necessary documents to obtain rights of way, easements, and other property interests necessary to complete duly authorized Capital Improvement Projects.

Proposed Ordinance No. 2020-12

Page Three

Capital Improvement Projects based on the ownership and life expectancy of the assets or improvements or based on the funding source authorized may be budgeted in the General, Capital Projects or Stormwater Funds. If expenditures are expressly authorized for an approved Capital Improvement Project in any of the budgeted funds, then the Town Manager is hereby authorized to execute all necessary documents and to expend such funds as are approved pursuant to the Capital Improvement budgets. Provided, however, in the event that the costs of an acquisition of such real property interests materially exceeds the amount budgeted in the approved Capital Improvement Project and the Town Manager is unable to shift additional funds from other authorized sources, the Town Manager shall be required to obtain the approval of Town Council for such additional expenditures. Nothing herein shall obviate the requirement that no condemnations shall be commenced without the appropriate approval of the Town Council for the Town of Hilton Head Island.

**Section 5. Assignment of Funds for Future Use.** Town Council continues to assign and reserve funds for its future dredging projects in the amount of \$200,000 of Hospitality Tax and \$100,000 for Pine Island renourishment from Stormwater funds in accordance with Town practice.

**Section 6. Severability.** If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 7. Effective Date.** This Ordinance shall be effective upon its enactment by the Town Council for the Town of Hilton Head Island.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS** 16 **DAY OF** May, 2020.

  
John J. McLaughlin, Mayor

ATTEST:

  
Krista M. Wiedmeyer, Town Clerk

First Reading: May 12, 2020

Public Hearing: June 16, 2020

Revised First Reading: N/A

Second Reading: June 16, 2020

APPROVED AS TO FORM

  
Curtis L. Coltrane, Town Attorney

Introduced by Council Member:

Bill Harkins





## TOWN OF HILTON HEAD ISLAND

### *Staff Report Memo*

TO: Mayor & Town Council  
FROM: Joshua A. Gruber, Deputy Town Manager  
VIA: Marc Orlando, Town Manager  
DATE: April 27, 2022  
SUBJECT: Agreement with the South Island Dredging Association to Provide Funding Assistance for the Dredging of the Harbour Town Yacht Basin & Braddock Cove Creek

#### **Recommendation:**

Consider a Resolution authorizing the Town Manager to enter into an agreement (Exhibit "A" to the Resolution) with the South Island Dredging Association to assist in the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek.

#### **Summary:**

The South Island Dredging Association seeks financial assistance from the Town for its program of periodically dredging the Harbour Town Yacht Basin and Braddock Cove Creek. Both are used by the public for docking, sightseeing, navigation, and provide access to public and other amenities and other tourism-related activities. The agreement shall include a term of two years and the funds provided by the Town shall not exceed a cumulative total of \$600,000 from collected Hospitality Taxes. At their April 19, 2022 meeting the Finance and Administrative Committee unanimously approved forwarding the Resolution to Town Council for review and consideration.

#### **Background:**

In the Town's previous fiscal year Budgets for FY 2019, FY 2020, and FY 2021, the Town set aside budget funds from collected Hospitality Taxes in the amount of \$200,000 per year for a total cumulative amount of \$600,000 for allocation to the Association for the purpose of assisting with dredging of the Harbour Town Yacht Basin and Braddock Cove Creek. These funds have not yet been used and have rolled over into the Town's reserve accounts. The Town and Association have negotiated an agreement by which the Town will provide funding assistance in an amount not to exceed the budgeted funds for the dredging of the Harbour Town Yacht Basin and Braddock Cove on a reimbursement basis. The Town took similar action in 2018, transferring reserved funds in the amount of \$600,000 to the Association for dredging purposes.

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Stephen G. Riley Municipal Complex  
One Town Center Court • Hilton Head Island • South Carolina • 29928  
[www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)

South Island Dredging Association Funding Assistance Request

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**Attachments:**

- Request from the South Island Dredging Association
- Draft Resolution
- Draft Agreement
- FY2019 Budget Ordinance
- FY2020 Budget Ordinance
- FY2021 Budget Ordinance

ELECTRONICALLY FILED - 2022 Oct 11 3:30 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701625

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Exhibit "B" To Affidavit of Krista M. Wiedmeyer



STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )



The South Island Dredging Association (hereinafter, the "Association") and the Town of Hilton Head Island, South Carolina (hereinafter, the "Town") make this Agreement (hereinafter, the "Agreement") on this 14 Day of October, 2022.

#### RECITALS

Whereas, the Association has historically undertaken a program of periodically dredging the Harbour Town Yacht Basin which includes areas of the entrance channel, fuel docks, and inner basin, and Braddock Cove Creek which includes the Gull Point and South Beach Marinas to ensure the safe public access and navigability of these waterways and the public amenities that are associated within these areas; and

Whereas, the Harbour Town Yacht Basin and Braddock Cove Creek are used by the general public for docking, sightseeing, navigation, access to public and other amenities and other tourism related activities; and

Whereas, the Town has historically provided funding to support these dredging activities through the identification of Hospitality Tax funds; and

Whereas, unless periodic dredging and maintenance of these waterways continues to occur, then the internationally recognized Harbour Town Marina and Braddock Cove Creek will lose their usefulness, reputation, and ability to generate significant tourism related economic activity for Hilton Head Island; and

Whereas, the Town Council has budgeted and set aside funding to support the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek in the Fiscal Year 2019, the Fiscal Year 2020 and Fiscal Year 2021 budgets in the amount of \$200,000 per year for a total set aside of funding in the amount of \$600,000; and

Whereas, the Town and Association desire to enter into this Agreement by which the Association will undertake the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek as described in this Agreement, and the Town will provide funding to assist in that work under the terms and conditions set out in this Agreement.

Now, therefore, for and in consideration of the sum of One Dollar, and the exchange and performance of the mutual promises, undertakings and covenants described in this Agreement, the receipt and sufficiency of which is acknowledged, the Town and the Association agree as follows:

1. The Association shall undertake a program of dredging the Harbour Town Yacht Basin including the areas of the entrance channel, fuel docks, and inner basin. Additionally

dredging may occur in Braddock Cove Creek including its entrance and main channels and the Gull Point and South Beach Marinas.

- (a) The funds to be delivered under this Agreement from the Town to the Association are public funds, and the Association must comply with the competitive sealed bidding requirements of the Town's procurement code [§ 11-1-111, *Municipal Code of the Town of Hilton Head Island* (1983)], for all contracts related to the dredging of the Harbour Town Yacht Basin and Braddock Cove Creek..
  - (b) The Association must deliver documentation to the Town to verify that it has complied with the requirements of Article 11 of the Town procurement code [§ 11-1-111, *Municipal Code of the Town of Hilton Head Island* (1983)], including:
    - (i) A copy of the notice to bidders,
    - (ii) A copy of the log showing receipt of bids,
    - (iii) A copy of the document showing evaluation of the bids,
    - (iv) A copy of the notification and award to the successful bidder.
  - (c) The Association must also deliver documentation to the Town to verify that the public funds were used only for the dredging of the above-described areas including the invoices to which any public funds were applied, and proof of payment of the invoices. All funding to be provided to the Association under this Agreement shall be made on a reimbursement basis with sufficient documentation described above first being submitted to the Town prior to any payments being made.
  - (d) All documentation to be delivered to the Town under this Article 1 must be delivered to Mr. John Troyer, Finance Director for the Town of Hilton Head Island, One Town Center Court, Hilton Head Island SC 29928, within thirty (30) days following:
    - (i) the award of any contract for all or any part of the dredging activities identified herein; or,
    - (ii) the payment of any invoice to which all or any part of the public funds will be applied.
2. The funds delivered by the Town to the Association as described and conditioned in this Agreement shall not exceed the total sum of Six Hundred Thousand (\$600,000.00) Dollars. The Association acknowledges that the funds delivered under this Agreement must be used by the Association solely for purposes of performing the dredging activities described herein.
  3. The Term of this Agreement shall commence on the date this Agreement set out above, and the Term shall end on the date which is two (2) years from the date this Agreement set out above.

4. Any payments to be made by the Town under the terms of this Agreement shall be made from funds that were budgeted by the Town during prior fiscal years occurring prior to the Term of this Agreement and which have been rolled over into the following fiscal years' budgets. The Town and the Association intend that the payment obligations of the Town shall constitute a current expense of the Town and shall not in any way be construed to be a debt of the Town in contravention of any applicable constitutional or statutory limitations concerning indebtedness of the Town, nor shall anything contained herein constitute a pledge of general tax revenues, funds, money or credit of the Town.

5. The Association shall be responsible for providing both a cost-effective design and project schedule that are acceptable to the Town and that are permissible by all applicable regulating agencies.

7. The Association shall be responsible for obtaining and complying with all necessary local, state, and federal permits for the work associated with and to be completed with the public funds to be provided pursuant to this Agreement.

8. Should any part of this Agreement be rendered void, invalid, or unenforceable by any court of law, such a determination shall not render void, invalid, or unenforceable any other part of this Agreement.

9. This Agreement has been made and entered into in the State of South Carolina, and the laws of South Carolina shall govern the validity and interpretation of this Agreement in the performance due hereunder.

10. This Agreement may not be modified unless such modification is in writing and signed by both parties.

11. The Association may not assign this contract without the prior written approval of the Town.

12. The Association shall defend, indemnify, and hold harmless the Town, its officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses, and/or damages, including attorney's fees, whether incurred prior to the institution of litigation, during litigation, or on appeal arising out of or resulting from the conduct of any activity hereby authorized or the performance of any requirement imposed pursuant by this Agreement, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.

13. The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by this Agreement. Nothing contained herein creates any relationship between the Town and the Association other than that which is expressly stated herein. The Town is interested only in the results to be achieved under this Agreement, and the conduct and control of the agents and employees of the Association and the methods utilized by the Association in

fulfilling its obligations hereunder shall lie solely and exclusively with the Association and its agents and employees shall not be considered agents or employees of the Town for any purpose. No person employed by the Association shall have any benefits, status, or right of employment with the Town.

14. The Association, by signing this Agreement, hereby certifies that Association shall comply with all applicable requirements of the South Carolina Illegal Immigration Reform Act, S.C. Code Ann. §41-8-10, *et seq.* (2021) (the "Act"), and that Association covenants and agrees as follows:

14.1. Association shall not knowingly or intentionally employ any unauthorized alien and, unless excluded from coverage of the "Act", shall verify the work authorization of all newly hired employees performing work under the contract by either:

(a) registering and participating in the Federal Work Authorization Program (E-verify) and verifying the work authorization of every new hired employee within five (5) business days after employing employee; or

(b) employing only workers who, at the time of said employment:

- (i) possess a valid South Carolina driver's license or identification card; or are eligible to obtain a South Carolina driver's license or identification card by providing proof of name, social security number and date and place of birth; or,
- (ii) possess a valid driver's license or identification card from another state deemed by the Executive Director Department of Motor Vehicles to have requirements at least as strict as those in South Carolina.

The Association may choose either option 1 (a) or option 1 (b) but acknowledges that the Association cannot use both.

14.2. The Association agrees to provide to the Town all documentation requested by it to establish either:

(a) the applicability of the South Carolina Illegal Immigration Reform Act to the Association,

or,

(b) compliance with the South Carolina Illegal Immigration Reform Act by the Association.

14.3. Association agrees to include in any contracts with its sub-contractors, language requiring its sub-Associations to:

(a) comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code

of Laws.

and.

- (b) include in their contracts with the sub-contractors, language requiring the sub-contractors to comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws.

14.4. The Association acknowledges and agrees that it shall comply with requirements of the Immigration Reform and Control Act of 1986 including the non-discrimination provisions thereof and shall complete all required I-9 documentation for all workers employed by it.

14.5. The Association certifies it shall comply with all state, federal, and local laws, rules, regulations, and orders applicable to it in performance of work under the contract.

In Witness whereof, the parties hereto have affixed their signatures hereto the date first written hereinabove.

WITNESSES:

SOUTH ISLAND DREDGING ASSOCIATION

\_\_\_\_\_

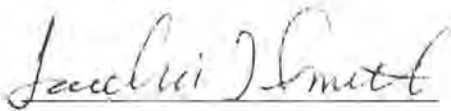
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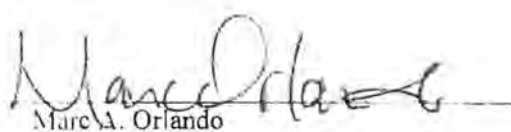
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Its: \_\_\_\_\_

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA



By:   
Marc A. Orlando



Its: Town Manager



of Laws,

and.

- (b) include in their contracts with the sub-contractors, language requiring the sub-contractors to comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws.

14.4. The Association acknowledges and agrees that it shall comply with requirements of the Immigration Reform and Control Act of 1986 including the non-discrimination provisions thereof and shall complete all required 1-9 documentation for all workers employed by it.

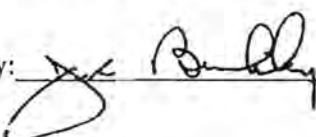
14.5. The Association certifies it shall comply with all state, federal, and local laws, rules, regulations, and orders applicable to it in performance of work under the contract.

In Witness whereof, the parties hereto have affixed their signatures hereto the date first written hereinabove.

WITNESSES:

SOUTH ISLAND DREDGING ASSOCIATION



By: 

Its: President

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

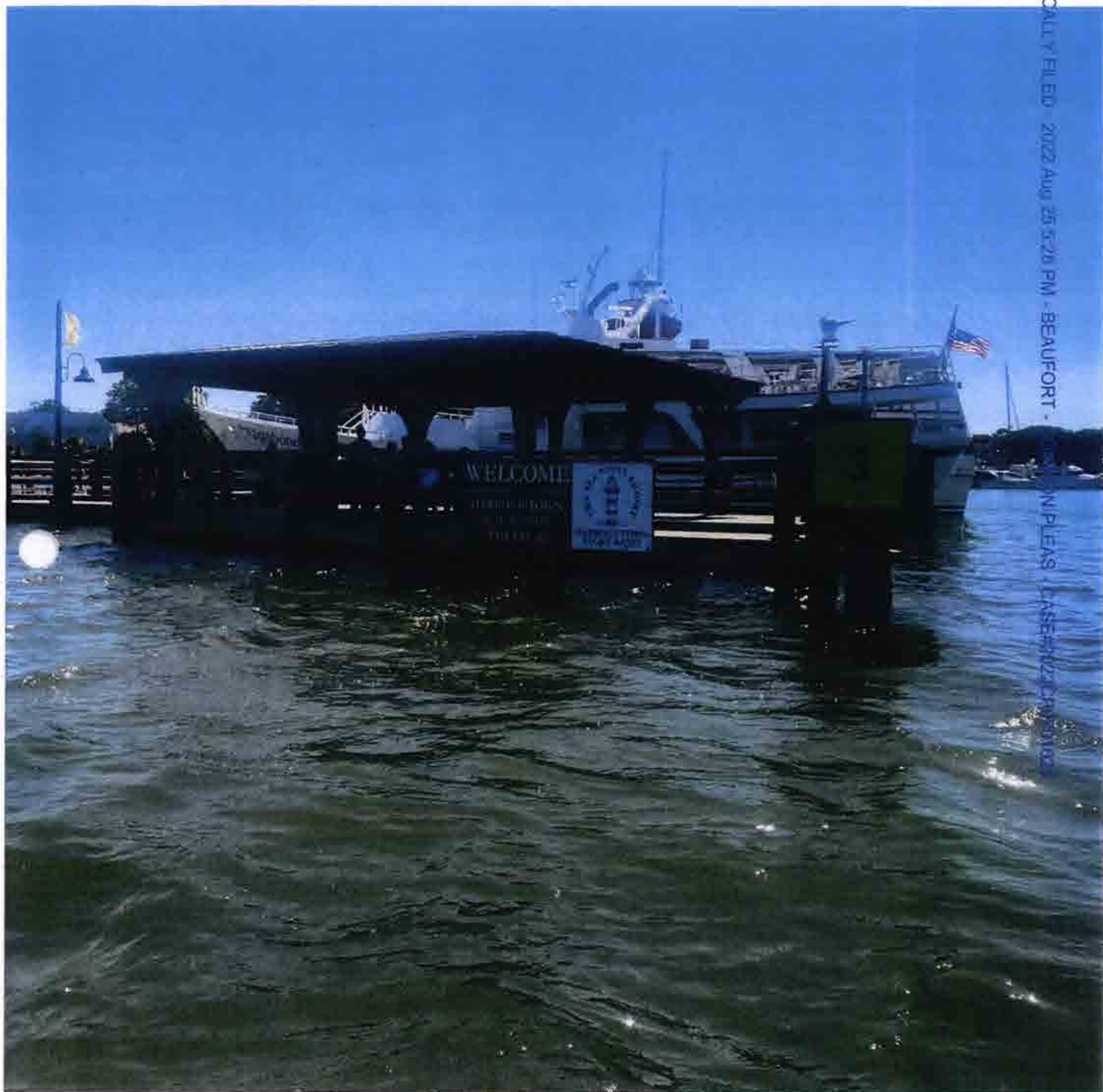
Marc A. Orlando

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Its: \_\_\_\_\_

Town Manager

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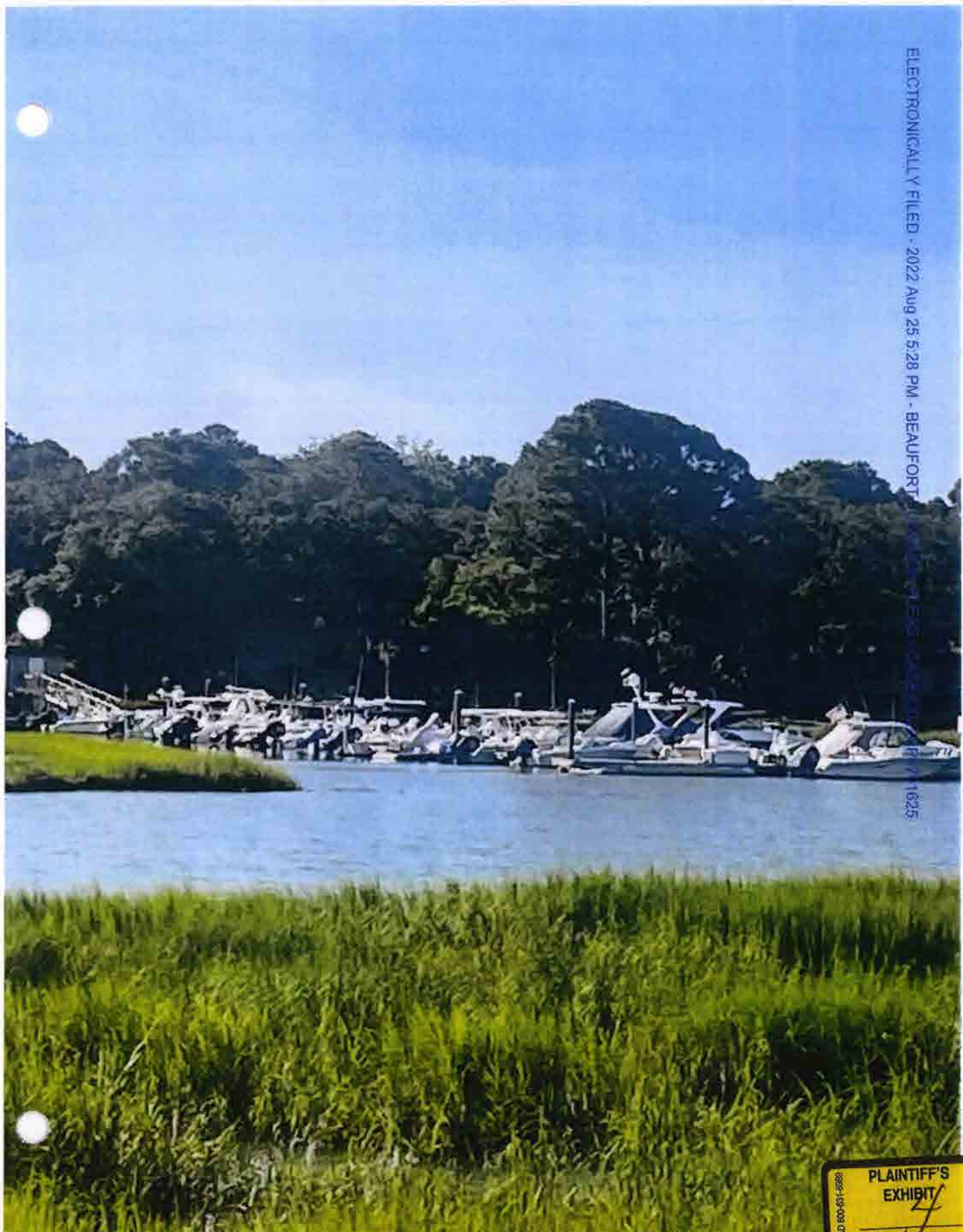


PLAINTIFF'S  
EXHIBIT  
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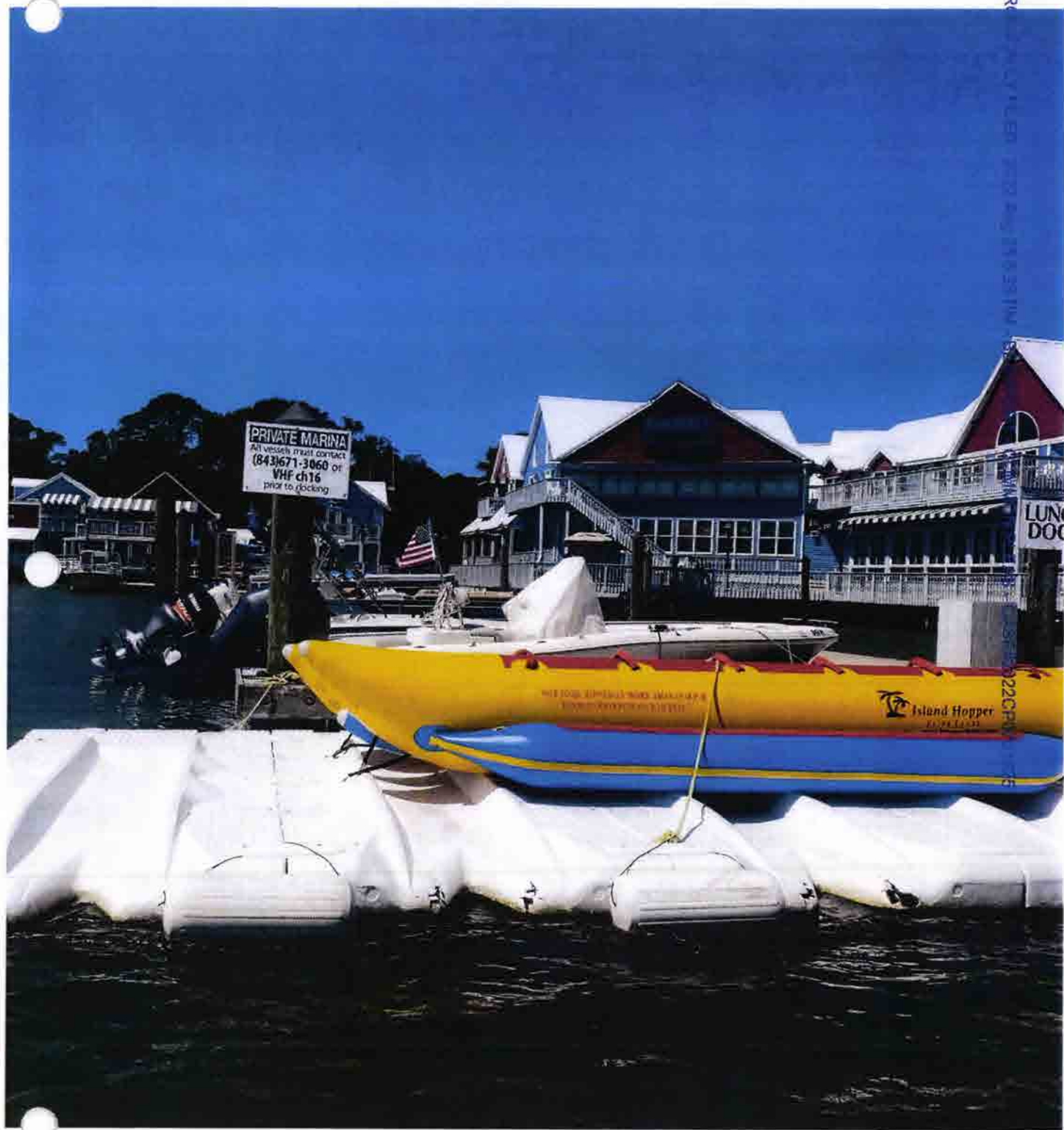


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Gull Point Marina

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9/5/23  
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PLAINTIFF'S  
EXHIBIT  
5  
9/5/23  
PENGAD 800-331-6899





March 28, 2022

Jack Brinkley, President  
South Island Dredging Association  
46 Gull Point Rd.  
Hilton Head Island, SC 29928

Marc Orlando, Town Manager  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

Re: Dredge Funding

Dear Mr. Orlando,

The purpose of this letter is to confirm the request by South Island Dredging Association for funding assistance for the planned South Island dredge event scheduled for November this year. It is our understanding that the Town has reserved \$400,000 to date and will reserve another \$200,000 in it's fiscal 2023 budget. The requested Town's support of \$600,000 is approximately 12% of the expected project costs.

Background

In 2001 the South Island Dredging Association (SIDA) was formed by the Sea Pines property owners to work on a collaborative basis to preserve waterway access in that portion of Hilton Head and conduct dredging on a program basis. Working with DHEC-OCRM and the Army Corps of Engineers, new dredging permits were obtained in 2013 to allow inland open water disposal at a site near the mouth of Calibogue Sound via pipeline. These are the only permits allowing open water disposal in South Carolina and are based on Calibogue Sound's unique characteristics that disperse the dredged material with no adverse impacts. The practical impact is that this technique substantially reduces dredging costs and eliminates impacts on Hilton Head itself such as upland disposal and potentially 1000's of truck trips taking the sediment off island.

In 2013/14 and in 2017/18 dredging activities were successfully completed as designed and in accordance with all permit requirements. Harbour Town Yacht Basin was dredged, including the entrance channel, fuel docks, ship's store, restaurants, and inner basin. Braddock Creek was also dredged, including its entrance and main channels and Gull Point and South Beach Marina, as well as allowing the water-focused commercial operators at South Beach to continue to serve the public. Approximately 240,000 cubic yards were removed and successfully transported to the authorized open water disposal site.

In 2017/18 146,956 cubic yards were removed and transported. Post dredging testing and evaluation by state and federal permitting on both projects confirmed the viability of the overall inland open water approach and the specific placement site.



**Current Project Scope**

Maintenance dredging is now required in these same venues to preserve access and maintain safe navigation at all tides. A competitive bidding process was managed by project consultant GEL Engineering LLC and the low bidder was determined to be Waterfront Property Services, LLC located in Clearwater FL. In accordance with the dredge permits, final contractor selection is subject to review and approval by the Army Corps of Engineers and the Corps' acceptance of detailed Dredge Plan. Project management and oversight will be provided by GEL Engineering who supervised the previous two dredge events. Preliminary surveys indicate 194,266 cubic yards require removal. The increase from 2017/18 includes the addition of Baynard Creek (52,790 cubic yards) who were unable to participate in the previous dredges. Dredging is scheduled to commence November 1, 2022 at Harbour Town and be completed no later than April 30, 2023 at South Beach Marina.

Project Costs based on preliminary volumes total \$4,619,788 for the contractor with mobilization and demobilization accounting for \$465,000 regardless of volume. Project costs at final volumes and including costs for full time project oversight and management will exceed \$5,000,000. Unfortunately, costs have increased substantially reflecting fuel costs and inflation. The current permits expire during 2023 and must be renewed to support future dredges.

**Economic and Community Benefit**

The Sea Pines Waterways are an integral component in maintaining Hilton Head Island as a highly desirable community and resort destination. Similar to our beaches, routine maintenance is required to maintain this public attraction. In the case of these waterways, the maintenance takes the form of dredging to offset siltation which can restrict navigation 12+ hours each day and block access to Calibogue Sound.

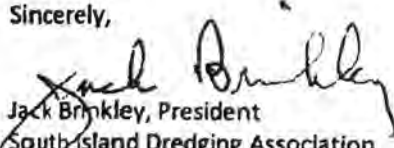
**Conclusion**

SIDA members will fund the remaining project costs (est. \$4,500,000) and proof of funds will be provided to ensure project completion. SIDA requests disbursement of \$600,000 which can be linked to staged completion. The 2017/18 dredge and Town disbursement of \$600,000 was managed as follows:

1. Pay \$180,000 after the first month of work after mobilization
2. Pay \$180,000 after the second month of work
3. Pay \$180,000 after the third month
4. Pay \$ 60,000 upon certification of the completed project from the project engineer.

We appreciate your consideration of this request. Please contact me with any questions.

Sincerely,

  
Jack Brinkley, President  
South Island Dredging Association

CC: John McCann, Mayor  
Thomas Lennox, Council Member, Ward 5, Hilton Head Island

Exhibit "A" to Affidavit of John F. Brinkley





September 6, 2017

Larry Setzler  
PO Box 30712  
Charleston, SC 29417

Re: Extensions per 48-39-10 §4:(6) and 48-39-150(f), 2012-00926-2IR

Dear Mr. Setzler:

In response to your request, the Department has reviewed your inquiry concerning permit number 2012-00926-2IR. Our records show that the permit was active as of April 29, 2013 with an original expiration date of April 29, 2018.

This permit is captured under sections 48-39-10 §4:(6) and 48-39-150(f). Specifically, this section of the regulations allows the Department to extend dredging permits which contain maintenance dredging components for an extra 5 years from the original expiration date.

Based on the language under sections 48-39-10 §4:(6) and 48-39-150(f), the Department has determined your new expiration date to be April 29, 2023.

Please call me at (843) 846-9400 or email me at [shawtd@dhec.sc.gov](mailto:shawtd@dhec.sc.gov) should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Trent D. Shaw". The signature is fluid and cursive, with a long horizontal stroke at the end.

Trent D. Shaw  
Project Manager  
Critical Area Permitting Section

cc: Blair Williams, Section Manager, Critical Area Permitting Section

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Catherine B. Templeton, Director  
*Promoting and protecting the health of the public and the environment*

## CRITICAL AREA & WATER QUALITY CERTIFICATION PERMIT

**Permittee:** South Island Dredging Association

**Permit Number:** 2012-00926-2IR

**Date of Issuance:** April 29, 2013

**Expiration Date:** April 29, 2018

**Location:** On and adjacent to Calibogue Sound at Harbour Town Marina, Barnard Cove Creek and Community Dock, Braddock Cove Creek and Gull Point Marina, South Beach Marina, and Port Villas, Hilton Head Island, Beaufort County, South Carolina.

**SEE SPECIAL  
CONDITION(S)**

This permit/certification is issued under the provisions of 25A S.C. Code Ann. Regs. 61-101 (Supp. 2005), *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Additionally, as required by R.61-101, Department staff have reviewed plans for this project and determined there is a reasonable assurance the project will be conducted in a manner consistent with Certification requirements of Section 401 of the Clean Water Act. We also certify that this project, subject to the indicated conditions, is consistent with applicable provisions of Section 303 of the Clean Water Act, as amended, that there are no applicable effluent limitations under Sections 301(b) and 302, and that there are no applicable standards under Sections 306 and 307.

This permit contains required certification pursuant to Section 401 of the Clean Water Act. Work may not commence under this permit until after the permit has been signed by the applicant and received by OCRM or appealed within 15 days. PLEASE CAREFULLY READ THE ENCLOSED "GUIDE TO BOARD REVIEW."

Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed and may modify the work from that shown on the submitted plans. All special conditions attached to the permit will take precedent over submitted plans. If there are no special conditions, then the work is authorized as described in the project description and as modified by general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as Section 40-11-5 through 430, requires that all construction with a total cost of \$5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.

1 of 33

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**DESCRIPTION OF THE PROJECT, AS AUTHORIZED**

The plans submitted by you, attached hereto, show the work consists of performing maintenance dredging of the SIDA facilities on Hilton Head Island to maintain navigation access, and placing the dredged material at an open water disposal site south of the mouth of Calibogue Sound. Specifically, the applicant proposes to dredge approximately 300,000 cubic yards of material from existing marina basins and access channels at Harbour Town Marina, Barnard Cove Creek and Community Dock, Braddock Cove Creek and Gull Point Marina, South Beach Marina, and Port Villas. These areas will be dredged to a depth of 5 to 8 feet below Mean Low Water, with an allowable 1-foot overdredge. The material will be hydraulically dredged using a small cutterhead dredge and pumped via pipeline, using booster pumps as necessary, to an open water disposal site identified as Placement Site 5 (PS5) on the permit drawings, located approximately 4,600 feet from the shoreline of Hilton Head Island. The pipeline will extend 2 to 3.5 miles along the Hilton Head Island/Calibogue Sound shoreline and will be floated at the surface except where crossing creeks, where it will be submerged and anchored to avoid impacts to navigation. The dredged material will be discharged through a pipe placed approximately 3 feet above the sediment surface, with a baffle plate to ensure even bottom spreading of the dredged material. Dredging will be conducted continuously and will require approximately six months to complete. The purpose of the proposed work is to maintain navigational access from certain Sea Pines waterways to Calibogue Sound, for recreational and commercial use. The water quality conditions listed below are made a part of this critical area permit and address critical area impact concerns.

**CRITICAL AREA PERMIT SPECIAL CONDITIONS**

1. Provided that dredging shall be conducted between November 1 and April 30, during a period of lower biological activity.
2. Provided that the permittee shall implement the project monitoring plan dated April 10, 2013, subject to the Water Quality Conditions listed below. All data collected under the monitoring plan shall be provided to the Department within the timeframes described in the monitoring plan.
3. Provided that the permittee may be required to discontinue all dredging activity if bathymetric surveys of the discharge site one month after construction starts indicates a significant accumulation or mounding of sediment at the discharge site.
4. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

2 of 33

**SEE SPECIAL  
CONDITION(S)**

**WATER QUALITY SPECIAL CONDITIONS**

- 1) All necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands during the project.
- 2) The permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel must monitor water-related activities for the presence of manatees during May 15-October 15.
- 3) Any collisions with and/or injury to manatee shall be reported immediately to Jim Valade of the U.S. fish and Wildlife Service, North Florida Field Office, at (904) 731-3116.
- 4) If manatee(s) are seen within 100 yards of the active construction area all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operations of all moving equipment no closer than 50 feet to a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment.
- 5) The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees, which are protected under the Marine Mammal Protection, act of 1972 and the ESA.
- 6) Any siltation barriers used during the project shall be made of material in which manatees cannot become entangled and must be properly secured, and regularly monitored to avoid entrapment.
- 7) All vessels associated with the project shall operate at "no wake/idle" speeds at all times while in the construction area and while in the water where the draft of the vessel provides less than four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- 8) The applicant must comply with the Monitoring Plan submitted to the SCDHEC dated April 10, 2013.
- 9) The excavated and/or dredged area must be sloped such that the rear is no deeper than the front and the front is no deeper than the adjacent waterbody to maintain water circulation.
- 10) All efforts must be made to protect existing native riparian vegetation in and along shoreline areas. A 10-foot buffer from oysters and marsh must be maintained excluding the 0.003-acre area at the mouth of Braddock Creek that was identified in the permit application and supporting documentation.
- 11) A 500m buffer must be maintained between the end of the discharge pipe and any previously identified hard bottom.
- 12) The monitoring plan referenced in Condition #8 above will be revised to include the following:

(Section 5.1) Should the pipeline be moved, it will be reported to the USACE and SCDHEC in the daily reports to include new coordinates.

3 of 35 **SEE SPECIAL  
CONDITION(S)**



(Section 5.2) The bathymetric survey will be submitted within 7 days of the data collection to the USACE and SCDHEC. The determination of what constitutes "significant" will be made at that time in consideration of other available data and in consultation with the permitting agencies.

(Section 5.3) The proposed water quality monitoring location near the mouth of the Cooper River will be moved to the channel of Calibogue Sound opposite the mouths of Braddock and Baynard Creeks.

(Section 5.3) The Monitoring Plan will be modified to include vertical profiles and water quality sampling at all four locations before, during and after dredging. All continuous monitoring will remain as proposed.

(Section 5.4) Two 100-m tows in each area will be conducted to assess the bottom types and presence of live bottom growth.

- 13) The Essential Fish Habitat recommendations stated in NMFS letter dated April 26, 2013 must be addressed in accordance with "the Charleston District Process for EFH Consultation for Regulatory Activities" between the U.S. Army Corps and NMFS dated April 6, 2000 prior to commencement of dredging.

**SEE SPECIAL  
CONDITION(S)**

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PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND (5), BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT, AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

2012-00926-2IR

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
(PERMITTEE)  
South Island Dredging Association

\_\_\_\_\_  
(DATE)

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

William C. Eiser  
(WETLAND SECTION PROJECT MANAGER)  
William C Eiser  
or his Designee  
Other Authorized State Official

4/29/13  
(DATE)

**SEE SPECIAL  
CONDITION(S)**

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

Ocean and Coastal Resource Management  
Charleston Office • 1362 McMillan Ave, Suite 400 • Charleston, SC 29405-2047  
Phone: 843-953-0200 • Fax: 843-953-0201 • www.scdhec.gov



**GENERAL CONDITIONS:**

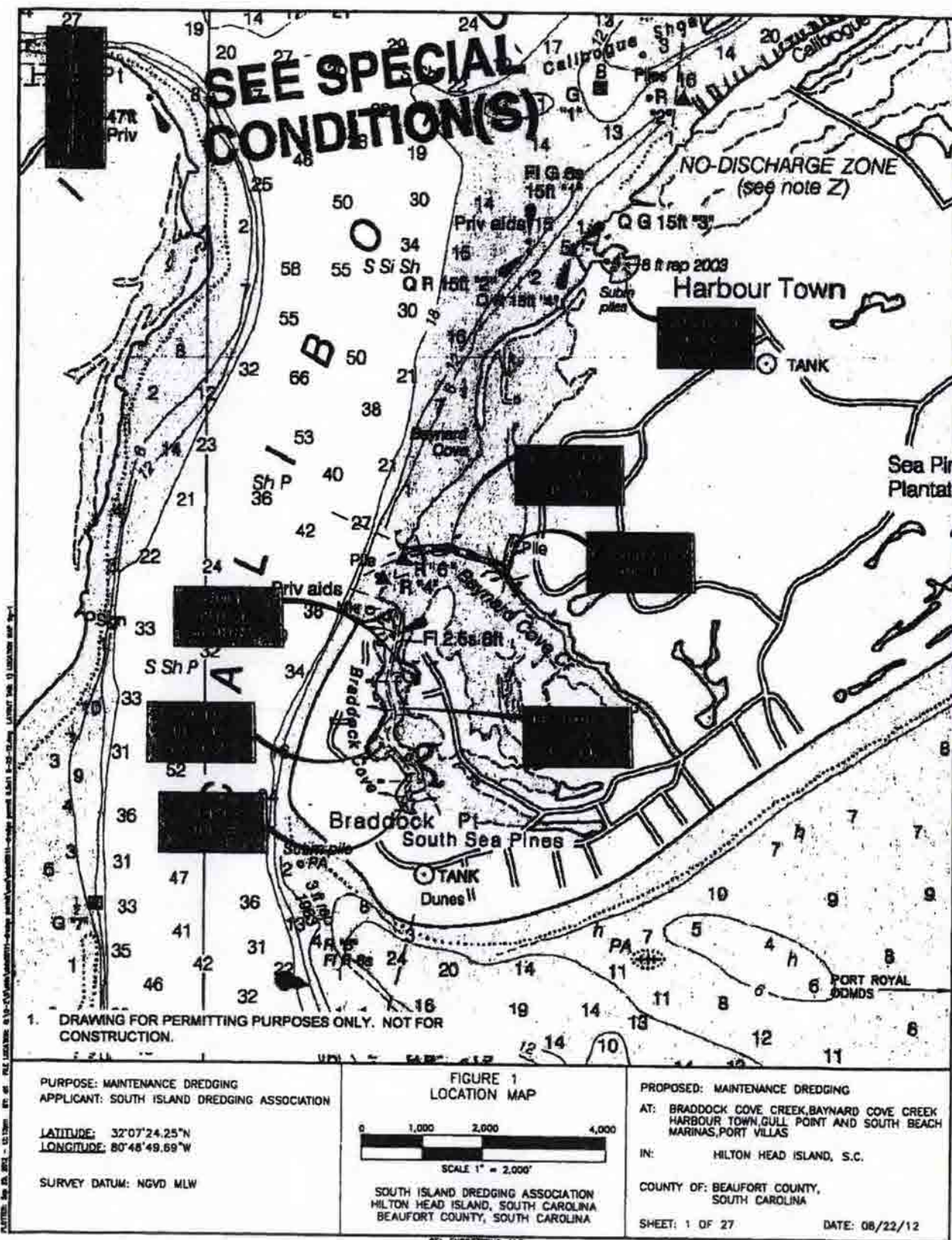
This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

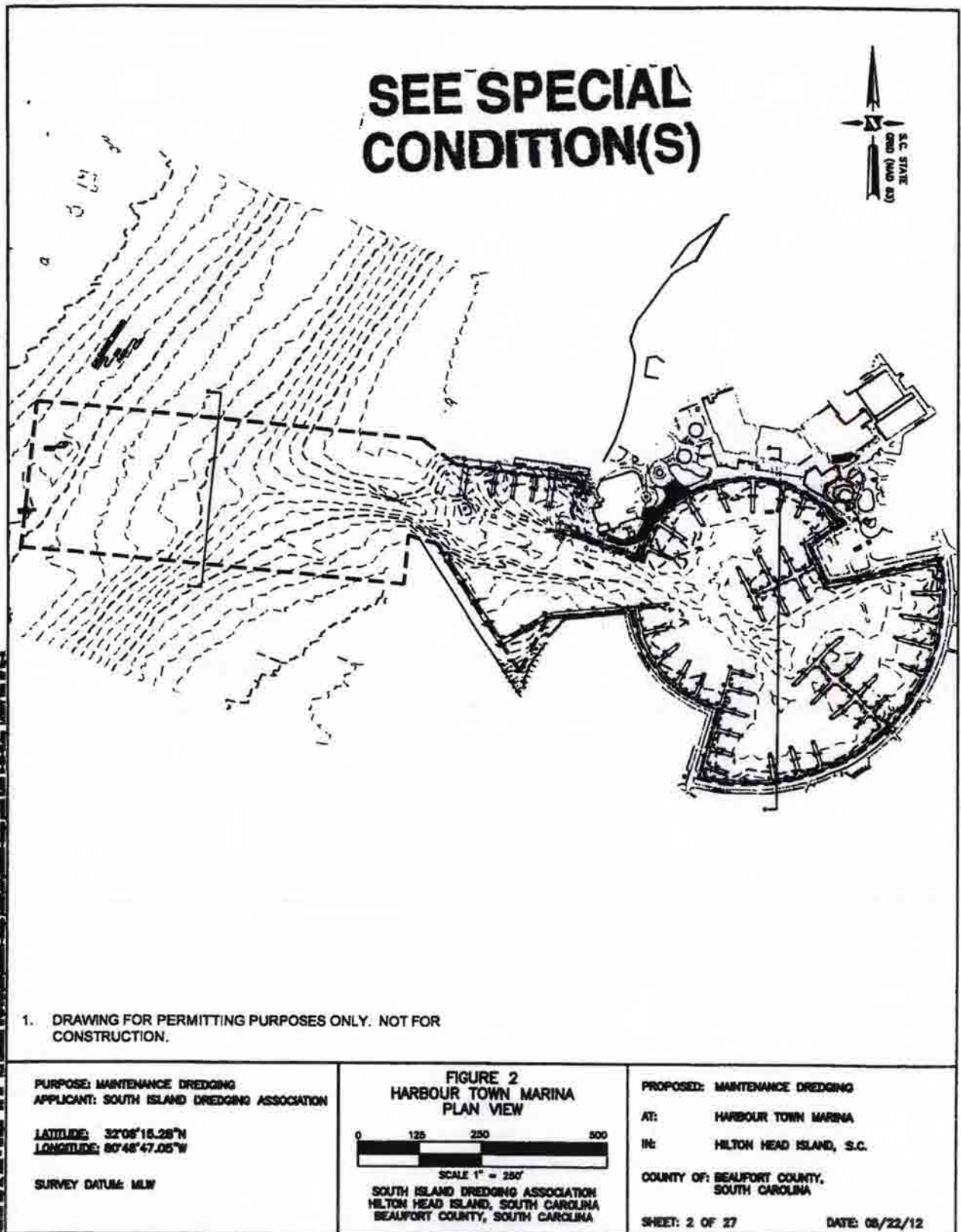
1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than thirty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the permit, as issued, and shall be maintained in good condition. Failure to build in accordance with the permit, as issued, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is in violation of the terms and/or conditions, including any special conditions of the permit. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-23-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

**SEE SPECIAL  
CONDITION(S)**

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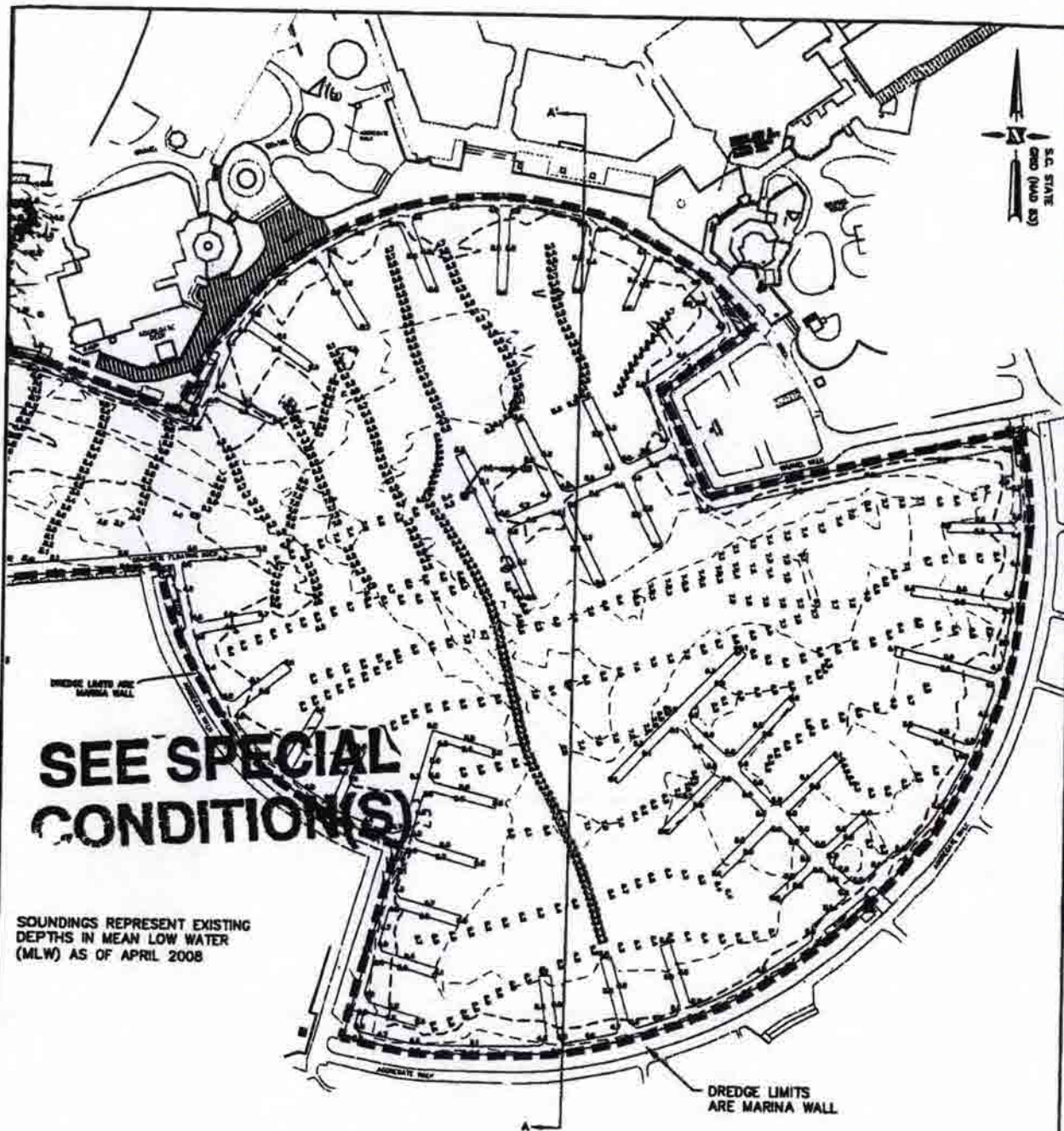






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1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

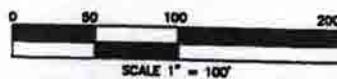
PROJECT DEPTH: (-) 5.0' MLW

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'15.28"N  
LONGITUDE: 80°48'47.05"W

SURVEY DATUM: MLW

FIGURE 3  
HARBOUR TOWN MARINA  
ENLARGED PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: HARBOUR TOWN MARINA  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 3 OF 27

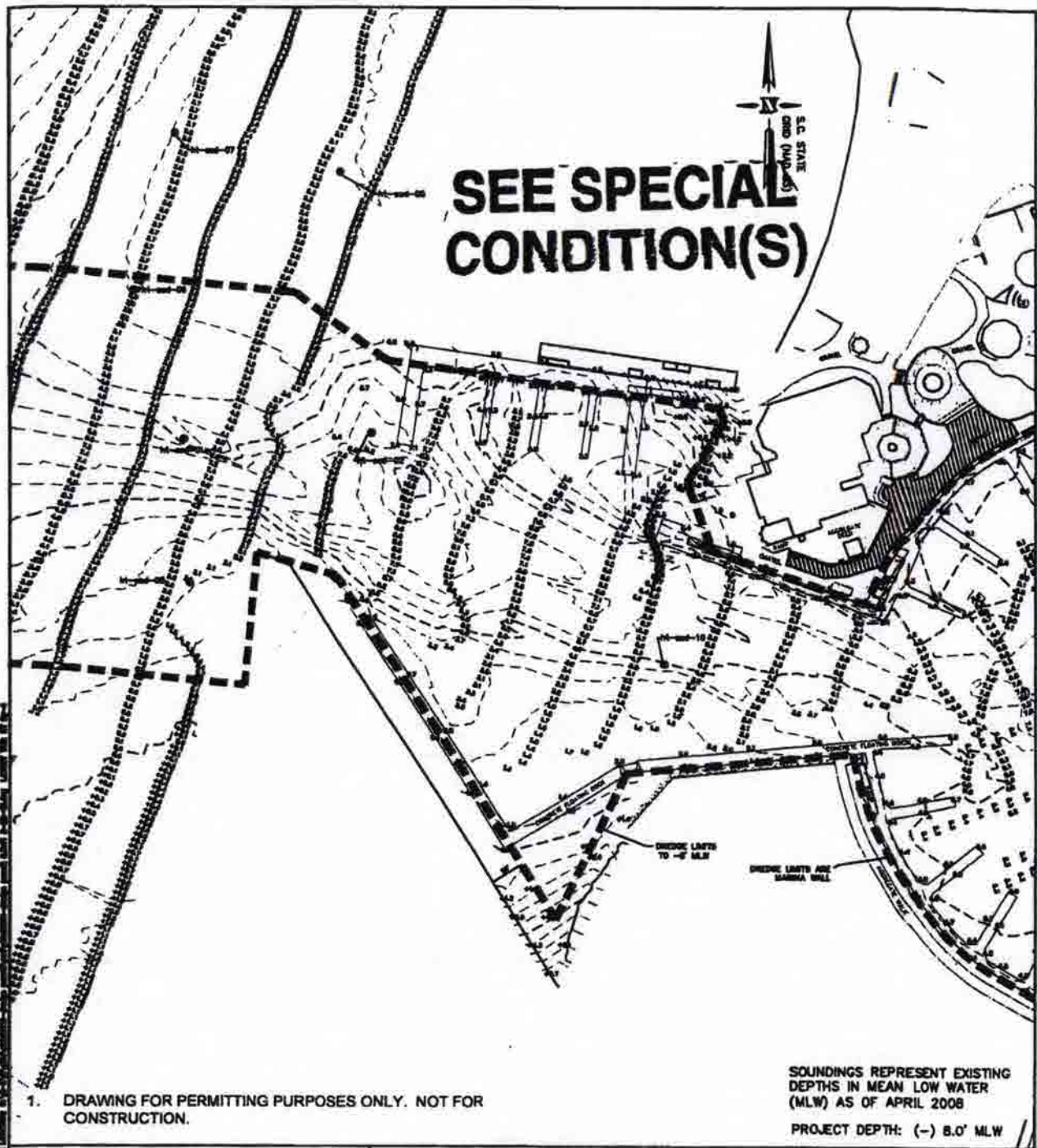
DATE: 08/22/12

DR. ENGINEERING, LLC

a Member of THE GRI GROUP INC.

6 4 77



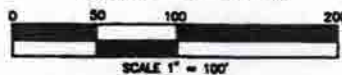


PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°05'15.28"N  
LONGITUDE: 80°46'47.05"W

SURVEY DATUM: MLW

**FIGURE 4  
HARBOUR TOWN MARINA  
ENLARGED PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: HARBOUR TOWN MARINA  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 4 OF 27

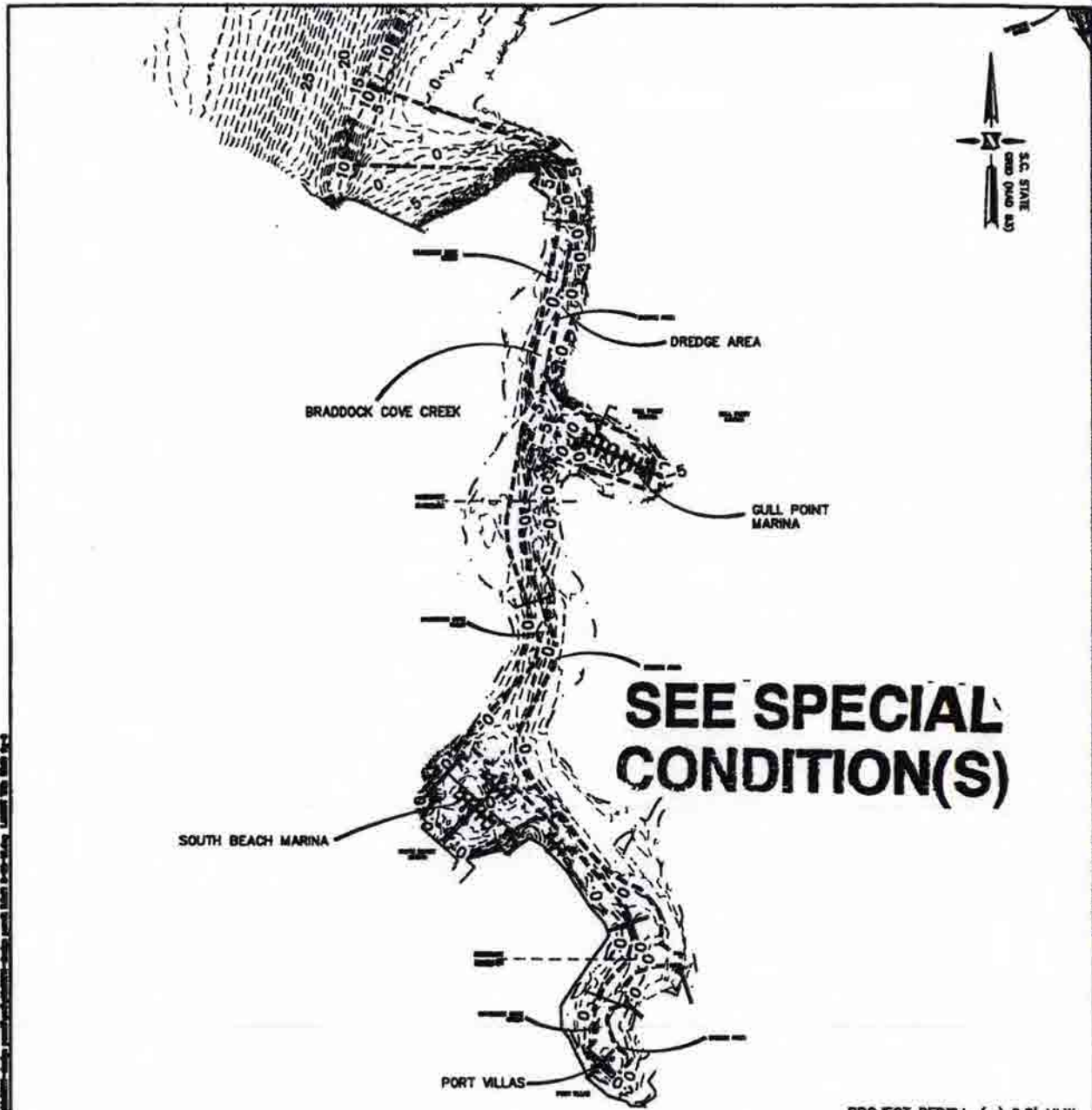
DATE: 08/22/12

15 f 23



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1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PROJECT DEPTH: (-) 8.0' MLW

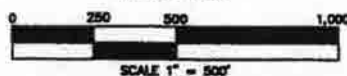
NOTE:  
SOME TYPICAL ENLARGED PLAN  
VIEW SECTIONS FOR CHANNEL  
ARE NOT SHOWN.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'01.92"N  
LONGITUDE: 80°49'25.68"W

SURVEY DATUM: MLW

FIGURE 8  
BRADDOCK COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

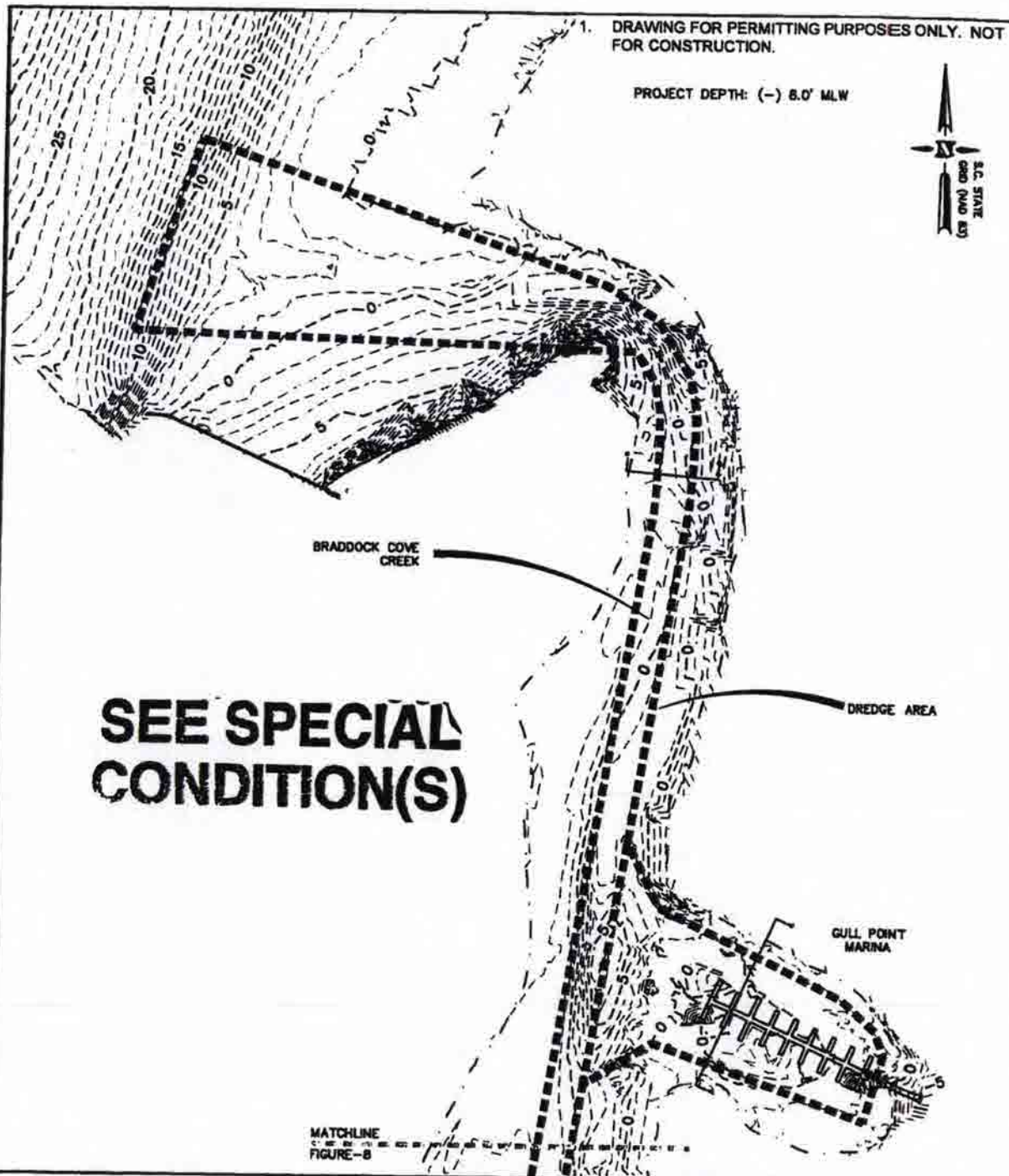
SHEET: 6 OF 27

DATE: 06/22/12

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**SEE SPECIAL  
CONDITION(S)**

PURPOSE: MAINTENANCE DREDGING  
 APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION  
 LATITUDE: 32°07'01.82"N  
 LONGITUDE: 80°48'25.68"W  
 SURVEY DATUM: MLW

**FIGURE 7  
 BRADDOCK COVE CREEK  
 PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
 HILTON HEAD ISLAND, SOUTH CAROLINA  
 BEAUFORT COUNTY, SOUTH CAROLINA

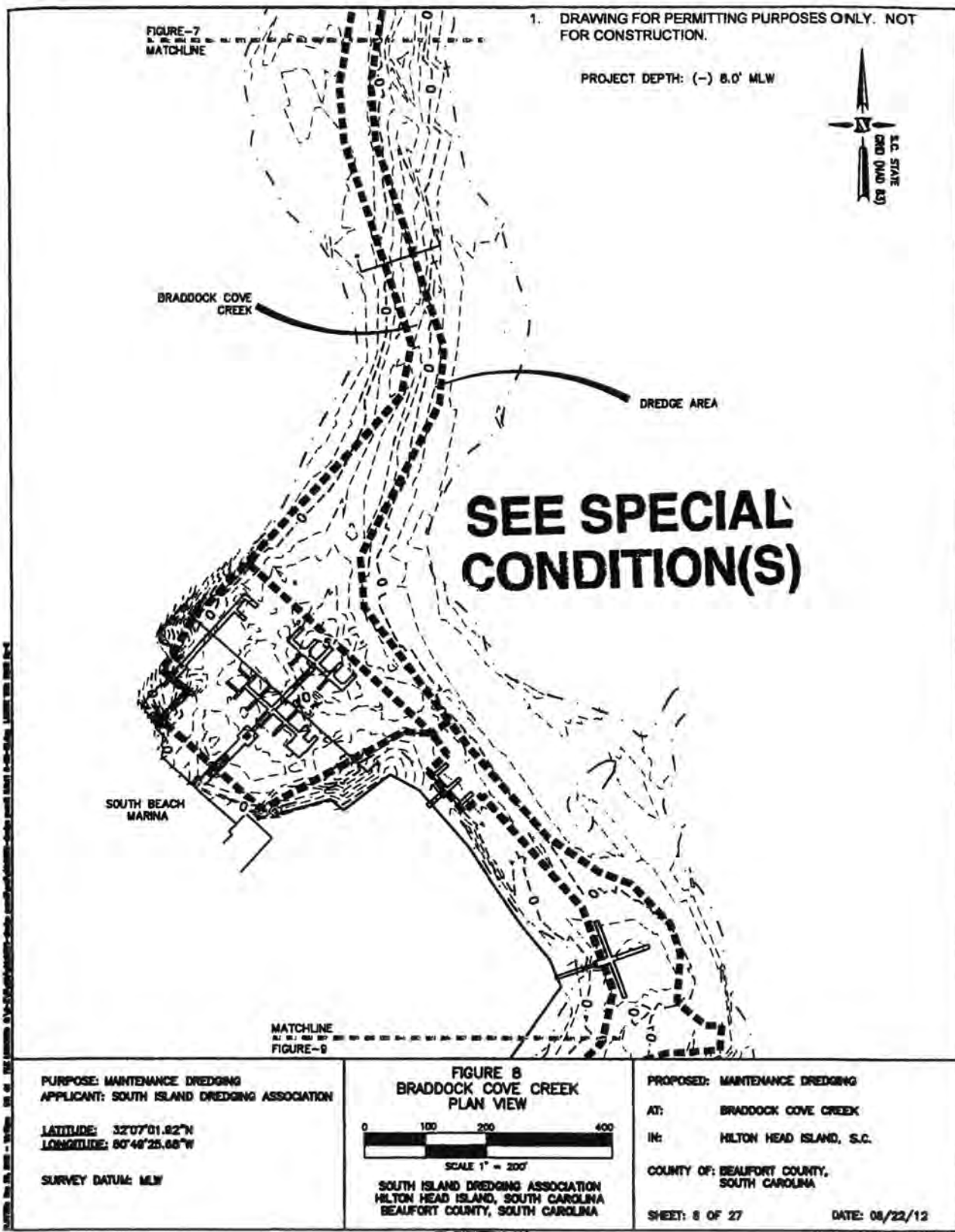
PROPOSED: MAINTENANCE DREDGING  
 AT: BRADDOCK COVE CREEK  
 IN: HILTON HEAD ISLAND, S.C.  
 COUNTY OF: BEAUFORT COUNTY,  
 SOUTH CAROLINA

SHEET: 7 OF 27

DATE: 08/22/12

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12 x 22



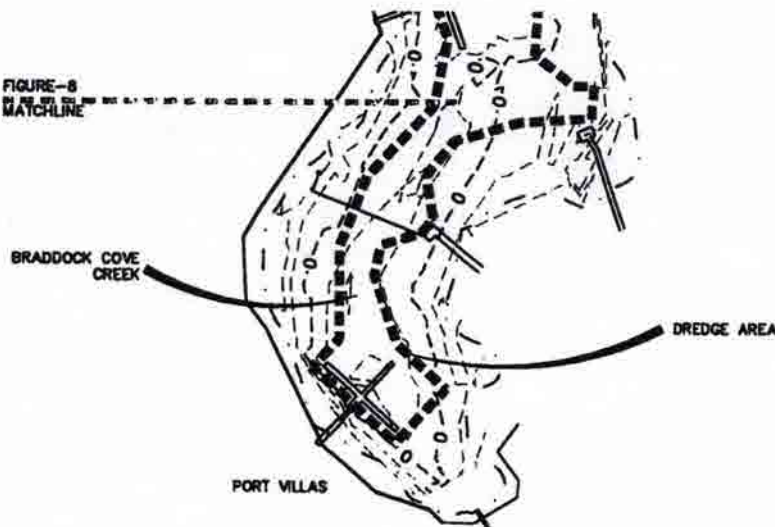
14 of 33

1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PROJECT DEPTH: (-) 8.0' MLW



FIGURE-8  
MATCHLINE



**SEE SPECIAL  
CONDITION(S)**

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'01.62"N  
LONGITUDE: 80°48'25.66"W

SURVEY DATUM: MLW

**FIGURE 9  
BRADDOCK COVE CREEK  
PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 9 OF 27

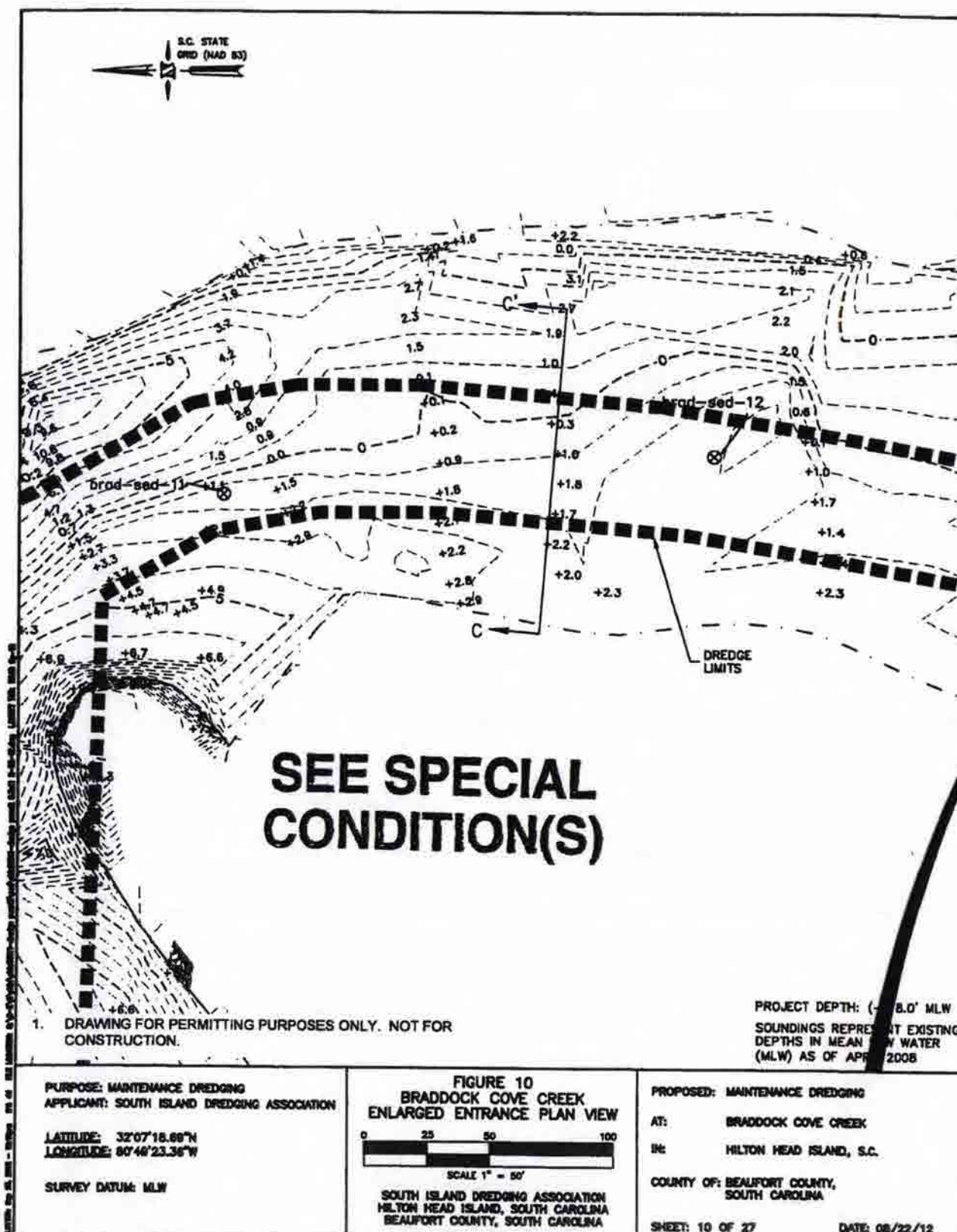
DATE: 08/22/12

SEL ENGINEERING, LLC

a Member of THE GEL GROUP, INC.

15 of 33



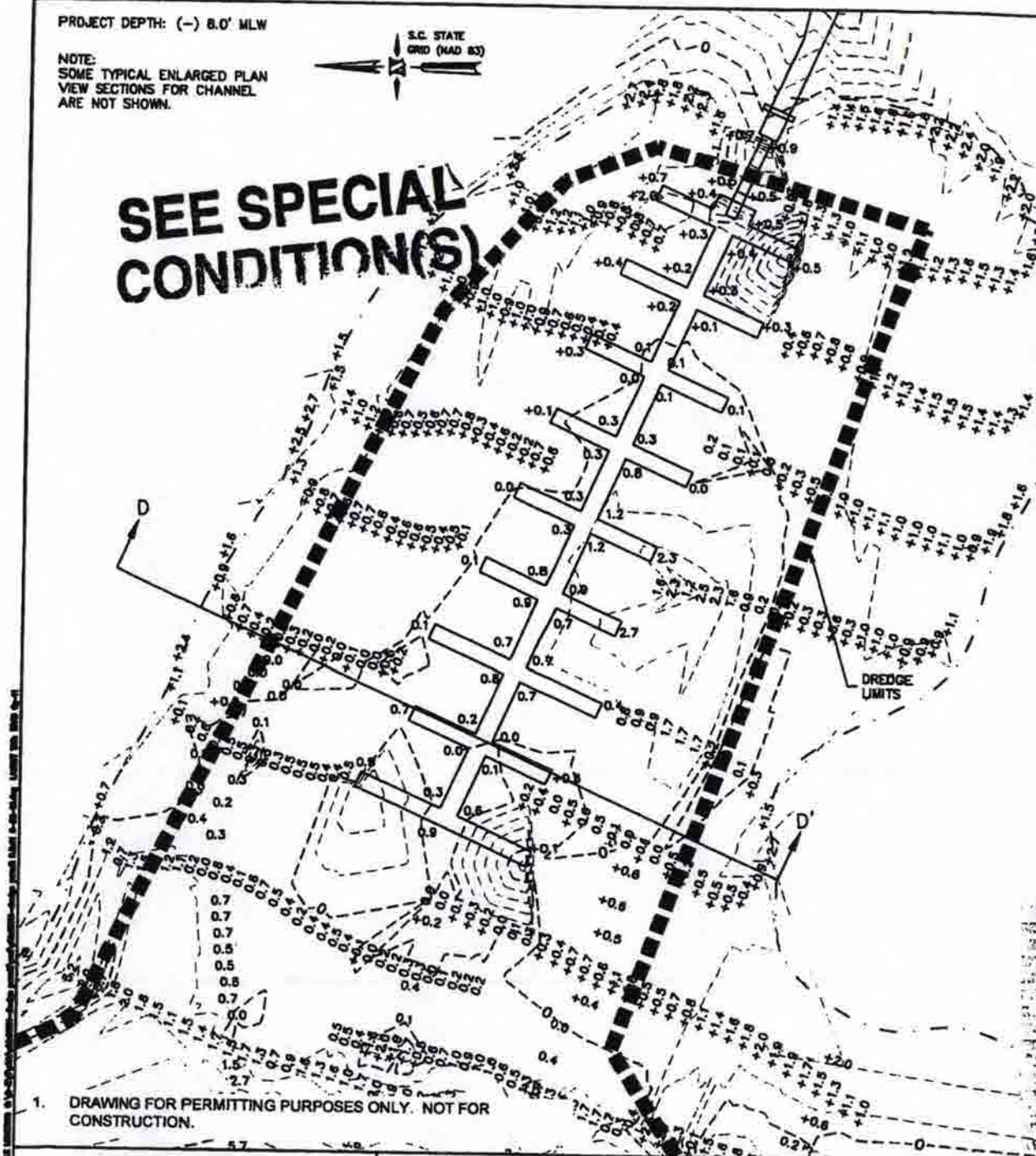


PROJECT DEPTH: (-) 8.0' MLW

NOTE:  
SOME TYPICAL ENLARGED PLAN  
VIEW SECTIONS FOR CHANNEL  
ARE NOT SHOWN.



**SEE SPECIAL  
CONDITION(S)**



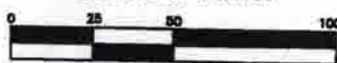
1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

**LATITUDE:** 32°07'10.11"N  
**LONGITUDE:** 80°48'22.20"W

**SURVEY DATUM: MLW**

FIGURE 11  
BRADDOCK COVE CREEK  
GULL POINT MARINA



**SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA**

**PROPOSED: MAINTENANCE DREDGING**

AT: BRADDOCK COVE CREEK

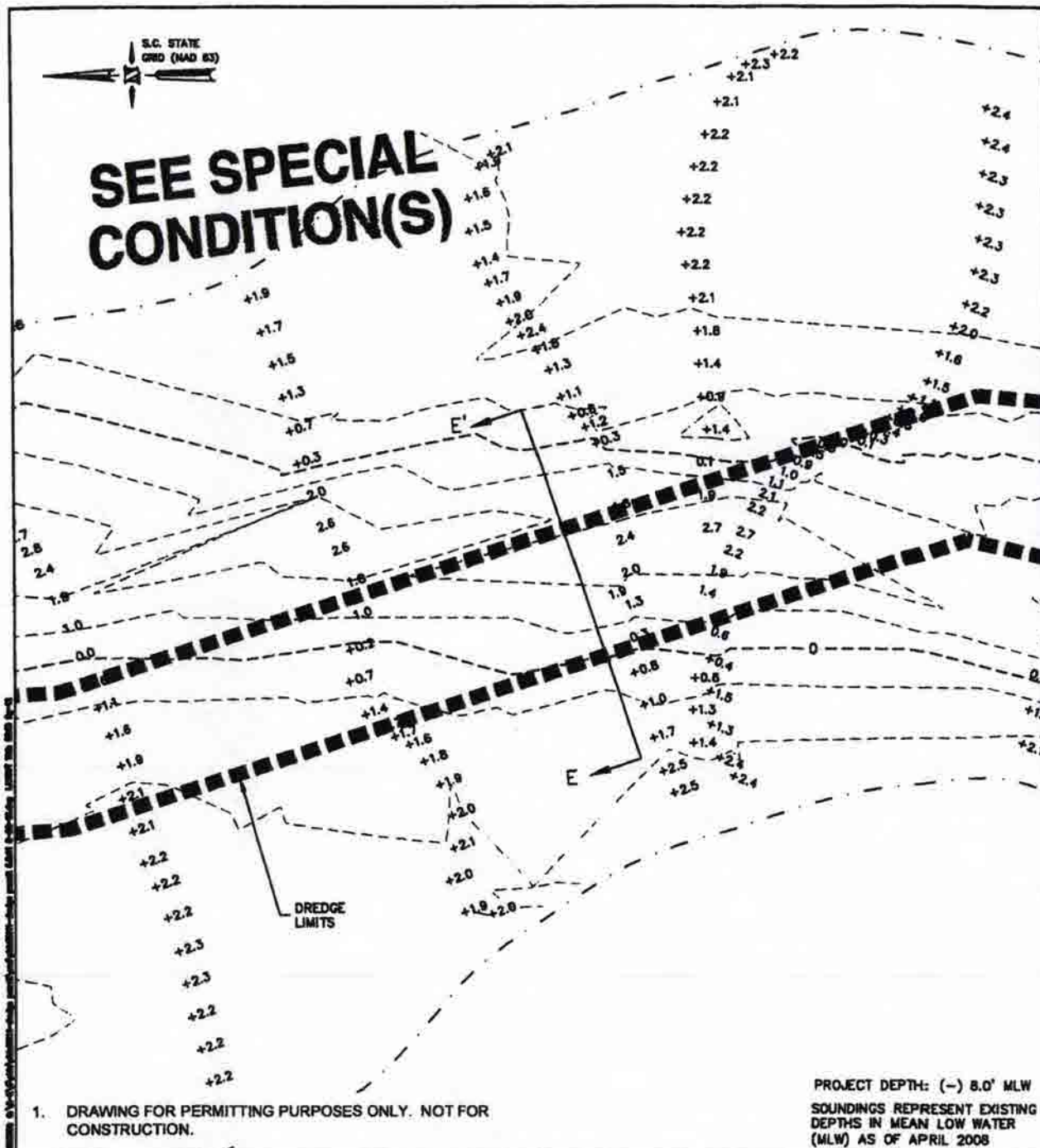
**RE: HILTON HEAD ISLAND, S.C.**

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

**SHEET: 11 OF 27**

DATE: 08/22/12



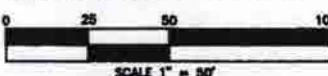


PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'01.82"N  
LONGITUDE: 80°46'25.88"W

SURVEY DATUM: MLW

**FIGURE 12  
BRADDOCK COVE CREEK  
ENLARGED CHANNEL PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

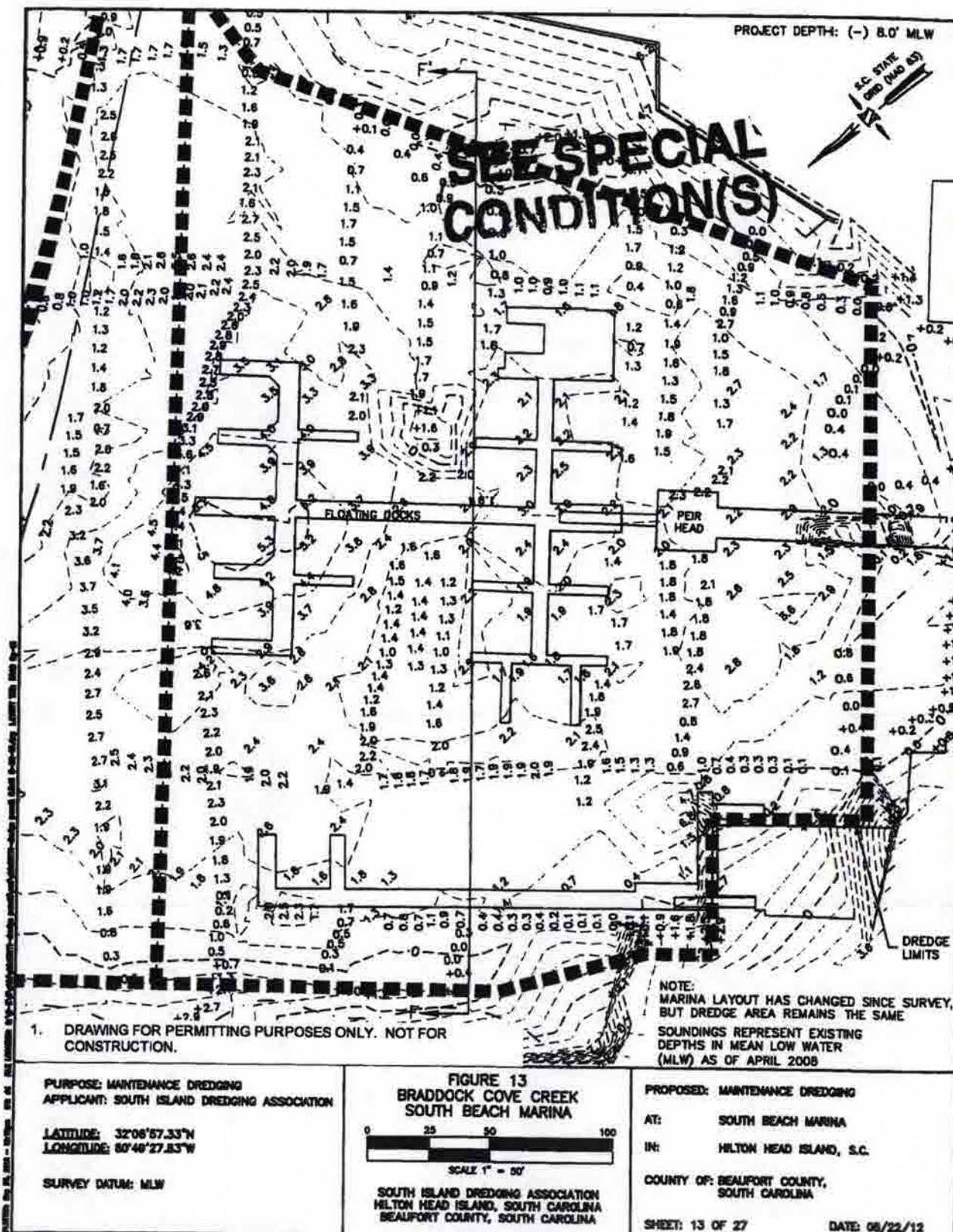
PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

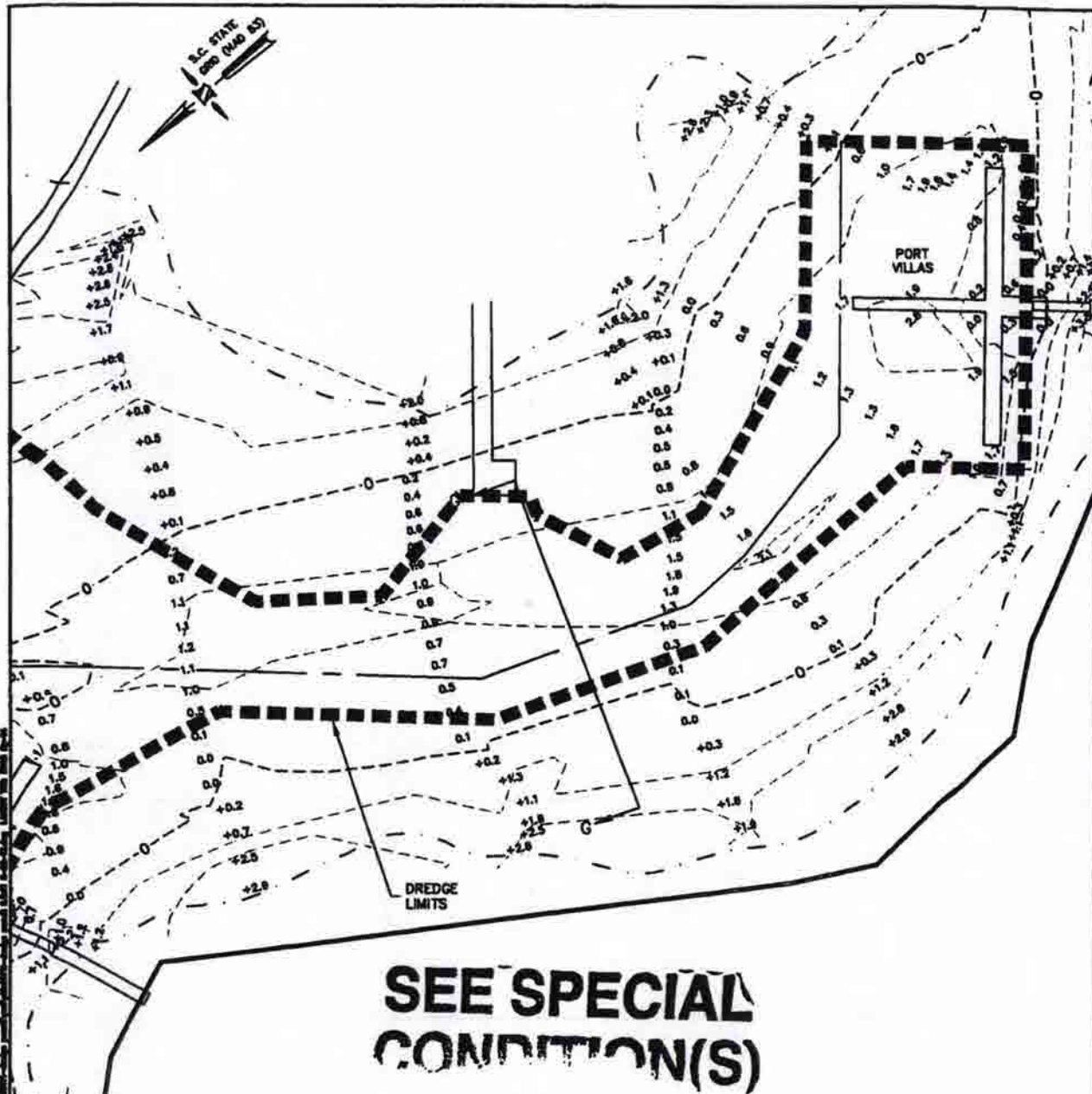
SHEET: 12 OF 27

DATE: 08/22/12

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1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

SOUNDINGS REPRESENT EXISTING DEPTHS IN MEAN LOW WATER (MLW) AS OF APRIL 2008

PROJECT DEPTH: (-) 6.0' MLW

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

**LATITUDE:** 32°06'50.71"N  
**LONGITUDE:** 80°48'22.61"W

**SURVEY DATE:** MLW

**FIGURE 14  
BRADDOCK COVE CREEK  
ENLARGED CHANNEL PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

**PROPOSED:** MAINTENANCE DREDGING  
**AT:** BRADDOCK COVE CREEK  
**IN:** HILTON HEAD ISLAND, S.C.

**COUNTY OF:** BEAUFORT COUNTY,  
SOUTH CAROLINA

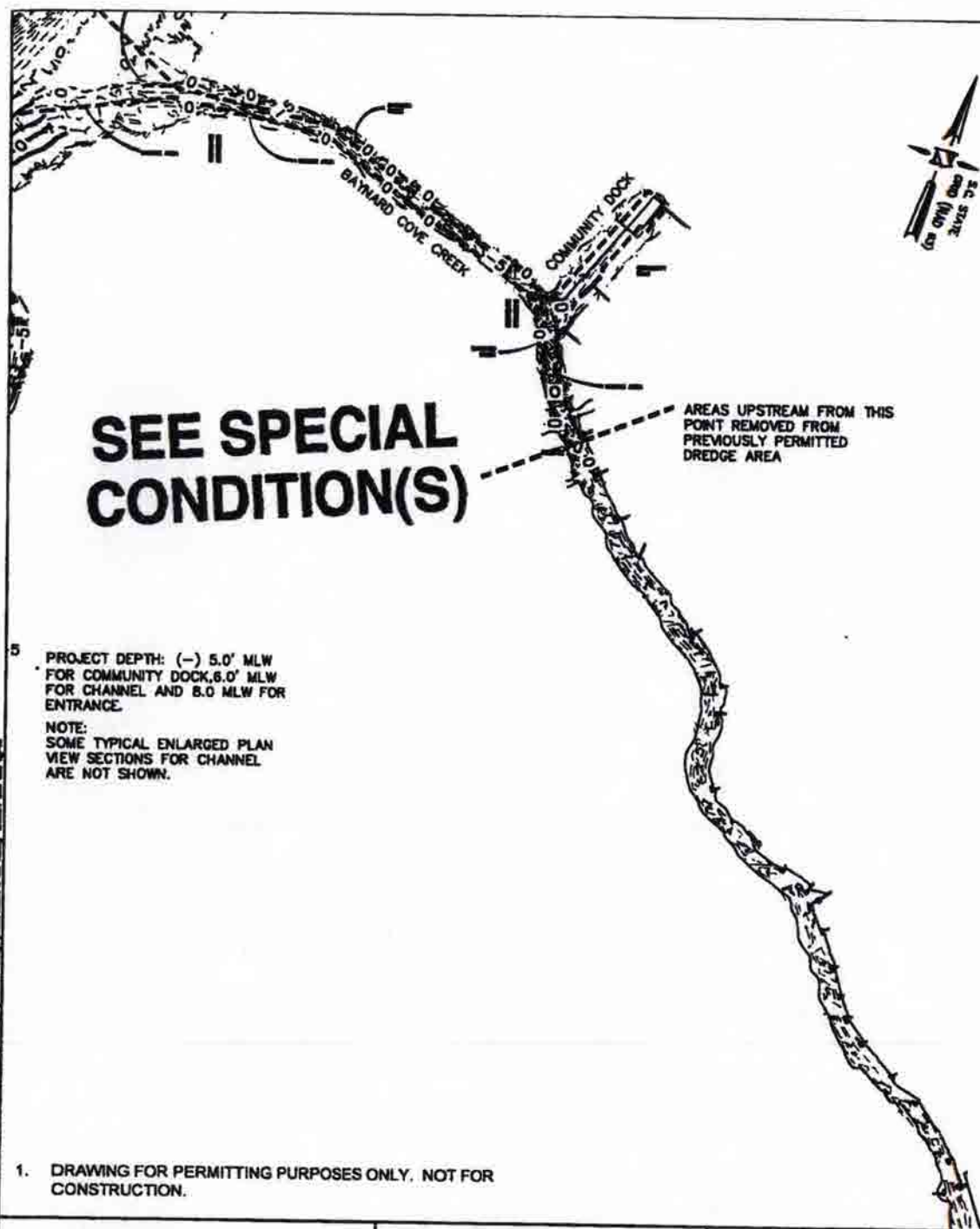
**SHEET:** 14 OF 27

**DATE:** 08/22/12

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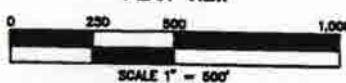


PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°46'07.48"W

SURVEY DATUM: MLW

**FIGURE 15  
BAYNARD COVE CREEK  
PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 15 OF 27

DATE: 06/22/12

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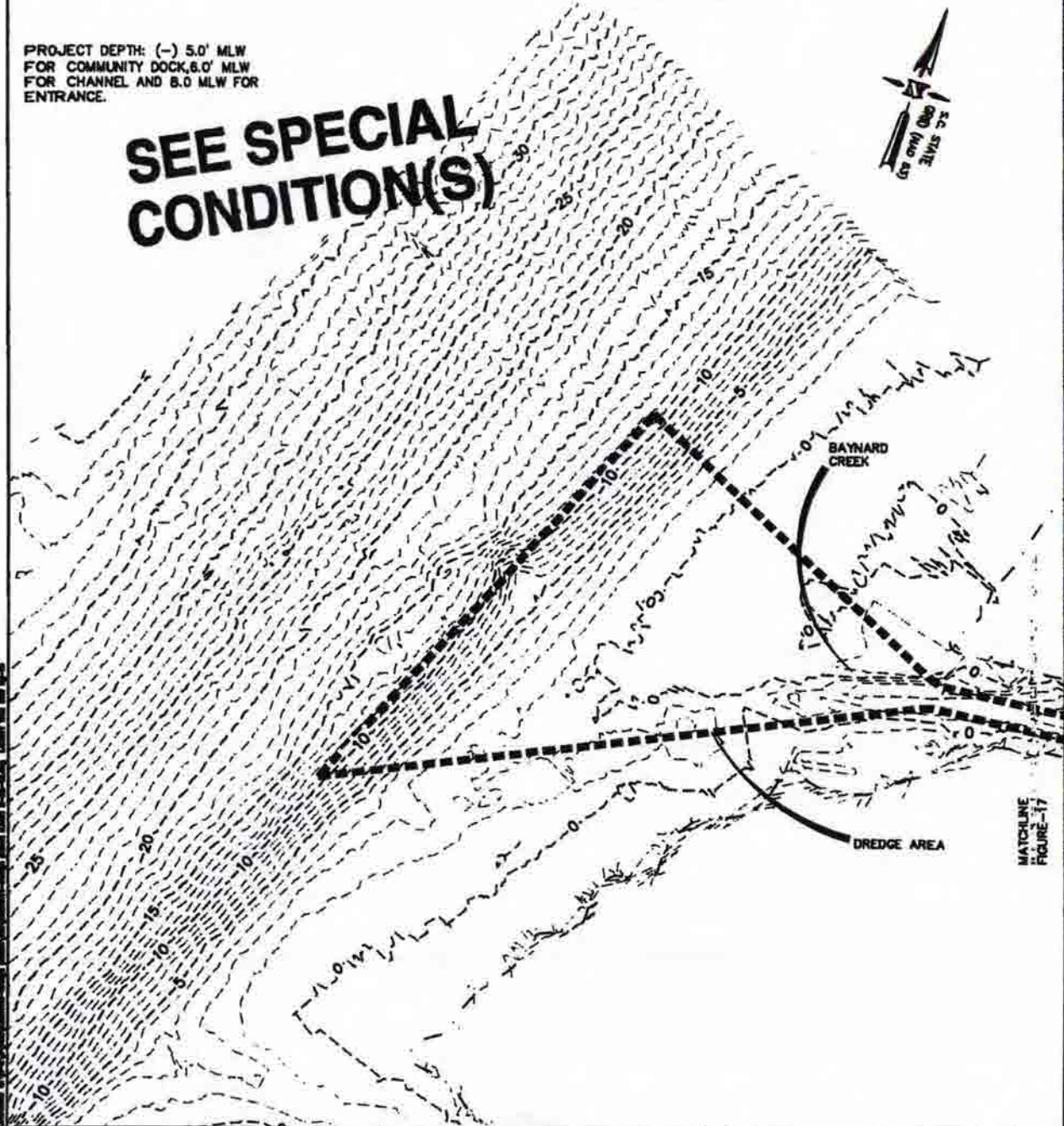
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1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PROJECT DEPTH: (-) 5.0' MLW  
FOR COMMUNITY DOCK, 6.0' MLW  
FOR CHANNEL AND 8.0 MLW FOR  
ENTRANCE.

**SEE SPECIAL  
CONDITION(S)**



PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°46'07.48"W

SURVEY DATUM: MLW

**FIGURE 16  
BAYNARD COVE CREEK  
PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

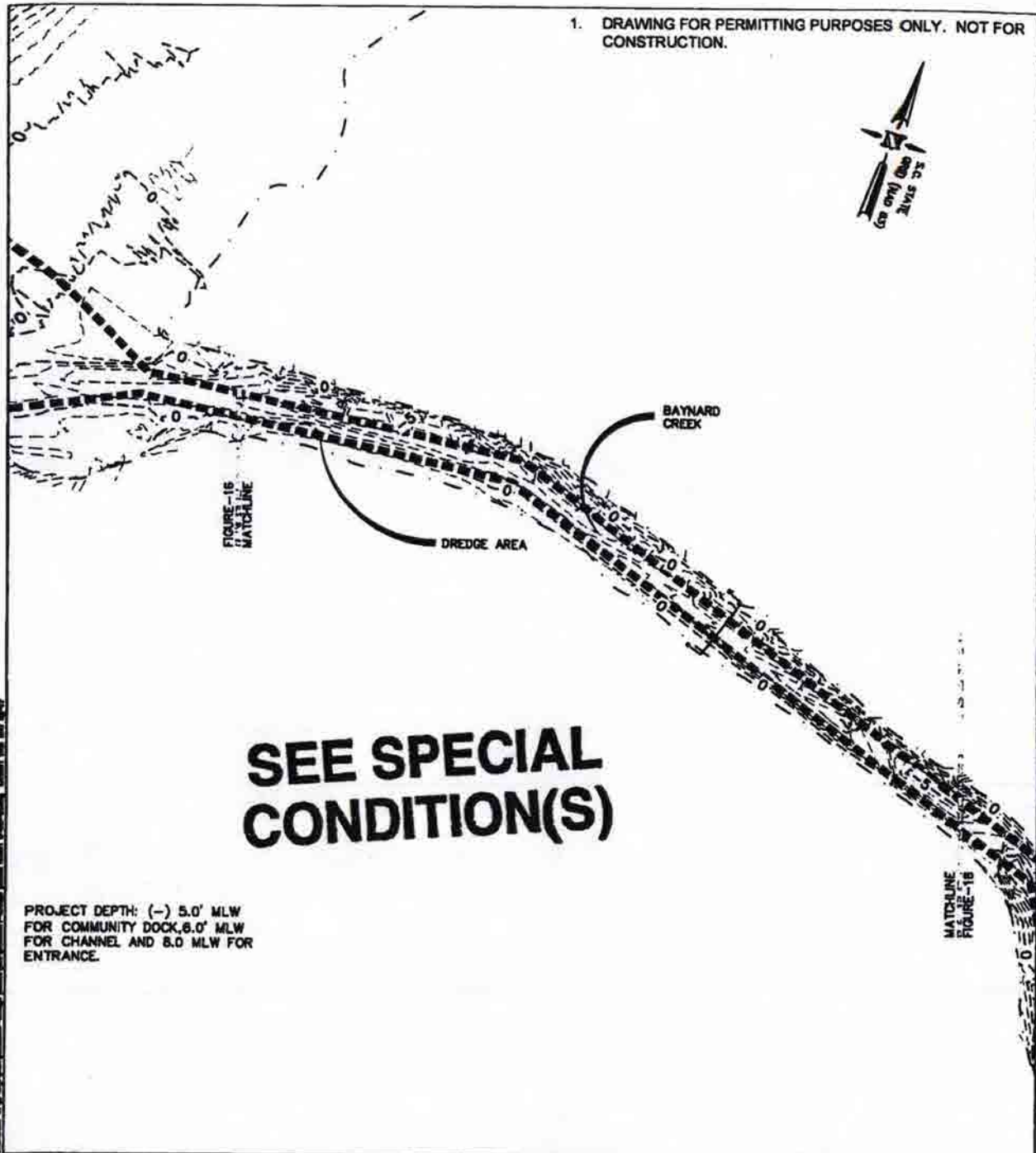
SHEET: 16 OF 27

DATE: 06/22/12

BY: BARNHART, LLC

a Member of THE HD GROUP, INC.

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PROJECT DEPTH: (-) 5.0' MLW  
FOR COMMUNITY DOCK, 6.0' MLW  
FOR CHANNEL AND 8.0' MLW FOR  
ENTRANCE.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°48'07.48"W

SURVEY DATUM: MLW

FIGURE 17  
BAYNARD COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 17 OF 27

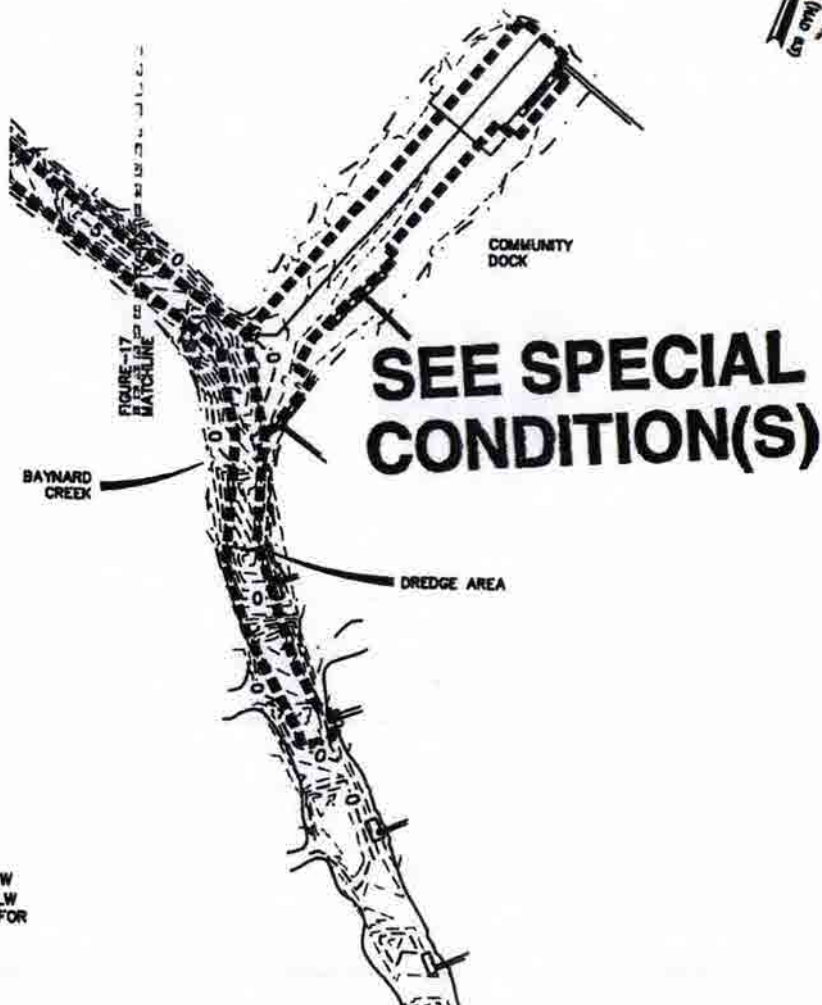
DATE: 08/22/12

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1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.



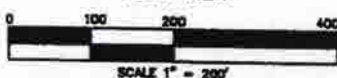
PROJECT DEPTH: (-) 5.0' MLW  
FOR COMMUNITY DOCK, 6.0' MLW  
FOR CHANNEL AND 8.0 MLW FOR  
ENTRANCE.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°46'07.48"W

SURVEY DATUM: MLW

FIGURE 18  
BAYNARD COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 18 OF 27

DATE: 06/22/12

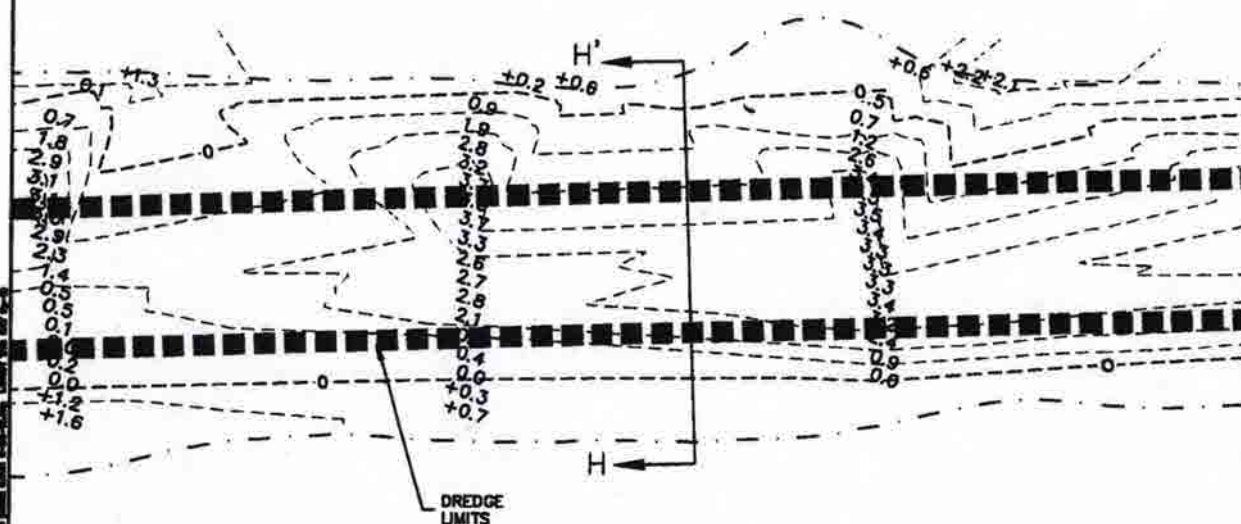
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**SEE SPECIAL  
CONDITION(S)**



SOUNDINGS REPRESENT EXISTING  
DEPTHS IN MEAN LOW WATER  
(MLW) AS OF APRIL 2008

1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PROJECT DEPTH: (-) 8.0' MLW

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'26.86"N  
LONGITUDE: 80°48'12.39"W

SURVEY DATUM: MLW

**FIGURE 19  
BAYNARD COVE CREEK  
ENLARGED CHANNEL PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 18 OF 27

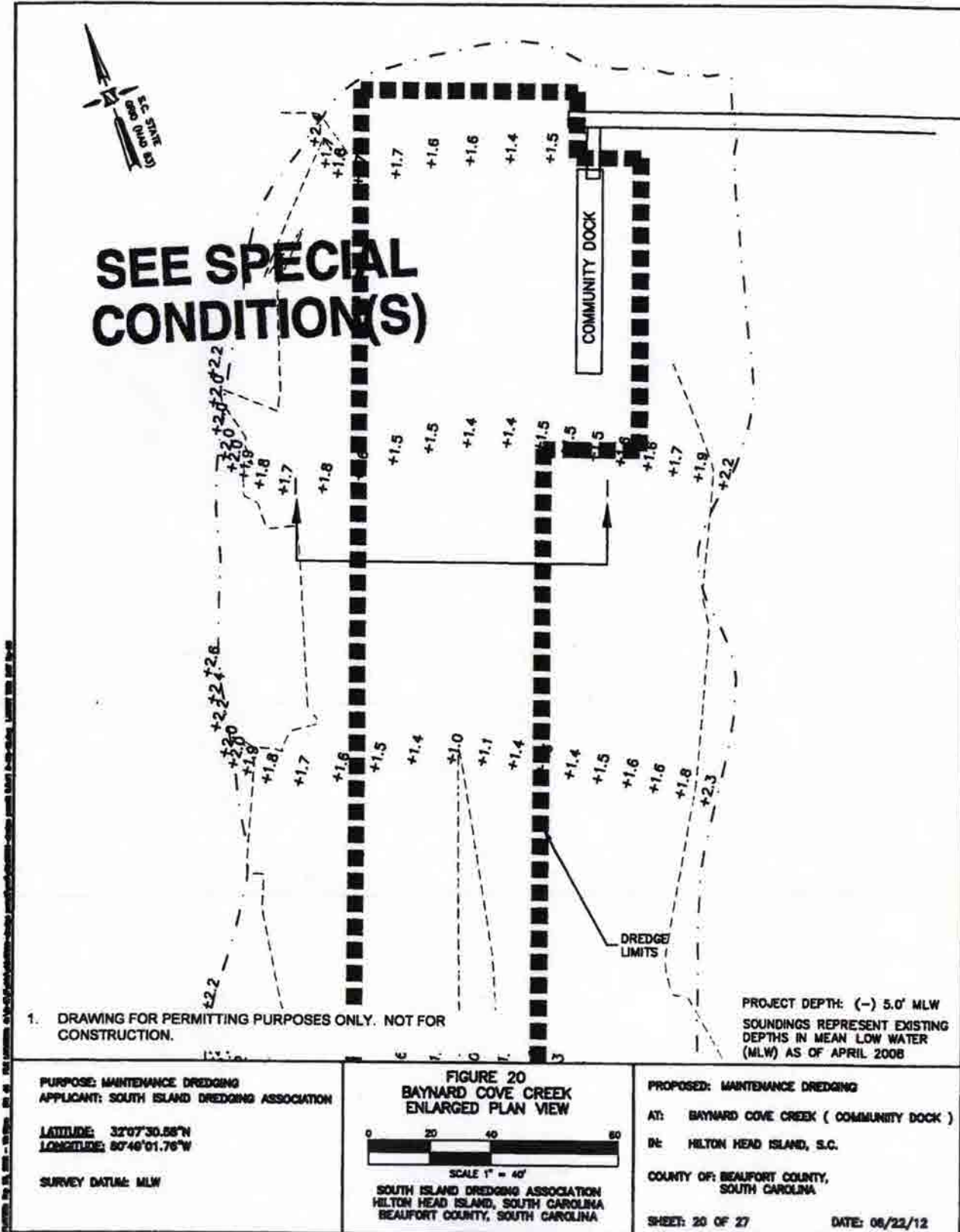
DATE: 08/22/2012

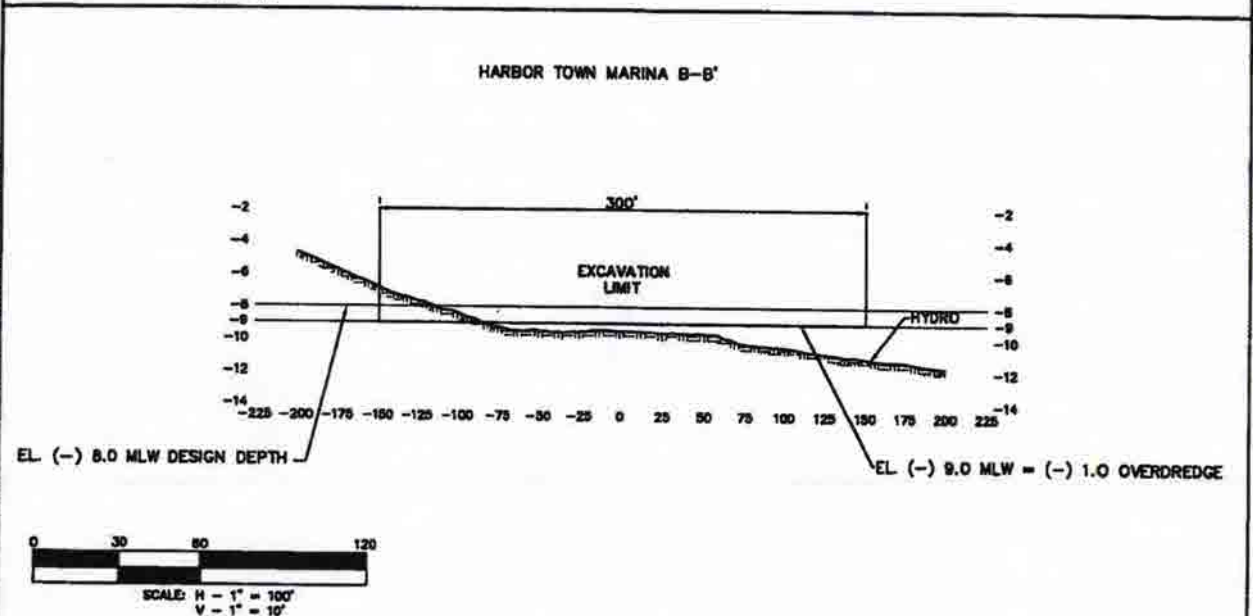
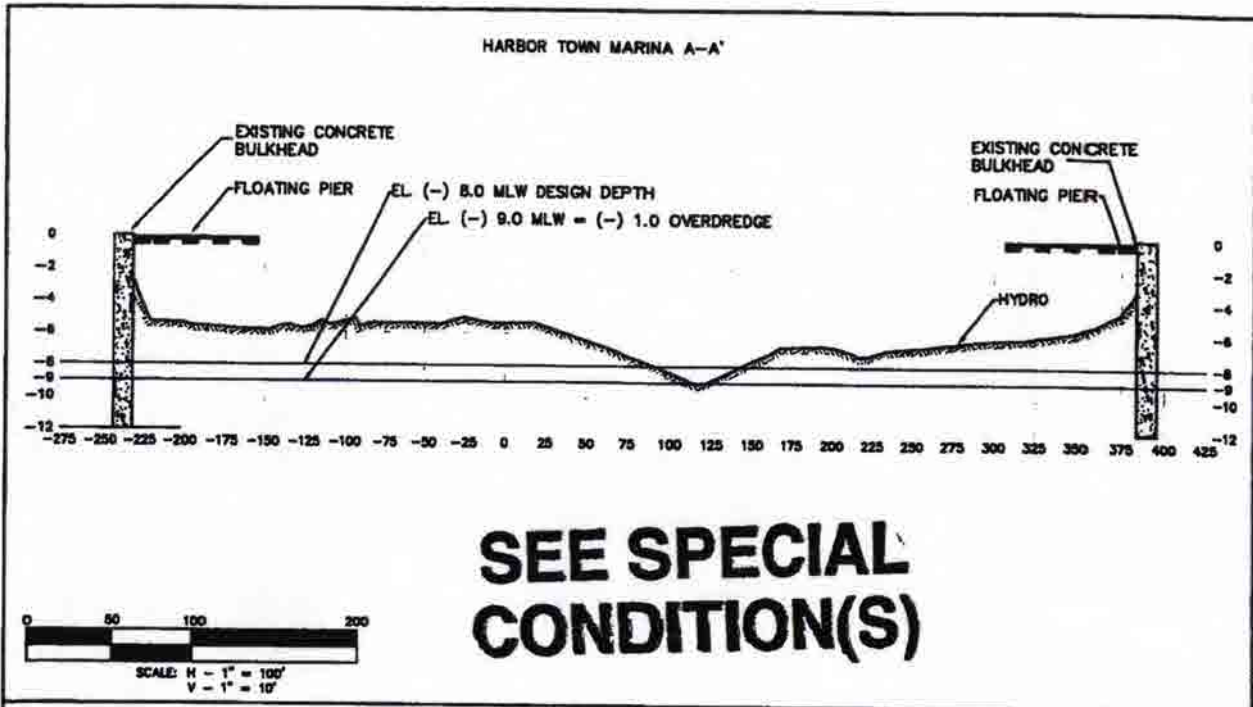
GEI ENGINEERS, LLC

a Member of THE GEI GROUP, INC.

15 of 33







1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

MLW - MEAN LOW WATER

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'18.98"N  
LONGITUDE: 80°46'42.92"W

SURVEY DATUM: MLW

**FIGURE 21  
CROSS SECTIONS  
HARBOR TOWN MARINA**

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: HARBOR TOWN MARINA  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

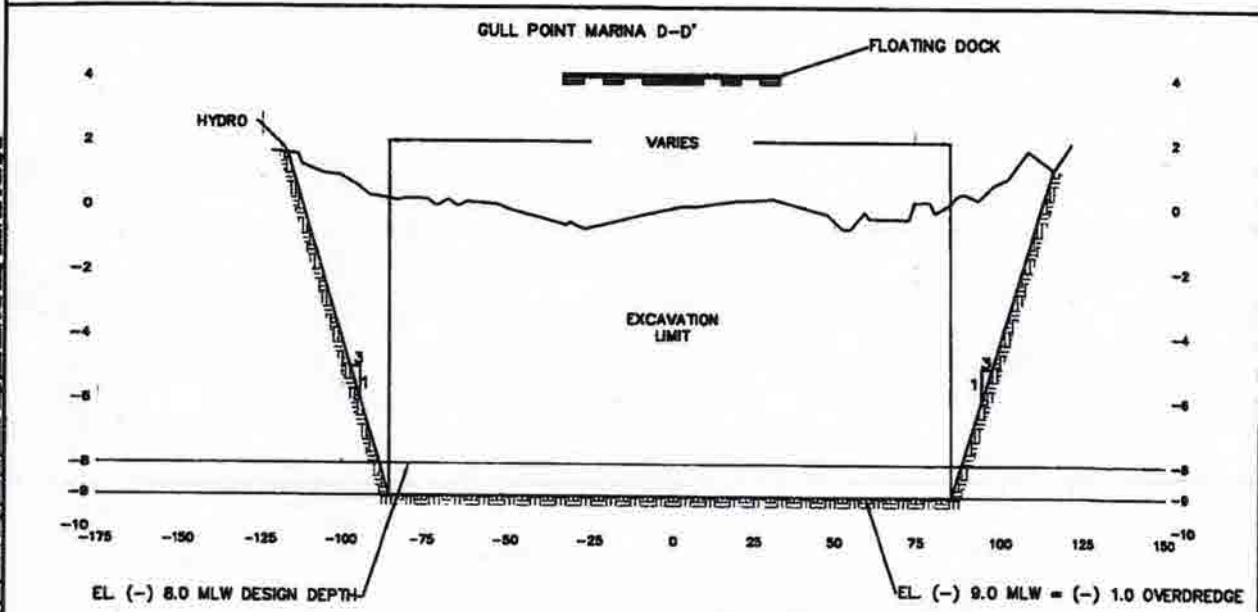
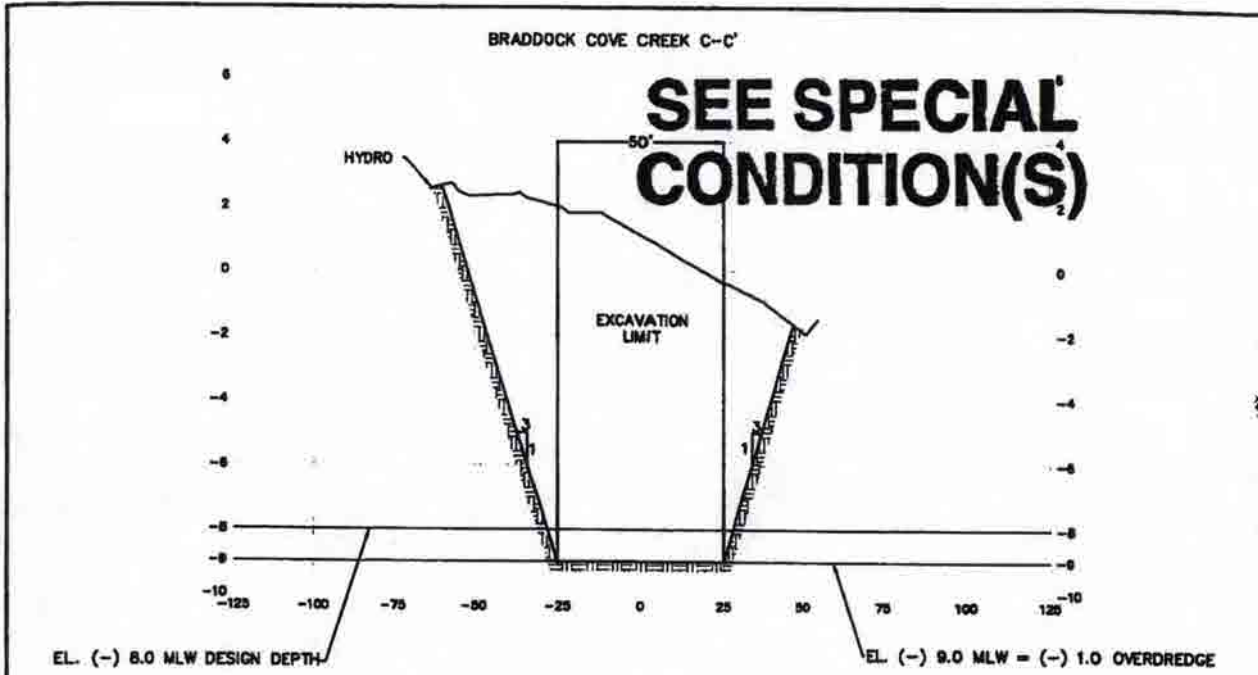
SHEET: 21 OF 27

DATE: 08/22/12

REL. ENGINEERING, LLC

a member of THE REL GROUP, INC.

27 of 33



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.



MLW - MEAN LOW WATER

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'08.54"N  
LONGITUDE: 80°46'24.87"W

SURVEY DATUM: MLW

**FIGURE 22  
CROSS SECTIONS  
BRADDOCK COVE CREEK**

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

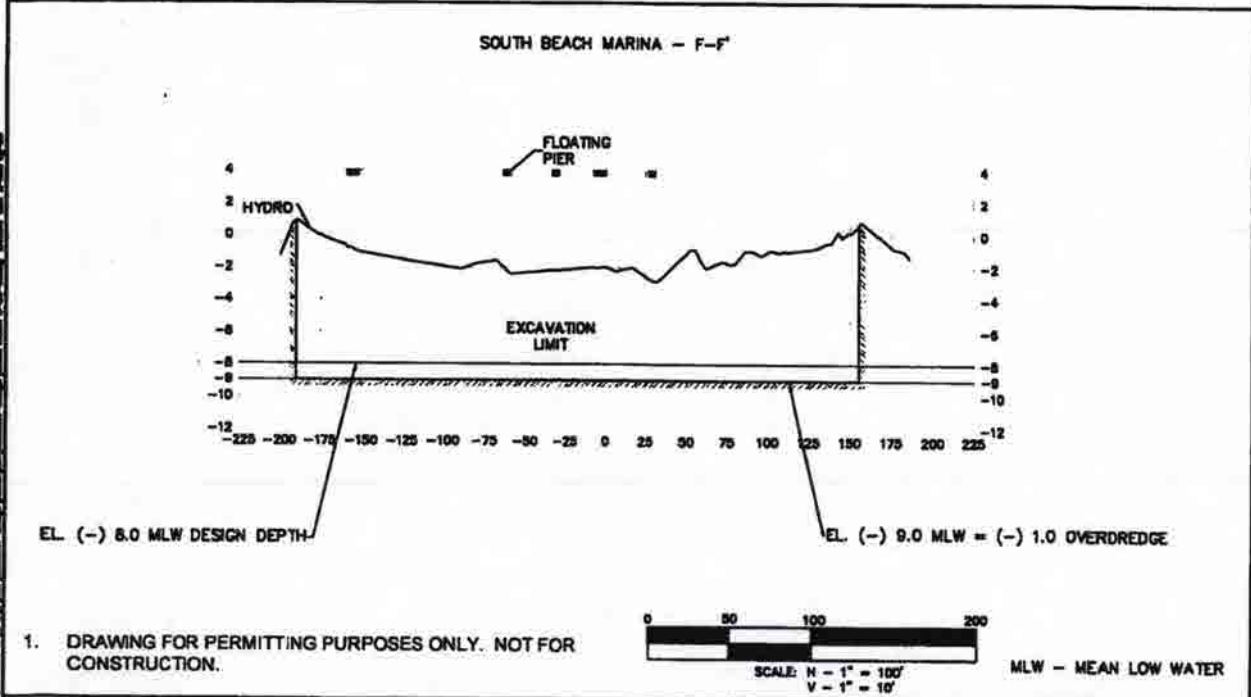
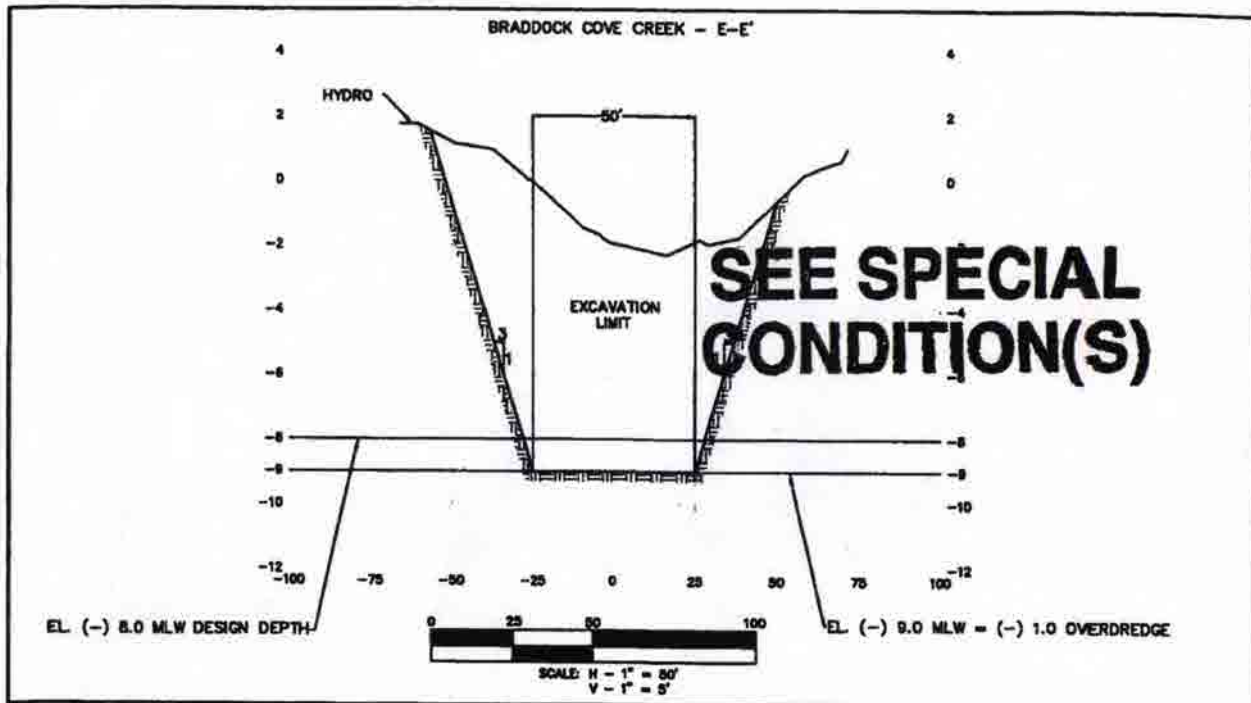
SHEET: 22 OF 27

DATE: 08/22/12

GEL ENGINEERING, LLC

a Member of THE GEL GROUP, INC.

28 of 33



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°06'58.79"N  
LONGITUDE: 80°48'28.40"W

SURVEY DATUM: MLW

FIGURE 23  
CROSS SECTIONS  
BRADDOCK COVE CREEK

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 23 OF 27

DATE: 08/22/12

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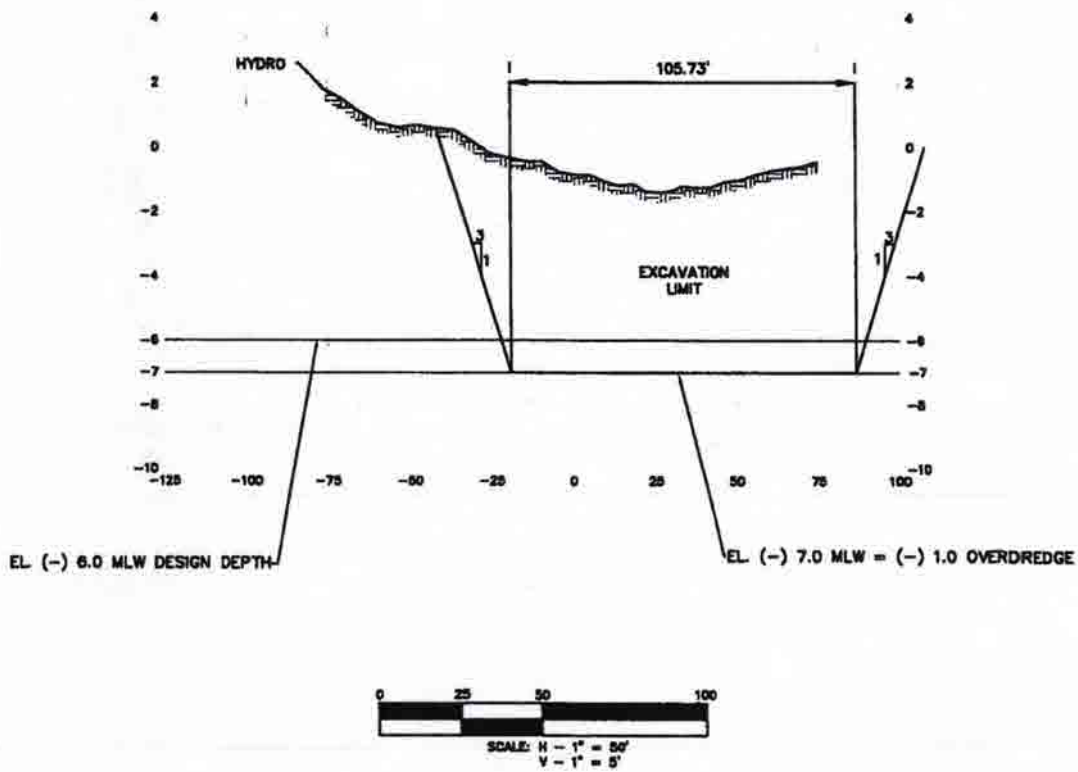
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29 of 33



BRADDOCK COVE CREEK G-G'

**SEE SPECIAL  
CONDITION(S)**



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

MLW - MEAN LOW WATER

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°06'51.87"N  
LONGITUDE: 80°48'20.74"W

SURVEY DATUM: MLW

**FIGURE 24  
CROSS SECTIONS  
BRADDOCK COVE CREEK**

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

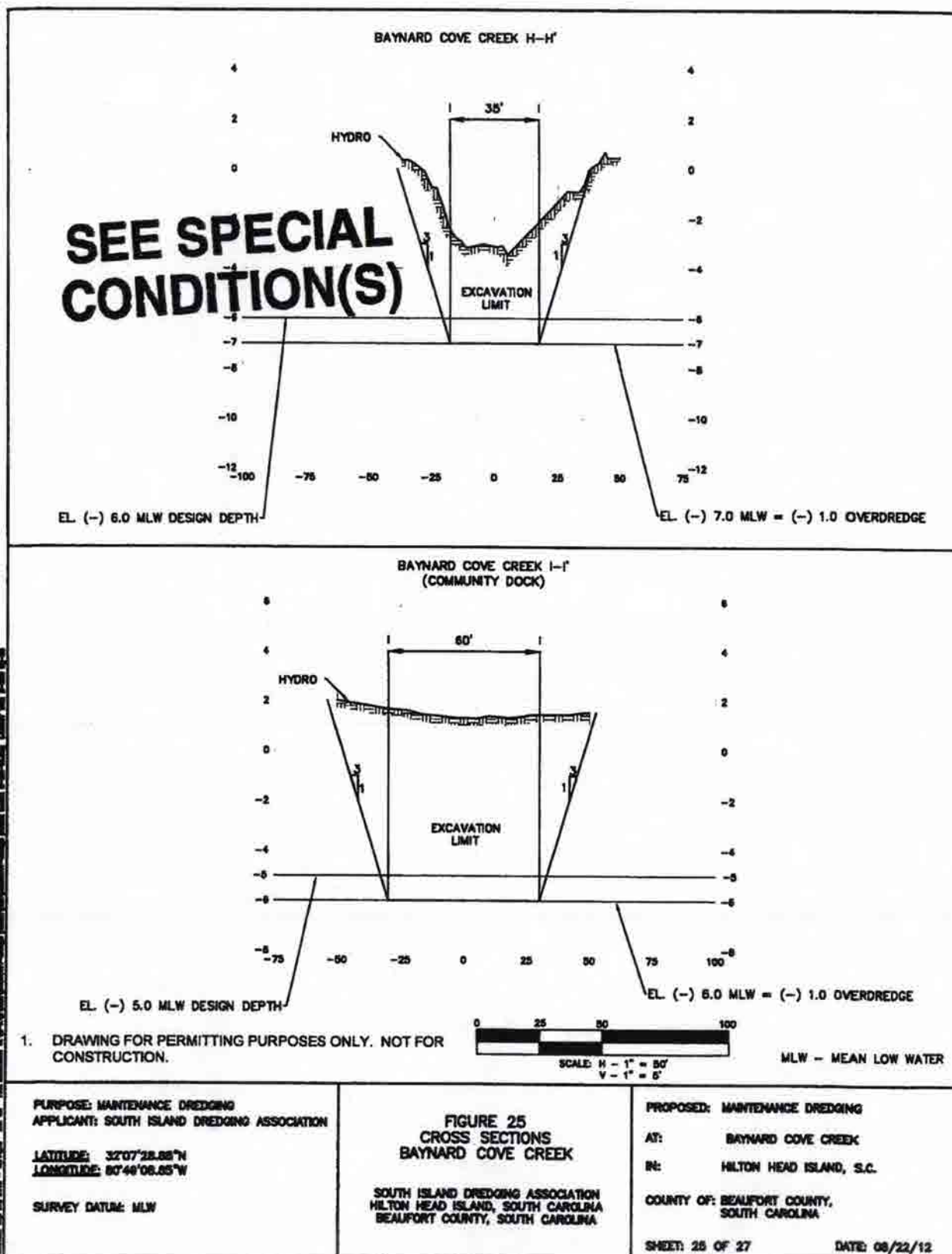
SHEET: 24 OF 27

DATE: 08/22/12

GEL ENGINEERING, LLC

a Member of THE GEL GROUP, INC.

30 of 33



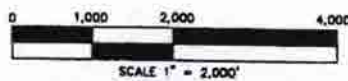


PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'24.25"N  
LONGITUDE: 80°48'49.69"W

SURVEY DATUM: NGVD MLW

FIGURE 26  
DISPOSAL SITE



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK, BAYNARD COVE CREEK  
HARBOUR TOWN, GULL POINT AND SOUTH BEACH  
MARINAS

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 26 OF 27

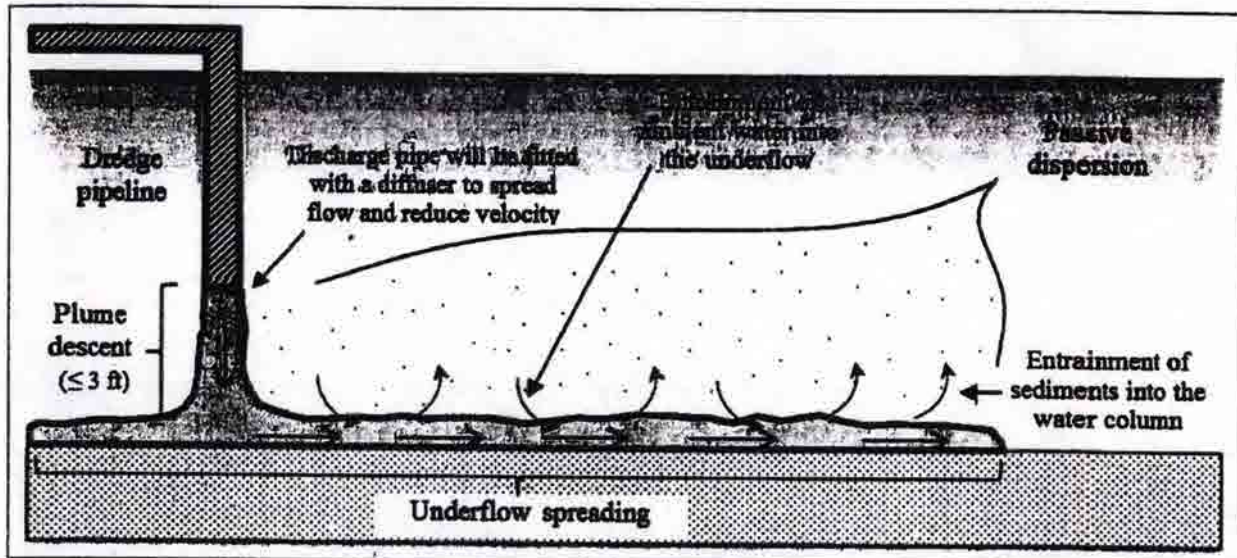
DATE: 06/22/12

NOT FOR CONSTRUCTION

32 of 33



# SEE SPECIAL CONDITION(S)



(Adapted from Teeter, in Thovenot et al., 1992).

1. DRAWING FOR PERMITTING PURPOSES ONLY.  
NOT FOR CONSTRUCTION.

|                                                                                                                                                                                          |                                                                                                                                                                                        |                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>PURPOSE: MAINTENANCE DREDGING</p> <p><u>LATITUDE:</u> 32°07'24.25"</p> <p><u>LONGITUDE:</u> 80°48'49.69"</p> <p>SURVEY DATUM: NGVD MLW</p> <p>SHEET: 27 OF 27      DATE: 09/20/12</p> | <p><b>FIGURE 27</b><br/>PLACEMENT SITE<br/>DISCHARGE SCHEMATIC</p> <p>SOUTH ISLAND DREDGING ASSOCIATION<br/>HILTON HEAD ISLAND, SOUTH CAROLINA<br/>BEAUFORT COUNTY, SOUTH CAROLINA</p> | <p>PROPOSED: MAINTENANCE DREDGING</p> <p>AT: BRADDOCK COVE CREEK, BAYNARD<br/>COVE CREEK, HARBOUR TOWN, GULL<br/>POINT AND SOUTH BEACH MARINAS,<br/>PORT VILLAS</p> <p>IN: HILTON HEAD ISLAND</p> <p>COUNTY: BEAUFORT COUNTY, SC</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|







RECEIVED  
AUG 24 2012

BY: \_\_\_\_\_

August 21, 2012

Mr. Steven Brooks P.E., Staff Biologist  
SC Dept. of Health & Environmental Control  
1362 McMillan Ave., Suite 400  
Charleston, SC 29405

Mr. Mark Purcell, Project Manager  
CESAC-DO-P  
Charleston US Army Engineer District  
P. O. Box 919  
Charleston, SC 29402

Re: SIDA LTMS - Permit Application  
Ownership/Control Information

Dear Messrs. Brooks and Purcell:

We support South Island Dredging Association's (SIDA) request for permits from the US Army Corps of Engineers and the SC Department of Health and Environmental Control to dredge our waterway. We are the owner of record of the Harbour Town Marina located within Harbour Town Yacht Basin in Beaufort County, SC. This property is all of the property in the Outer Yacht Basin that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, we certify that as the owner of record, we have, or we will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in the said property to conduct the work proposed in the permit application.

We also certify that the project as proposed does not cross any wetlands or areas below mean high water by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

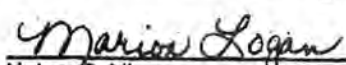
Additionally, we are authorizing SIDA to act on our behalf as permit holder and Applicant and Gel Engineering, LLC. (GEL) to act of Agent in the permit process.

Sincerely,

By:   
Steven P. Birdwell  
President

Sworn to and subscribed before me at 32 Greenwood Dr., Hilton Head Island, Beaufort County, South Carolina.

This 22<sup>nd</sup> day of August, 2012.

  
Notary Public  
My commissions expires: 3/12/2014

The Sea Pines Resort • 32 Greenwood Drive • Hilton Head Island, SC 29928  
(843) 785-3333 • Toll Free (866) 561-8802 • Fax (843) 842-1475 • [www.seapines.com](http://www.seapines.com)

**Gull Point Owners' Association, Inc.  
Hilton Head Island, SC**

September 6, 2012

Mr. Steven Brooks, Project Manager  
SC Department of Health and Environmental Control  
Office of Ocean and Coastal Resource Management  
1362 McMillan Avenue, Suite 400  
Charleston, SC 29405

Ms. Robin D. Collier-Socha  
Project Manager Regulatory Division  
Charleston US Army Corps of Engineers  
69A Hagood Avenue  
Charleston, SC 29402

Re: SIDA - Permit Application Ownership Control Information

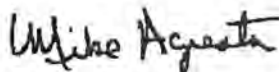
Dear Mr. Brooks and Ms. Collier-Socha:

We are a member of the South Island Dredging Association (SIDA) and are requesting permits from the US Army Corps of Engineers and the SC Department of Health and Environmental Control to dredge our facility. We are the record owner of the Gull Point Marina which is located in Braddock Creek in Hilton Head, South Carolina, which is within the area proposed in the permit application. Furthermore, we certify that as the record owner, we have or we will have prior to undertaking the work, necessary approvals of permission from all other persons with a legal interest in the said property to conduct the work proposed in the permit application.

We also certify that the project does not cross any wetlands or areas below mean high water which is in the ownership of other private parties or private entities and that there is no disputed claim to the wetlands or areas below mean high water by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Additionally, we authorize the South Island Dredging Association to act on our behalf as permit holder and Applicant, and GEL Engineering, LLC (GEL) to act as Agent in the permit process.

Sincerely,



Mike Agresta  
President

Sworn to and subscribed to this 6th day of September 2012.  
Notary Public, State of South Carolina Thomas R. Chant  
My Commission Expires My Commission Expires  
January 20, 2020

THE HARBOUR TOWN YACHT CLUB  
BOAT SLIP OWNERS  
HORIZONTAL PROPERTY REGIME

September 6, 2012

Mr. Steven Brooks, Staff Biologist  
SC Department of Health and Environmental Control  
1362 McMillan Avenue, Suite 400  
Charleston, SC 29405

Ms. Robin D. Collier-Souche, Project Manager  
CESAC-D0-F  
Charleston US Army Engineer District  
P.O. Box 919  
Charleston, South Carolina 29402

RE: SIDA LTMS - Permit Application  
Ownership/Control Information

Dear Messrs. Brooks and Collier-Souche:

We support the South Island Dredging Association (SIDA) request for permits from the US Army Corps of Engineers and the SC Department of Health and Environmental Control to dredge our waterway. We are the Association representing the individual Slip Owners located within Harbour Town Yacht Basin in Beaufort County, SC. This property is all of the property in the inner basin that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, we certify that as the owner of record we have, or we will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in the said property to conduct the work proposed in the permit application.

We also certify that the project as proposed does not cross any wetlands or areas below mean high water by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Additionally, we are authorizing SIDA to act on our behalf as permit holder and Applicant and Gcl Engineering, LLC (GEL) to act as Agent in the permit process.

Sincerely,

Harbour Town Yacht Club  
Boat Slip Owners  
Horizontal Property Regime

By: The Club Group, Ltd.  
Its: Managing Agent

By: Mark King  
Mark King  
Its: President

Sworn to and subscribed before me at Hilton Head, Beaufort County, South Carolina,  
This 6 day of September, 2012.

Andrew T. Sutton  
Notary Public  
My commission expires:



SBM LLC  
224 South Sea Pines Drive  
Hilton Head Island, SC 29928

Phone 843 384 6464 \* Fax 843 671 6679 \* Email bob@saltydog.com

September 6, 2012

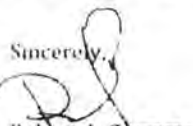
|                                                                                                                                                                                          |                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| Mr. Steven Brooks, Staff Biologist<br>SC Dept of Health & Environmental Control<br>Office of Ocean & Coastal Resource Management<br>1362 McMillan Ave, Suite 400<br>Charleston, SC 29405 | Ms. Robin D. Collier-Soucia<br>CESAC-CO-P<br>Charleston US Army Engineer District<br>PO Box 919<br>Charleston, South Carolina 29402 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|

Dear Mr. Brooks and Ms. Collier-Soucia,

We are a member of the South Island Dredging Association (SIDA) and are requesting permits from the US Army Corps of Engineers and the SC Department of Health and Environmental Control to dredge our facility. We are the record owner of this property along with Braddock Creek in Beaufort County, SC. This property is all of the property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, we certify that as the record owner, we have, or we will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in the said property to conduct the work proposed in the permit application.

We also certify that the project as proposed does not cross any wetlands or areas below mean high water which is in the ownership of other private persons or public or private entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Additionally, we authorize the South Island Dredging Association to act on our behalf as permit holder and Applicant, and GEL Engineering, LLC to act as Agent in the permit process.

Sincerely,  
  
Robert A. Gossett  
Managing Member

Sworn to and subscribed before me at Beaufort County, South Carolina, this 6th day of September, 2012.

Tami S. Horstman  
Notary Public  
My commission expires:

**NOTARY PUBLIC**  
State of South Carolina  
**TAMI S. HORSTMAN**  
My appointment expires Aug. 21, 2016

SEA PINES SOUTH BEACH OWNERS ASSOCIATION, INC.  
PO BOX 7366  
HILTON HEAD ISLAND, SC 29338

September 7, 2012

Mr. Steve Brooks, Project Manager  
SC Department of Health and Environmental Control  
Office of Ocean and Coastal Resource Management  
1362 McMillan Avenue, Suite 400  
Charleston, SC 29405

Ms. Robin D. Collier-Socha  
Project Manager Regulatory Division  
Charleston US Army Corps of Engineers  
69A Hagood Avenue  
Charleston, SC 29402

Re: SIDA - Permit Application Ownership Control Information

Dear Mr. Brooks and Ms. Collier-Socha:

We are a member of the South Island Dredging Association (SIDA) and are requesting permits from the US Army Corps of Engineers and the SC Department of Health and Environmental Control to dredge Braddock Cove and Creek. We are the record easement holder along this waterway in Beaufort County, SC. These properties are all of the property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted except for the two privately held lots at Wren Point. Furthermore, we certify that as the record easement holder, we have or we will have prior to undertaking the work, necessary approvals of permission from all other persons with a legal interest in the said property to conduct the work proposed in the permit application.

We also certify that the project does not cross any wetlands or areas below mean high water which is in the ownership of other private parties or private entities and that there is no disputed claim to the wetlands or areas below mean high water by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Additionally, we authorize the South Island Dredging Association to act on our behalf as permit holder and Applicant, and GEL Engineering, LLC (GEL) to act as Agent in the permit process.

Sincerely,



George Williams, President  
Sea Pines South Beach Owners Association, Inc.

Sworn to and subscribed to this 9 day of September 2012.  
Notary Public, State of South Carolina Michael R. Egan  
My Commission Expires \_\_\_\_\_

My Commission Expires  
August 27, 2017

**BAYNARD CREEK PROPERTY OWNERS ASSOCIATION, INC.**  
**35 BAYNARD CREEK ROAD**  
**HILTON HEAD ISLAND, SC 29928**

September 10, 2012

Mr. Steve Brooks, Project Manager  
SC Department of Health and Environmental Control  
Office of Ocean and Coastal Resource Management  
1362 McMillan Avenue, Suite 400  
Charleston, SC 29405

Ms. Robin D. Collier-Socha  
Project Manager Regulatory Division  
Charleston US Army Corps of Engineers  
69A Hagood Avenue  
Charleston, SC 29402

Re: SIDA – Permit Application Ownership Control Information

Dear Mr. Brooks and Ms. Collier-Socha:

We are a member of the South Island Dredging Association (SIDA) and are requesting permits from the US Army Corps of Engineers and the SC Department of Health and Environmental Control to dredge portions of Baynard Creek including the Community Dock area, which is owned by this association.

Our association, on behalf of the property owners who are its members, represents those property owners whose property fronts along these particular waterways, and is charged with the maintenance of the Creek and Community Dock. The affected properties are all contiguous to and landward of the areas in which a portion of the dredging work proposed by the permit application is to be conducted. Furthermore, we certify that in its role as representative of these property owners, this association will have obtained, prior to actually undertaking the work, the necessary approvals of permission from all other persons with a legal interest in the said properties to conduct the work proposed in the permit application.

We also certify that the project, as related to waters adjoining the properties of our members, as proposed in the application, does not cross any wetlands or areas below mean high water which is in the ownership of other private persons or public or private entities and that there is no disputed claim to the wetlands or areas below mean high water by person or entities due to a Kings Grant, State Grant, easement, or conveyance or other legal document evidencing ownership of these areas.

Additionally, we authorize the South Island Dredging Association to act on our behalf as permit holder and Applicant for such permit, and we are also authorizing GEL Engineering, LLC (GEL) to act as Agent in the permit process.

Sincerely,



On Behalf of the Association  
duly authorized

Sworn to and subscribed to this 13<sup>th</sup> day of September 2012.  
Notary Public, State of South Carolina Marion Logan  
My Commission Expires 3/12/2014

**RECEIVED**

SEP 14 2012

**DHEC-OCRM**  
**CHARLESTON OFFICE**



Exhibit "B" to Affidavit of John F. Brinkley





**DEPARTMENT OF THE ARMY**  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
69A HAGOOD AVENUE  
CHARLESTON, SOUTH CAROLINA 29403-5107

**NOV - 4 2016**

Regulatory Division

Mr. Jack Brinkley  
South Island Dredging Association  
46 Gull Point Road  
Hilton Head, South Carolina 29928

Dear Mr. Brinkley:

**PLEASE READ THIS LETTER CAREFULLY AND  
COMPLY WITH ITS PROVISIONS**

This is in response to your letter dated May 5, 2016, requesting modifications of the work authorized by Department of the Army (DA) permit (SAC-2012-00926). The requested modifications included expanding the dredging footprint and realigning the Braddock Cove Creek main channel as described below. The request further includes a revision to the monitoring requirements as described below. Lastly the requested modifications included reducing the presence of onsite dredge inspectors from the required 24 hours per day to 12 hours per day. The proposed work consists of maintenance dredging approximately 300,000 cubic yards of material from existing marina basins and access channels with disposal of the material in inshore waters near the mouth of Calibogue Sound. The project is located at Harbour Town Marina, Braddock Cove Creek, Gull Point Marina, South Beach Marina, Port Villas, Baynar Cove Creek, Community Dock, open water disposal in Calibogue Sound, Beaufort County, South Carolina (Latitude: 32.1206°N, Longitude: 80.8238°W).

In detail, the authorized modifications include the following:

- 1) Amend the existing Dredging Plan to address the following:
  - a) Increase the dredging footprint in the area around the Brown Dock in the upper reach of Braddock Cove Creek (increase 0.28 acre), as shown on sheet 9 of 27,
  - b) Expanding the dredging footprint on the south side of Gull Point Marina (increase 0.65 acre), and the connection between Gull Point Marina and the Braddock Cove Creek main channel (increase 0.28 acre), as shown on sheet 11 of 27,
  - c) Realign the Braddock Cove Creek main channel between Gull Point Marina and South Beach Marina (no net increase/channel realigned 25' to the east), as shown on sheet 12 of 27.

ELECTRONICALLY FILED - 2022 Oct 11 3:30 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701625

2) Amend the "SIDA/Hilton Head Island Dredging and Open Water Placement Monitoring Plan" to address the following revisions:

- a) Bathymetric monitoring of the Inshore Open Water Disposal Site will be conducted prior to, during, and following dredging is required.
- b) Sediment types (sand vs. fines) at the Inshore Open Water Disposal Site will be monitored prior to and following dredging.

The authorized modifications are shown on the attached drawings, entitled Braddock Cove Creek, Sheets 6-9, 11, and 12 of 27, and dated, May 5, 2016.

Requested modification NOT authorized: The request to reduce the inspection staff requirements from 24 hours per day to 12 hours per day is NOT authorized.

This letter should be attached to your copy of the signed permit. This permit was issued under the provisions of the Federal laws for the protection and preservation of the navigable waters of the United States. These laws provide that after the proposed work has been approved by the issuance of a Department of the Army permit,

**IT SHALL NOT BE LAWFUL TO DEVIATE FROM SUCH PLANS EITHER  
BEFORE OR AFTER COMPLETION OF THE WORK,**

unless modification of said plans has previously been submitted to and received the approval of the Department of the Army. All other conditions to which the work is made subject remain in full force and effect. In that this work appears subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, it is highly recommended that you contact that agency to ascertain their requirements in this matter.

Your cooperation in the protection and preservation of our navigable waters and natural resources is appreciated. In all future correspondence concerning this matter, please refer to file number SAC-2012-00926. If you have any questions concerning this matter, please contact Warren H. May III, Project Manager, at 843-329-8033.

Sincerely,

Matthew W. Luzzatto, P.E., PMP  
Lieutenant Colonel, U.S. Army  
Commander and District Engineer

Enclosures  
Modified Drawings  
Notification of Appeal Options

Copies Furnished:

Mr. Larry Setzler  
GEL Engineering LLC  
P O Box 30712  
Charleston, South Carolina 29417

Mr. Mark Caldwell  
U.S. Fish and Wildlife Service  
176 Croghan Spur Road, Suite 200  
Charleston, South Carolina 29407

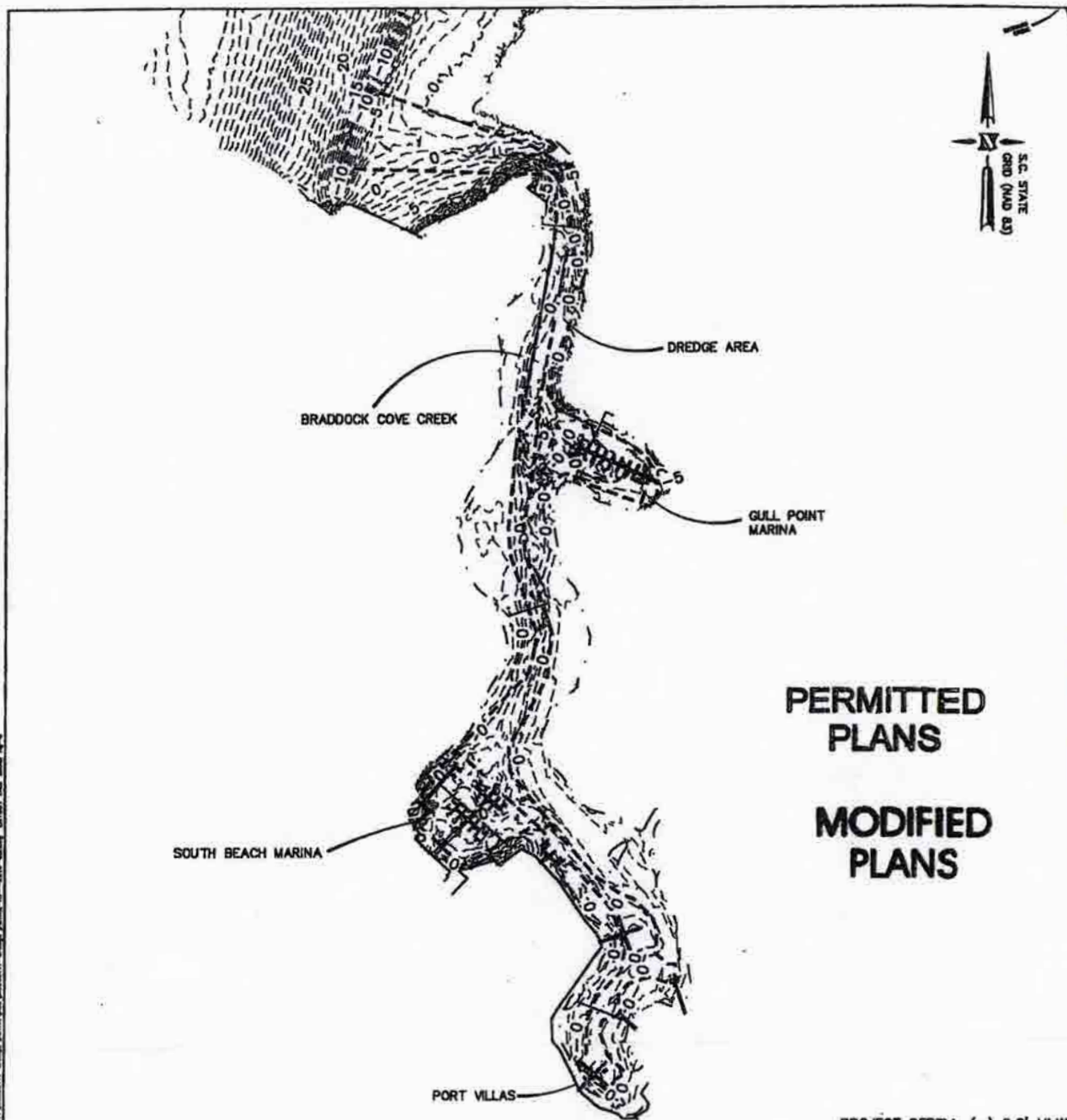
Mr. Pace Wilber  
National Marine Fisheries Service  
219 Fort Johnson Road  
Charleston, South Carolina 29412-9110

Ms. Elizabeth Johnson  
S. C. Department of Archives & History  
State Historic Preservation Office  
8301 Parklane Road  
Columbia, South Carolina 29223-4905

Mr. Chuck Hightower  
South Carolina Department of  
Health and Environmental Control  
Bureau of Water  
2600 Bull Street  
Columbia, South Carolina 29201

Mr. Blair Williams  
South Carolina Department of Health  
and Environmental Control  
Office of Ocean and Coastal  
Resource Management  
1362 McMillan Avenue, Suite 400  
Charleston, South Carolina 29405





**PERMITTED  
PLANS**

**MODIFIED  
PLANS**

PROJECT DEPTH: (-) 8.0' MLW

NOTE:  
SOME TYPICAL ENLARGED PLAN  
VIEW SECTIONS FOR CHANNEL  
ARE NOT SHOWN.

1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR  
CONSTRUCTION.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'01.92"N  
LONGITUDE: 80°49'25.66"W

SURVEY DATUM: MLW

**FIGURE 6-R1  
BRADDOCK COVE CREEK  
PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

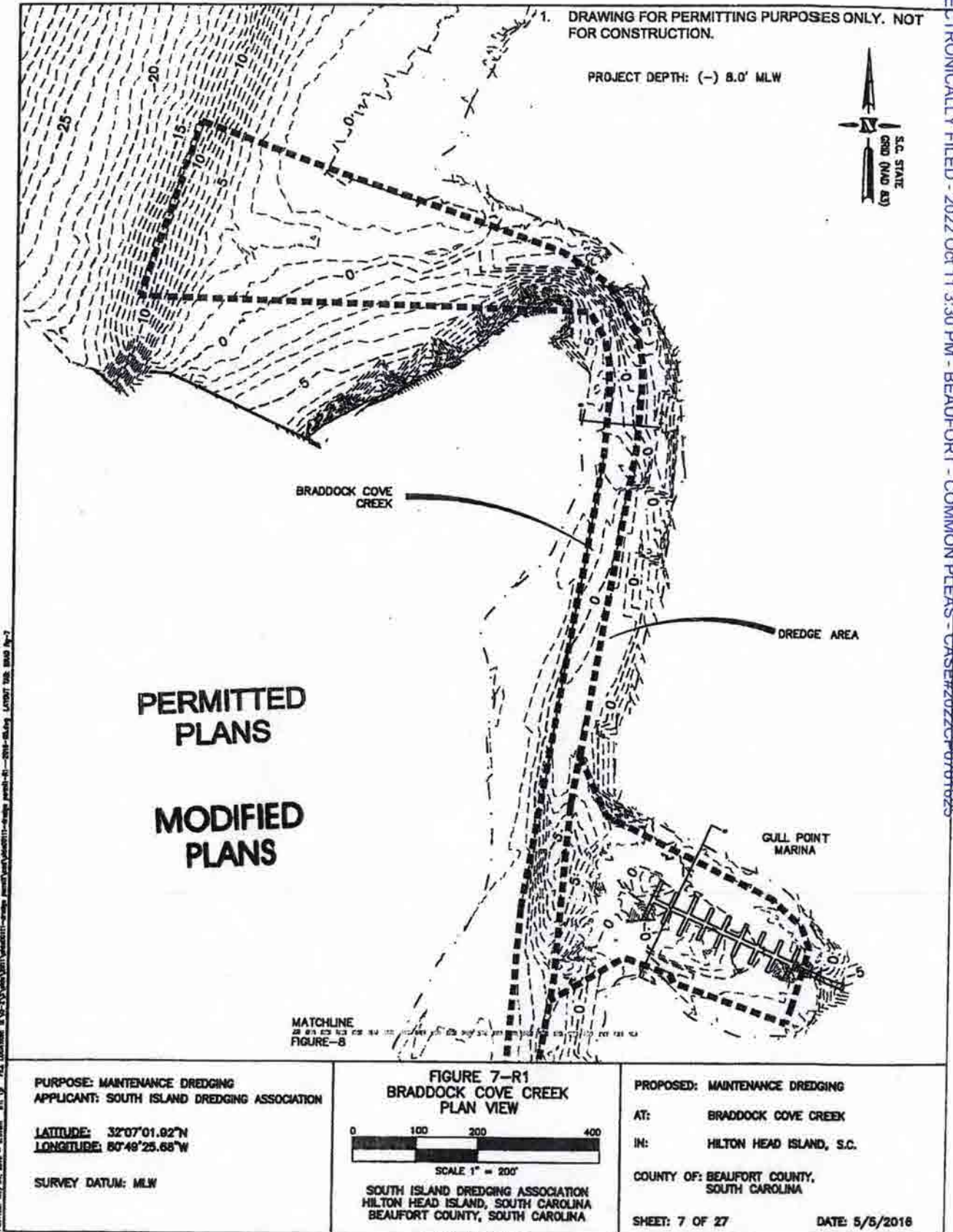
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

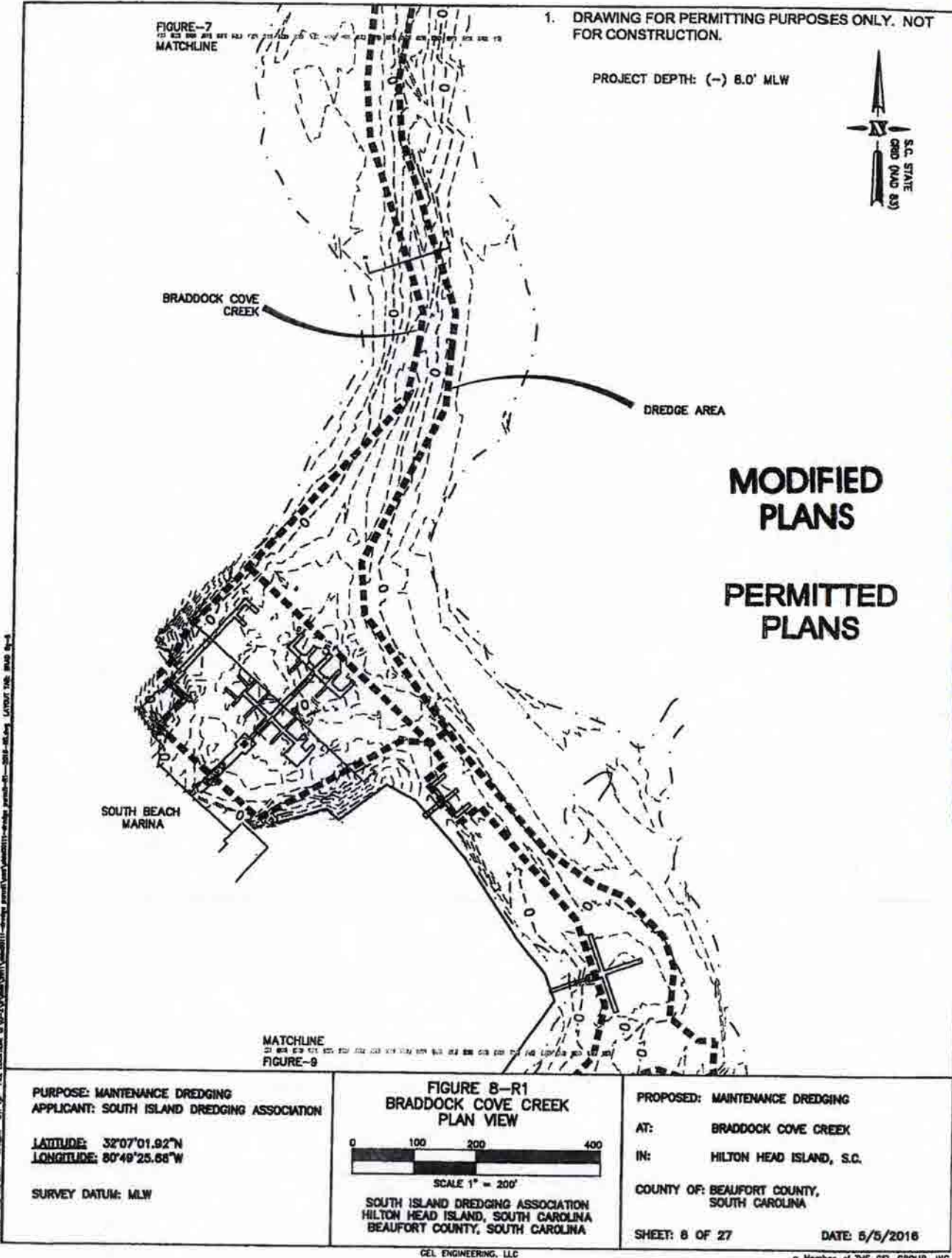
SHEET: 6 OF 27

DATE: 5/5/2016

CEL ENGINEERING, LLC

a Member of THE CEL GROUP, INC.







1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PROJECT DEPTH: (-) 8.0' MLW



FIGURE-8  
MATCHLINE

BRADDOCK COVE  
CREEK

PORT VILLAS

INCREASE  
.023 ACRE

DREDGE AREA

PERMITTED  
PLANS

MODIFIED  
PLANS

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'01.92"N  
LONGITUDE: 80°49'25.68"W

SURVEY DATUM: MLW

FIGURE 9-R1  
BRADDOCK COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

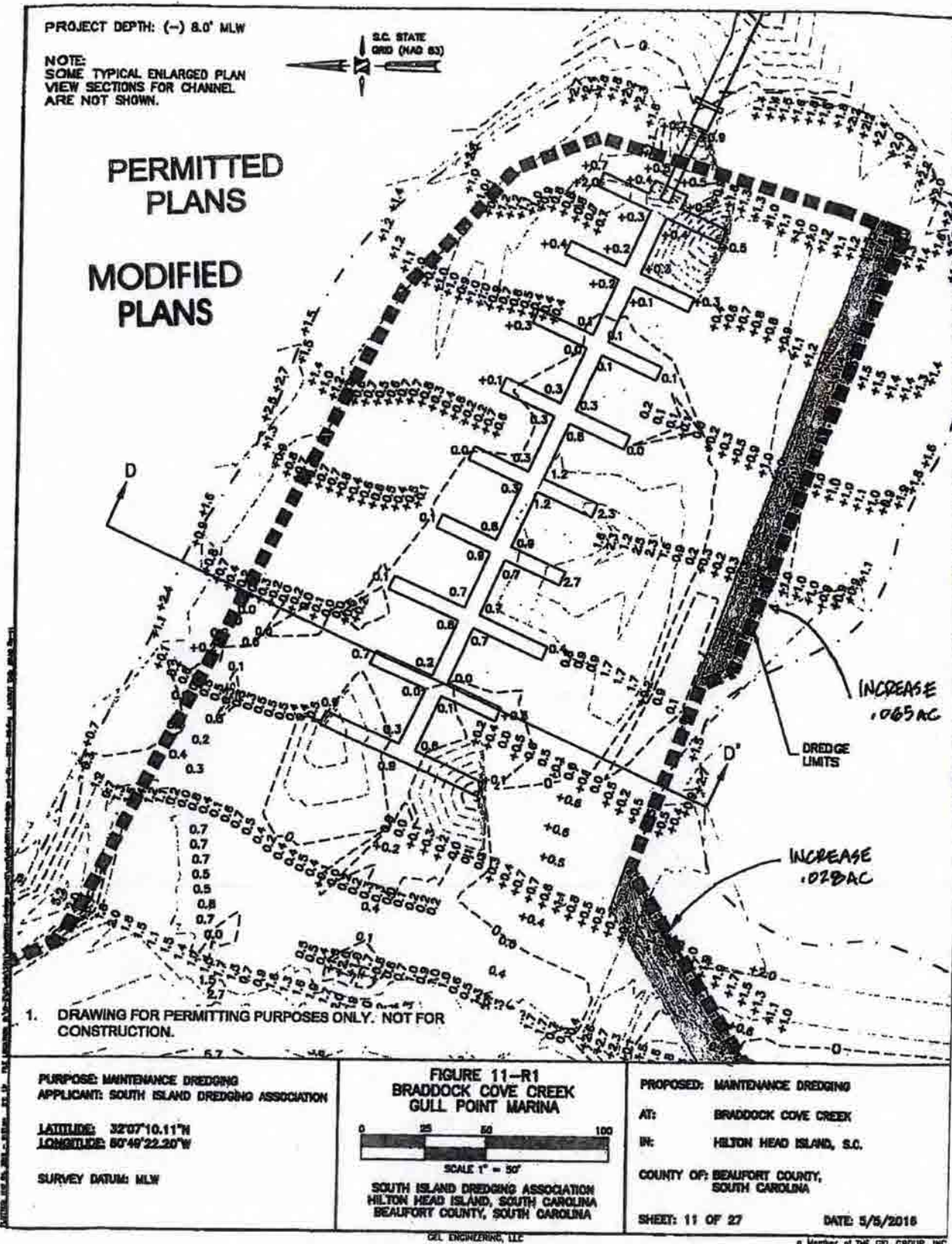
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 9 OF 27

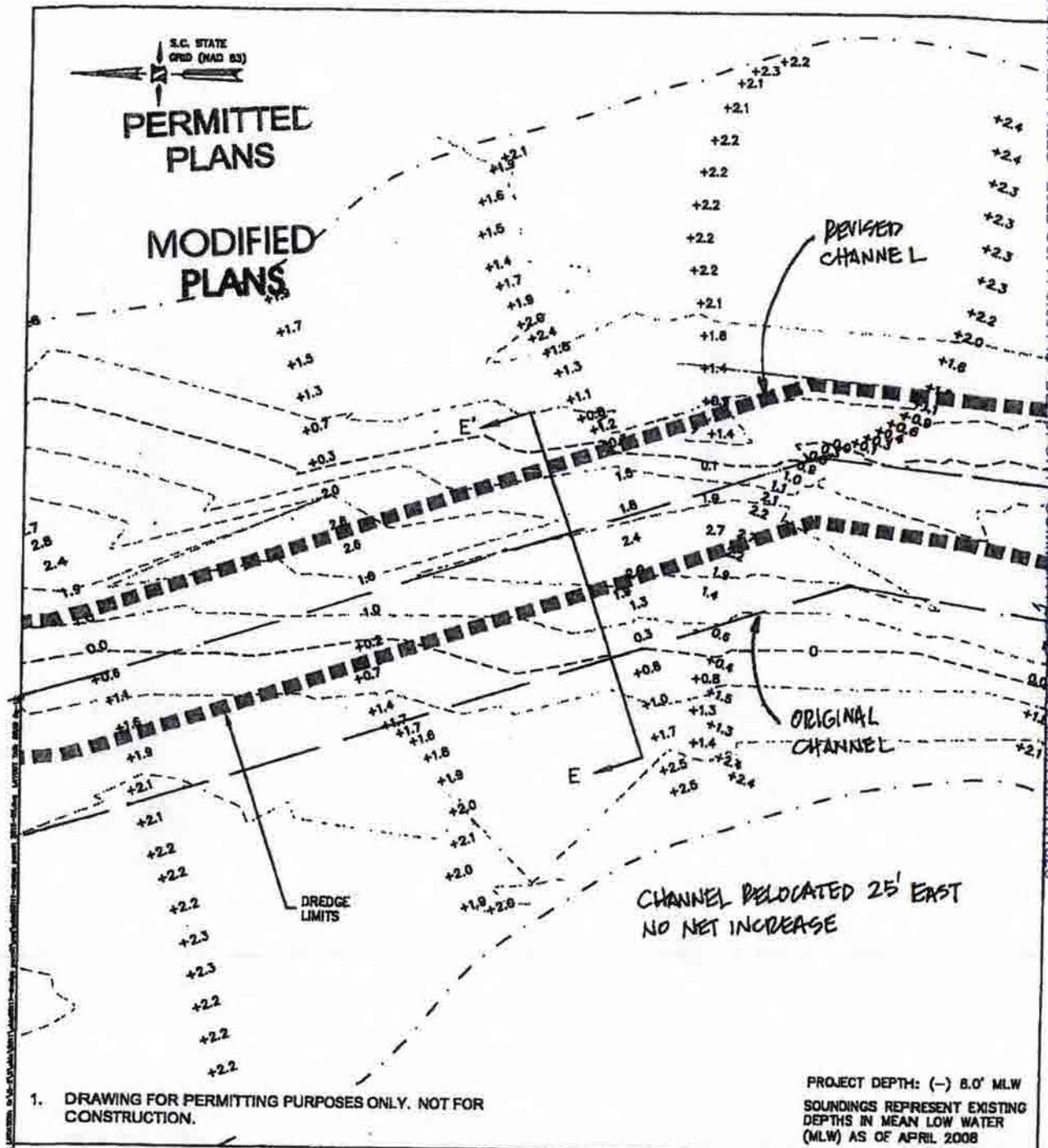
DATE: 5/5/2016

CEL ENGINEERING, LLC

Member of THE CEL GROUP, INC.







|                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>PURPOSE: MAINTENANCE DREDGING<br/>         APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION</p> <p><u>LATITUDE:</u> 32°07'01.92"N<br/> <u>LONGITUDE:</u> 80°49'25.68"W</p> <p>SURVEY DATUM: MLW</p> | <p><b>FIGURE 12-B1</b><br/> <b>BRADDOCK COVE CREEK</b><br/> <b>ENLARGED CHANNEL PLAN VIEW</b></p> <p>0 25 50 100</p> <p>SCALE 1" = 50'</p> <p>SOUTH ISLAND DREDGING ASSOCIATION<br/>         HILTON HEAD ISLAND, SOUTH CAROLINA<br/>         BEAUFORT COUNTY, SOUTH CAROLINA</p> <p>DEL ENGINEERING, LLC</p> | <p>PROPOSED: MAINTENANCE DREDGING</p> <p>AT: BRADDOCK COVE CREEK</p> <p>IN: HILTON HEAD ISLAND, S.C.</p> <p>COUNTY OF: BEAUFORT COUNTY,<br/>         SOUTH CAROLINA</p> <p>SHEET: 12 OF 27      DATE: 8/5/2016</p> <p style="text-align: right;">© Member of THE DEL GROUP, INC.</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
68-A HAGOOD AVENUE  
CHARLESTON, SOUTH CAROLINA 29403-5107

Regulatory Division

JUL 3 2013

GEL Engineering, LLC  
c/o Mr. Thomas D.W. Hutto  
Post Office Box 30712  
Charleston, South Carolina 30712

Dear Mr. Hutto:

This is in response to your application requesting a Department of the Army permit.

Enclosed is your Department of the Army Permit #SAC-2012-926-2IR. It authorizes you to perform the work specified on the attached drawings. This permit is issued under the provisions of the Federal laws for the protection and preservation of the navigable waters of the United States.

Please notify this office promptly, in writing, when you start and complete the work. The enclosed cards may be used for that purpose. You should also be aware that a special condition has been included in this permit which requires that a copy of the permit and drawings must be available at the work site during the entire time of construction.

Sincerely,

Edward P. Chamberlayne, P.E.  
Lieutenant Colonel, U.S. Army  
Commander and District Engineer

Enclosures

ELECTRONICALLY FILED - 2022 Oct 11 3:30 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701625



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
55 A Hugood Avenue  
CHARLESTON, SOUTH CAROLINA 29403-5107

REGULATORY DIVISION

TO WHOM IT MAY CONCERN:

In issuing this permit, this office has acted with reliance on the plans which you submitted. As you proceed with your project, please exercise every caution to ensure the work is performed exactly as shown on the approved plans and specifications, as deviations of any nature are expressly prohibited without the prior authorization of this office.

With this in mind, you will find this office cooperative in authorizing minor deviations if they are clearly within the scope of the original permit; however, you are placed on any "unauthorized" deviation from the approved plans will be constructed as a violation of Federal law and, at a minimum, you will be required to submit as-built plans of any deviations. These as-built plans will have to be prepared by a registered land surveyor. You will not be required to submit as-built drawings unless an "unauthorized" deviation is detected by this office or such submittals are required by a special condition in the permit (i.e., certified as-built plans are commonly required for utility crossings and structures adjacent to Federal channels.) If, upon demand, you fail to provide this office with such drawings in the requisite format, this office will request the U.S. Attorney to seek appropriate civil or criminal sanctions in order to maintain the integrity of the Department of the Army permit program.

Please be assured that you will find the Corps of Engineers receptive to minor deviations from the approved plans as long as such deviations are approved prior to commencement of work.

ELECTRONICALLY FILED - 2022 Oct 11 3:30 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701625

NOTICE OF COMMENCEMENT OR COMPLETION  
OF WORK AUTHORIZED BY PERMIT

DATE

WORK AUTHORIZED BY DEPARTMENT OF THE ARMY PERMIT

2012-926-ZIR

DATED \_\_\_\_\_

PERFORM WORK IN \_\_\_\_\_

(WATERBODY NAME)

WAS COMMENCED

ON \_\_\_\_\_

WAS COMPLETED

(DATE)

(check appropriate box)

\_\_\_\_\_  
SIGNATURE

FL 130  
5 MAR. 79

NOTICE OF COMMENCEMENT OR COMPLETION  
OF WORK AUTHORIZED BY PERMIT

DATE

WORK AUTHORIZED BY DEPARTMENT OF THE ARMY PERMIT

2012-926-ZIR

DATED \_\_\_\_\_

PERFORM WORK IN \_\_\_\_\_

(WATERBODY NAME)

WAS COMMENCED

ON \_\_\_\_\_

WAS COMPLETED

(DATE)

(check appropriate box)

\_\_\_\_\_  
SIGNATURE

FL 130  
5 MAR. 79

ELECTRONICALLY FILED - 2022 Oct 11 3:30 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701625



## DEPARTMENT OF THE ARMY PERMIT

Permittee: **SOUTH ISLAND DREDGING  
ASSOCIATION (SIDA)**

**46 GULL POINT ROAD  
HILTON HEAD, SC 29928**

Permit No: **SAC-2012-926-21R**

Issuing Office: **CHARLESTON DISTRICT**

**NOTE:** The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:**

The work consists of hydraulic maintenance dredging approximately 300,000 cubic yards of material from existing marina basins and access channels with disposal of the material in inshore waters near the mouth of Calibogue Sound to remove sediments from existing tidal waterways associated with Calibogue Sound with disposal at the mouth of Calibogue Sound in order to provide adequate depths for recreational and commercial vessels utilizing the waterways in accordance with the attached drawings entitled: Proposed: Maintenance Dredging; Applicant: South Island Dredging Association; At: Braddock Cove Creek, Baynard Cove Creek, Harbour Town, Gull Point, South Beach Marinas and Port Villas; In: Hilton Head Island, S.C.; County Of: Beaufort County, South Carolina. Sheets 1 thru 27 of 27 dated 27 September 2012.

**Project Location:**

The proposed project is located in Sea Pines Plantation on the southern end of Hilton Head Island on the Calibogue Sound side, in Beaufort County, South Carolina. There are multiple locations including one marina and two tidal creeks. The following coordinates provide the approximate limits of the permitted project:

|                      |                                                                    |
|----------------------|--------------------------------------------------------------------|
| Harbour Town Marina: | from inner coordinates: Latitude: 32.137605; Longitude: -80.810900 |
|                      | to outer coordinates: Latitude: 32.138848; Longitude: -80.816520   |
| Braddock Cove Creek: | from inner coordinates: Latitude: 32.113391; Longitude: -80.822652 |
|                      | to outer coordinates: Latitude: 32.122913; Longitude: -80.825566   |
| Gull Point Marina:   | from inner coordinates: Latitude: 32.119260; Longitude: -80.822356 |
|                      | to Braddock Cove Creek Channel                                     |
| South Beach Marina:  | from inner coordinates: Latitude: 32.115613; Longitude: -80.824709 |
|                      | to Braddock Cove Creek Channel                                     |
| Port Villas:         | from inner coordinates: Latitude: 32.113314; Longitude: -80.822832 |
|                      | to Braddock Cove Creek Channel                                     |
| Baynard Cove Creek:  | from inner coordinates: Latitude: 32.123098; Longitude: -80.816884 |
|                      | to outer coordinates: Latitude: 32.125128; Longitude: -80.824814   |
| Community Dock:      | from inner coordinates: Latitude: 32.125636; Longitude: -80.817000 |
|                      | to Baynard Cove Creek Channel                                      |

**Permit Conditions:**

**General Conditions:**

1. The time limit for completing the work authorized ends on **30 June 2023**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.



2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

SEE PAGES 4 & 5.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- ☒ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- ☒ Section 404 of the Clean Water Act (33 U.S.C. 1344).
- ☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Thomas D.W. Hutto  
(PERMITTEE)  
SOUTH ISLAND DREDGING ASSOCIATION (SIDA)

7/2/2013  
(DATE)

Thomas D.W. Hutto  
PRINT NAME

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Edward P. Chamberlayne  
(DISTRICT ENGINEER)  
EDWARD P. CHAMBERLAYNE, P.E., LTC  
or his Designee  
Tina B. Hadden  
Chief, Regulatory Division

3 JUL 13  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEEE)

\_\_\_\_\_  
(DATE)



**A. SPECIAL CONDITIONS FOR PERMIT #: SAC-2012-926-2IR**

- a. The permittee acknowledges that failure to comply with all terms and conditions may be grounds for modification, suspension or revocation of this Department of the Army authorization.
- b. That the permittee ensures that the contractor is aware that no discharge of dredged or fill material outside of the defined Inshore Open Water Disposal Site is authorized by this permit.
- c. The permittee understands and agrees that a performance bond in the amount of \$3,000,000 (\$3 million) must be posted prior to commencement of the authorized work. This performance bond will remain in effect until all of the authorized work is complete. Failure to maintain a Corps-approved performance bond during dredging and monitoring may be grounds for modification, suspension or revocation of this Department of the Army permit.
- d. Public Website: That within one month prior to commencement of any work authorized herein, the permittee will establish a public website that will display the DA permit and all associated reports required by this DA permit. All reports will be uploaded to the website within the timeframes outlined in this DA permit. The website must be maintained throughout the dredging operations and for 6 months after all operations and monitoring cease. For all subsequent maintenance dredging activities, the website will be reopened one month before operations begin and last until 6 months after all operations and monitoring cease. Within 30 days after the completion of EACH dredging event, the permittee will transmit the contents of the website to the Corps both digitally (on disks) and in hardcopy. The format, to include the URL, for the website must be provided to this office within 30 days of the issuance of this DA permit for review and approval.
- e. That the permittee will engage the services of an independent contractor to provide dredging inspectors during ALL dredge and disposal operations. This inspector will answer directly to the District Engineer, and is wholly funded by the permittee. Prior to ANY work being performed that is authorized herein, the permittee will provide this office with the names of the inspectors and their credentials for Corps review and approval. It is understood that these inspectors MUST be qualified to supervise maintenance dredging and disposal work. The inspectors will attend a pre-construction meeting in this office with members of the Corps' Regulatory staff. The inspectors will insure compliance with all terms and conditions of the DA permit, and will prepare the Daily Inspection Log (as contained in the approved "Comprehensive Dredging and Disposal Operations, Monitoring, and Management Plan"). It is fully and completely understood that the inspector has the ability and responsibility to implement the "Comprehensive Dredging and Disposal Operations, Monitoring, and Management Plan" and/or to temporarily halt dredging operations until such time as remedial actions have been taken to the satisfaction of the inspector. It is further understood that the inspector will notify this office IMMEDIATELY when it becomes necessary to halt dredging operations for violations of the terms and conditions of this DA permit, and all actions

will be documented on the "Dredging Certification Log" (as contained in the approved "Comprehensive Dredging and Disposal Operations, Monitoring, and Management Plan"). The District Engineer may require replacement of any inspector and/or independent contractor who does not comply with the terms and conditions of this permit.

- f. That prior to commencement of ANY work authorized herein, a pre-construction conference will be held among the permittee, the permittee's contractor, inspectors, and members of the Corps' staff. At this meeting, the permittee will provide for review and approval with the names of the contractors being utilized for both the dredging and disposal activities. Among items to be reviewed will be a profile of the dredging company, its qualifications and references, names and areas of responsibilities of management personnel and crewmembers that will be used on this project, the equipment being used (including vessel registration numbers), and the experience of those responsible for its operation. The permittee understands and agrees that registered vessels and trained crew will be used for any and all work authorized herein.
- g. "Comprehensive Dredging and Disposal Operations, Monitoring, and Management Plan": The permittee understands and agrees that a document entitled, "Comprehensive Dredging and Disposal Operations, Monitoring, and Management Plan" (hereinafter referred to in this permit as the Plan) must be developed and submitted for Corps review and approval within 30 days of issuance of this permit or two months PRIOR to commencement of dredging operations, whichever is later. Once approved, all requirements of the Plan must be strictly adhered as a condition of this permit. The Plan must contain, at a minimum, the following:
  1. All pertinent information contained in the "Dredge Plan", the Revised Monitoring Plan dated May 14, 2013, and the Preliminary Adaptive Management Plan submitted via email on June 4.
  2. Surveys: Explicit details on the requisite bathymetric surveys for both the dredge areas and the disposal area must be included in the Plan. Some of the basic minimum requirements are:
    - For the dredge areas, the permittee agrees to conduct before and after hydrographic dredging surveys to precisely determine the quantity of material disposed in the Inshore Open Water Disposal Site. These surveys must encompass all areas to be dredged and will be conducted to meet USACE Performance Standards as defined in the Hydrographic Surveying Manual EM 1110-2-1003. The survey must be referenced to MLLW and horizontal position to NAD 83 SC State Plane Coordinates.
    - For the Inshore Open Water Disposal Site, the permittee agrees to conduct before, after and 1 month after commencement of hydrographic dredging surveys of the proposed disposal site to precisely determine the quantity of material disposed in the Inshore Open Water Disposal Site. These surveys must be conducted in an area that encompasses an area approximately 500' in all directions surrounding the disposal area, except in that area that is landward of mean high water. Survey lanes will be at intervals no wider than 100' and surveys must be conducted to meet USACE



Performance Standards as defined in the Hydrographic Surveying Manual EM 1110-2-1003. The survey must be referenced to MLLW and horizontal position to NAD 83 SC State Plane. The permittee shall submit a detailed survey plan, to include but is not limited to: description of the type of survey vessel and equipment to be used, distance between transects and sounding, and the level of accuracy.

- It is further understood that if the survey taken one month after commencement of work shows that there is more than 2 feet of mounding over ¼ of the 56 acres site (14 acres), adaptive management techniques will be implemented, including but not limited to, re-locating the discharge pipe, reducing the dredging discharge, and /or ceasing operations. Additional surveys must be performed within 30 days to document that the adaptive management techniques implemented are sufficient. The Plan must clearly describe all details and requirements for further surveys if needed

3. Remedial actions that will be taken if there is a discharge of sediment outside the authorized disposal site resulting from a REAL accident such as a leak or break in the pipe.
4. Remedial actions to be taken in the event of "spread" of the underflow sediment outside of the authorized disposal site.
5. Dredge Specifications such as the type, capacity, daily production, and size of dredge(s) and boosters that will be used. If an exact size of the vessels is not currently known, the maximum dredge size can be stated. The crew required on each vessel must be listed.
6. Order of Work should be described.
7. Dredge Pipeline Route must be included.
8. Measures to insure safe navigation during dredging and disposal operations must be included.
9. The requirement for a Preconstruction Conference (to include the Corps) and details of items to be addressed at the conference must be described.
10. Working hours
11. The recognition that a "stop work" order will occur if other actions are insufficient to address concerns.
12. The "duties" and responsibilities of the independent inspector as outlined in the special condition below.
13. The requirement for NAD 83 state plane coordinates of the initial location of the discharge pipe and all subsequent locations.
14. Measures/techniques that will be used to insure the protection of the oyster beds as outlined in the special condition below.
15. Daily Inspection Log – The attached required "Daily Inspection Log" must be included in the Plan. This log will be provided to the Corps of Engineers, Regulatory Division, via email to the following email address: CESAC-RD-MAIL@USACE.ARMY.MIL by 0900 the following day and must have the following specific title: SAC 2012-00926-2IR-yyyymmdd. The "yyyymmdd" must be the date of the inspection. In addition, all logs will be posted on the public website required herein.
16. It is understood that the daily inspections and the Daily Inspection Log must include environmental protective measures during construction, including but not limited to:

spill contingency plan, appropriate spill containment equipment, visual water quality observation and reporting of any abnormalities in the standard daily operations.

17. The Plan shall discuss all associated construction actions to address the potential unexpected occurrences.
  18. That the permittee fully and completely understands and accepts that there is extensive inspection and monitoring requirement associated with this permit. These requirements are outlined in the "Dredge Plan", the Revised Monitoring Plan dated May 14, 2013, and the Preliminary Adaptive Management Plan submitted via email on June 4. The Plan must combine all the requirements from these other documents and explicitly describe all monitoring and inspection requirements.
- h. The permittee agrees to maintain a 10' buffer around all oyster reefs and emergent salt marsh with the exception of the 0.003 area of sand spit at the mouth of Braddock Cove Creek. The permittee will mark the edges of oyster reefs in areas that may be obscured by water near the dredge footprint with PVC pipe just prior to dredging so that the dredge operator can clearly see the demarcation of the buffer areas.
  - i. That the permittee agrees to conduct the work authorized herein in a manner that will not prevent or interfere with full and free use of the adjacent or nearby navigable waters of the United States by the boating public.
  - j. That the permittee must contact the United States Coast Guard to ascertain and assist in the issuance of a Notice to Mariners advising the boating public of the place and time that the dredging activity will be occurring.
  - k. That the permittee is responsible for properly installing and providing appropriate warning and marking devices to alert the boating public of any dangers (such as cables, anchors, buoys and other appurtenances) associated with the proposed dredging activity. All warning and marking devices must be marked and installed in accordance with United States Coast Guard standards.
  - l. That the permittee agrees to contact the Boating Division of the South Carolina Department of Natural Resources to advise them of the place and time that the dredging activity will be occurring. The permittee will solicit any information that the Department may have on local boating traffic patterns and activities in the project area. Such information will be used to facilitate dredging plant and appurtenances setup and operation to insure safe navigation through the area of work.
  - m. In order to insure protection of West Indian Manatees that may enter the project area during dredging activities performed outside the winter months (November 1 thru February 15), the permittee will comply with the following:
    1. The permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel must monitor water-related activities for the presence of manatee(s) during May 15 - October 15.

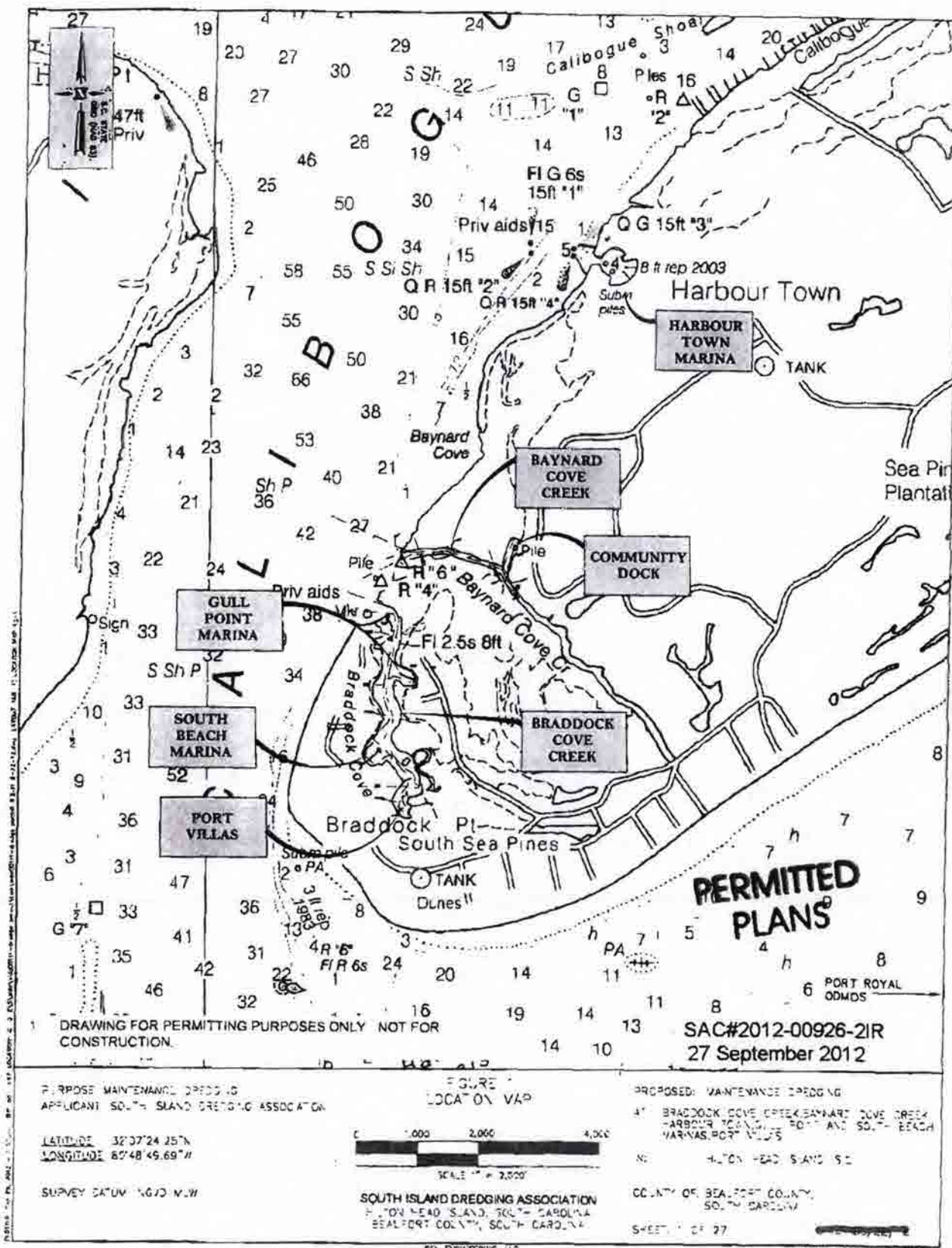


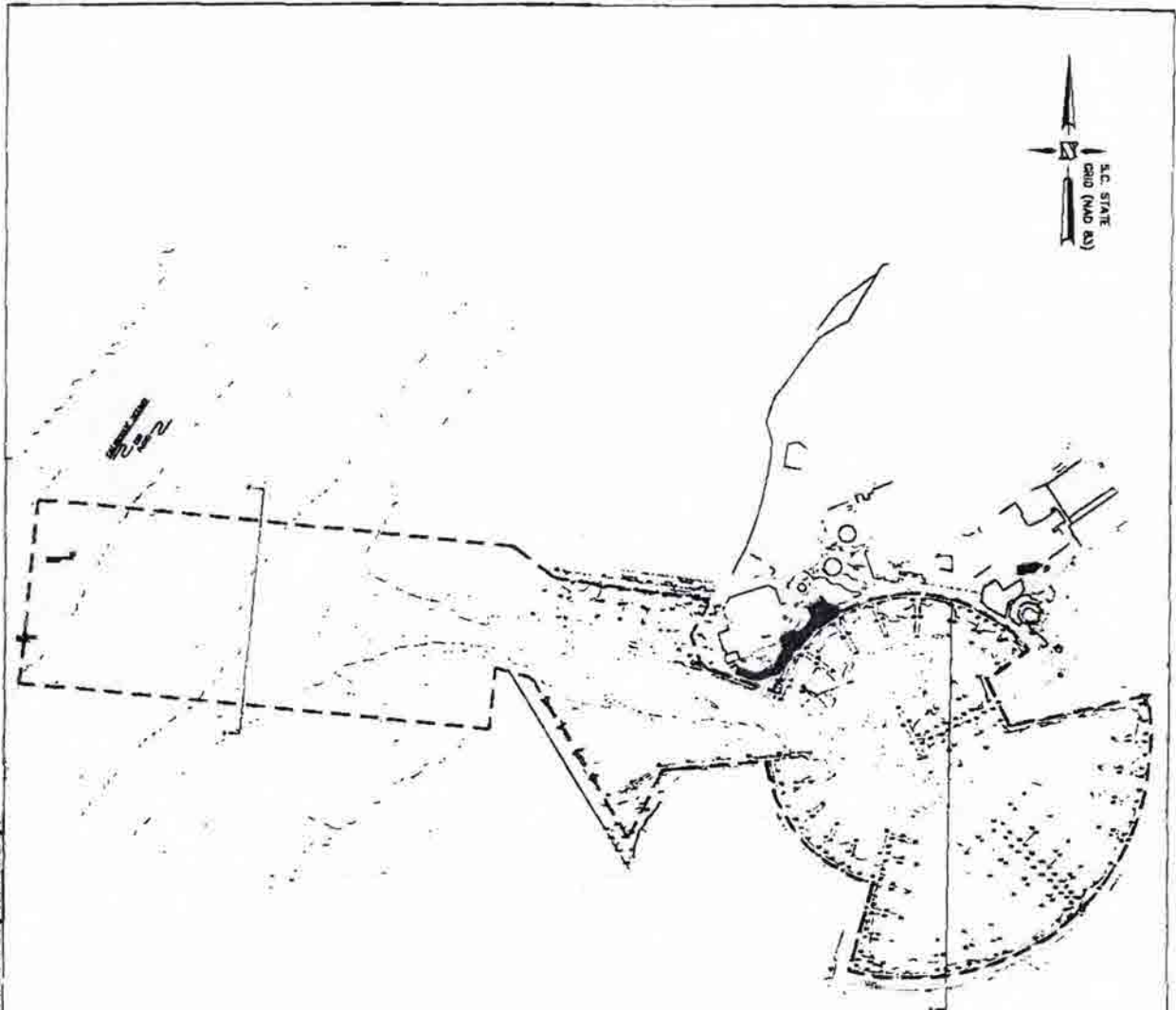
2. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973.
  3. Any siltation barriers used during the project shall be made of material in which manatees cannot become entangled and must be properly secured, and regularly monitored to avoid manatee entrapment.
  4. All vessels associated with the project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
  5. If manatees are seen within 100 yards of the active construction area all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet to a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities will not resume until the manatee(s) has departed the project area of its own volition.
  6. Any collision with and/or injury to a manatee shall be reported immediately to Jim Valade of the U.S. Fish and Wildlife Service, North Florida Field Office, at (904) 731-3116, and to the S.C. Wildlife and Marine Resources department, Heritage Trust Section, (803) 844-2473.
- n. Any collision or sightings of stranded marine mammals under NMFS jurisdiction should be reported to the South Carolina Marine Mammal Stranding Hotline: 800-922-5431.
  - o. That the permittee agrees to provide all contractors associated with construction of the authorized activity a copy of the permit and drawings. A copy of the permit will be available at the construction site at all times.
  - p. That the permittee shall submit a signed compliance certification to the Corps within 60 days following completion of the authorized work and any required mitigation. The certification will include:
    1. A copy of this permit;
    2. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
    3. A statement that any required mitigation was completed in accordance with the permit conditions;
    4. The signature of the permittee certifying the completion of the work and mitigation.
  - q. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions



caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

- r. Approval of this permit will give Federal authorization for maintenance dredging for a period of ten (10) years from the date of issuance provided all other special conditions are complied with.
- s. That the permittee agrees to follow and comply with all conditions attached to the Water Quality Certification (WQC) issued for this project. Conditions attached to the WQC are incorporated by reference and are made part of this permit by General Condition #5. Failure to follow and comply with all conditions of the WQC may be grounds for modification, suspension, or revocation of this Department of the Army permit.





## PERMITTED PLANS

1. DRAWING FOR PERMITTING PURPOSES ONLY, NOT FOR CONSTRUCTION.

SAC#2012-00926-2IR  
27 September 2012

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'15.28"N  
LONGITUDE: 80°48'47.05"W

SURVEY DATUM: MLLW

FIGURE 2  
HARBOUR TOWN MARINA  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: HARBOUR TOWN MARINA

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

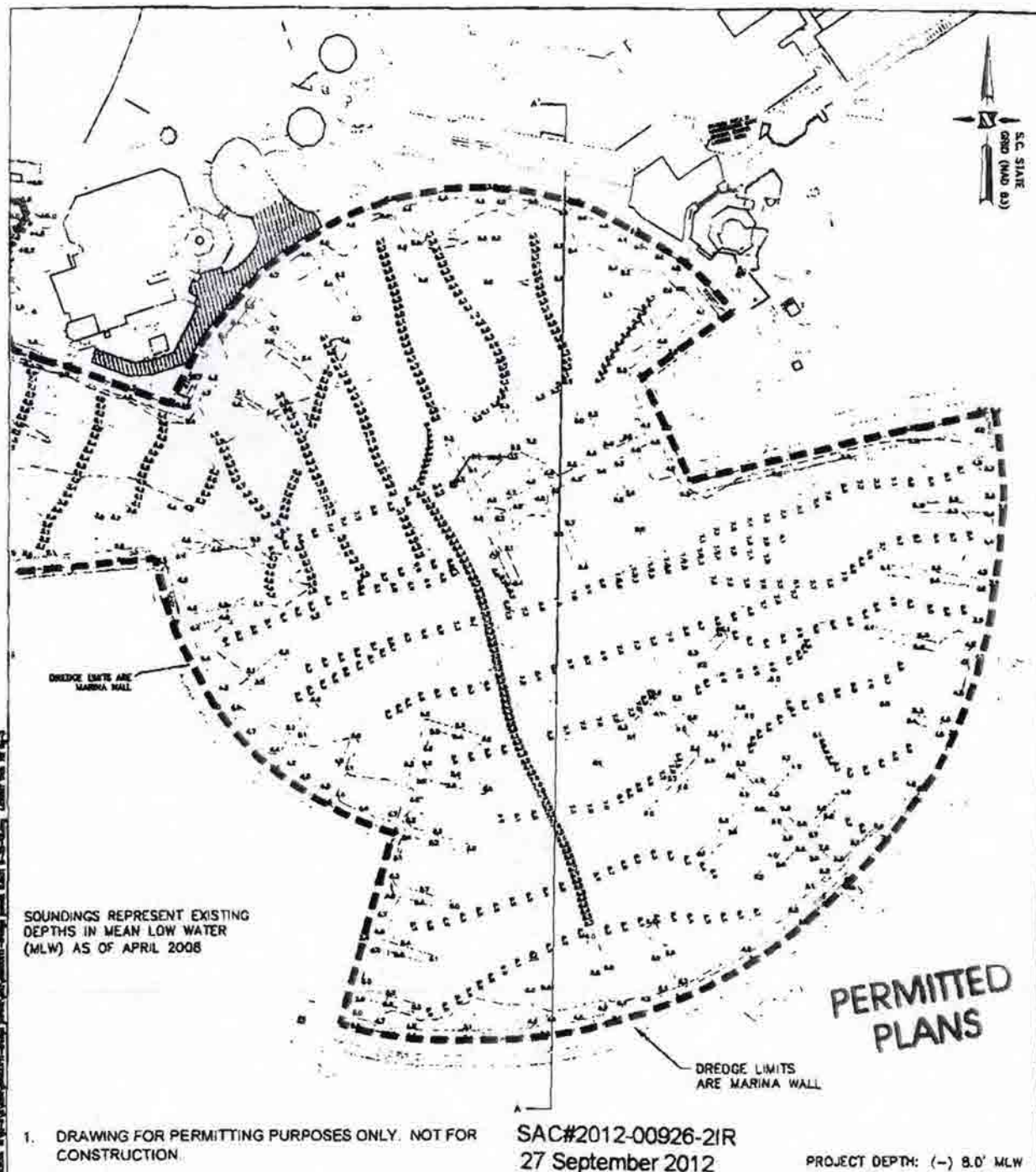
SHEET: 2 OF 27

*[Signature]*

DEL DREDGING, LLC

a Member of THE DEL GROUP, INC.





PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'18.28"N  
LONGITUDE: 80°48'47.05"W

SURVEY DATUM: MLW

FIGURE 3  
HARBOUR TOWN MARINA  
ENLARGED PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: HARBOUR TOWN MARINA  
IN: HILTON HEAD ISLAND, S.C.

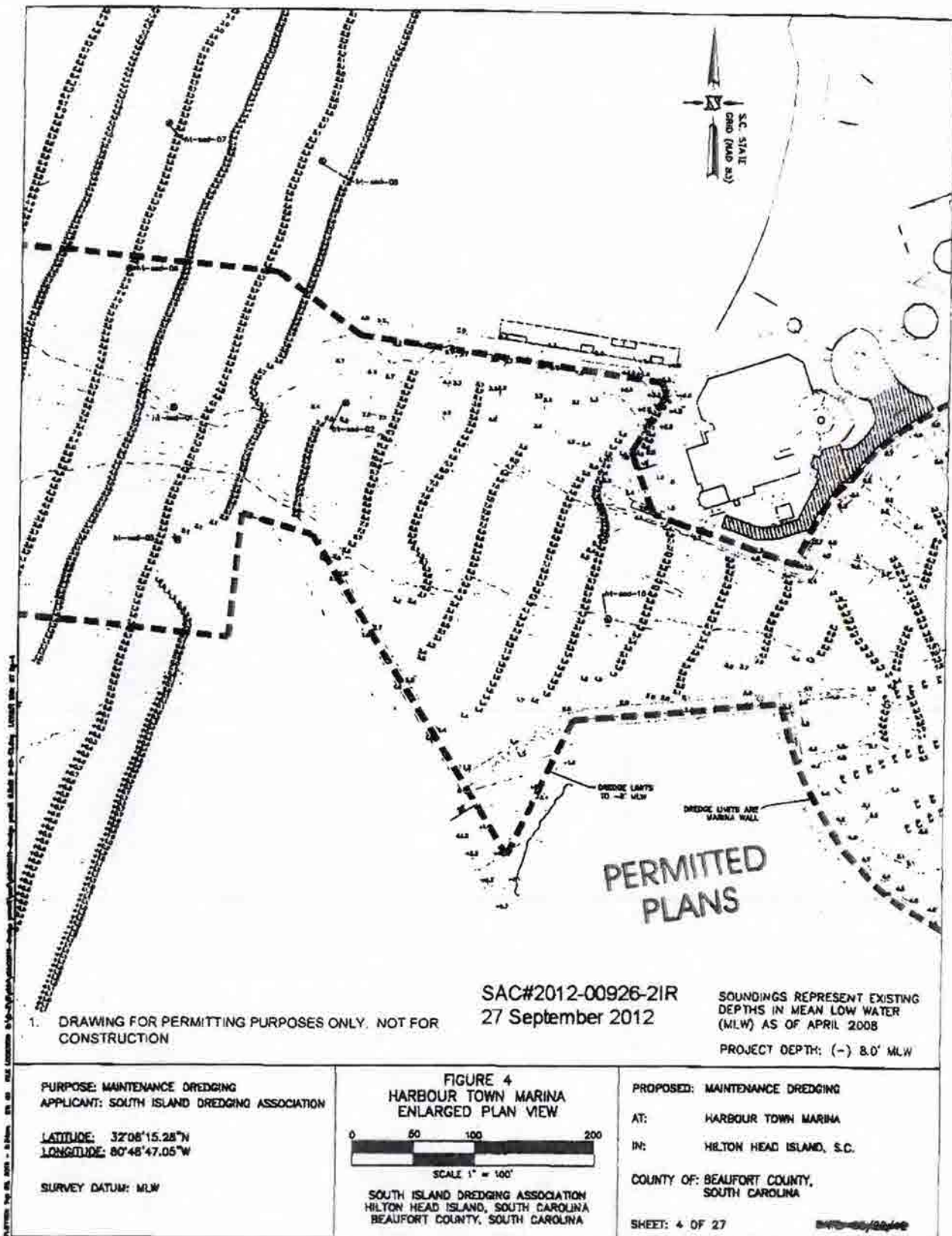
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 3 OF 27

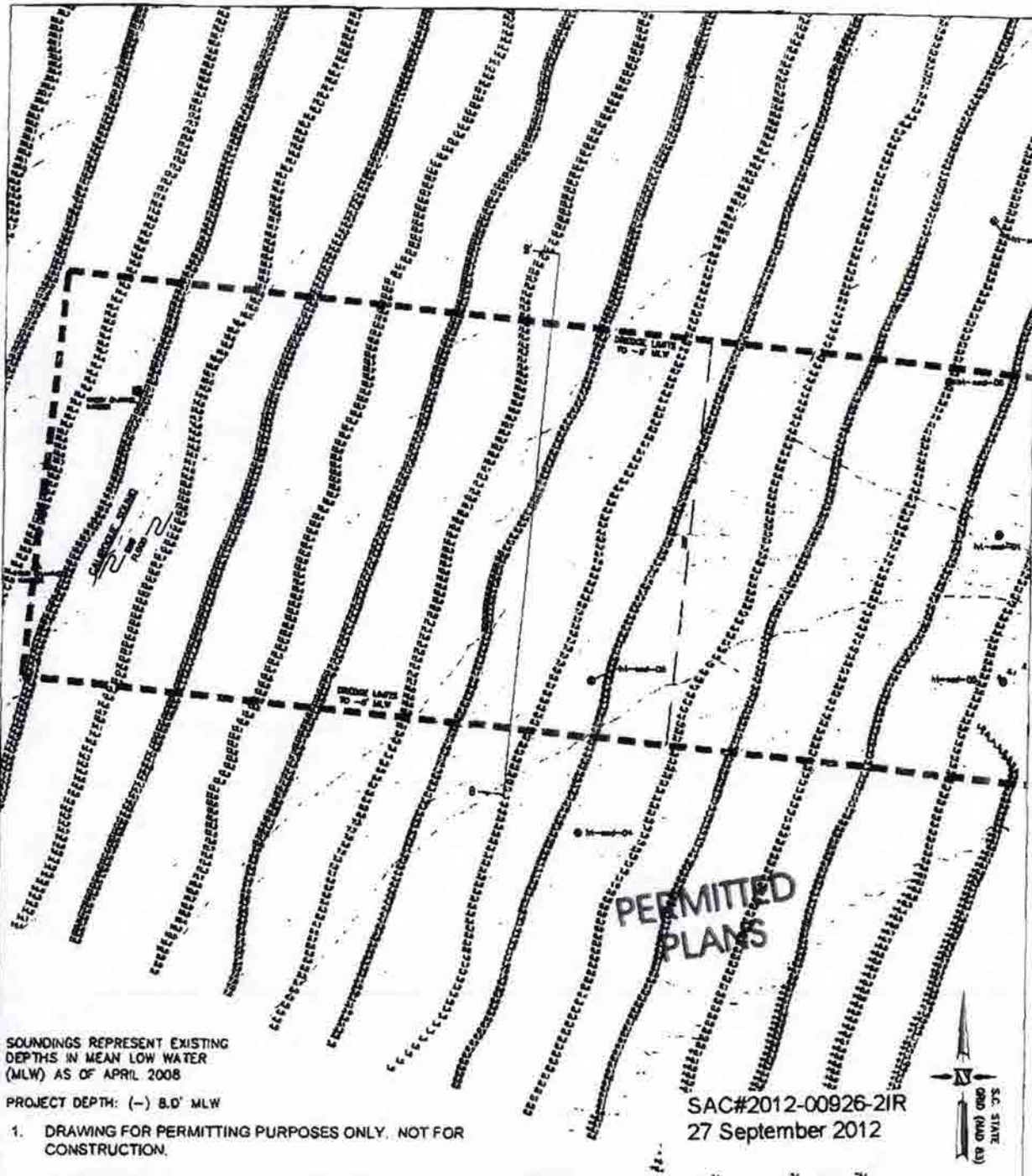
2022-09-27

SEE ENGINEERING LOG

a Member of THE C&G GROUP, INC.







PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°06'15.28"N  
LONGITUDE: 80°48'47.05"W

SURVEY DATUM: MLW

FIGURE 5  
HARBOUR TOWN MARINA  
ENLARGED PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

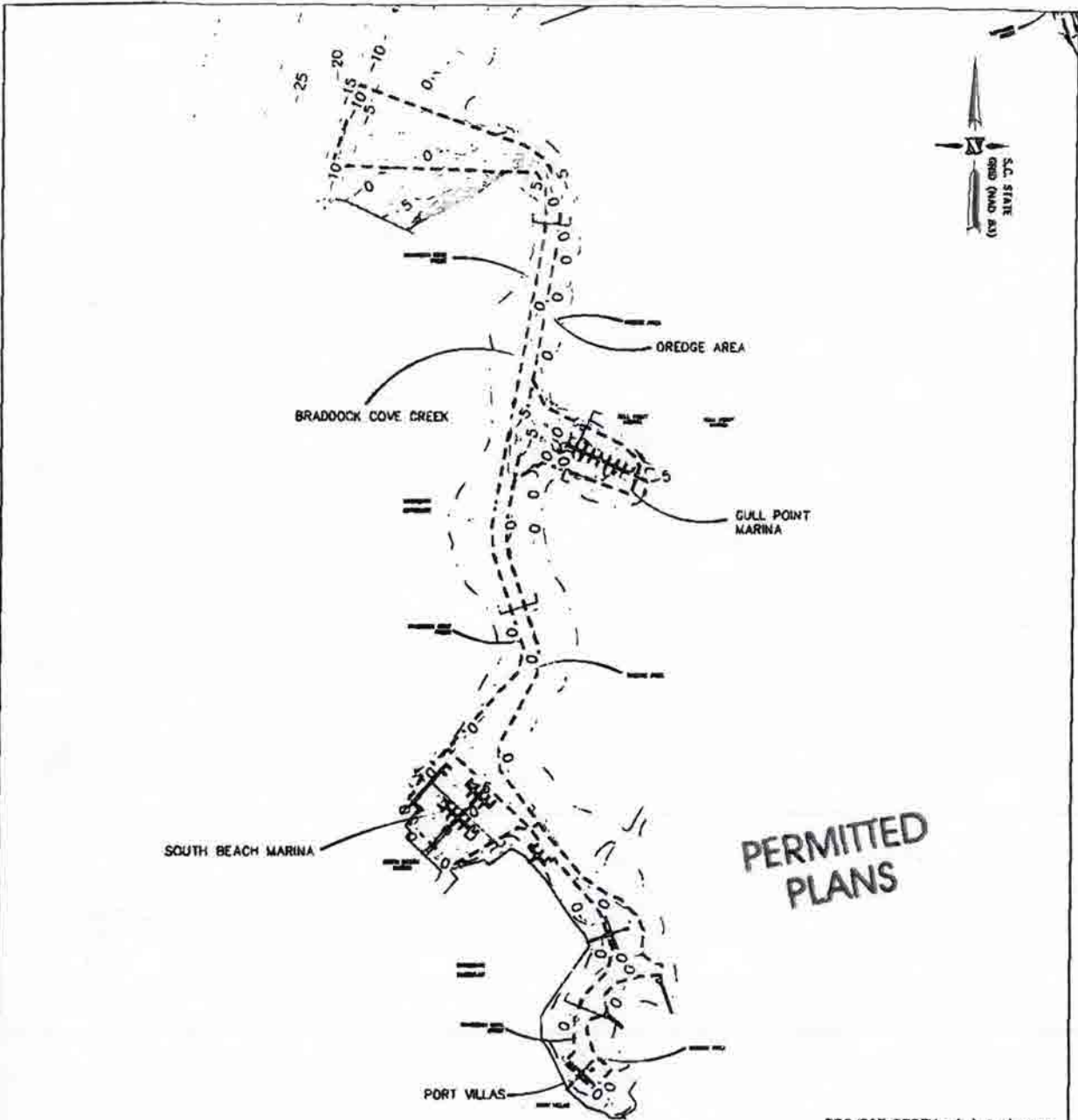
AT: HARBOUR TOWN MARINA

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 5 OF 27

DATE: 09/27/2012



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

SAC#2012-00926-2IR  
27 September 2012

PROJECT DEPTH: (-) 8.0' MLW

NOTE:  
SOME TYPICAL ENLARGED PLAN  
VIEW SECTIONS FOR CHANNEL  
ARE NOT SHOWN.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'01.82"N  
LONGITUDE: 80°49'25.88"W

SURVEY DATUM: MLW

FIGURE 6  
BRADDOCK COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

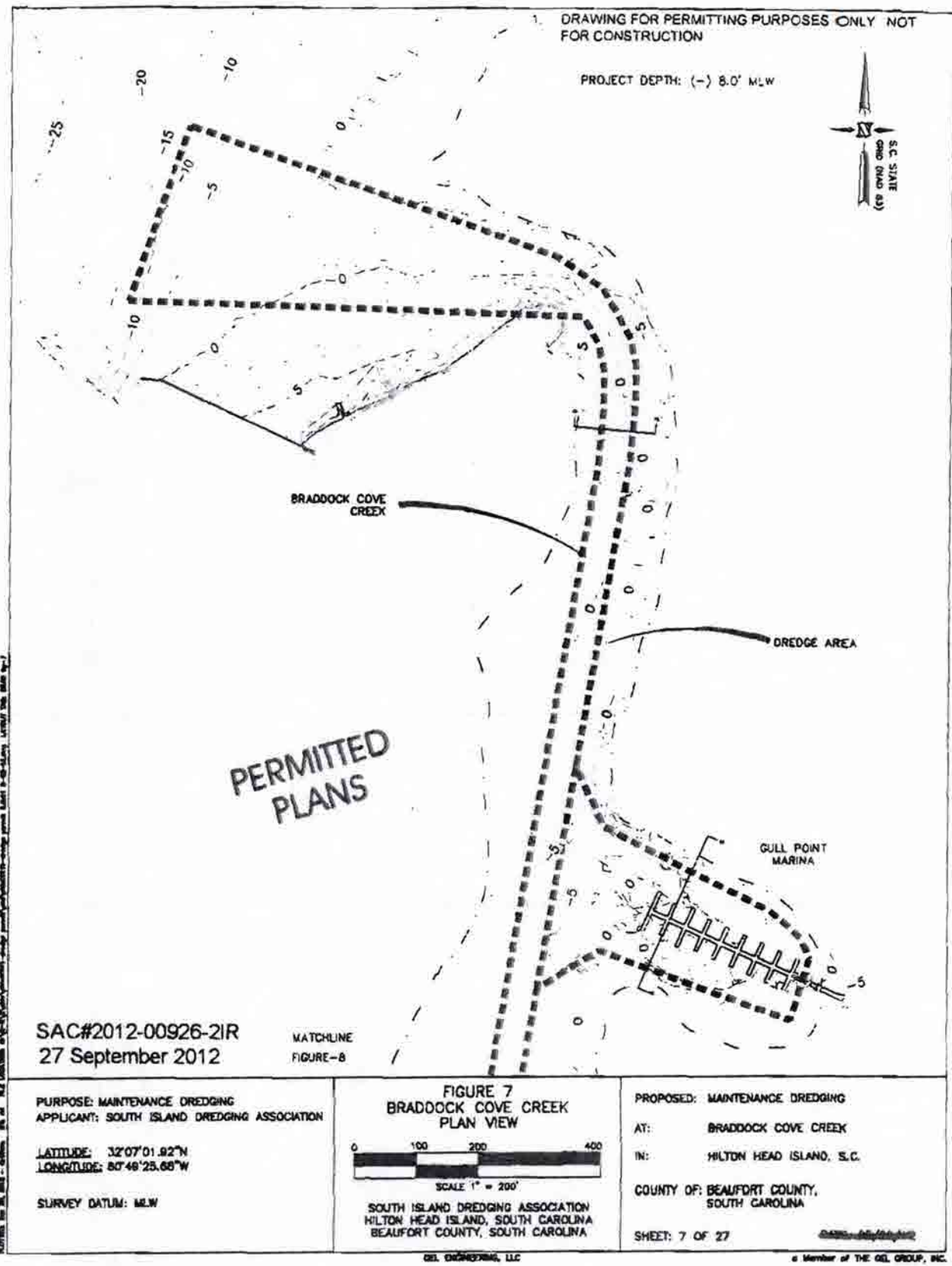
SHEET: 6 OF 27

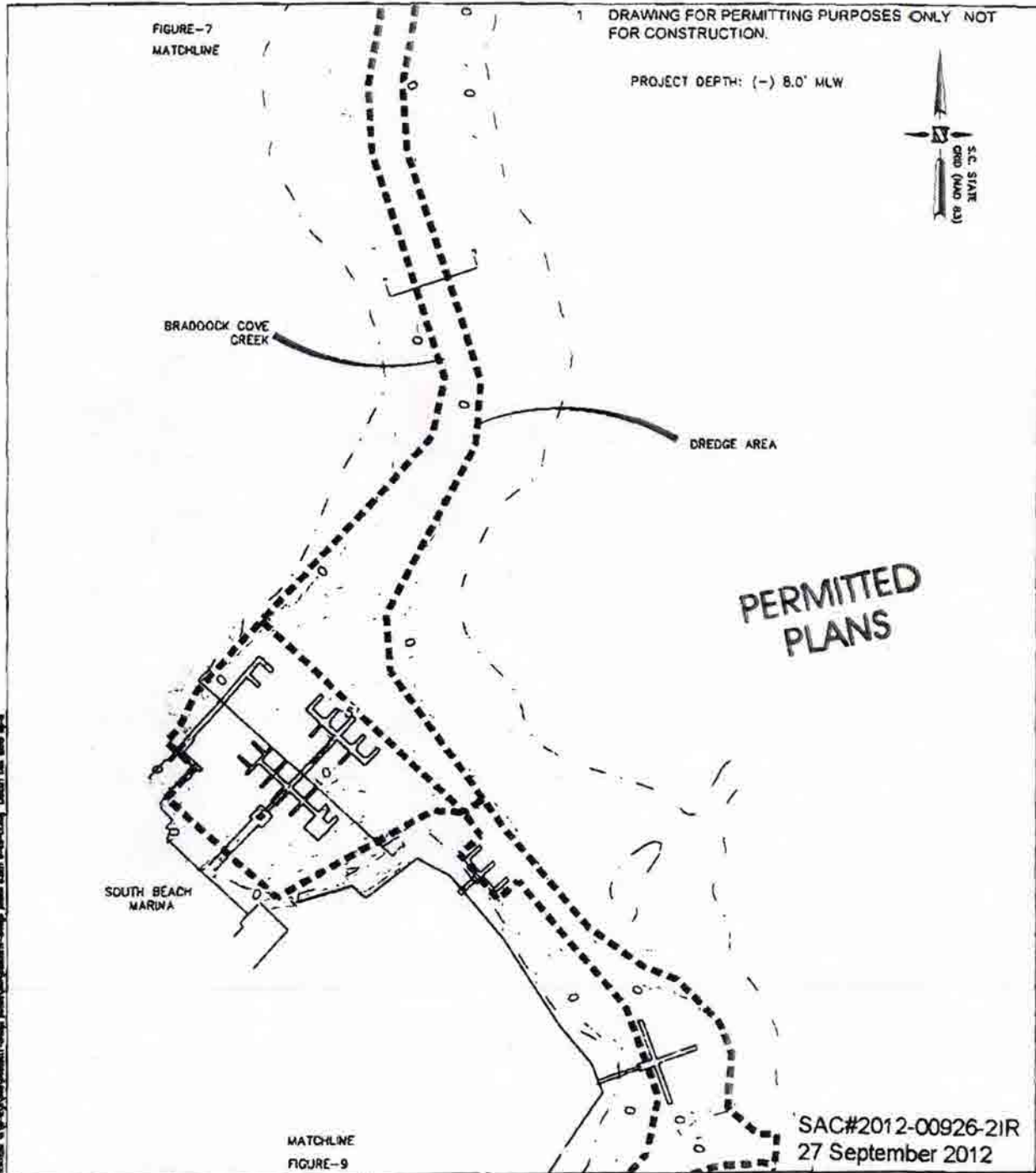
*Signature*

DEL ENGINEERING, LLC

a Member of THE DEL GROUP, INC.







PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'01.92"N  
LONGITUDE: 80°48'25.88"W

SURVEY DATUM: MLW

FIGURE 8  
BRADDOCK COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 8 OF 27

DATE: 09/27/2012

GEL ENGINEERING, LLC

a Member of THE GEL GROUP, INC.

1. DRAWING FOR PERMITTING PURPOSES ONLY NOT FOR CONSTRUCTION.

PROJECT DEPTH: (-) 8.0' MLW



FIGURE-8  
MATCHLINE

BRADDOCK COVE CREEK

PORT VILLAS

DREDGE AREA

PERMITTED  
PLANS

SAC#2012-00926-2/R  
27 September 2012

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'01.92"N  
LONGITUDE: 80°49'25.88"W

SURVEY DATUM: MLW

FIGURE 9  
BRADDOCK COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

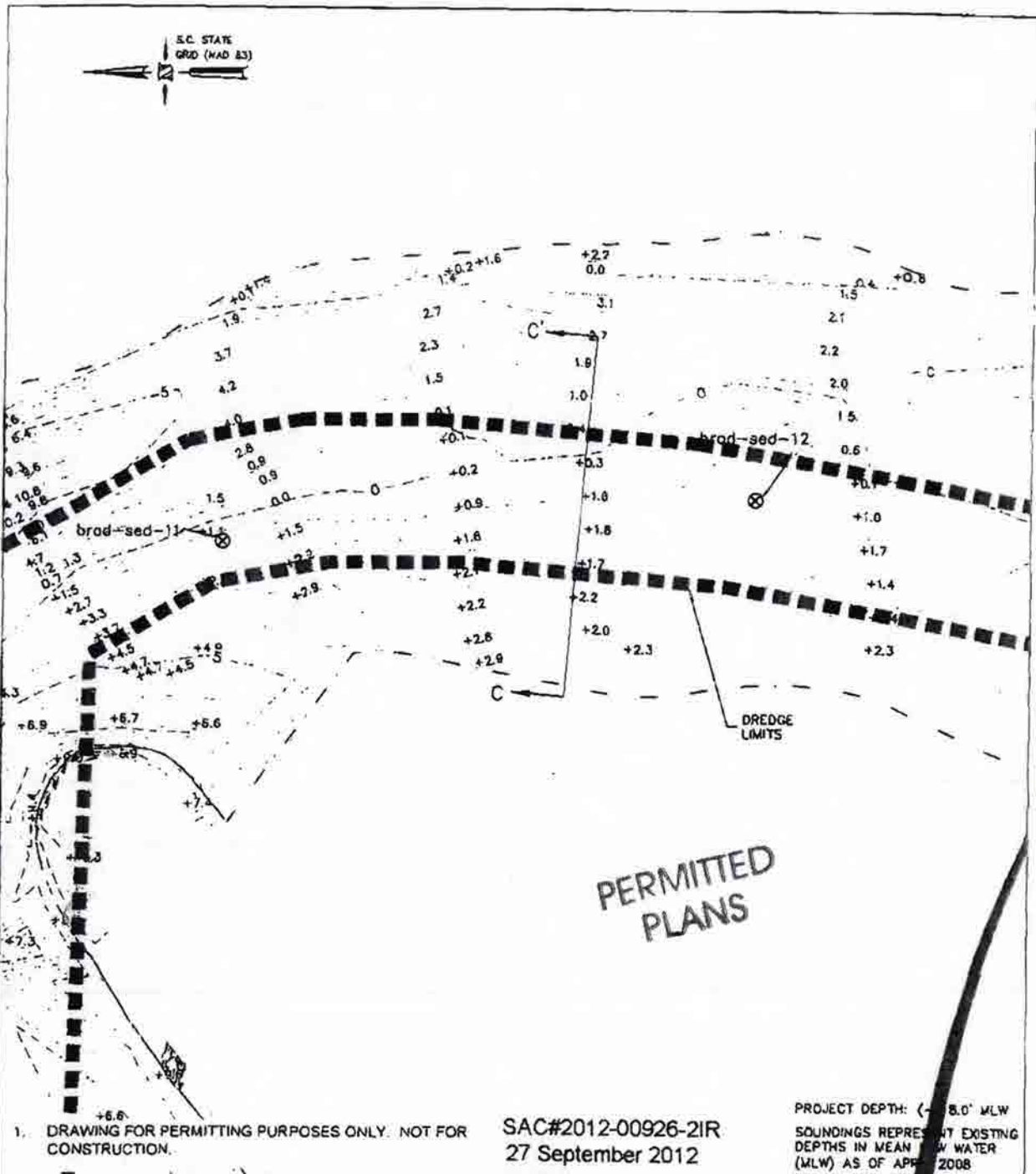
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 9 OF 27

DATE: 09/27/12

GEL DREDGING, LLC

a Member of THE GEL GROUP, INC.



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

SAC#2012-00926-2IR  
27 September 2012

PROJECT DEPTH: (-) 8.0' MLW  
SOUNDINGS REPRESENT EXISTING  
DEPTHS IN MEAN LOW WATER  
(MLW) AS OF APRIL 2008

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'18.80"N  
LONGITUDE: 80°40'23.36"W

**SURVEY DATUM: MLW**

FIGURE 10  
BRADDOCK COVE CREEK  
ENLARGED ENTRANCE PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

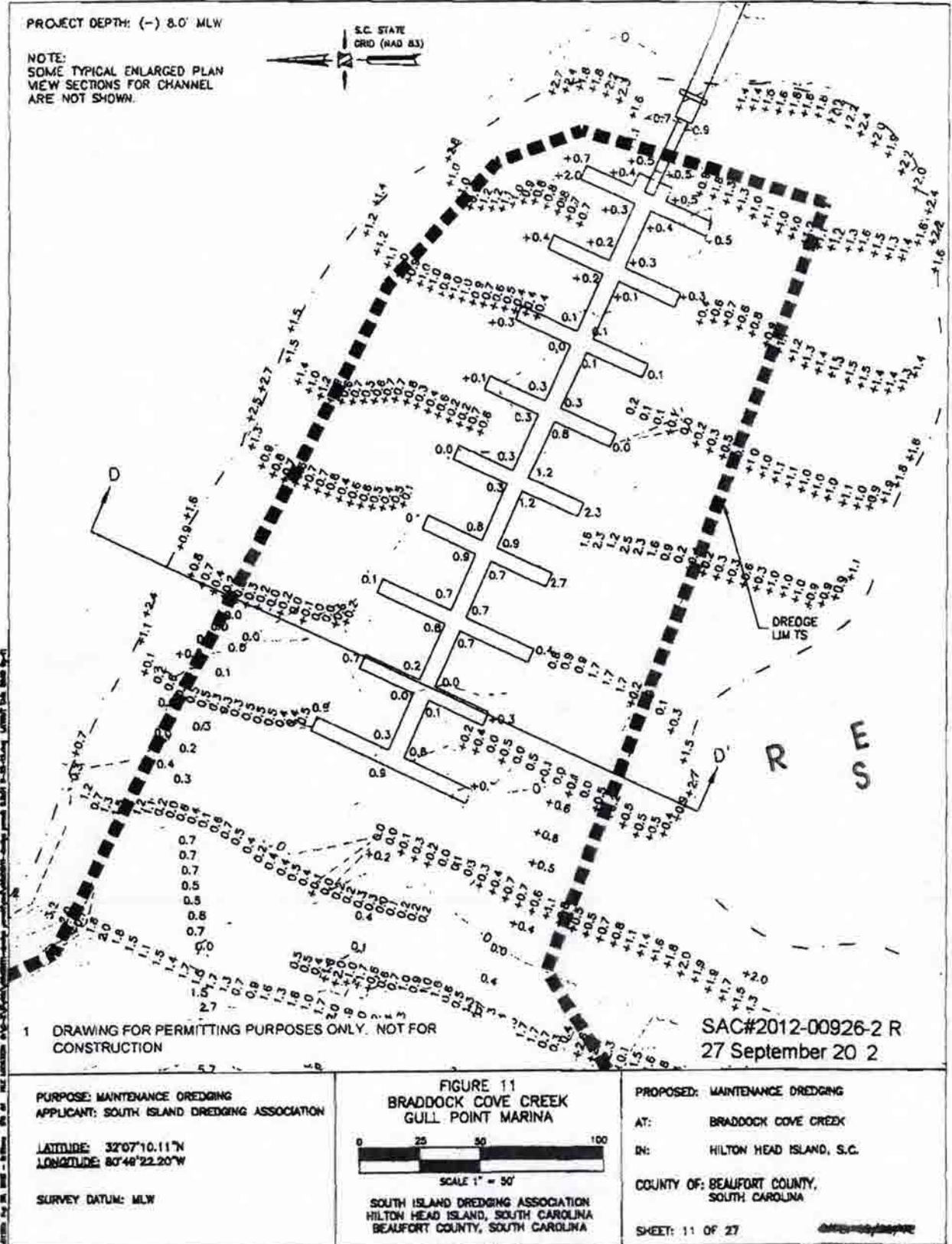
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

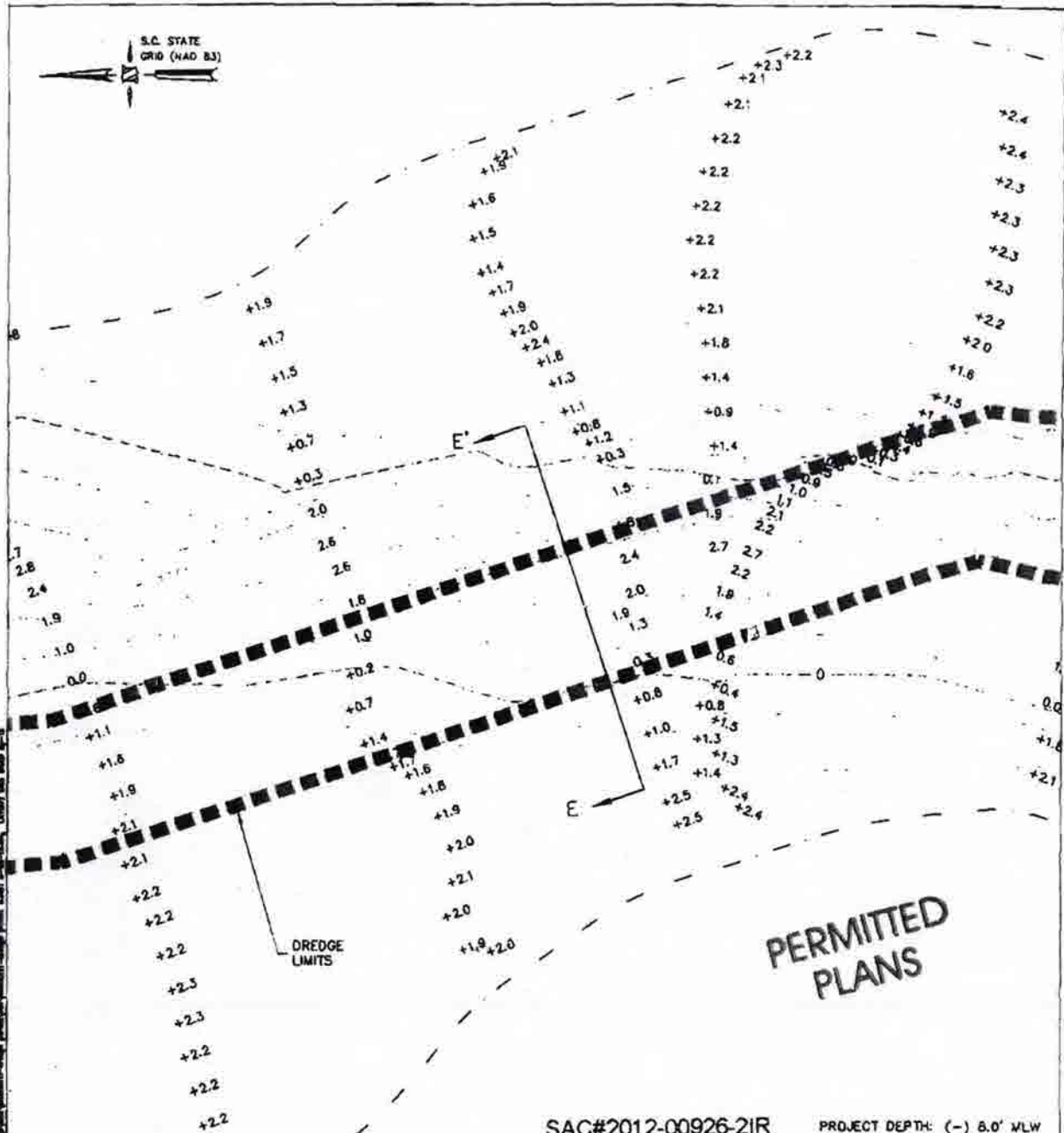
SHEET: 10 OF 27

**SPENCER**

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1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

SAC#2012-00926-21R  
27 September 2012

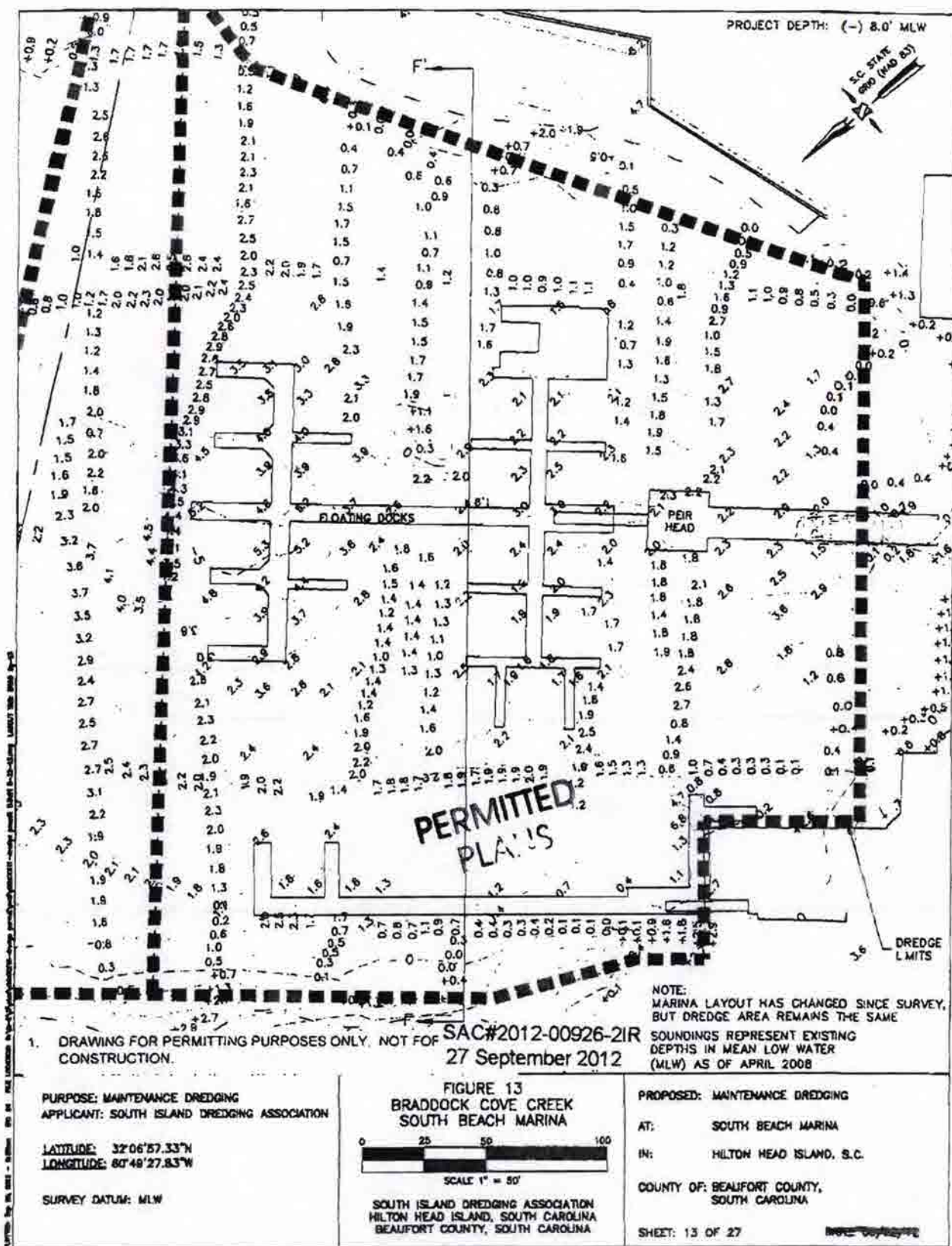
PROJECT DEPTH: (-) 8.0' MLW  
SOUNDINGS REPRESENT EXISTING DEPTHS IN MEAN LOW WATER (MLW) AS OF APRIL 2008

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION  
LATITUDE: 32°07'01.92"N  
LONGITUDE: 80°48'25.88"W  
SURVEY DATUM: MLW

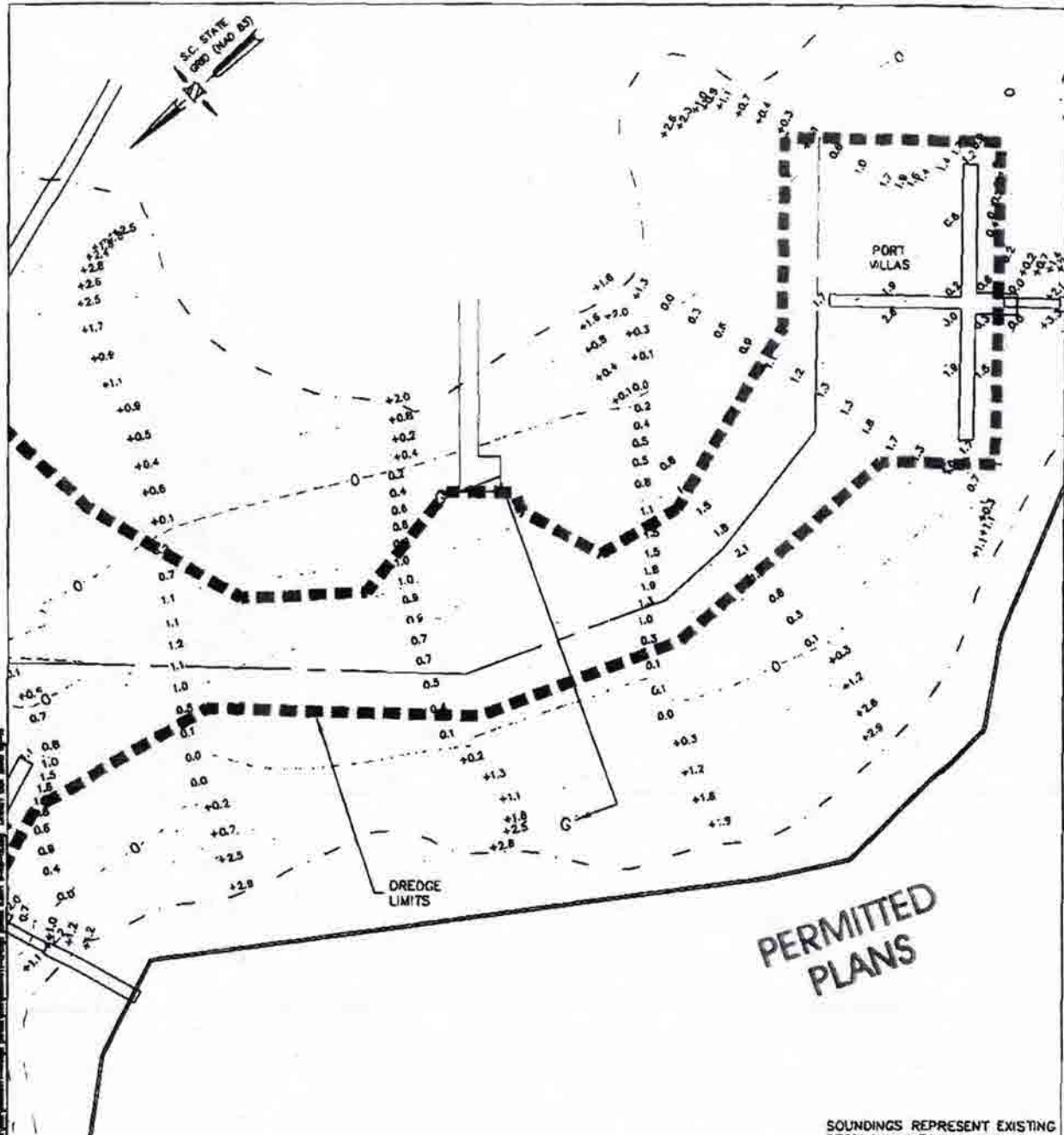
FIGURE 12  
BRADDOCK COVE CREEK  
ENLARGED CHANNEL PLAN VIEW  
SCALE 1" = 50'  
SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.  
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA  
SHEET: 12 OF 27









1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

SAC#2012-00926-21R  
27 September 2012

SOUNDINGS REPRESENT EXISTING DEPTHS IN MEAN LOW WATER (MLW) AS OF APRIL 2008

PROJECT DEPTH: (-) 8.0' MLW

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'50.71"N  
LONGITUDE: 80°48'22.81"W

SURVEY DATUM: MLW

FIGURE 14  
BRADDOCK COVE CREEK  
ENLARGED CHANNEL PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

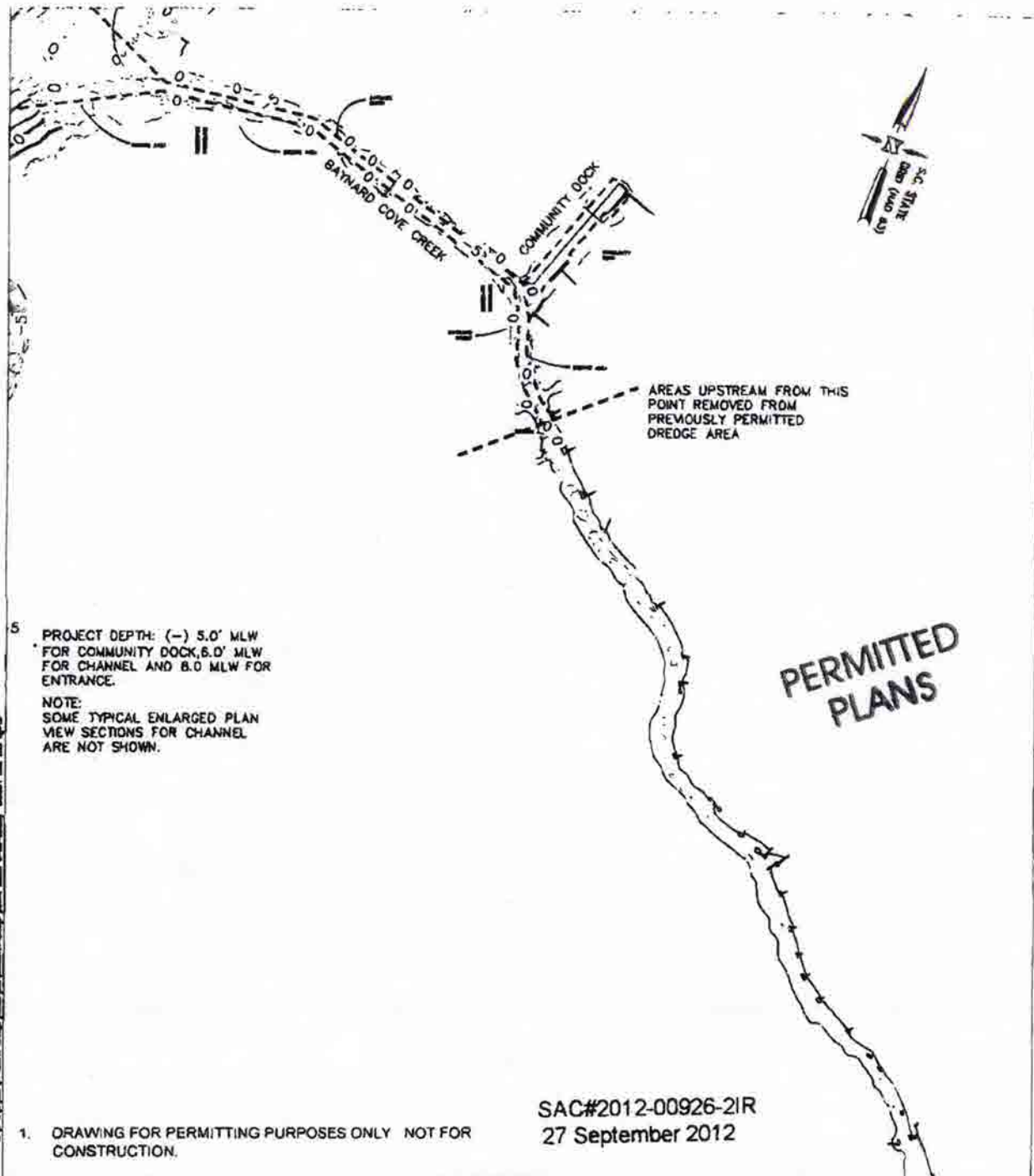
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 14 OF 27

*Signature*

DEL. DREDGING, LLC

Member of THE GRI GROUP, INC.



PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°49'07.48"W

SURVEY DATUM: MLW

FIGURE 15  
BAYNARD COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

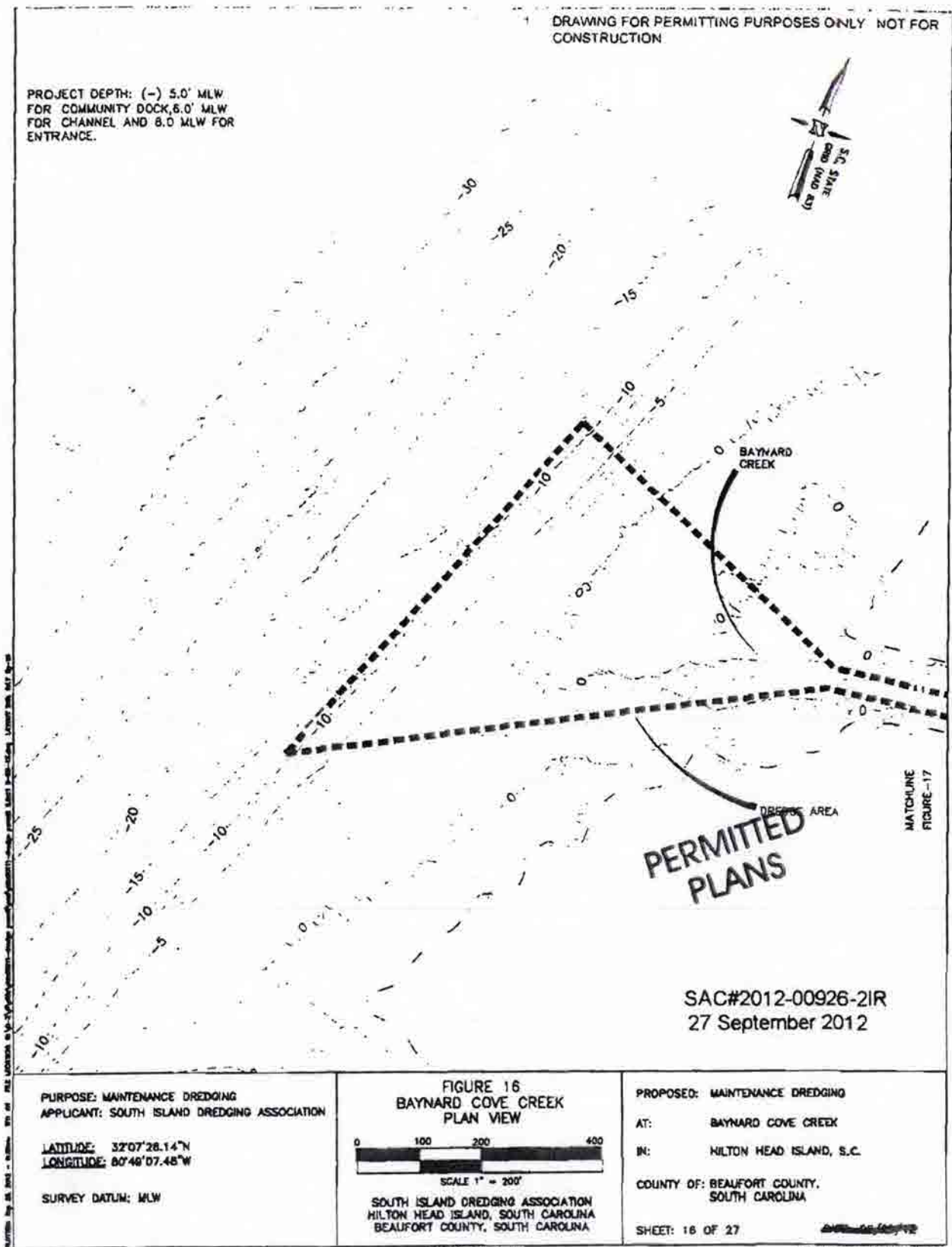
PROPOSED: MAINTENANCE DREDGING  
AT: BAYNARD COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.  
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 15 OF 27

DATE: 09/27/12

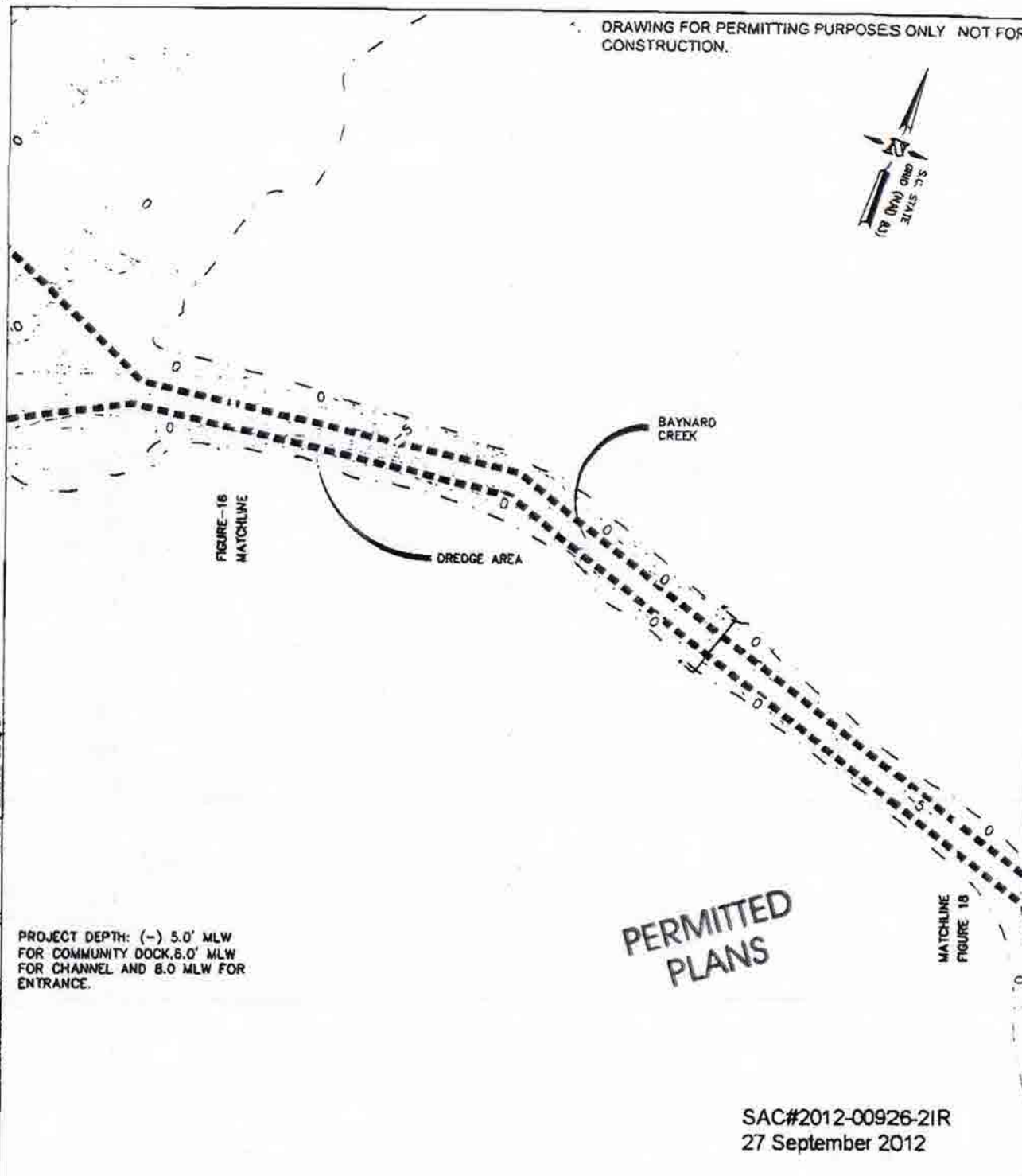
DEL ENGINEERING, LLC

a Member of THE DEL GROUP, INC.



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DRAWING FOR PERMITTING PURPOSES ONLY NOT FOR CONSTRUCTION.



PROJECT DEPTH: (-) 5.0' MLW FOR COMMUNITY DOCK, 6.0' MLW FOR CHANNEL AND 8.0 MLW FOR ENTRANCE.

SAC#2012-00926-2IR  
27 September 2012

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°48'07.48"W

SURVEY DATUM: MLW

FIGURE 17  
BAYNARD COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: BAYNARD COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 17 OF 27

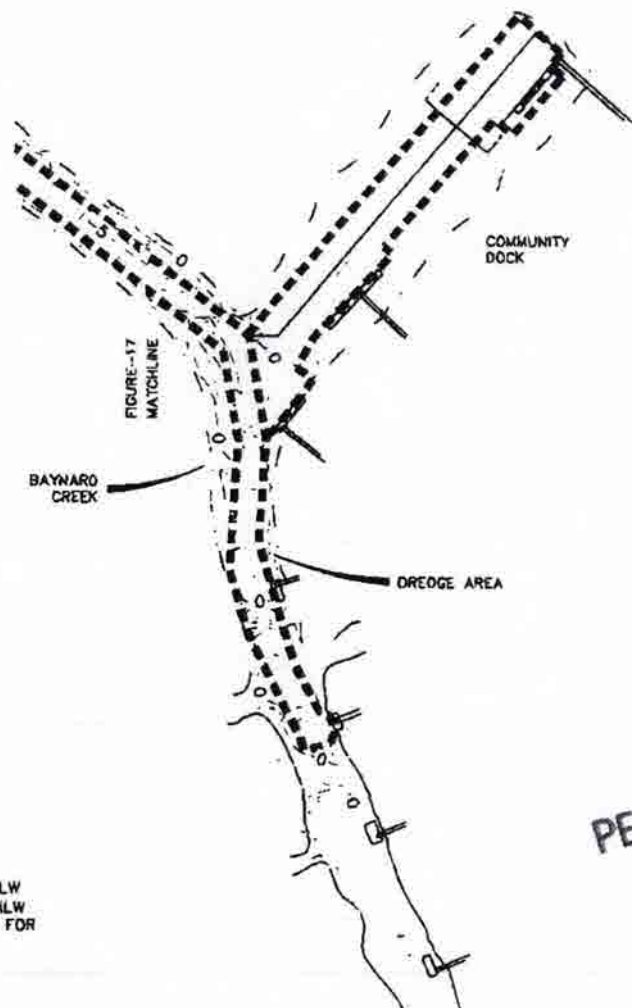
DATE: 09/27/12

DEL ENGINEERING, LLC

a Member of THE DEL GROUP, INC.



DRAWING FOR PERMITTING PURPOSES ONLY NOT FOR CONSTRUCTION



**PERMITTED  
PLANS**

PROJECT DEPTH: (-) 5.0' MLW  
FOR COMMUNITY DOCK, 6.0' MLW  
FOR CHANNEL AND 8.0 MLW FOR  
ENTRANCE

SAC#2012-00926-2IR  
27 September 2012

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°48'07.48"W

SURVEY DATUM: MLW

**FIGURE 18  
BAYNARD COVE CREEK  
PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 18 OF 27

GEL ENGINEERING, LLC

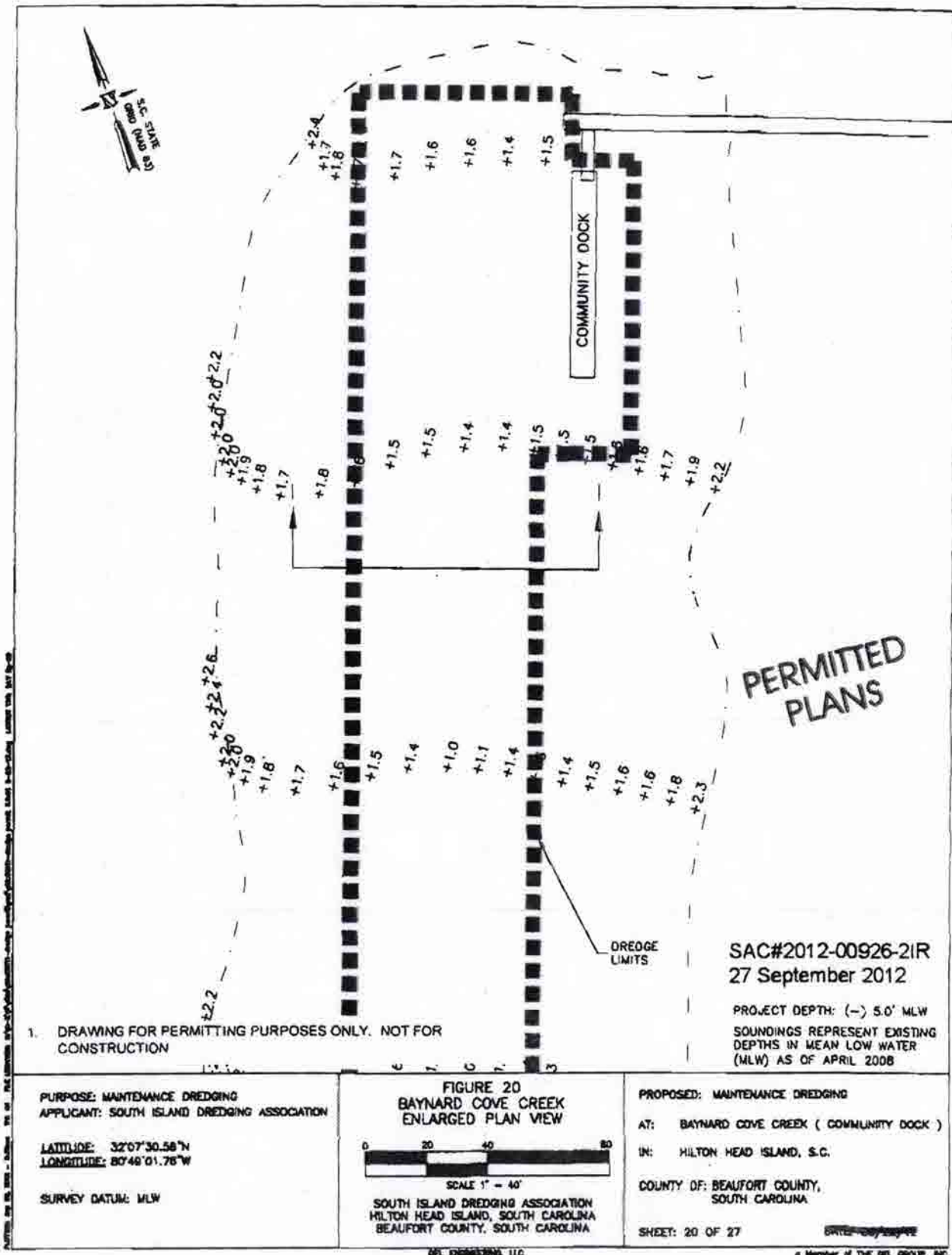
a member of THE GEL GROUP, INC.

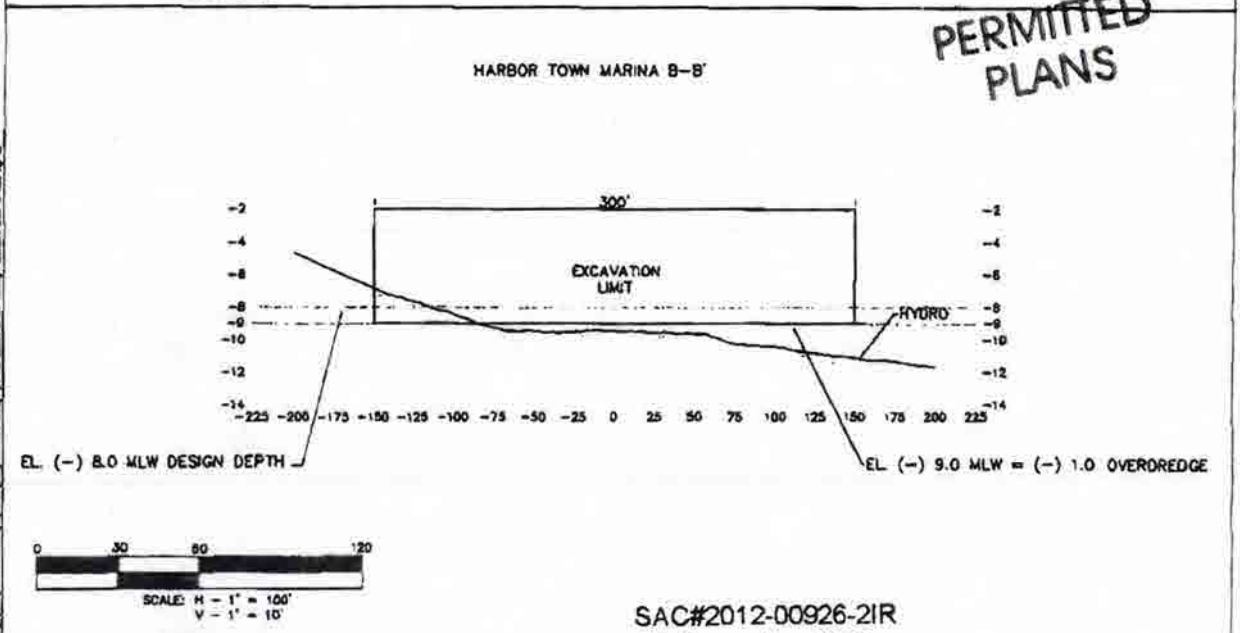
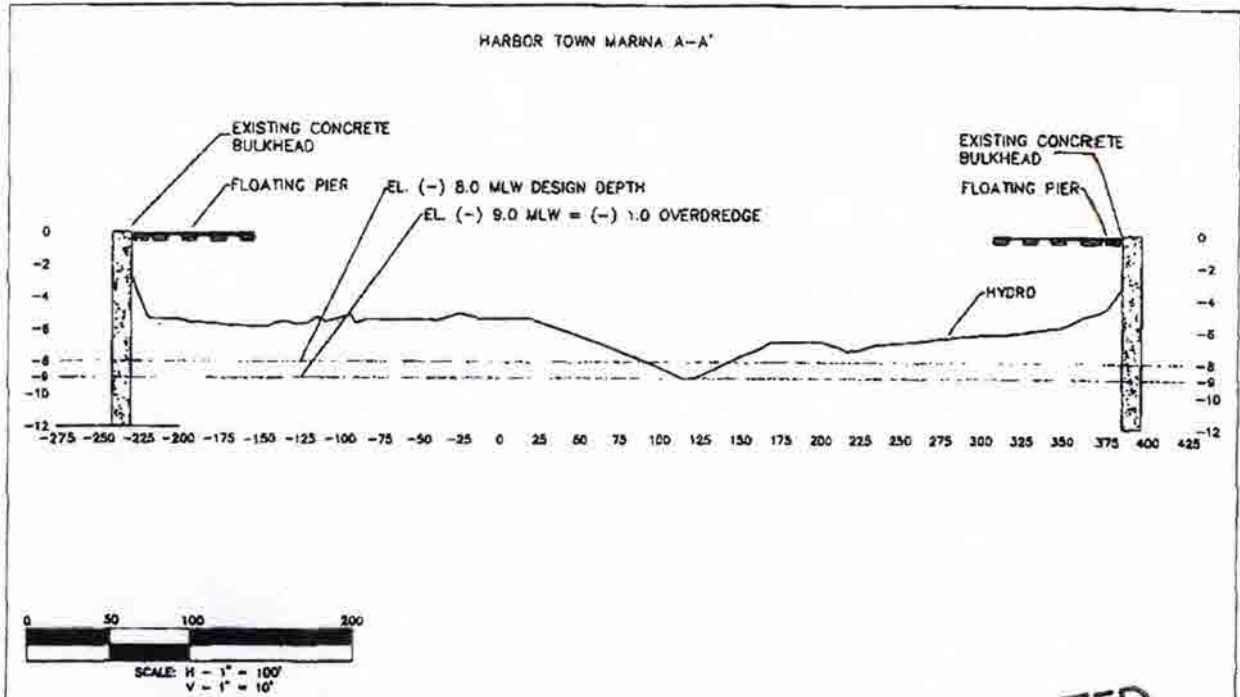


PROJECT DEPTH: (-) 6.0' MLW

- SHEET: 19 OF 27







PERMITTED  
PLANS

1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

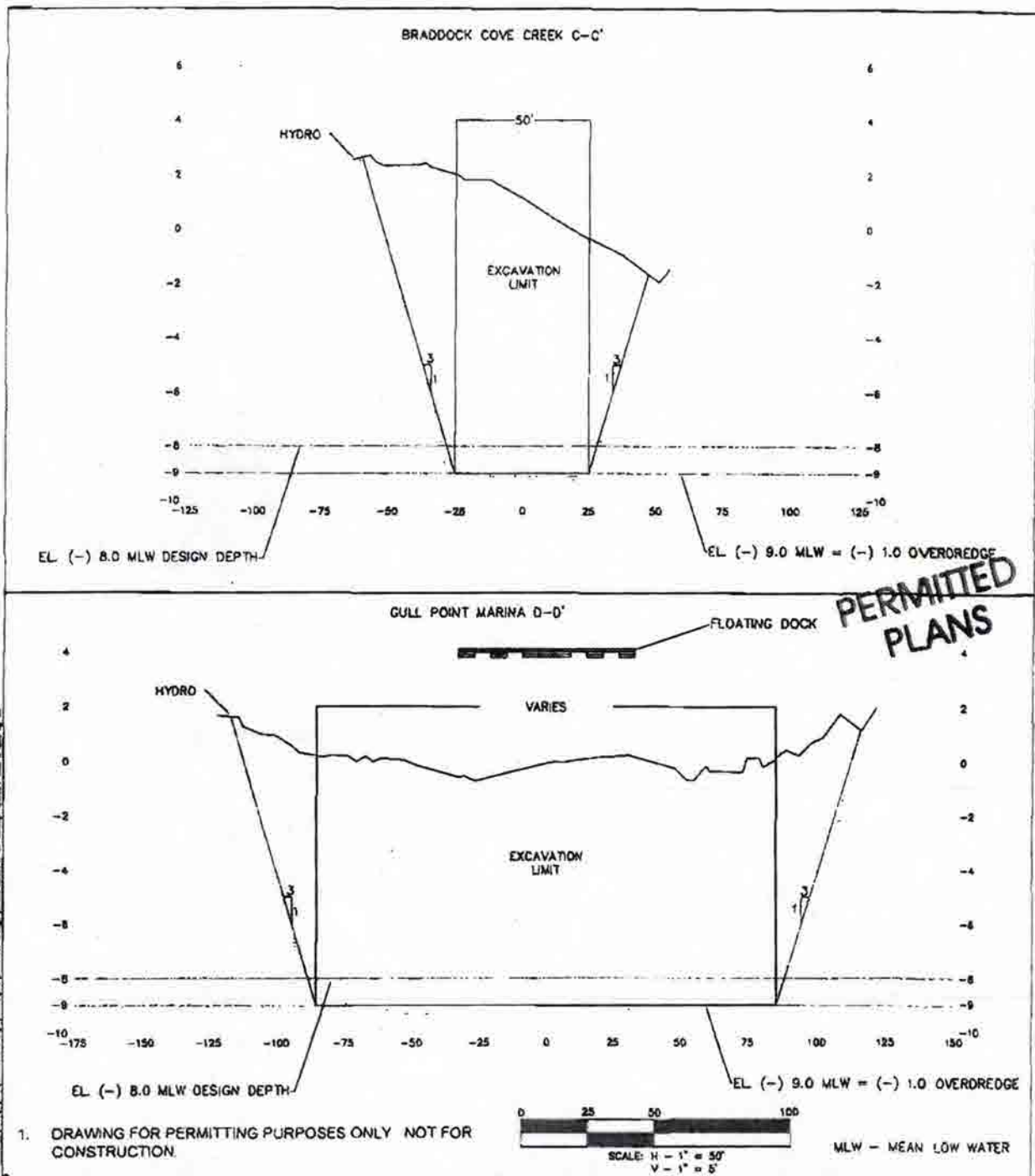
SAC#2012-00926-2IR  
27 September 2012

MLW - MEAN LOW WATER

|                                                                                                                                                                            |                                                                                                                                                                                |                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>PURPOSE: MAINTENANCE DREDGING<br/>APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION</p> <p>LATITUDE: 32°08'18.88"N<br/>LONGITUDE: 80°46'42.82"W</p> <p>SURVEY DATUM: MLW</p> | <p>FIGURE 21<br/>CROSS SECTIONS<br/>HARBOR TOWN MARINA</p> <p>SOUTH ISLAND DREDGING ASSOCIATION<br/>HILTON HEAD ISLAND, SOUTH CAROLINA<br/>BEAUFORT COUNTY, SOUTH CAROLINA</p> | <p>PROPOSED: MAINTENANCE DREDGING</p> <p>AT: HARBOR TOWN MARINA<br/>IN: HILTON HEAD ISLAND, S.C.</p> <p>COUNTY OF: BEAUFORT COUNTY,<br/>SOUTH CAROLINA</p> <p>SHEET: 21 OF 27</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

GEL ENGINEERING, LLC

a Member of THE GEL GROUP, INC.



PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'09.54"N  
LONGITUDE: 80°40'24.97"W

SURVEY DATUM: MLW  
SAC#2012-00926-2IR  
27 September 2012

FIGURE 22  
CROSS SECTIONS  
BRADDOCK COVE CREEK

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

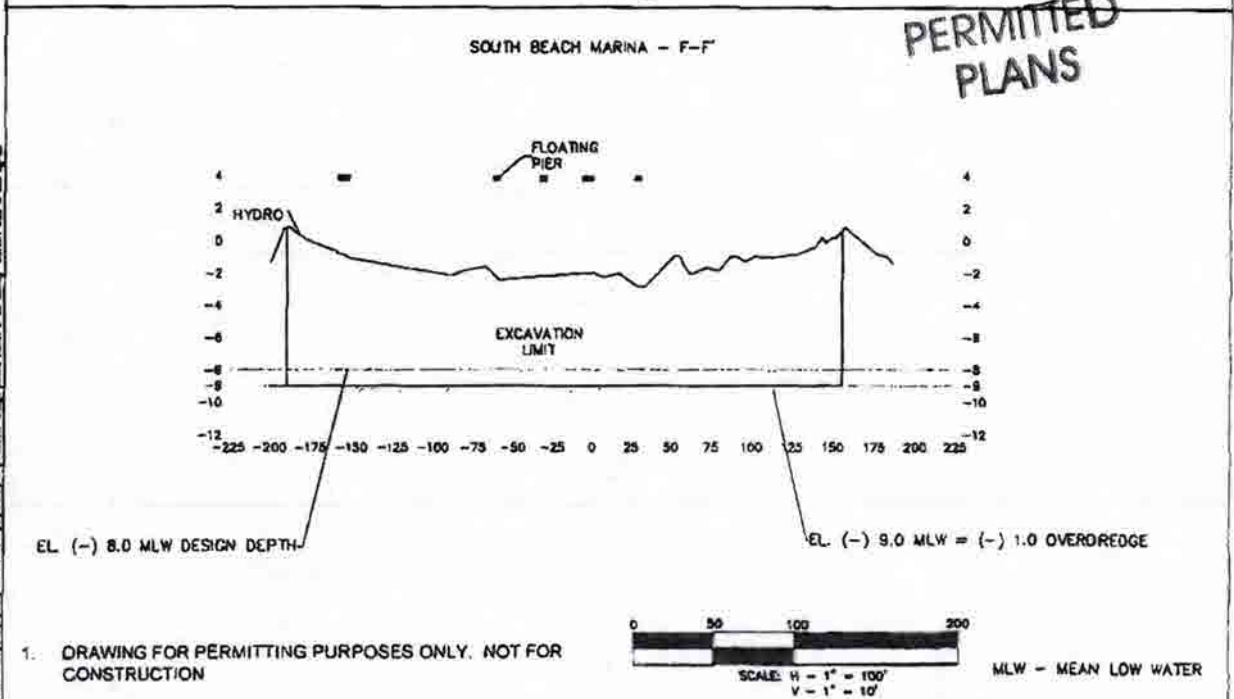
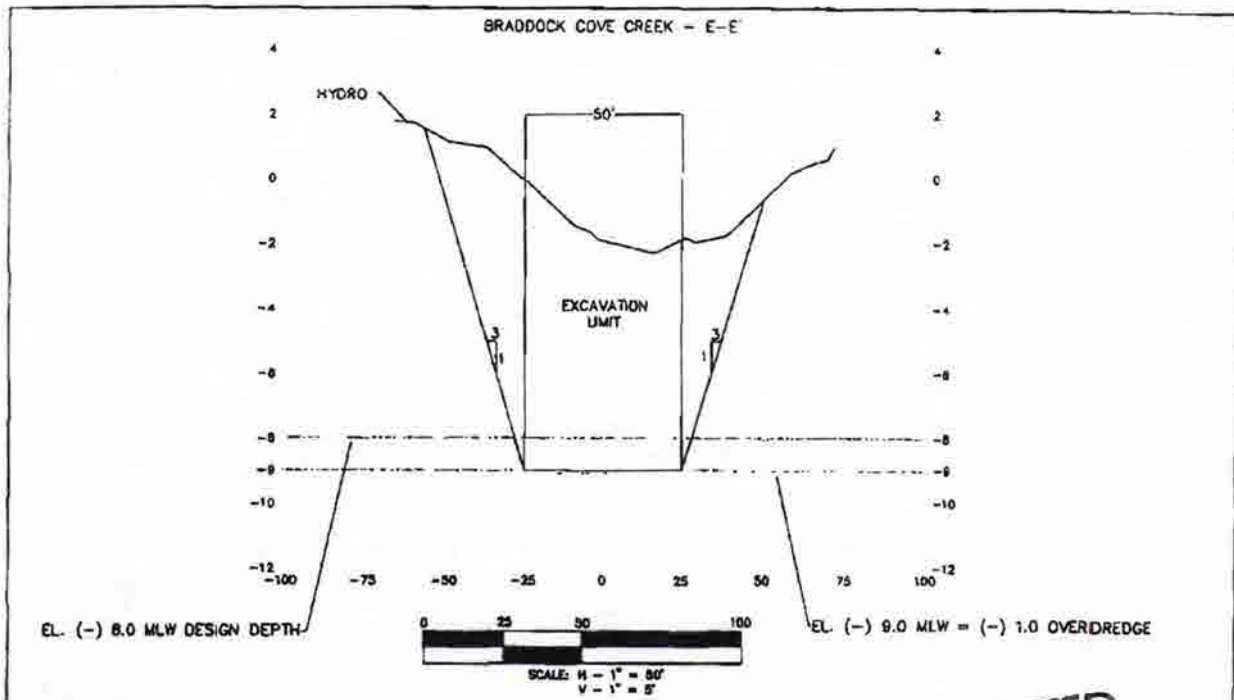
PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 22 OF 27

DEL. DREDGING, LLC

a Member of THE DED GROUP, INC.



PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°06'58.79"N  
LONGITUDE: 80°48'28.40"W

SURVEY DATUM: MLW  
SAC#2012-00926-2IR  
27 September 2012

FIGURE 23  
CROSS SECTIONS  
BRADDOCK COVE CREEK

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

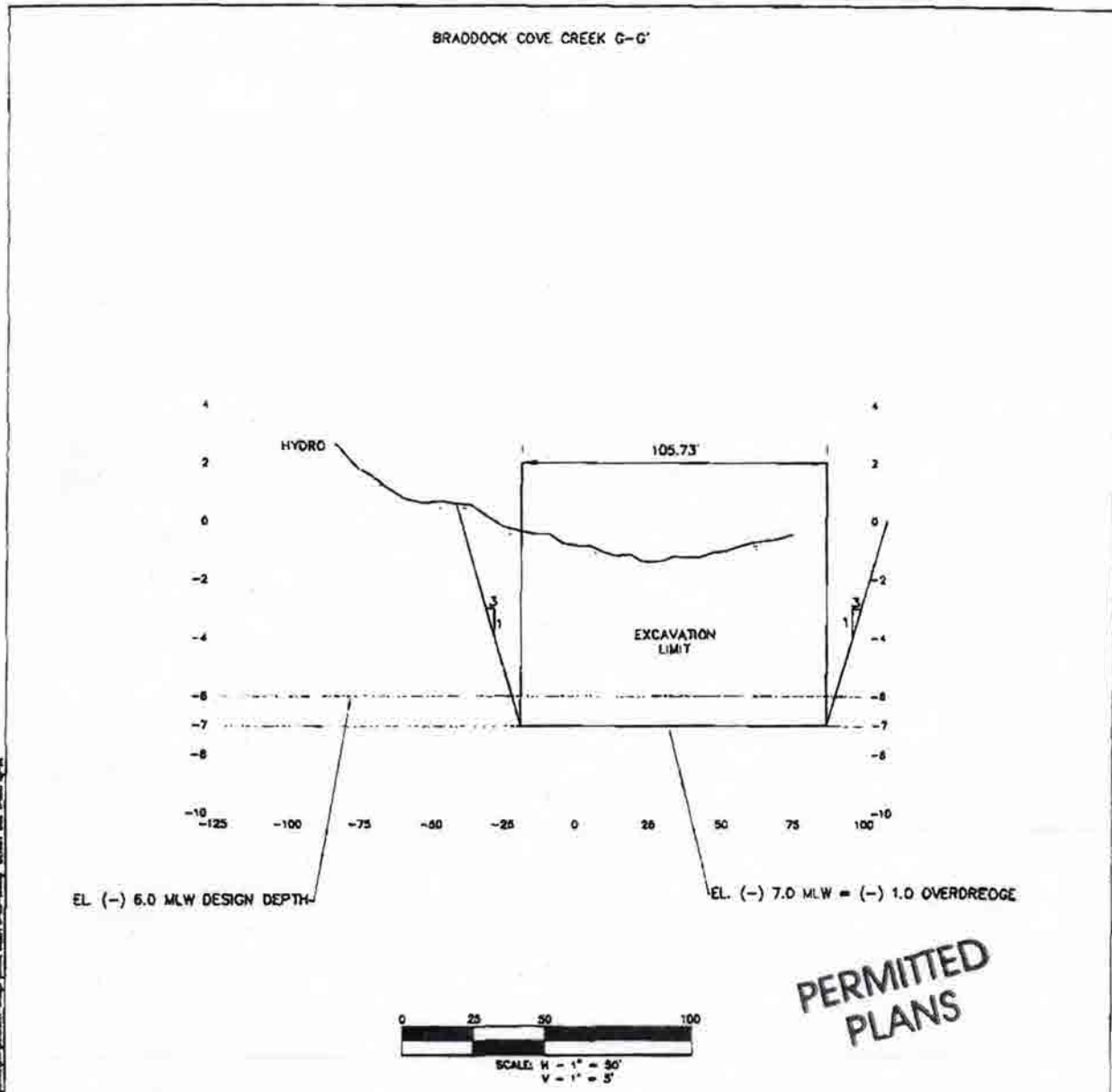
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 23 OF 27

DEL ENGINEERING, LLC

a Member of THE DEL GROUP, INC.





1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION

MLW - MEAN LOW WATER

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'51.97"N  
LONGITUDE: 80°49'20.74"W

SURVEY DATUM: MLW

SAC#2012-00926-2IR  
27 September 2012

FIGURE 24  
CROSS SECTIONS  
BRADDOCK COVE CREEK

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

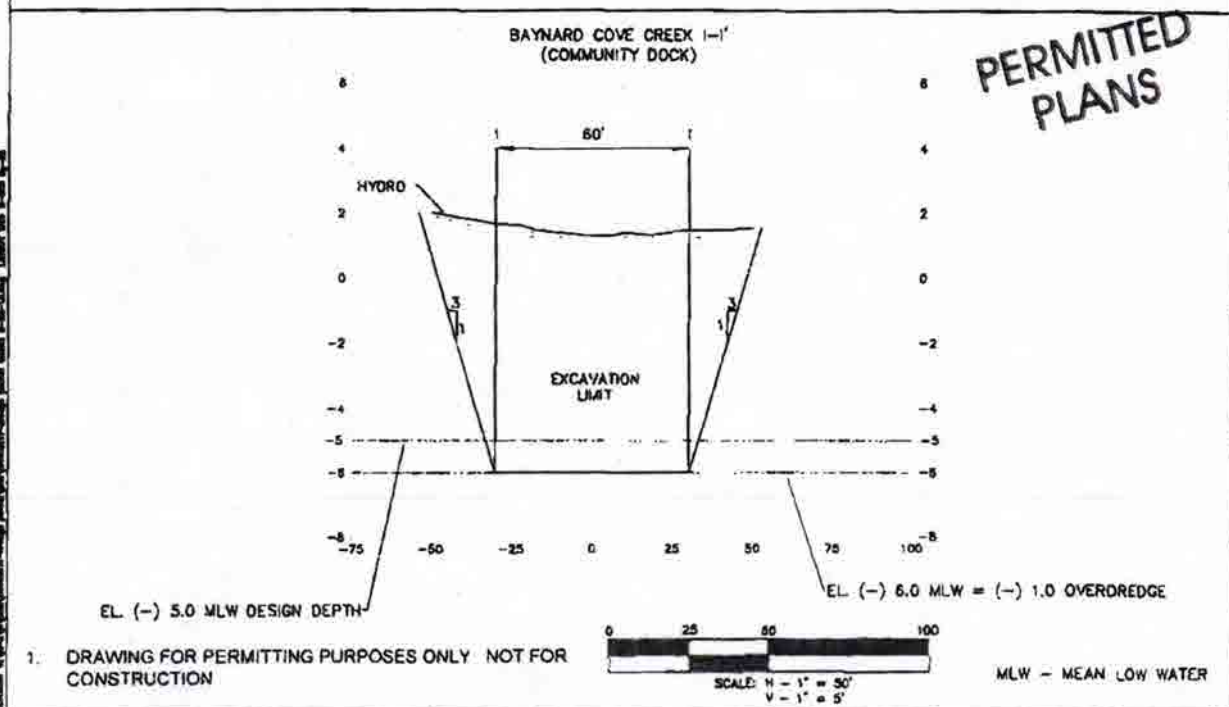
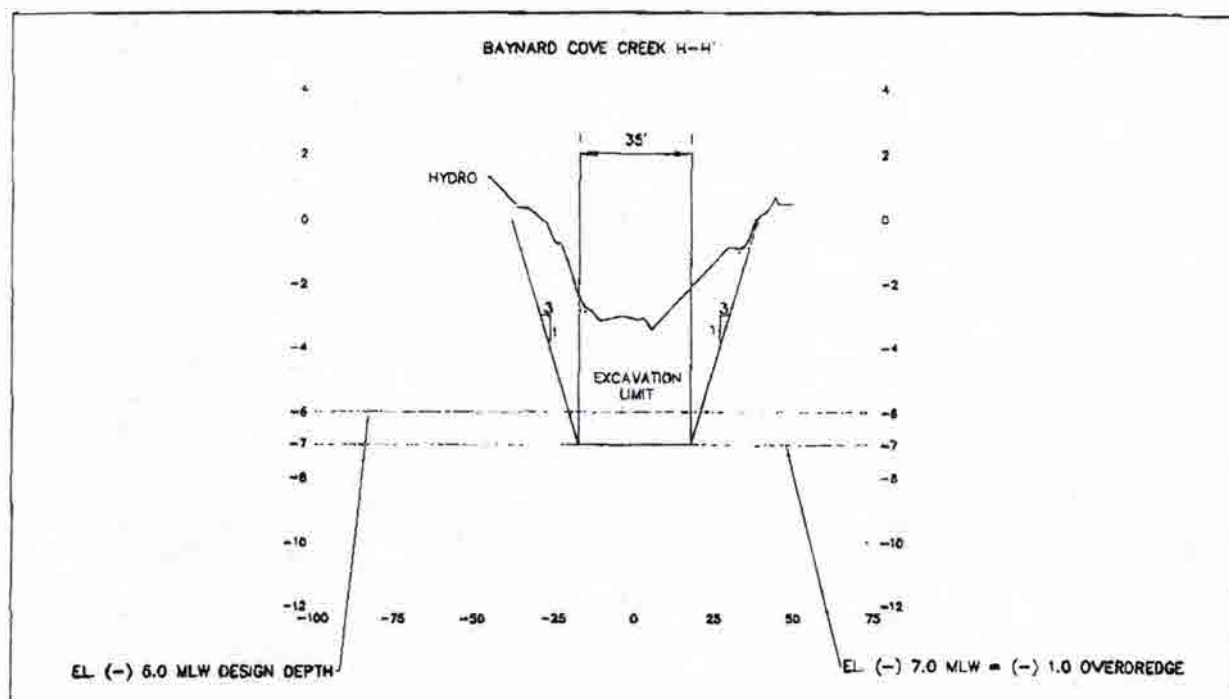
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 24 OF 27

DATE: 09/27/12

DEL ENGINEERING, LLC

Member of THE DEL GROUP, INC.



PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.88"N  
LONGITUDE: 80°49'08.85"W

SURVEY DATUM: MLW  
SAC#2012-00926-2IR  
27 September 2012

FIGURE 25  
CROSS SECTIONS  
BAYNARD COVE CREEK

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 25 OF 27

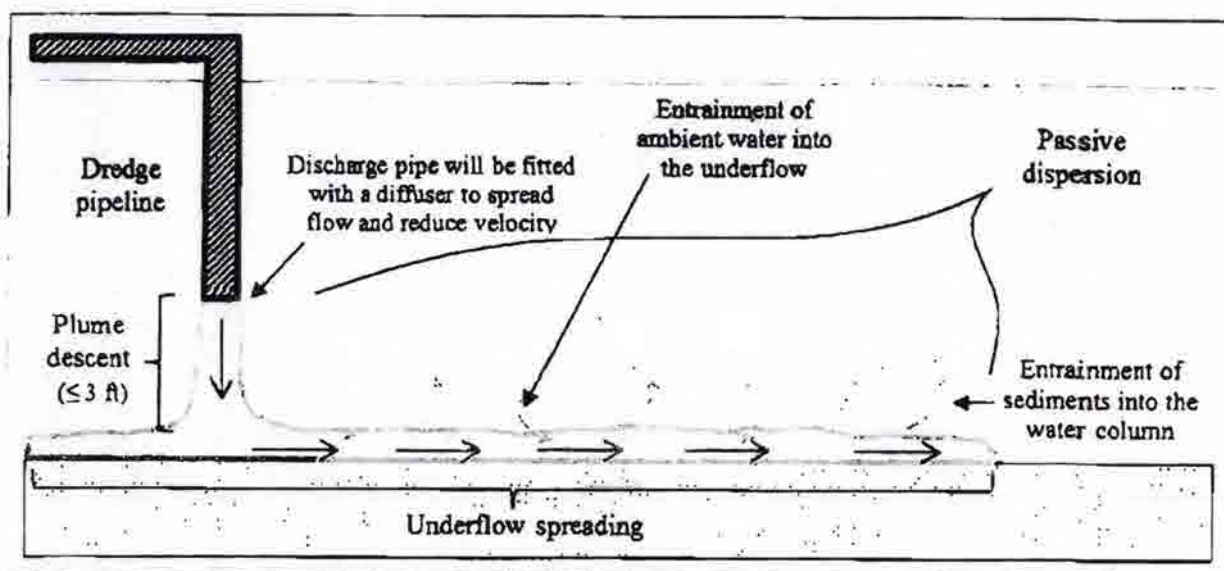
BY: ENGINEERING, LLC

in accordance with the 2012 edition of the





# PERMITTED PLANS



(Adapted from Teeter, in Thovenot et al., 1992).

1. DRAWING FOR PERMITTING PURPOSES ONLY.  
NOT FOR CONSTRUCTION.

SAC#2012-00926-2IR  
27 September 2012

|                                                                                                                                                                      |                                                                                                                                                                                        |                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>PURPOSE: MAINTENANCE DREDGING</p> <p><u>LATITUDE:</u> 32°07'24.25"</p> <p><u>LONGITUDE:</u> 80°48'49.89"</p> <p>SURVEY DATUM: NGVD MLW</p> <p>SHEET: 27 OF 27</p> | <p><b>FIGURE 27</b><br/>PLACEMENT SITE<br/>DISCHARGE SCHEMATIC</p> <p>SOUTH ISLAND DREDGING ASSOCIATION<br/>HILTON HEAD ISLAND, SOUTH CAROLINA<br/>BEAUFORT COUNTY, SOUTH CAROLINA</p> | <p>PROPOSED: MAINTENANCE DREDGING</p> <p>AT: BRADDOCK COVE CREEK, BAYNARD<br/>COVE CREEK, HARBOUR TOWN, GULL<br/>POINT AND SOUTH BEACH MARINAS,<br/>PORT VILLAS</p> <p>IN: HILTON HEAD ISLAND</p> <p>COUNTY: BEAUFORT COUNTY, SC</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

DEL Engineering, LLC

a Member of THE DEL GROUP, INC.

**DAILY INSPECTION LOG  
FOR PERMIT SAC#2012-926-2R**

Name(s) of Inspector(s): \_\_\_\_\_ Date/Time \_\_\_\_\_

Dredge Captain's Name: \_\_\_\_\_ Dredge Company Name: \_\_\_\_\_

Time of Shift Start: \_\_\_\_\_ Time of Shift End: \_\_\_\_\_

Location of Dredge: \_\_\_\_\_

Type of sediment being dredged: Sand \_\_\_\_\_ Fine grained \_\_\_\_\_

Coordinates (Latitude/Longitude): \_\_\_\_\_

Time Ceased Operation: \_\_\_\_\_ Time Resumed Operation: \_\_\_\_\_

Time Ceased Operation: \_\_\_\_\_ Time Resumed Operation: \_\_\_\_\_

**1. Pipeline Integrity.**

- a. Pipe Pressure. Normal pipe pressure ranges from ~~xxxx~~ – ~~xxxx~~. Provide average pipe pressure during shift with peak and low pressure readings:

Average: \_\_\_\_\_ High: \_\_\_\_\_ Low: \_\_\_\_\_

- b. Describe any irregularities with the pipeline: \_\_\_\_\_

Are leaks in pipe detected? Yes \_\_\_\_\_ No \_\_\_\_\_

Remedial action taken? Yes \_\_\_\_\_ No \_\_\_\_\_

Describe action taken: \_\_\_\_\_

- c. Are adaptive management techniques necessary? Yes \_\_\_\_\_ No \_\_\_\_\_

Describe adaptive management actions taken: \_\_\_\_\_

- d. Environmental Preventative measures implemented: \_\_\_\_\_

- 2. a. Sedimentation plume: Describe plume and extent visible from outfall location:** \_\_\_\_\_

- b. Are adaptive management techniques necessary? Yes \_\_\_\_\_ No \_\_\_\_\_

Describe adaptive management actions taken: \_\_\_\_\_

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c. Environmental Preventative measures implemented: \_\_\_\_\_  
 \_\_\_\_\_

**3. Mounding at the placement site:**

a. Is mounding visible at the placement site? Yes \_\_\_\_\_ No \_\_\_\_\_

b. Are adaptive management techniques necessary? Yes \_\_\_\_\_ No \_\_\_\_\_

Describe adaptive management actions taken: \_\_\_\_\_  
 \_\_\_\_\_

c. Environmental Preventative measures implemented: \_\_\_\_\_  
 \_\_\_\_\_

**4. Other Violations / Incidents:**

a. Describe: \_\_\_\_\_  
 \_\_\_\_\_

b. Are adaptive management techniques necessary? Yes \_\_\_\_\_ No \_\_\_\_\_

Describe adaptive management actions taken: \_\_\_\_\_  
 \_\_\_\_\_

c. Environmental Preventative measures implemented: \_\_\_\_\_  
 \_\_\_\_\_

**5. Additional Notes and/or continuation of items above:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I, hereby, certify that I have a thorough knowledge of all conditions of the Federal Permit and have a copy of said permit in my possession at all times that I am serving as the daily Inspector. I certify that all dredging and disposal operations performed during my hours of responsibility have been in compliance with the Federal permit or have been annotated above.

*All information, except signature, must be clearly printed in ink.*



Catherine B. Templeton, Director  
*Promoting and protecting the health of the public and the environment*

MAY 22 2013

ELECTRONICALLY FILED - 2022 Oct 11 3:30 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0701625

## CRITICAL AREA & WATER QUALITY CERTIFICATION PERMIT

**Permittee:** South Island Dredging Association

**Permit Number:** 2012-00926-2IR

**Date of Issuance:** April 29, 2013

**Expiration Date:** April 29, 2018

**Location:** On and adjacent to Calibogue Sound at Harbour Town Marina, Barnard Cove Creek and Community Dock, Braddock Cove Creek and Gull Point Marina, South Beach Marina, and Port Villas, Hilton Head Island, Beaufort County, South Carolina.

**SEE SPECIAL CONDITION(S)**

This permit/certification is issued under the provisions of 25A S.C. Code Ann. Regs. 61-101 (Supp. 2005), *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Additionally, as required by R.61-101, Department staff have reviewed plans for this project and determined there is a reasonable assurance the project will be conducted in a manner consistent with Certification requirements of Section 401 of the Clean Water Act. We also certify that this project, subject to the indicated conditions, is consistent with applicable provisions of Section 303 of the Clean Water Act, as amended, that there are no applicable effluent limitations under Sections 301(b) and 302, and that there are no applicable standards under Sections 306 and 307.

This permit contains required certification pursuant to Section 401 of the Clean Water Act. Work may not commence under this permit until after the permit has been signed by the applicant and received by OCRM or appealed within 15 days. **PLEASE CAREFULLY READ THE ENCLOSED "GUIDE TO BOARD REVIEW."**

Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed and may modify the work from that shown on the submitted plans. All special conditions attached to the permit will take precedent over submitted plans. If there are no special conditions, then the work is authorized as described in the project description and as modified by general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as Section 40-11-5 through 430, requires that all construction with a total cost of \$5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.

1 of 33



**DESCRIPTION OF THE PROJECT, AS AUTHORIZED**

The plans submitted by you, attached hereto, show the work consists of performing maintenance dredging of the SIDA facilities on Hilton Head Island to maintain navigation access, and placing the dredged material at an open water disposal site south of the mouth of Calibogue Sound. Specifically, the applicant proposes to dredge approximately 300,000 cubic yards of material from existing marina basins and access channels at Harbour Town Marina, Barnard Cove Creek and Community Dock, Braddock Cove Creek and Gull Point Marina, South Beach Marina, and Port Villas. These areas will be dredged to a depth of 5 to 8 feet below Mean Low Water, with an allowable 1-foot overdredge. The material will be hydraulically dredged using a small cutterhead dredge and pumped via pipeline, using booster pumps as necessary, to an open water disposal site identified as Placement Site 5 (PS5) on the permit drawings, located approximately 4,600 feet from the shoreline of Hilton Head Island. The pipeline will extend 2 to 3.5 miles along the Hilton Head Island/Calibogue Sound shoreline and will be floated at the surface except where crossing creeks, where it will be submerged and anchored to avoid impacts to navigation. The dredged material will be discharged through a pipe placed approximately 3 feet above the sediment surface, with a baffle plate to ensure even bottom spreading of the dredged material. Dredging will be conducted continuously and will require approximately six months to complete. The purpose of the proposed work is to maintain navigational access from certain Sea Pines waterways to Calibogue Sound, for recreational and commercial use. The water quality conditions listed below are made a part of this critical area permit and address critical area impact concerns.

**CRITICAL AREA PERMIT SPECIAL CONDITIONS**

1. Provided that dredging shall be conducted between November 1 and April 30, during a period of lower biological activity.
2. Provided that the permittee shall implement the project monitoring plan dated April 10, 2013, subject to the Water Quality Conditions listed below. All data collected under the monitoring plan shall be provided to the Department within the timeframes described in the monitoring plan.
3. Provided that the permittee may be required to discontinue all dredging activity if bathymetric surveys of the discharge site one month after construction starts indicates a significant accumulation or mounding of sediment at the discharge site.
4. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

2 of 33

**SEE SPECIAL  
CONDITION(S)**



**WATER QUALITY SPECIAL CONDITIONS**

- 1) All necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands during the project.
- 2) The permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel must monitor water-related activities for the presence of manatees during May 15-October 15.
- 3) Any collisions with and/or injury to manatee shall be reported immediately to Jim Valade of the U.S. Fish and Wildlife Service, North Florida Field Office, at (904) 731-3116.
- 4) If manatee(s) are seen within 100 yards of the active construction area all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operations of all moving equipment no closer than 50 feet to a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment.
- 5) The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees, which are protected under the Marine Mammal Protection Act of 1972 and the ESA.
- 6) Any siltation barriers used during the project shall be made of material in which manatees cannot become entangled and must be properly secured, and regularly monitored to avoid entrapment.
- 7) All vessels associated with the project shall operate at "no wake/idle" speeds at all times while in the construction area and while in the water where the draft of the vessel provides less than four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- 8) The applicant must comply with the Monitoring Plan submitted to the SCDHEC dated April 10, 2013.
- 9) The excavated and/or dredged area must be sloped such that the rear is no deeper than the front and the front is no deeper than the adjacent waterbody to maintain water circulation.
- 10) All efforts must be made to protect existing native riparian vegetation in and along shoreline areas. A 10-foot buffer from oysters and marsh must be maintained excluding the 0.003-acre area at the mouth of Braddock Creek that was identified in the permit application and supporting documentation.
- 11) A 500m buffer must be maintained between the end of the discharge pipe and any previously identified hard bottom.
- 12) The monitoring plan referenced in Condition #8 above will be revised to include the following:

(Section 5.1) Should the pipeline be moved, it will be reported to the USACE and SCDHEC in the daily reports to include new coordinates.

3 of 35 **SEE SPECIAL  
CONDITION(S)**

(Section 5.2) The bathymetric survey will be submitted within 7 days of the data collection to the USACE and SCDHEC. The determination of what constitutes "significant" will be made at that time in consideration of other available data and in consultation with the permitting agencies.

(Section 5.3) The proposed water quality monitoring location near the mouth of the Cooper River will be moved to the channel of Calibogue Sound opposite the mouths of Braddock and Baynard Creeks.

(Section 5.3) The Monitoring Plan will be modified to include vertical profiles and water quality sampling at all four locations before, during and after dredging. All continuous monitoring will remain as proposed.

(Section 5.4) Two 100-m tows in each area will be conducted to assess the bottom types and presence of live bottom growth.

- 13) The Essential Fish Habitat recommendations stated in NMFS letter dated April 26, 2013 must be addressed in accordance with "the Charleston District Process for EFH Consultation for Regulatory Activities" between the U.S. Army Corps and NMFS dated April 6, 2000 prior to commencement of dredging.

**SEE SPECIAL  
CONDITION(S)**

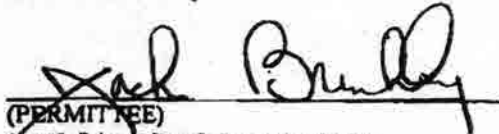
4 of 33

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND (5), BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT, AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

2012-00926-2IR

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
(PERMITTEE)  
South Island Dredging Association

5/28/2013  
(DATE)

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

  
(WETLAND SECTION PROJECT MANAGER)  
William C Eisner  
or his Designee  
Other Authorized State Official

4/29/13  
(DATE)

**SEE SPECIAL  
CONDITION(S)**

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
Ocean and Coastal Resource Management  
Charleston Office • 1362 McMillan Ave, Suite 400 • Charleston, SC 29405-2047  
Phone: 843-953-0200 • Fax: 843-953-0201 • [www.scdhec.gov](http://www.scdhec.gov)

5 of 33



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2012-00926-2IR

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
(PERMITTEE)  
South Island Dredging Association

\_\_\_\_\_  
(DATE)

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

William C. Eiser  
(WETLAND SECTION PROJECT MANAGER)  
William C Eiser  
or his Designee  
Other Authorized State Official

4/29/13  
(DATE)

**SEE SPECIAL  
CONDITION(S)**

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
Ocean and Coastal Resource Management  
Charleston Office · 1362 McMillan Ave, Suite 400 · Charleston, SC 29405-2047  
Phone: 843-953-0200 · Fax: 843-953-0201 · [www.scdhec.gov](http://www.scdhec.gov)

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### GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than thirty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the permit, as issued, and shall be maintained in good condition. Failure to build in accordance with the permit, as issued, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is in violation of the terms and/or conditions, including any special conditions of the permit. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-23-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

**SEE SPECIAL  
CONDITION(S)**

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## South Island Dredging Association (SIDA)

### Information to Better Define Potential Response Actions During Dredging<sup>1</sup>

SIDA will conduct significant monitoring before, during and following the dredging activities pursuant to Joint Application PIN #2012-00926. Some of the data will be interpreted during dredging and used to evaluate permit compliance and and/or response actions if appropriate. Of particular importance will be bathymetric surveys conducted to evaluate mounding and sediment dispersal.

Prior to the initiation of dredging, SIDA believes that it is in the best interests of the permitting agencies and SIDA to better define what responses/actions will be made in the event of significant mounding.

The "Dredge Analysis and Bottom Deposition Analysis" included in the permit application predicts that the underflow will spread over ~56 acres (although not all at one time) and mound to a height of approximately 2 feet. The permitted placement area is 106 acres. The model was run using conservative variables to predict what is anticipated to be the maximum area of coverage (56 acres). However, small changes in the input variables would result in less acreage being affected but accumulation near the discharge pipe being thicker. This is particularly true if a sandier area is encountered since sandier sediments may not behave like a fluid mud. The model predicts that accumulated sediment should disperse within days to weeks. An independent review of the model by ERDC suggests that less acreage will be affected by sediment accumulation and that dispersion will be more rapid.

One of the purposes of monitoring is to measure actual outcomes recognizing that the actual behavior of the sediment on the bottom may vary from predictions. This recognition is also reflected in the permitted placement area being larger (106 acres) than the predicted area of coverage (56 acres).

Given these factors, this document is intended to reflect some of the types of adaptive management measures that will be taken if mounding is thicker than anticipated. For example,

---

<sup>1</sup> This document was discussed with SCDHEC and Corps of Engineers staff in a meeting on May 20, 2013. In the meeting it was agreed that the items outlined herein are reasonable and representative of the types of responses that should be incorporated in the Contingency Plan/Adaptive Management Plan (Plan). The agency personnel requested that the Plan provided to them for review prior to initiation of dredging. On the basis of the discussions in the meeting, SIDA agreed to accept the conditions in the SCDHEC permit.

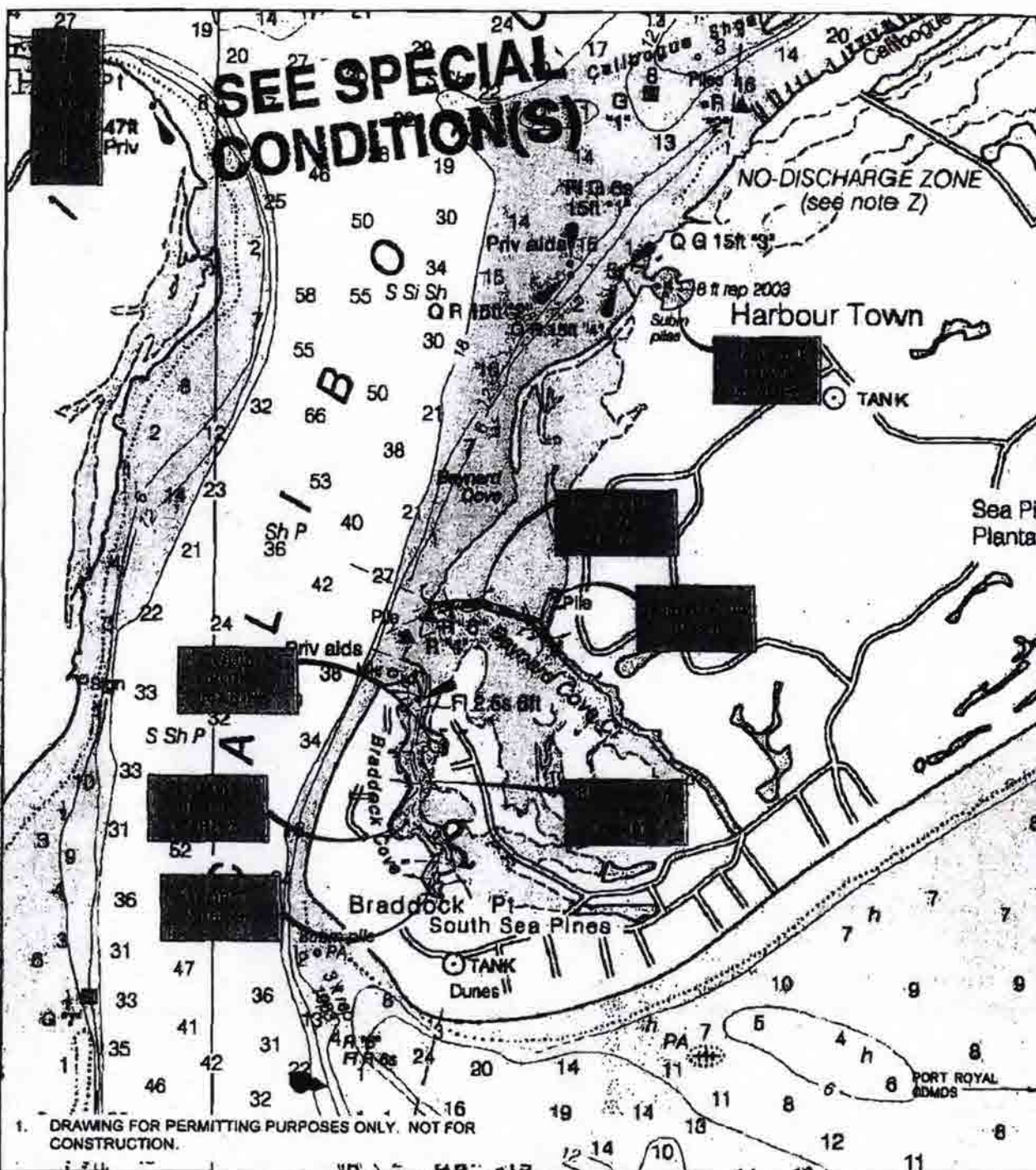


if the bathymetric survey identifies mounding of consolidated sediments more than 4 feet thick, the following types of measures may be implemented:

- Sample the mounded sediment to determine if it is fine grained or sandy,
- Move the discharge pipe away from the mounded area and perform additional surveys to determine how rapidly the mound dissipates,
- Move the dredge intake to more clay rich areas if the mound is predominantly sand.
- Adjust the rate of dredging,
- Adjust the angle of the discharge pipe, and/or
- Modify the diffuser on the discharge pipe.

These items, as well as additional measures contingencies related to the dredging, will be included in a formal Adaptive Management Plan/Contingency Plan developed in concert with the selected dredge contractor and provided to the permitting agencies for review prior to initiation of dredging. This is in addition to daily dredge inspection reports that will be submitted to the regulatory agencies.

If, despite these types of adaptive management measures, sediment continues to mound and not dissipate over many weeks or if mounding extends outside the placement area, SIDA recognizes that such conditions could result in a requirement to stop dredging. Any initial work stoppage would be temporary while SIDA gathers additional data and/or develops additional techniques to assure compliance. However, if after additional efforts, the project remains out of compliance, SIDA recognizes that the work stoppage could be permanent.

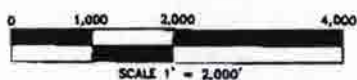


PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'24.25"N  
LONGITUDE: 80°48'49.69"W

SURVEY DATUM: NGVD MLW

FIGURE 1  
LOCATION MAP



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK, BAYNARD COVE CREEK  
HARBOUR TOWN, GULL POINT AND SOUTH BEACH  
MARINAS, PORT VILLAS

IN: HILTON HEAD ISLAND, S.C.

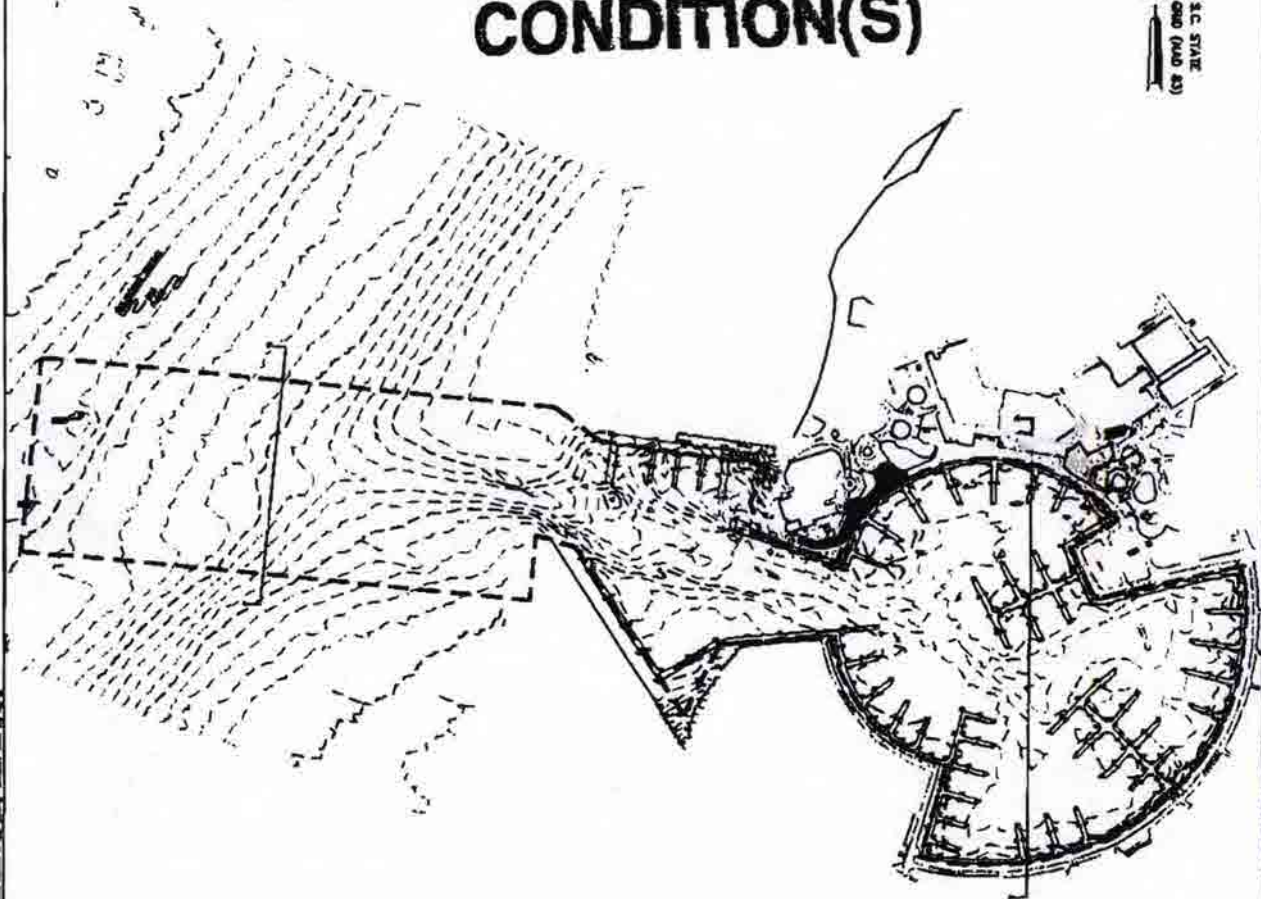
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 1 OF 27

DATE: 08/22/12



**SEE SPECIAL  
CONDITION(S)**



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'15.28"N  
LONGITUDE: 80°48'47.05"W

SURVEY DATUM: MLLW

**FIGURE 2  
HARBOUR TOWN MARINA  
PLAN VIEW**



SCALE 1" = 250'

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: HARBOUR TOWN MARINA

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

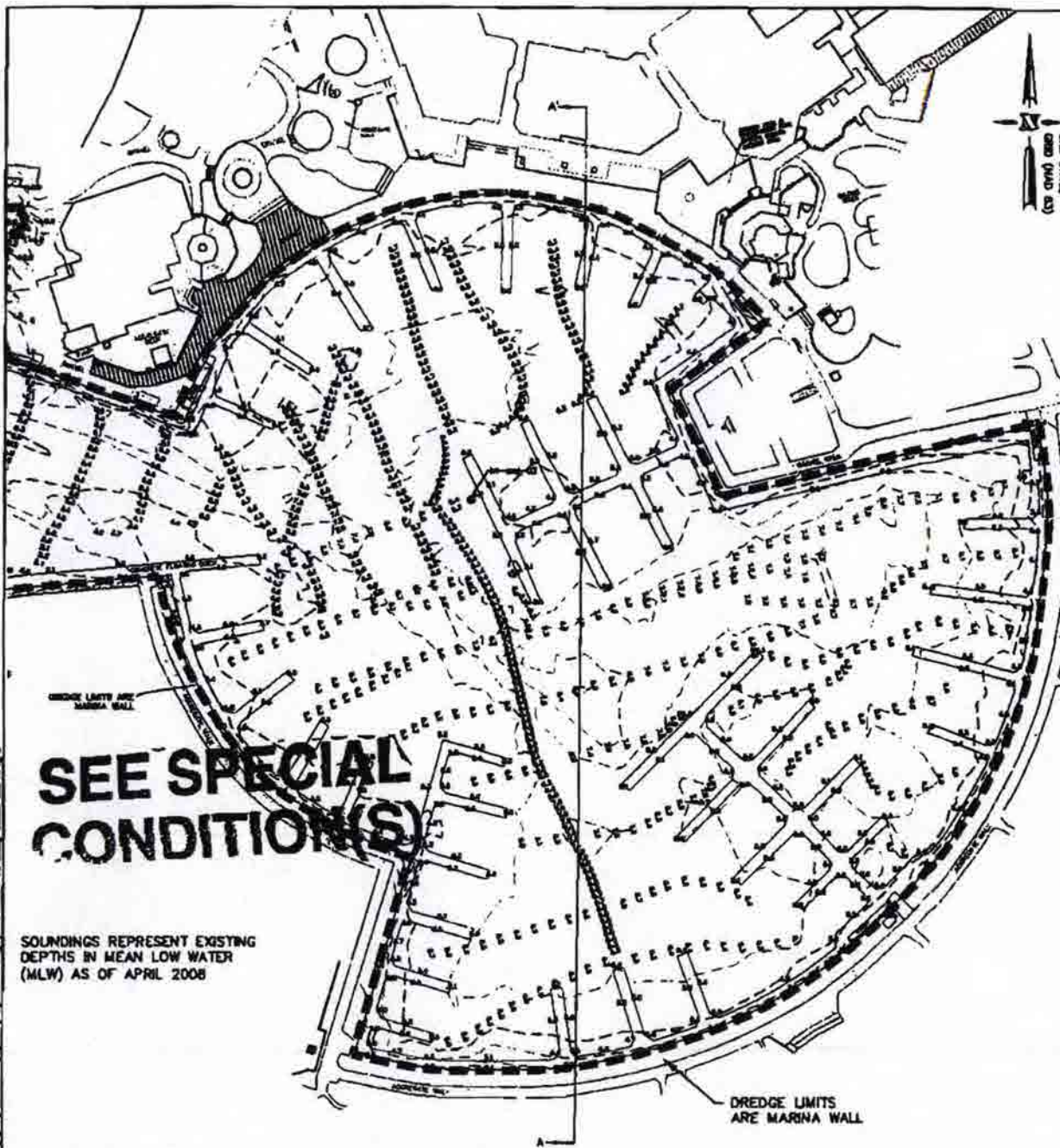
SHEET: 2 OF 27

DATE: 08/22/12

DEL. ENGINEERING, LLC

Member of THE EEL GROUP, INC.

8 of 33



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

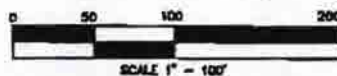
PROJECT DEPTH: (-) 8.0' MLW

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'16.28"N  
LONGITUDE: 80°46'47.05"W

SURVEY DATUM: MLW

FIGURE 3  
HARBOUR TOWN MARINA  
ENLARGED PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: HARBOUR TOWN MARINA

IN: HILTON HEAD ISLAND, S.C.

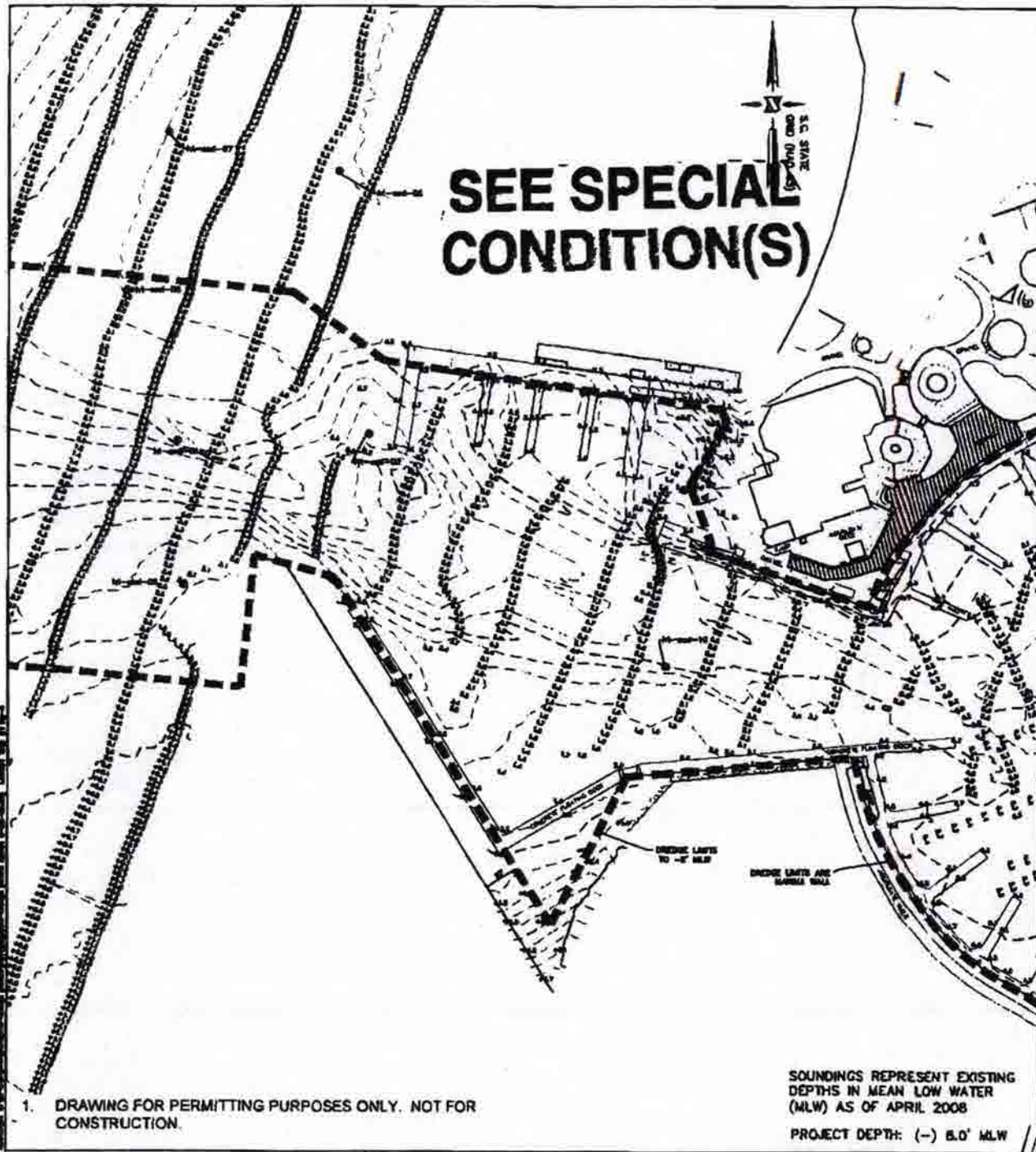
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 3 OF 27

DATE: 08/22/12

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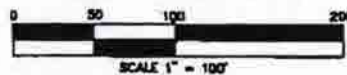


PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'15.28"N  
LONGITUDE: 80°48'47.05"W

SURVEY DATUM: MLW

FIGURE 4  
HARBOUR TOWN MARINA  
ENLARGED PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: HARBOUR TOWN MARINA

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 4 OF 27

DATE: 08/22/12

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SOUNDINGS REPRESENT EXISTING  
DEPTHS IN MEAN LOW WATER  
(MLW) AS OF APRIL 2008

PROJECT DEPTH: (-) 8.0' MLW

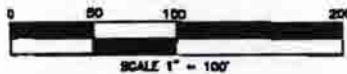
1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'15.28"N  
LONGITUDE: 80°48'47.05"W

SURVEY DATE: MLW

FIGURE 5  
HARBOUR TOWN MARINA  
ENLARGED PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: HARBOUR TOWN MARINA

IN: HILTON HEAD ISLAND, S.C.

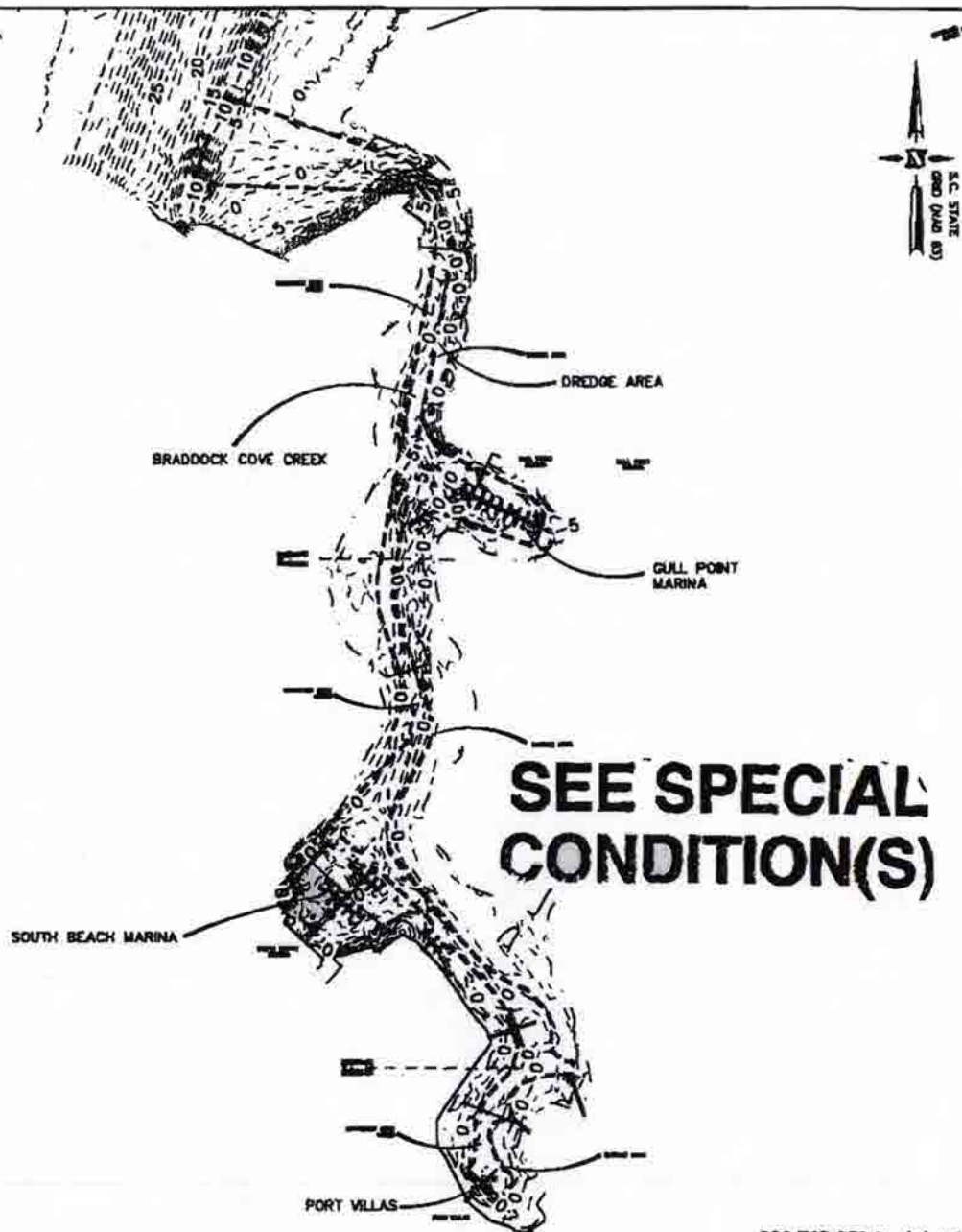
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

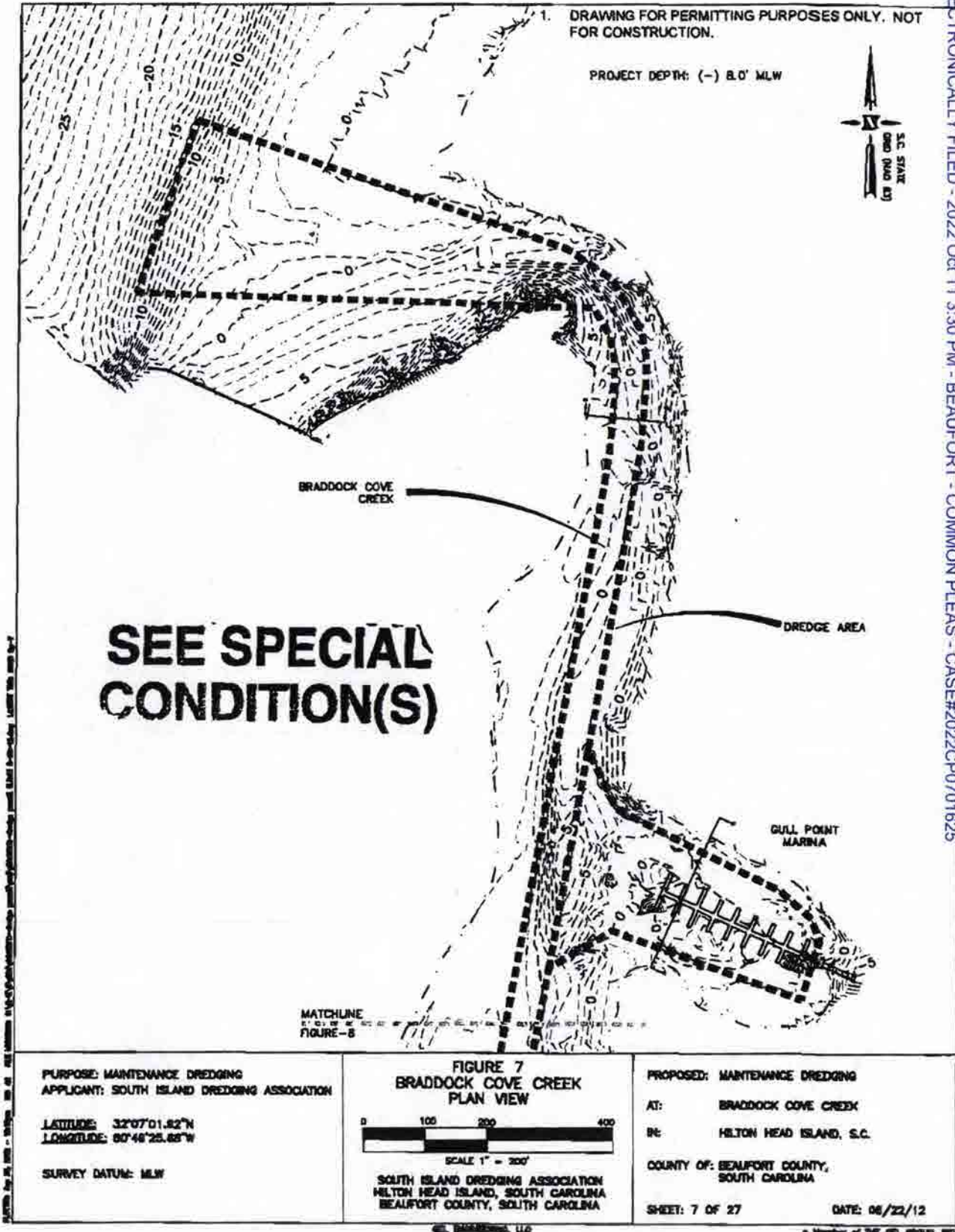
SHEET: 5 OF 27

DATE: 08/22/12

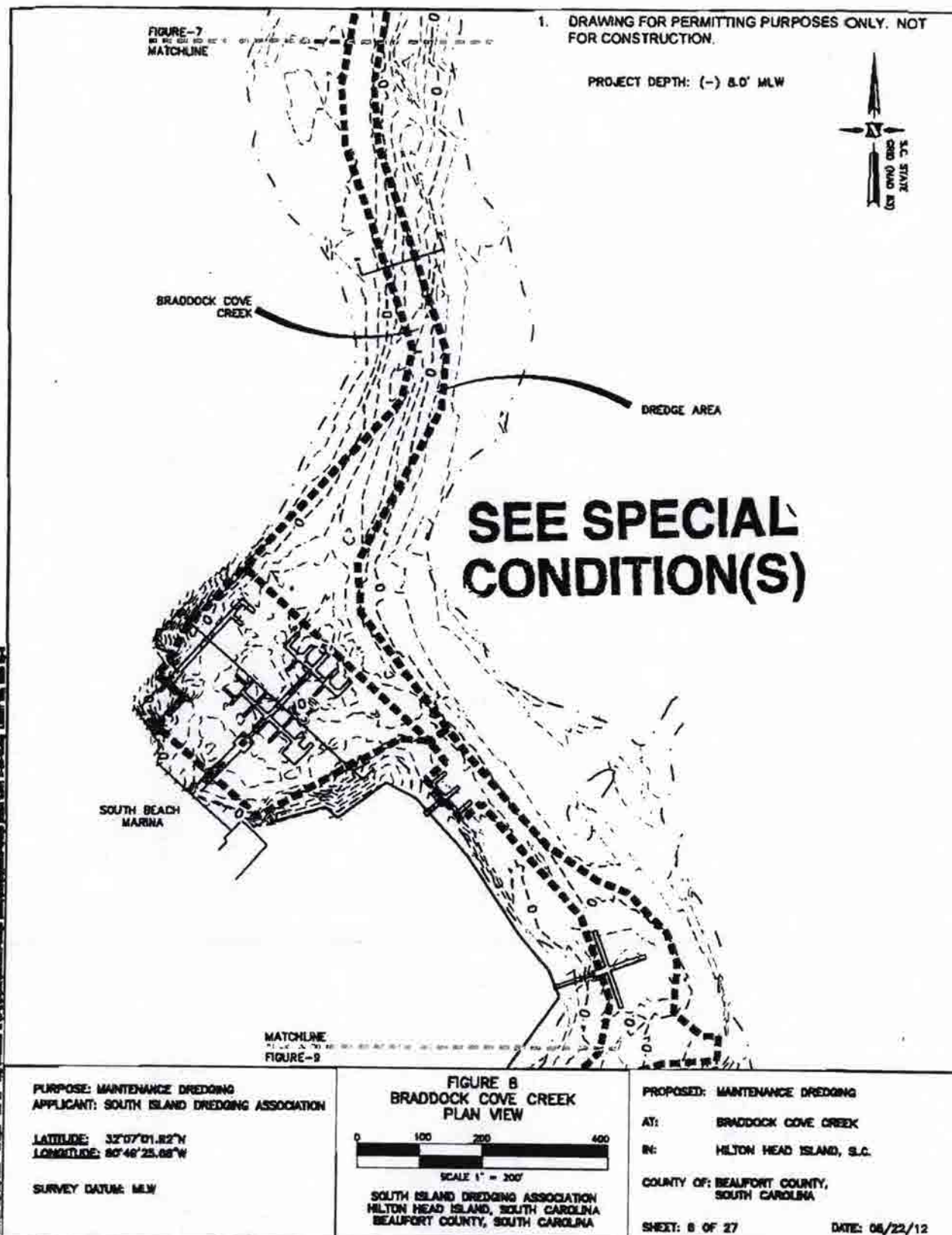
11 of 33







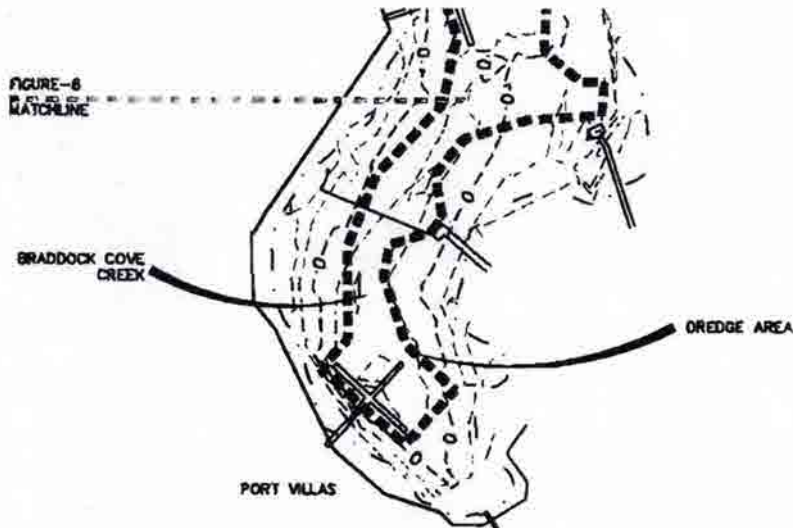
13 of 33





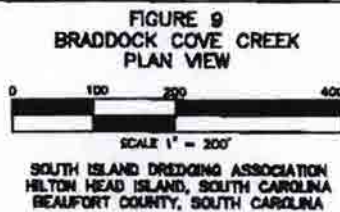
1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PROJECT DEPTH: (-) 8.0' MLW



**SEE SPECIAL  
CONDITION(S)**

PURPOSE: MAINTENANCE DREDGING  
 APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION  
 LATITUDE: 32°07'01.82"N  
 LONGITUDE: 80°48'25.86"W  
 SURVEY DATUM: MLW

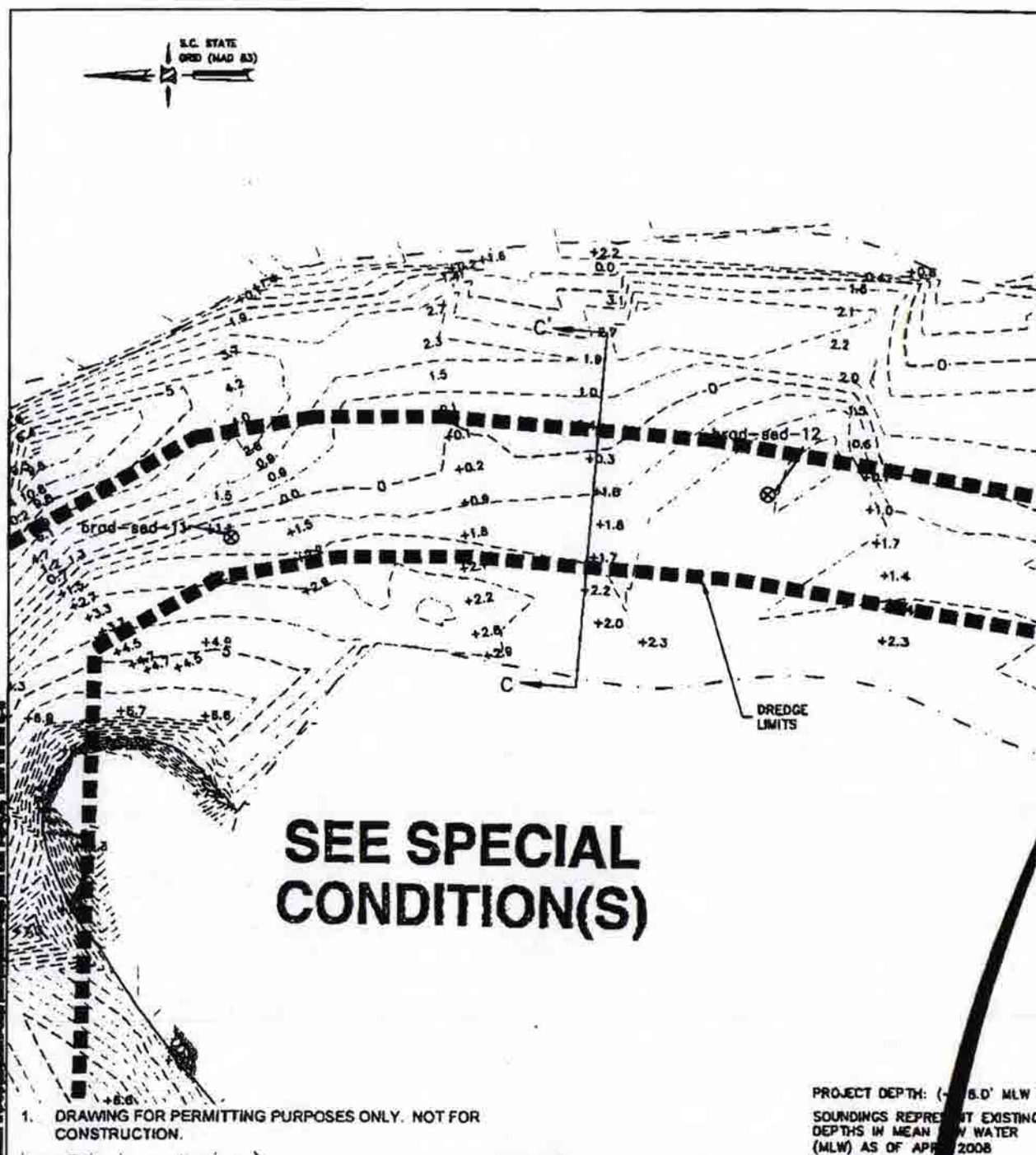


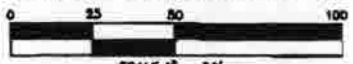
PROPOSED: MAINTENANCE DREDGING  
 AT: BRADDOCK COVE CREEK  
 IN: HILTON HEAD ISLAND, S.C.  
 COUNTY OF: BEAUFORT COUNTY, SOUTH CAROLINA  
 SHEET: 8 OF 27  
 DATE: 08/22/12

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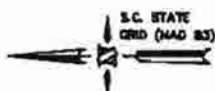


|                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>PURPOSE: MAINTENANCE DREDGING<br/>         APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION</p> <p>LATITUDE: 32°07'18.89"N<br/>         LONGITUDE: 80°46'23.36"W</p> <p>SURVEY DATUM: MLW</p> | <p>FIGURE 10<br/>         BRADDOCK COVE CREEK<br/>         ENLARGED ENTRANCE PLAN VIEW</p>  <p>SCALE 1" = 50'</p> <p>SOUTH ISLAND DREDGING ASSOCIATION<br/>         HILTON HEAD ISLAND, SOUTH CAROLINA<br/>         BEAUFORT COUNTY, SOUTH CAROLINA</p> | <p>PROPOSED: MAINTENANCE DREDGING</p> <p>AT: BRADDOCK COVE CREEK</p> <p>IN: HILTON HEAD ISLAND, S.C.</p> <p>COUNTY OF: BEAUFORT COUNTY,<br/>         SOUTH CAROLINA</p> <p>SHEET: 10 OF 27      DATE: 08/22/12</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

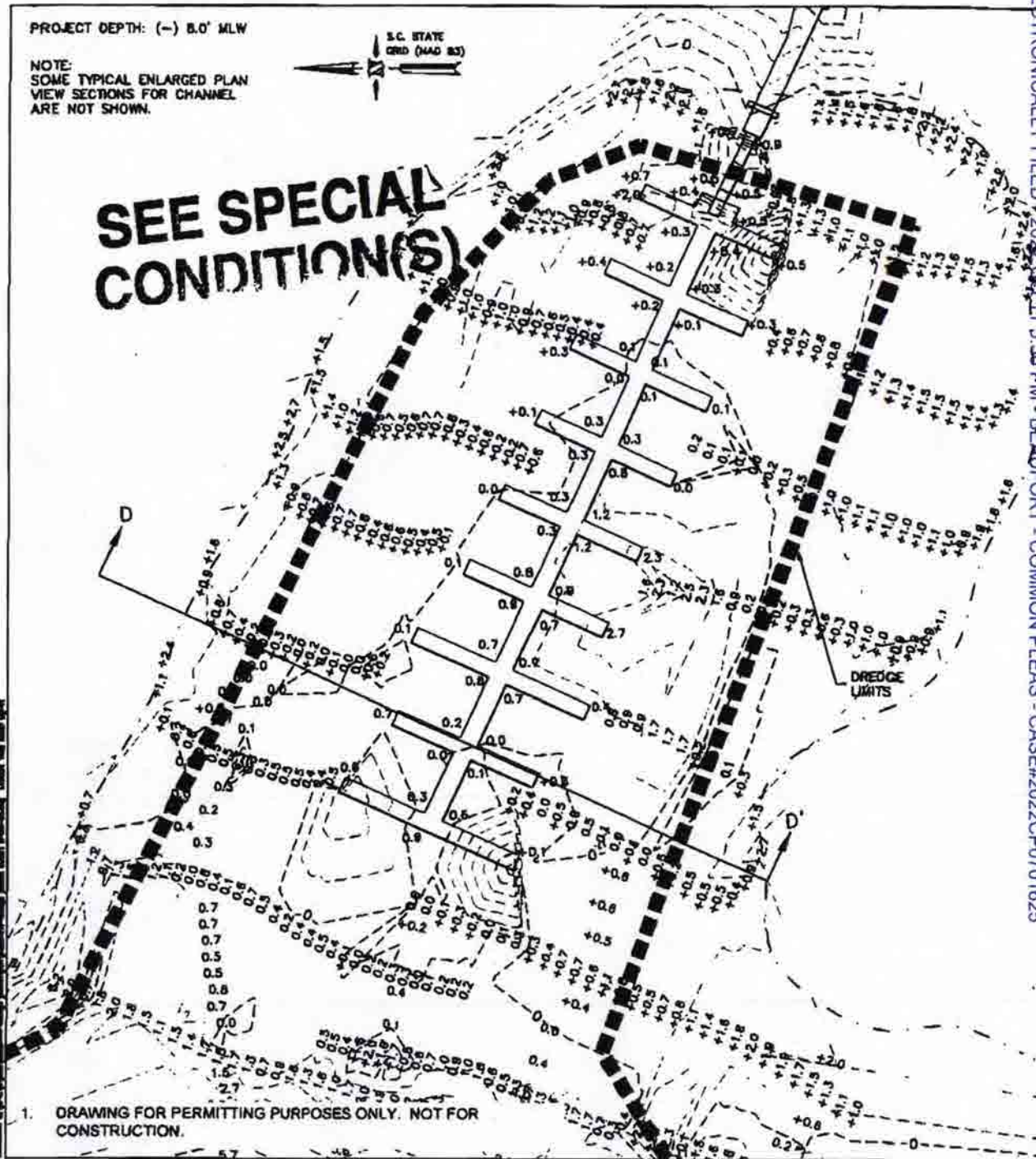
16 of 33

PROJECT DEPTH: (-) 8.0' MLW

NOTE:  
SOME TYPICAL ENLARGED PLAN  
VIEW SECTIONS FOR CHANNEL  
ARE NOT SHOWN.



**SEE SPECIAL  
CONDITION(S)**



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'10.11"N  
LONGITUDE: 80°48'22.20"W

SURVEY DATUM: MLW

**FIGURE 11  
BRADDOCK COVE CREEK  
GULL POINT MARINA**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.  
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

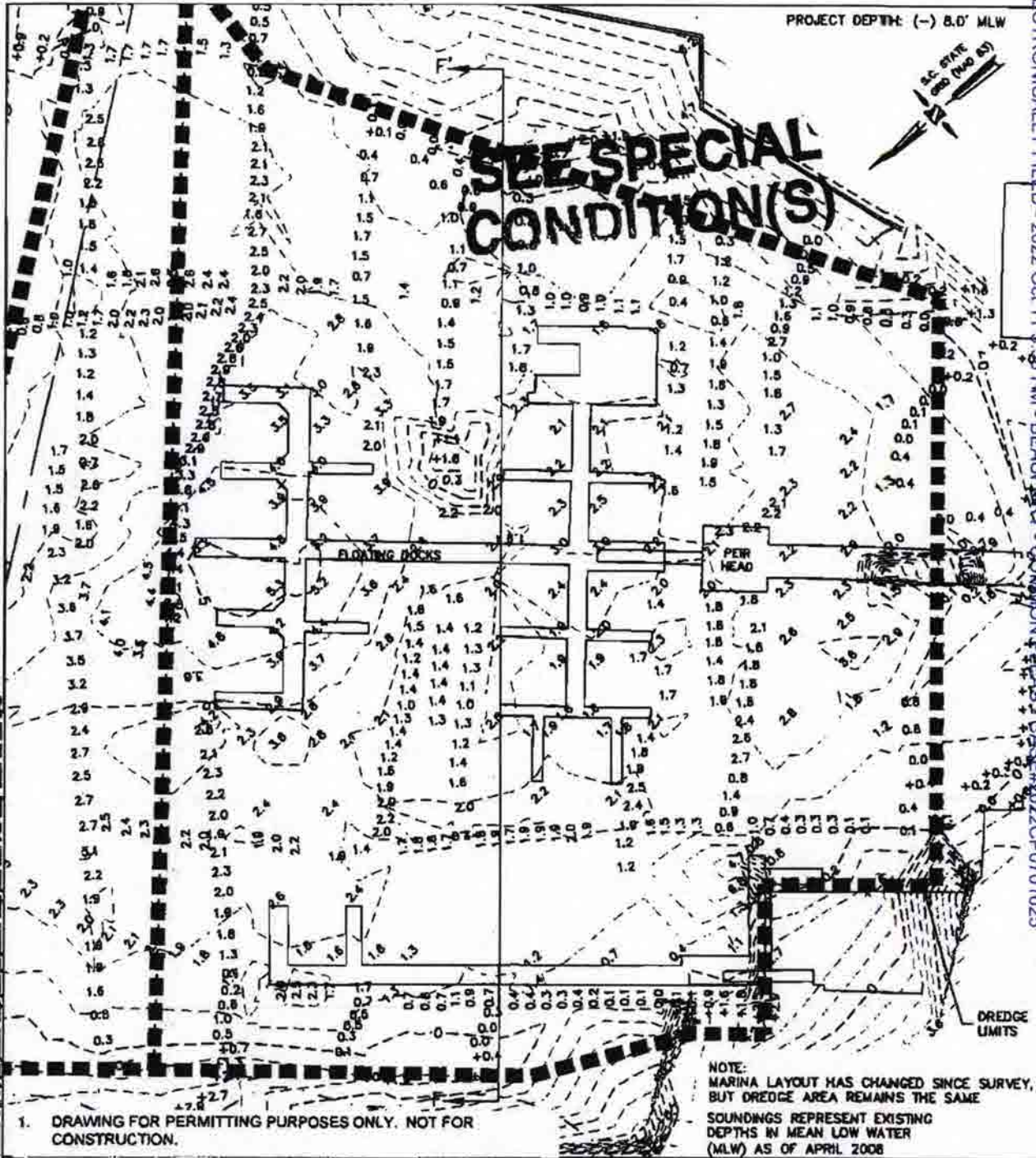
SHEET: 11 OF 27

DATE: 08/22/12

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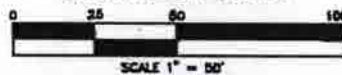






PURPOSE: MAINTENANCE DREDGING  
 APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION  
 LATITUDE: 32°04'57.33"N  
 LONGITUDE: 80°46'27.83"W  
 SURVEY DATUM: MLW

FIGURE 13  
 BRADDOCK COVE CREEK  
 SOUTH BEACH MARINA



SOUTH ISLAND DREDGING ASSOCIATION  
 HILTON HEAD ISLAND, SOUTH CAROLINA  
 BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
 AT: SOUTH BEACH MARINA  
 IN: HILTON HEAD ISLAND, S.C.  
 COUNTY OF: BEAUFORT COUNTY,  
 SOUTH CAROLINA

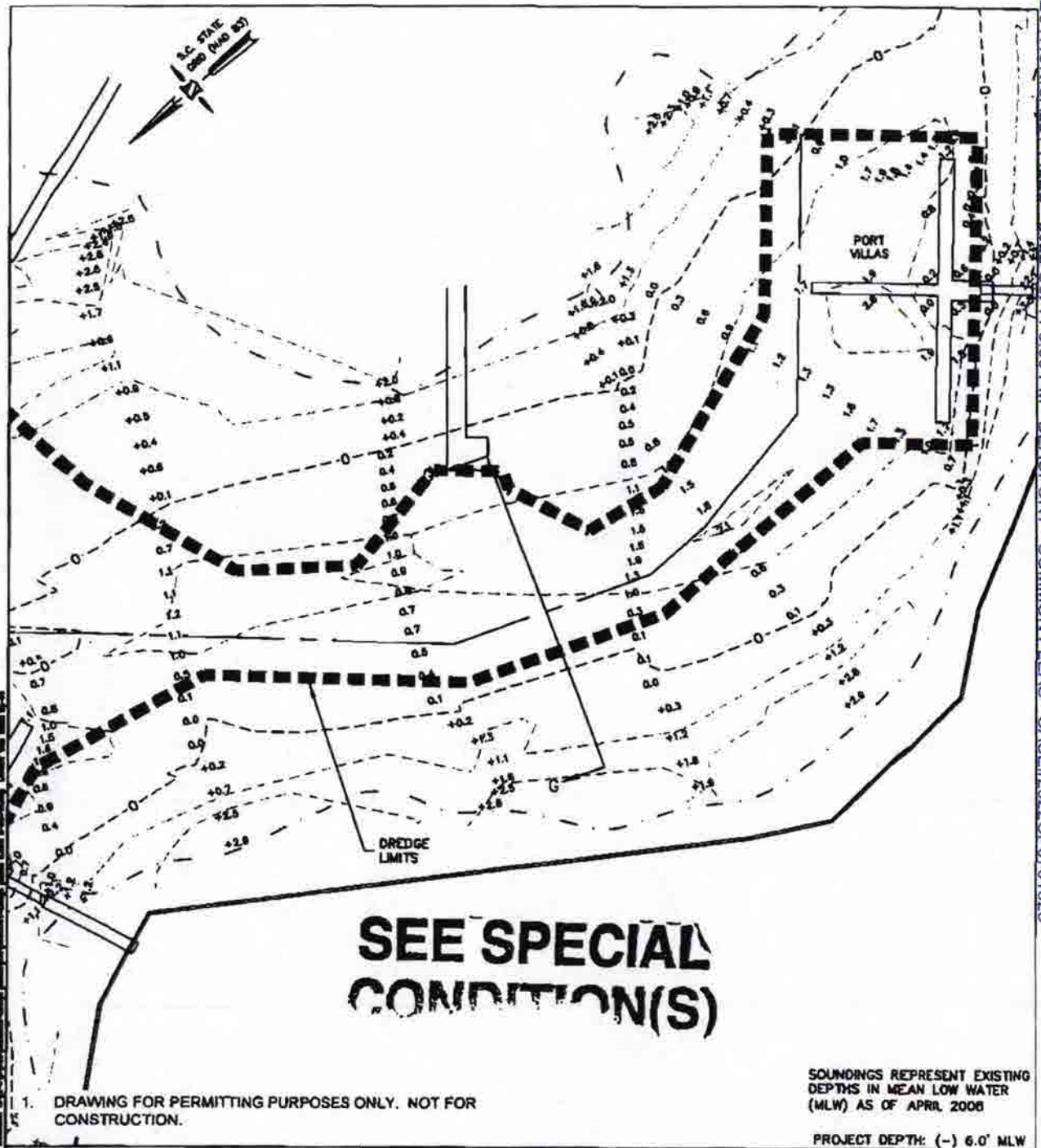
SHEET: 13 OF 27

DATE: 08/22/12

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SOUNDINGS REPRESENT EXISTING DEPTHS IN MEAN LOW WATER (MLW) AS OF APRIL 2006

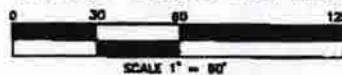
PROJECT DEPTH: (-) 6.0' MLW

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°08'30.71"N  
LONGITUDE: 80°48'22.81"W

SURVEY DATE: MLW

FIGURE 14  
BRADDOCK COVE CREEK  
ENLARGED CHANNEL PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.

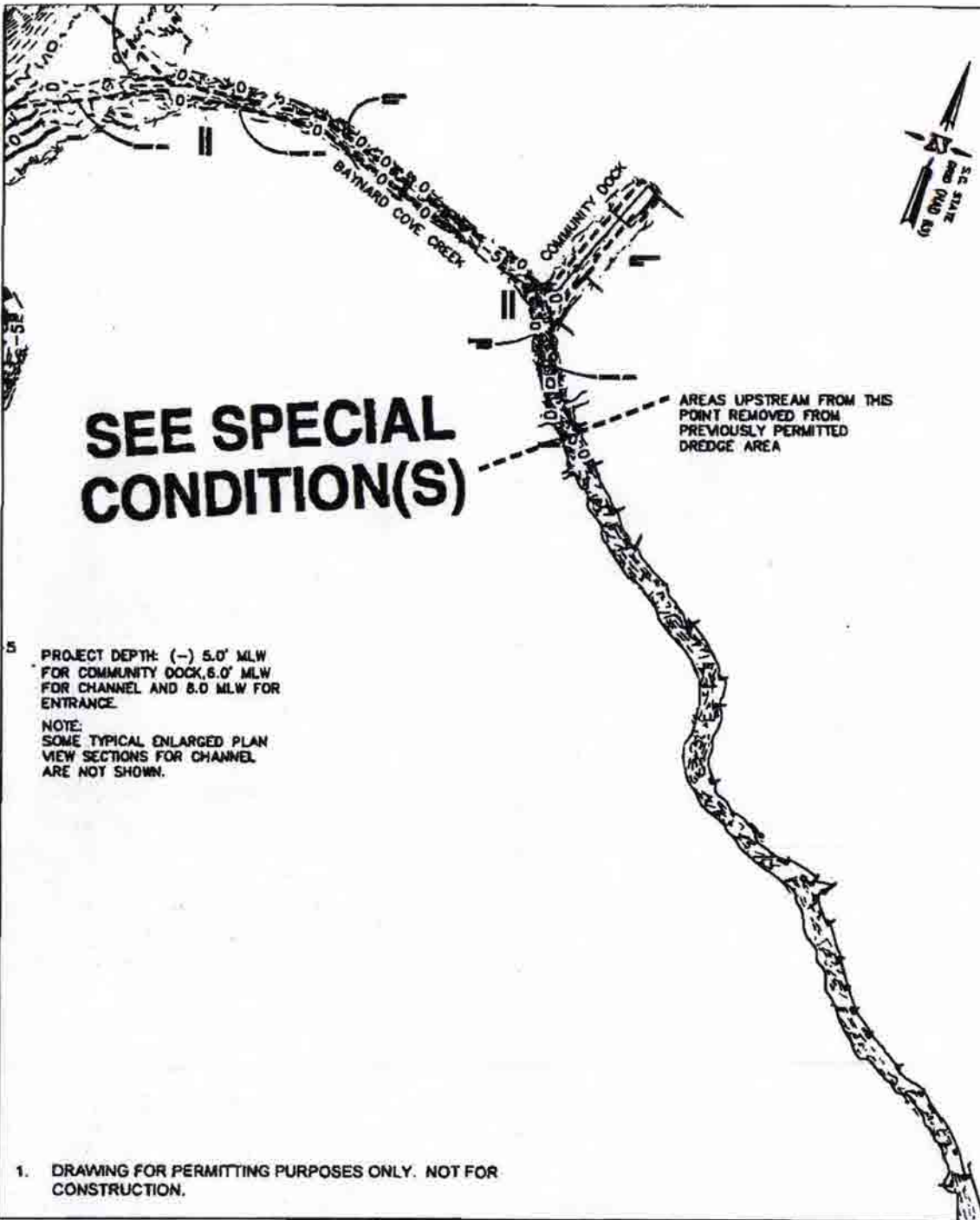
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 14 OF 27

DATE: 08/22/12

a Member of DIF 60% GROUP, INC.

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1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°40'07.48"W

SURVEY DATUM: MLW

FIGURE 15  
BAYNARD COVE CREEK  
PLAN VIEW



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 15 OF 27

DATE: 06/22/12

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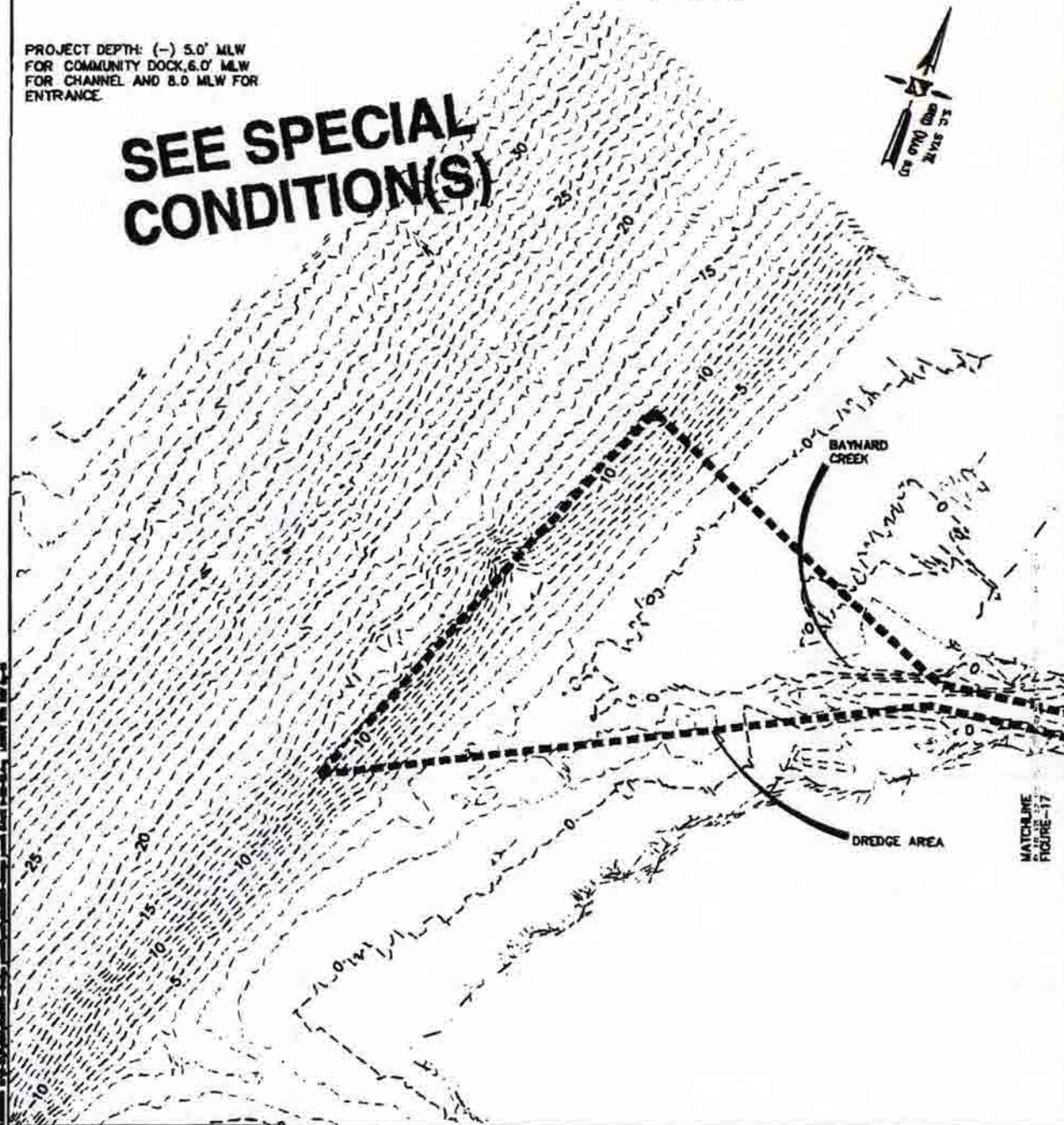
21 of 33



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PROJECT DEPTH: (-) 5.0' MLW  
FOR COMMUNITY DOCK, 6.0' MLW  
FOR CHANNEL AND 8.0 MLW FOR  
ENTRANCE.

**SEE SPECIAL  
CONDITION(S)**

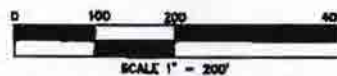


PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°48'57.48"W

SURVEY DATUM: MLLW

**FIGURE 16  
BAYNARD COVE CREEK  
PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 16 OF 27

DATE: 06/22/12

DEL. ENGINEERS, LLC

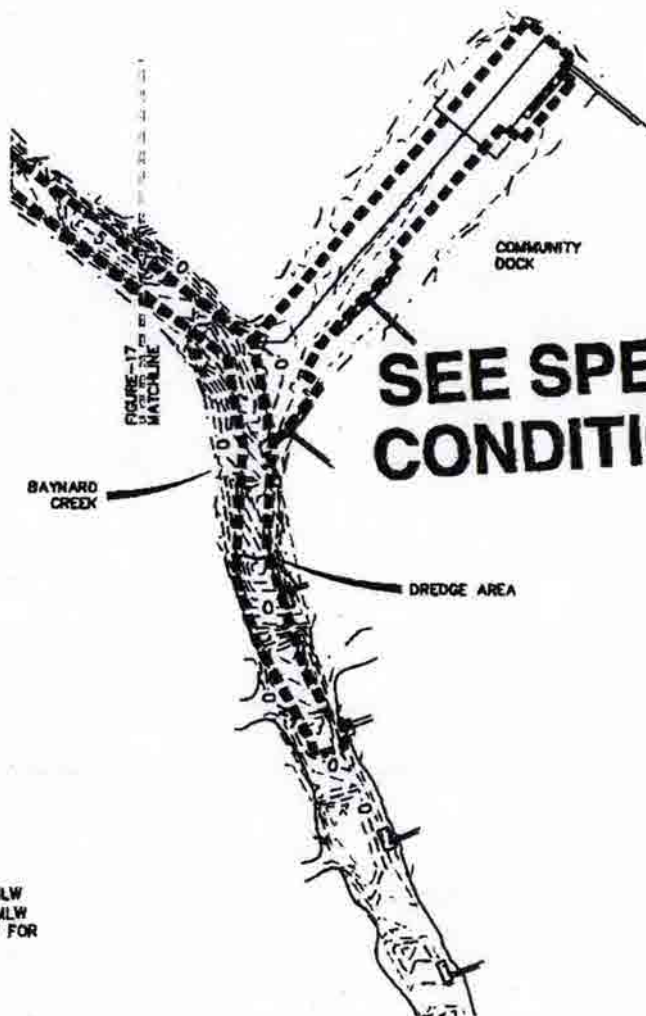
a Member of THE DEL. GROUP, INC.

22 of 33





1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.



**SEE SPECIAL  
CONDITION(S)**

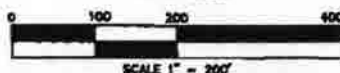
PROJECT DEPTH: (-) 5.0' MLW  
FOR COMMUNITY DOCK, 6.0' MLW  
FOR CHANNEL AND 8.0 MLW FOR  
ENTRANCE.

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.14"N  
LONGITUDE: 80°48'07.48"W

SURVEY DATUM: MLW

**FIGURE 18  
BAYNARD COVE CREEK  
PLAN VIEW**



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BAYNARD COVE CREEK

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 18 OF 27

DATE: 08/22/12

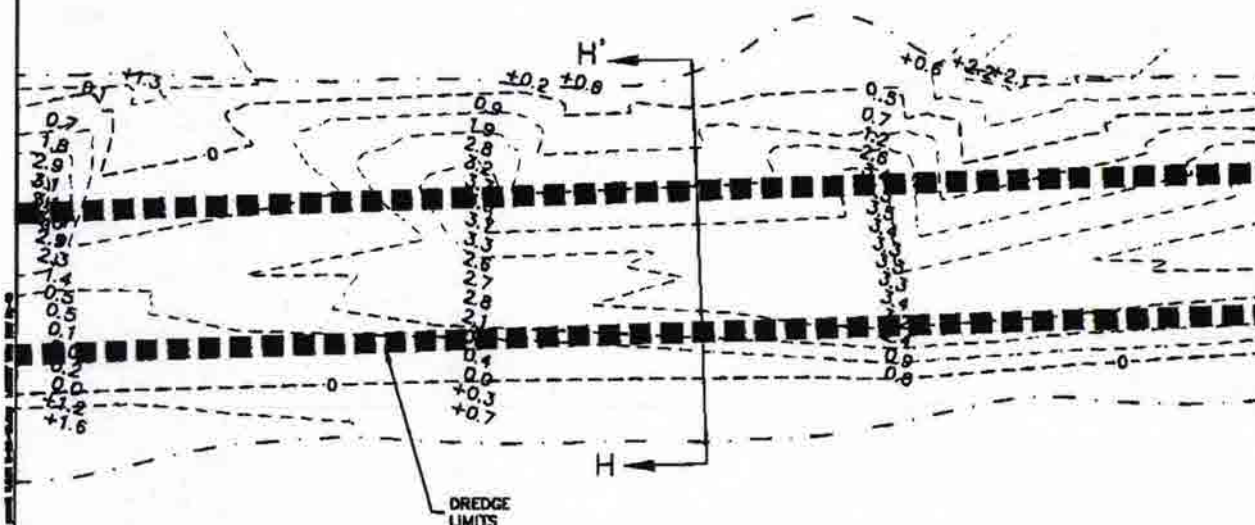
DR. BARNHART, LLC

a member of THE REL GROUP, INC.

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**SEE SPECIAL  
CONDITION(S)**



SOUNDINGS REPRESENT EXISTING  
DEPTHS IN MEAN LOW WATER  
(MLW) AS OF APRIL 2008

1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

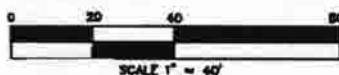
PROJECT DEPTH: (-) 8.0' MLW

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'28.68"N  
LONGITUDE: 80°48'12.39"W

**SURVEY DATE:** 11/01/2011

FIGURE 19  
BAYNARD COVE CREEK  
ENLARGED CHANNEL PLAN VIEW



**SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA**

PROPOSED: MAINTENANCE DREDGING  
AT: BAYNARD COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.  
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

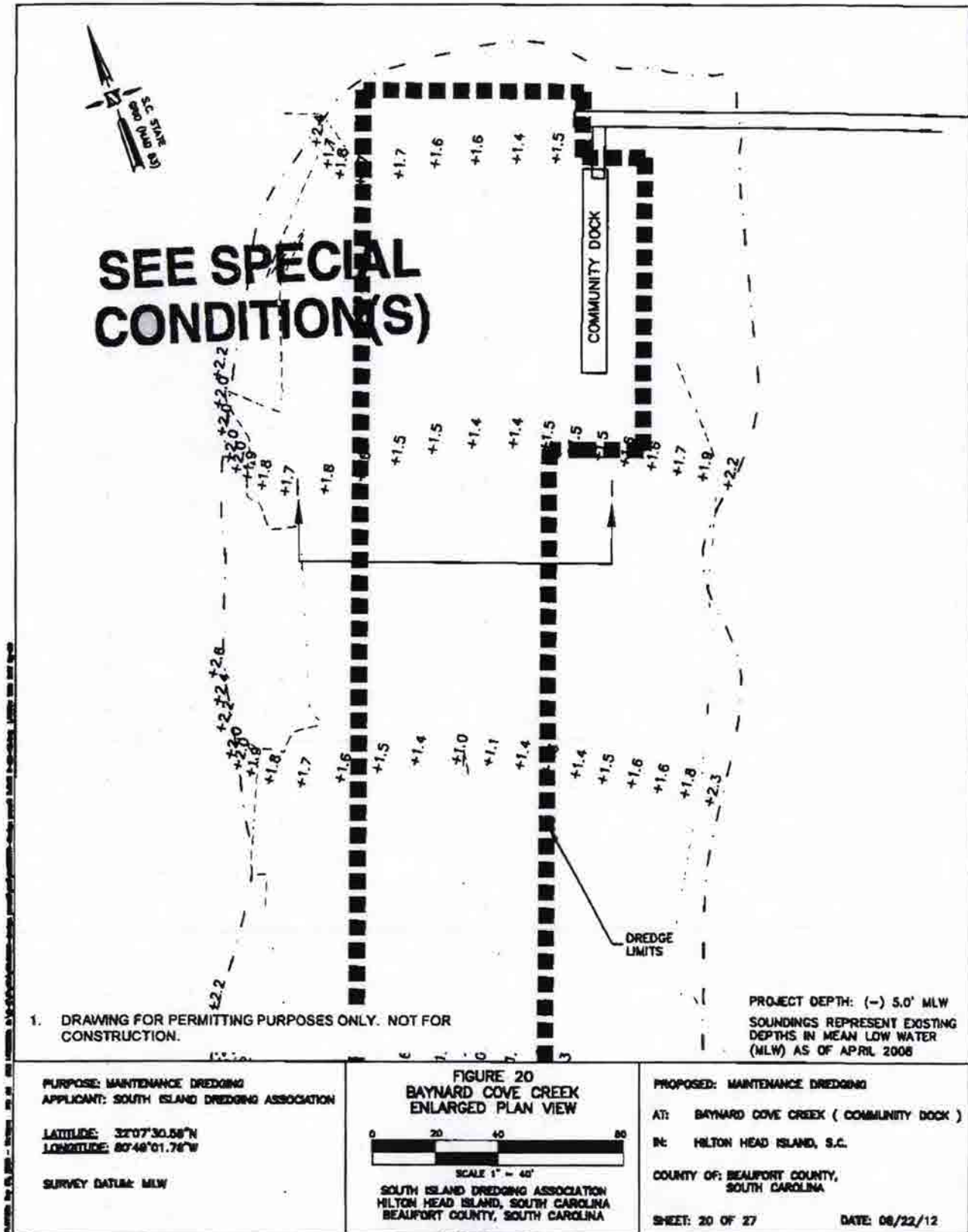
**SHEET: 18 OF 27**

DATE: 08/22/2012

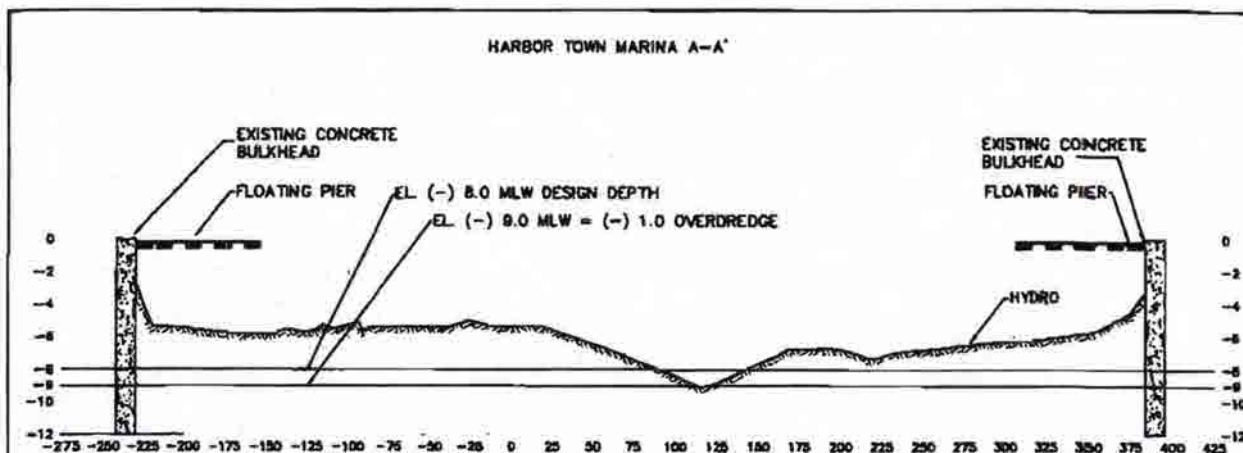
SEA, ELECTRONIC, 116

1 Member of THE OIL GROUP, INC.

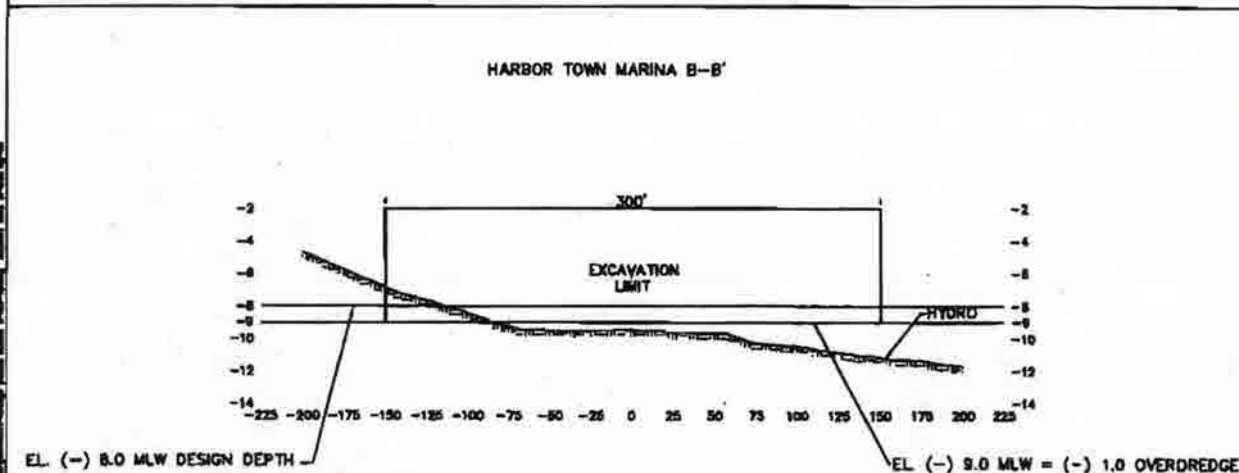
25 of 33



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**SEE SPECIAL  
CONDITION(S)**



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

MLW - MEAN LOW WATER

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°06'18.98"N  
LONGITUDE: 80°48'42.82"W

SURVEY DATUM: MLW

FIGURE 21  
CROSS SECTIONS  
HARBOR TOWN MARINA

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: HARBOR TOWN MARINA  
IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 21 OF 27

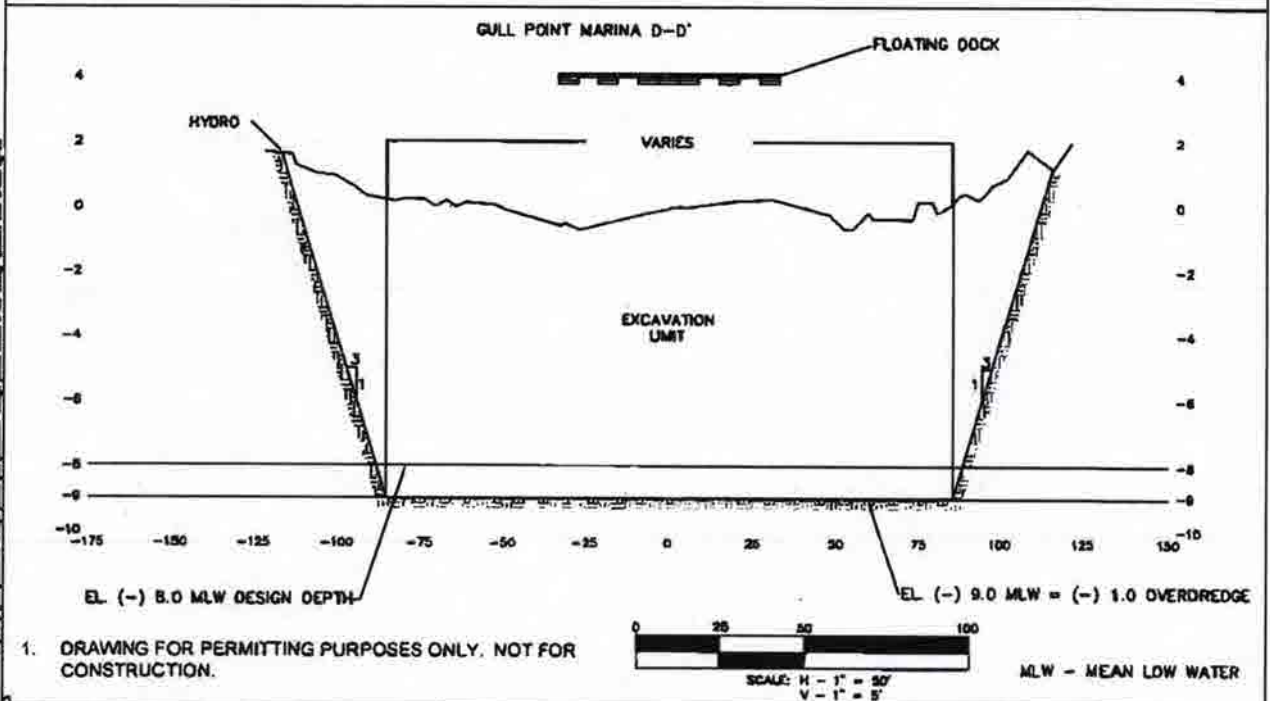
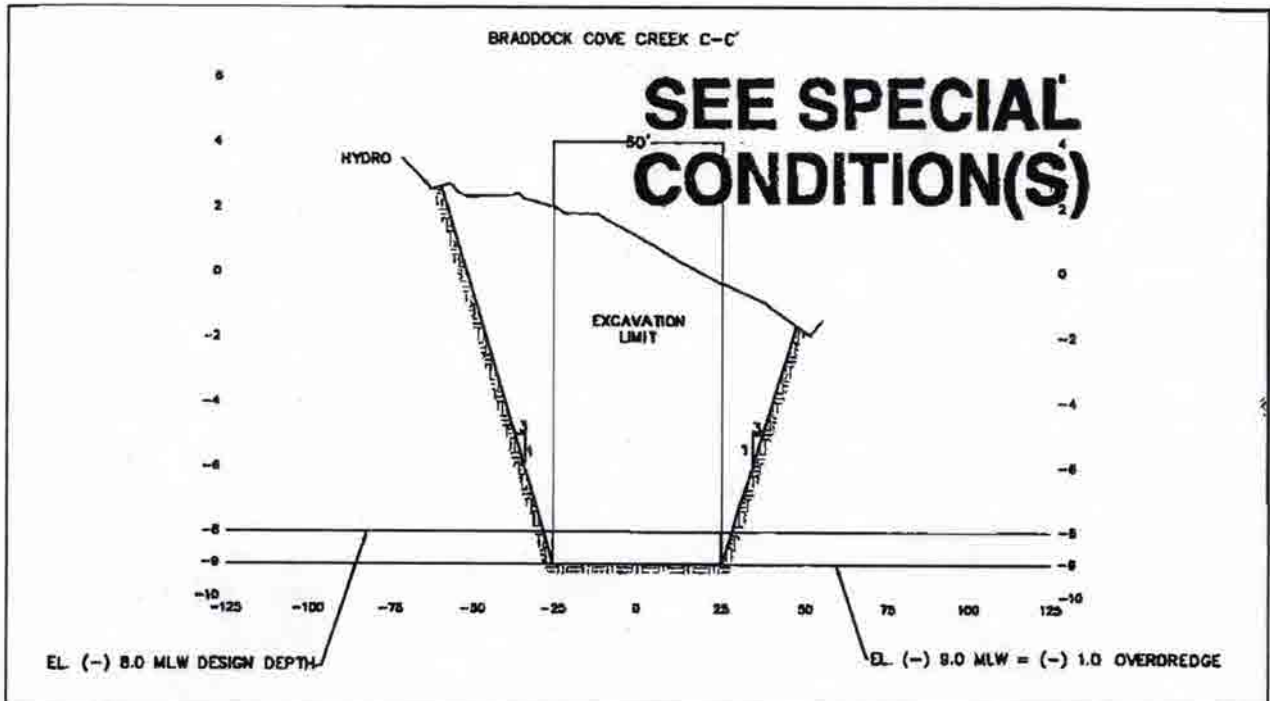
DATE: 08/22/12

DR. ENGINEERS, LLC

a member of the MWH GROUP, INC.

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1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PURPOSE: MAINTENANCE DREDGING  
 APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION  
 LATITUDE: 32°07'09.54"N  
 LONGITUDE: 80°46'24.87"W  
 SURVEY DATUM: MLW

**FIGURE 22  
 CROSS SECTIONS  
 BRADDOCK COVE CREEK**

SOUTH ISLAND DREDGING ASSOCIATION  
 HILTON HEAD ISLAND, SOUTH CAROLINA  
 BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
 AT: BRADDOCK COVE CREEK  
 IN: HILTON HEAD ISLAND, S.C.  
 COUNTY OF: BEAUFORT COUNTY,  
 SOUTH CAROLINA

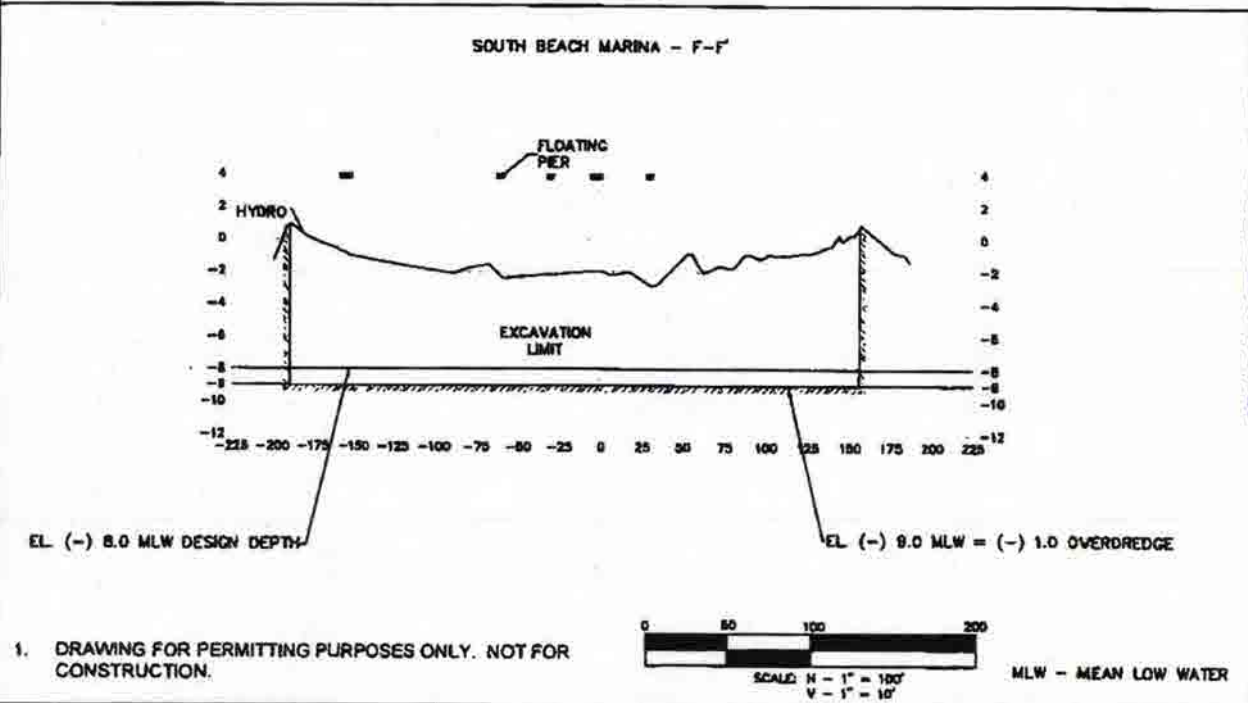
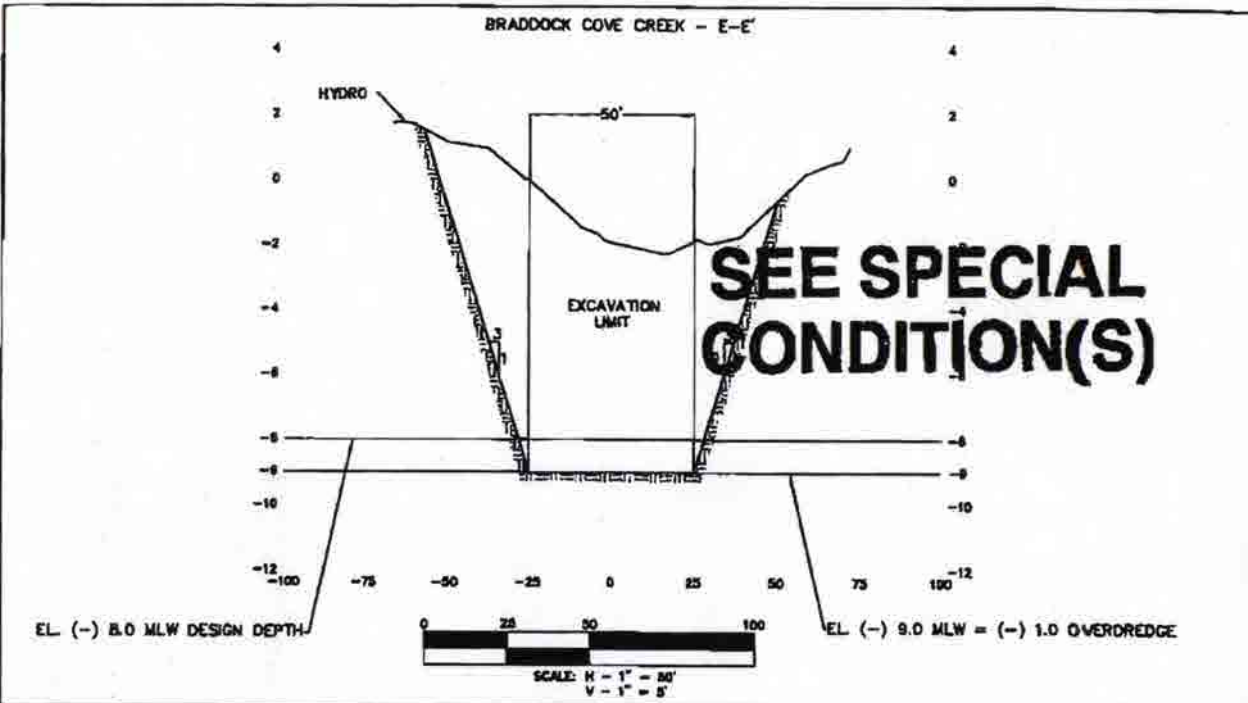
SHEET: 22 OF 27

DATE: 08/22/12

WIL. ENGINEERING, LLC

a Member of THE WIL GROUP, INC.

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1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

PURPOSE: MAINTENANCE DREDGING  
 APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION  
 LATITUDE: 32°08'58.79"N  
 LONGITUDE: 80°48'28.40"W  
 SURVEY DATUM: MLW

**FIGURE 23  
 CROSS SECTIONS  
 BRADDOCK COVE CREEK**

SOUTH ISLAND DREDGING ASSOCIATION  
 HILTON HEAD ISLAND, SOUTH CAROLINA  
 BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
 AT: BRADDOCK COVE CREEK  
 IN: HILTON HEAD ISLAND, S.C.  
 COUNTY OF: BEAUFORT COUNTY,  
 SOUTH CAROLINA

SHEET: 23 OF 27      DATE: 08/22/12

GEL ENGINEERING, LLC

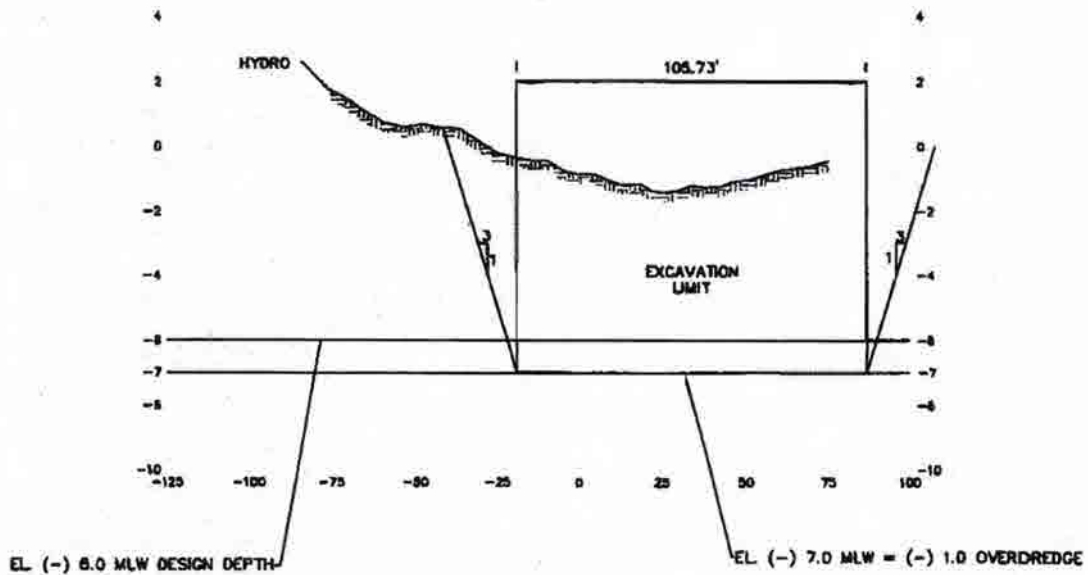
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BRADDOCK COVE CREEK G-G'

**SEE SPECIAL  
CONDITION(S)**



1. DRAWING FOR PERMITTING PURPOSES ONLY. NOT FOR CONSTRUCTION.

MLW - MEAN LOW WATER

PURPOSE: MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION  
LATITUDE: 32°08'51.57"N  
LONGITUDE: 80°48'20.74"W  
SURVEY DATUM: MLW

**FIGURE 24  
CROSS SECTIONS  
BRADDOCK COVE CREEK**

SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING  
AT: BRADDOCK COVE CREEK  
IN: HILTON HEAD ISLAND, S.C.  
COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

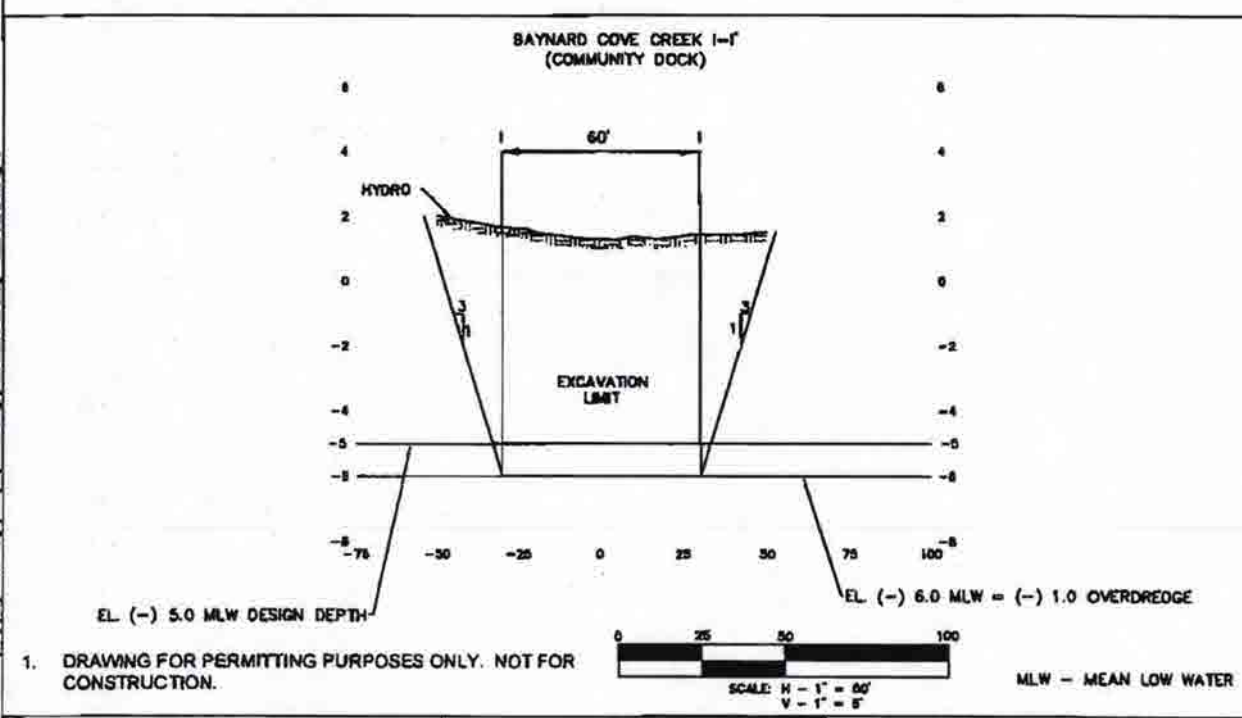
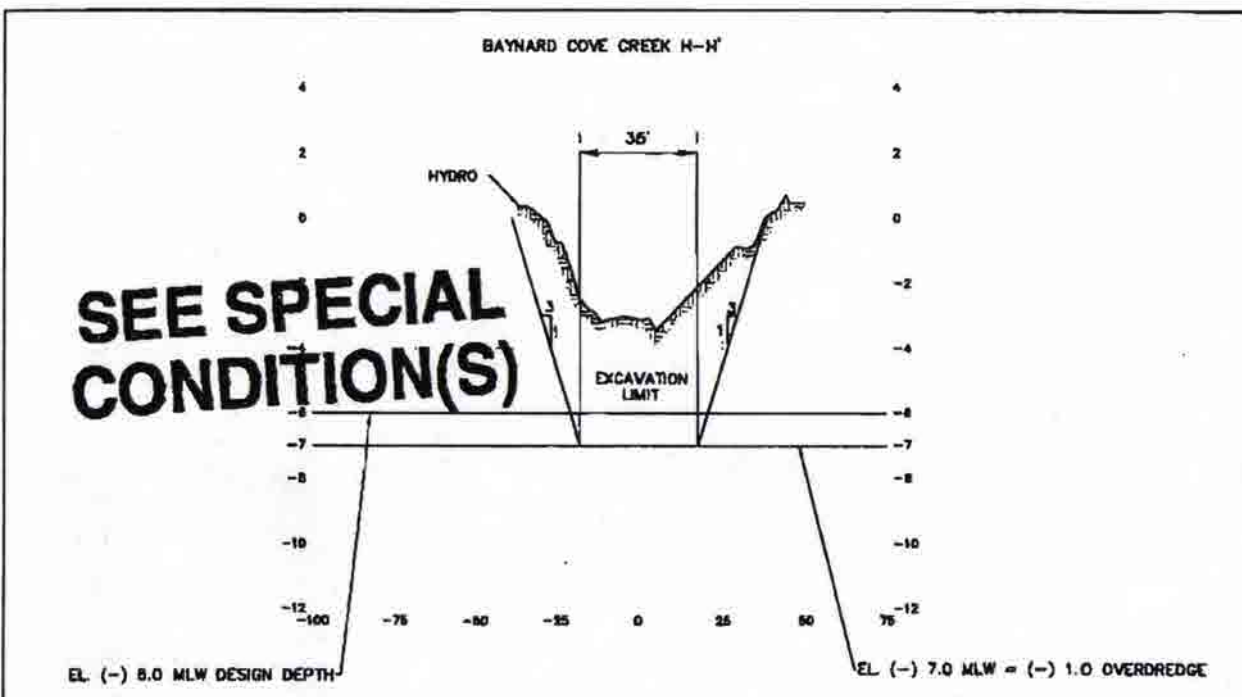
SHEET: 24 OF 27

DATE: 05/22/12

REL ENGINEERING, LLC

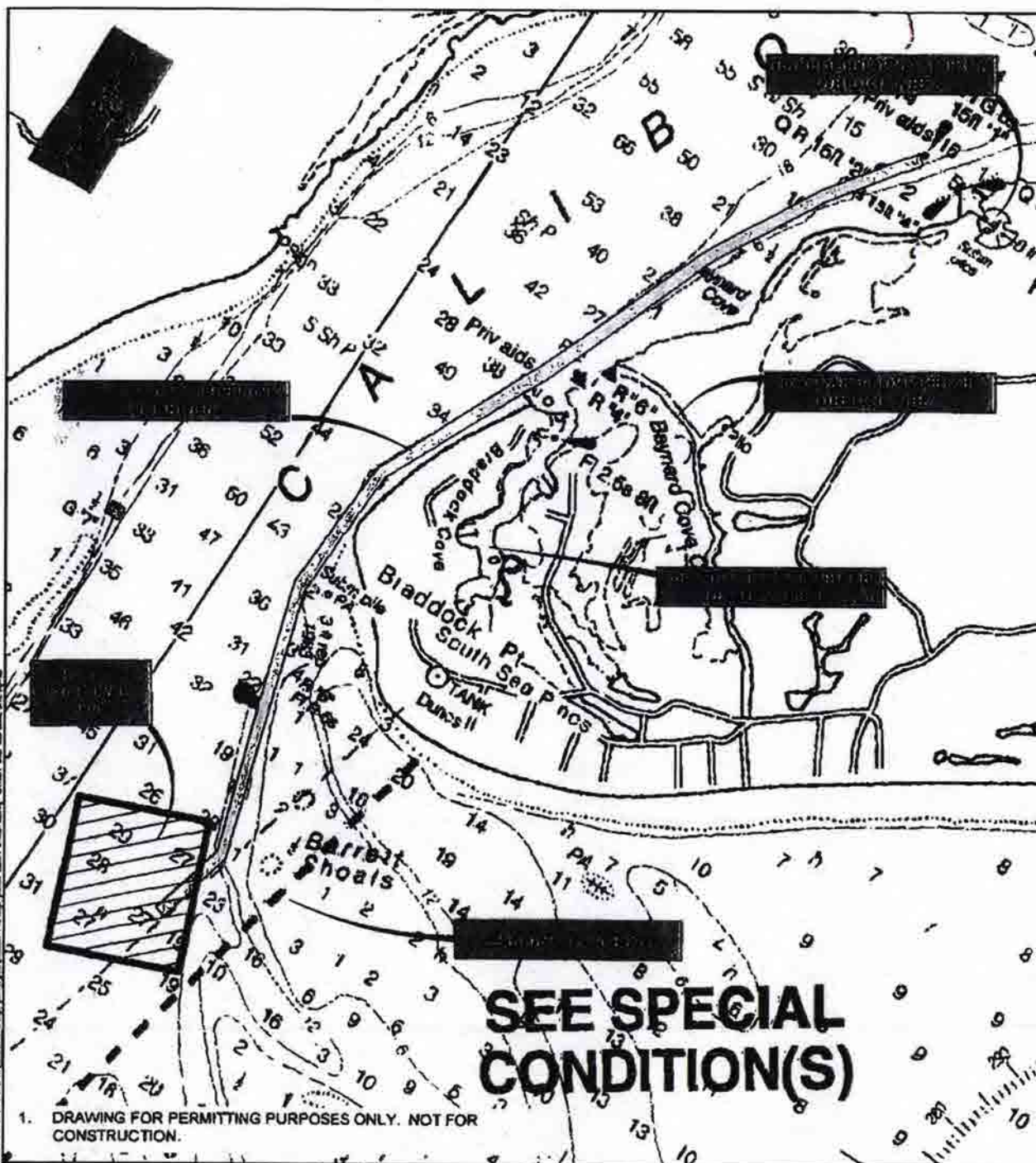
a Member of THE REL GROUP, INC.

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|                                                                                                                                                                                              |                                                                                                                                                                                                                    |                                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>PURPOSE: MAINTENANCE DREDGING<br/>         APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION</p> <p>LATITUDE: 32°07'28.85"N<br/>         LONGITUDE: 80°48'08.85"W</p> <p>SURVEY DATUM: MLW</p> | <p>FIGURE 25<br/>         CROSS SECTIONS<br/>         BAYNARD COVE CREEK</p> <p>SOUTH ISLAND DREDGING ASSOCIATION<br/>         HILTON HEAD ISLAND, SOUTH CAROLINA<br/>         BEAUFORT COUNTY, SOUTH CAROLINA</p> | <p>PROPOSED: MAINTENANCE DREDGING</p> <p>AT: BAYNARD COVE CREEK</p> <p>IN: HILTON HEAD ISLAND, S.C.</p> <p>COUNTY OF: BEAUFORT COUNTY,<br/>         SOUTH CAROLINA</p> <p>SHEET: 25 OF 27      DATE: 08/22/12</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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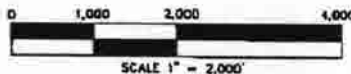


PURPOSE MAINTENANCE DREDGING  
APPLICANT: SOUTH ISLAND DREDGING ASSOCIATION

LATITUDE: 32°07'24.25"N  
LONGITUDE: 80°48'49.69"W

SURVEY DATUM: NVD MLW

FIGURE 26  
DISPOSAL SITE



SOUTH ISLAND DREDGING ASSOCIATION  
HILTON HEAD ISLAND, SOUTH CAROLINA  
BEAUFORT COUNTY, SOUTH CAROLINA

PROPOSED: MAINTENANCE DREDGING

AT: BRADDOCK COVE CREEK, BAYNARD COVE CREEK,  
HARBOR TOWN, GULL POINT AND SOUTH BEACH  
MARINAS

IN: HILTON HEAD ISLAND, S.C.

COUNTY OF: BEAUFORT COUNTY,  
SOUTH CAROLINA

SHEET: 26 OF 27

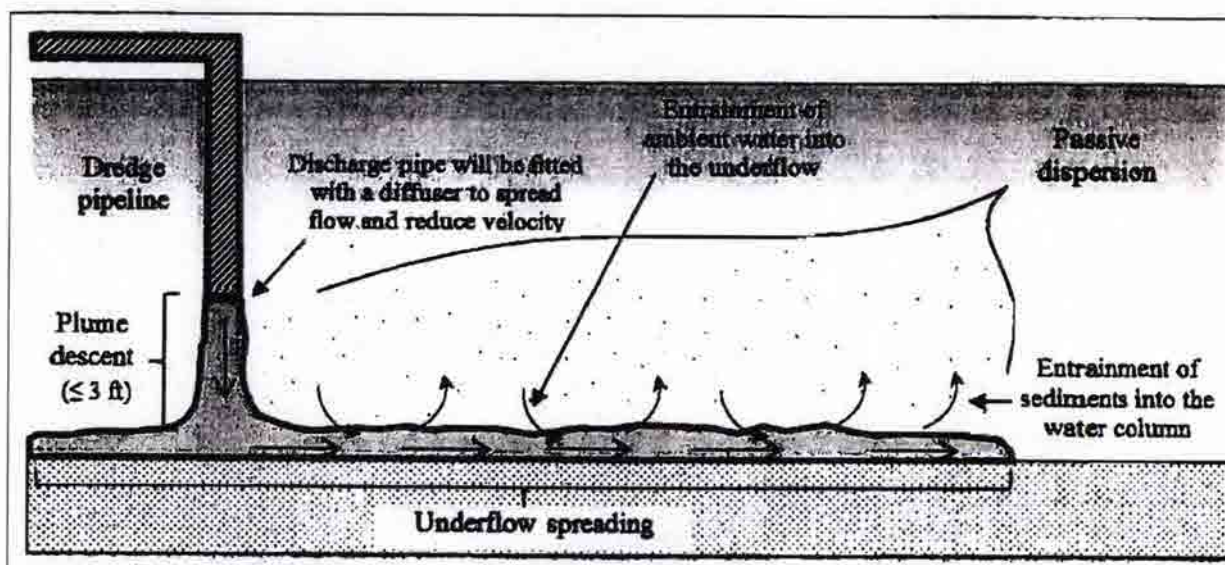
DATE: 08/22/12

081 FURNITURE, ETC.

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# SEE SPECIAL CONDITION(S)



(Adapted from Teeter, in Thovenot et al., 1992).

1. DRAWING FOR PERMITTING PURPOSES ONLY.  
NOT FOR CONSTRUCTION.

|                                                                                                                                                                                          |                                                                                                                                                                                        |                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>PURPOSE: MAINTENANCE DREDGING</p> <p><u>LATITUDE:</u> 32°07'24.25"</p> <p><u>LONGITUDE:</u> 80°48'49.69"</p> <p>SURVEY DATUM: NGVD MLW</p> <p>SHEET: 27 OF 27      DATE: 09/20/12</p> | <p><b>FIGURE 27</b><br/>PLACEMENT SITE<br/>DISCHARGE SCHEMATIC</p> <p>SOUTH ISLAND DREDGING ASSOCIATION<br/>HILTON HEAD ISLAND, SOUTH CAROLINA<br/>BEAUFORT COUNTY, SOUTH CAROLINA</p> | <p>PROPOSED: MAINTENANCE DREDGING</p> <p>AT: BRADDOCK COVE CREEK, BAYNARD<br/>COVE CREEK, HARBOUR TOWN, GULL<br/>POINT AND SOUTH BEACH MARINAS,<br/>PORT VILLAS</p> <p>IN: HILTON HEAD ISLAND</p> <p>COUNTY: BEAUFORT COUNTY, SC</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

GEL Engineering, LLC  
22 1 22

a Member of THE GEL GROUP, INC.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

South Carolina Public Interest Foundation  
and Edward D. Sloan, Jr., individually, and  
on behalf of all others similarly situated,  
Plaintiffs,

v.

South Carolina Department of  
Transportation and Jane Doe, a DOT  
employee,  
Defendants.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

DOCKET No. 2013-CP-40-03677

**ORDER**

2013 JUN 29 PM 2:11  
CLERK OF COURT

This action came before the Court for a nonjury trial on August 27, 2015. James G. Carpenter represented the Plaintiffs, and Beacham Brooker and Natalie Moore represented the Defendants. Plaintiffs filed this declaratory judgment action against SCDOT and Jane Doe seeking: (1) a declaration that work on a privately owned driveway violates Article X, §§ 5 and 11 of the State Constitution; (2) an order that the employee at whose residence the work was performed pay SCDOT the fair market value thereof; and (3) an award of costs and attorney's fees under S.C. Code Ann. § 15-77-300.

Prior to the testimony, the parties argued motions, including issues of standing. The issues in this action are almost identical to the issues raised in *S.C. Pub. Interest Found. v. S.C. Dep't of Transportation*, Docket No. 2012-CP-40-01560 (Richland Cnty. November 21, 2012). That case was appealed to the South Carolina Court of Appeals which issued an opinion that the plaintiffs did not have standing. *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 412 S.C. 18, 770 S.E.2d 399 (Ct. App. 2015) (hereafter referred to as "the *Bridge Inspection* case"). Subsequently, the S.C. Supreme Court granted the Plaintiffs' request for a writ of certiorari.

In this Court's opinion, the issues raised in the *Bridge Inspection* case would have a substantial impact upon the decision in this pending case. To avoid the potential of additional litigation on the same or similar matters, this Court delayed the issuance of a final order pending the Supreme Court's decision. The Supreme Court issued its decision in *S.C. Pub. Interest Found. v. S.C. Dep't of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017). This Court now addresses the issues raised in the instant case.

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Defendants challenged the standing of Plaintiffs to bring this action. Plaintiffs contend that they possess standing as taxpayers, and should be granted public importance standing to raise this important constitutional issue.

Standing may be acquired: (1) through the rubric of “constitutional standing”; (2) under the “public importance” exception; or (3) by statute. *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012) (citing *ATC South, Inc. v. Charleston Ctny.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008)). A taxpayer is not entitled to sue on that basis alone where he suffers in some indefinite way in common with people generally. *Id.*, 398 S.C. at 193, 728 S.E.2d at 43. A private person may not invoke judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom. *Baird v. Charleston County*, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). As stated by the Supreme Court in the *Bridge Inspection* case, “[Plaintiffs] are unable to show they suffered a concrete and particularized injury distinct from that shared by other taxpayers; therefore, we find [Plaintiffs] do not have [taxpayer] standing.” 421 S.C. at 118, 804 S.E.2d at 858.

However, Plaintiffs should be granted public importance standing. A possible exception to the bar against taxpayer suits may occur where the act sought to be enjoined is the “unlawful diversion of public funds.” *Myers v. Patterson*, 315 S.C. 248, 251, 433 S.E.2d 841, 843 (1993). “[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance.” *Baird v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). “The mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue.” *Sloan v. Greenville Cnty.*, 356 S.C. 531, 549, 590 S.E.2d 338, 347 (Ct. App. 2003) (quoting *Crews v. Beattie*, 197 S.C. at 49, 14 S.E.2d at 357-58 (1941)). This Court acknowledges that on numerous occasions, South Carolina courts have granted public importance standing to Mr. Sloan, the South Carolina Public Interest Foundation, and other persons and organizations to challenge illegal or unconstitutional acts of the State government in circumstances similar to those of this case.<sup>1</sup>

<sup>1</sup> *American Petroleum Institute v. S.C. Dep't. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District*

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The appellate courts of this State have ruled that the manner in which public funds are spent is of "immense public importance." *Sloan v. School District of Greenville County*, 342 S.C. 515, 524, 537 S.E.2d 299, 303 (2000) (emphasis added). The standard for public importance standing includes (1) a need for future guidance on the subject matter, and (2) a benefit to all the citizens of the State or local government whose actions are challenged. *Freemantle v. Preston*, 398 S.C. 186, 197, 728 S.E.2d 40 (2012). Similarly, the issue in this case is one of great public importance and requires future guidance. At the time this action was brought in 2013, there was no South Carolina case law directly on point that addressed an agency's expenditure of public funds for private purposes.<sup>2</sup> Several Attorney General Opinions have addressed the issue of expending public funds for private purposes, but neither Plaintiffs nor Defendants have submitted for this Court's review any appellate decision from this State addressing the constitutionality of expenditures that serve a private rather than a public purpose. Accordingly, this Court grants public importance standing to the Plaintiffs.

Defendants also argue that this matter is not justiciable because they have conducted an internal investigation and issued disciplinary actions against the offending employees. Throughout this litigation, Defendants have maintained that only a small part of their conduct was wrongful: merely jumping to the front of the line in the Highway Maintenance Management System (HMMS) and some record-keeping violations for failing to record the work in the HMMS. They have not admitted in this litigation that scraping the driveway of the DOT employee was an unconstitutional expenditure of public funds. Defendants have consistently maintained that their scraping and repair of a private driveway at public expense was perfectly legitimate and lawful. The facts of this case present an important public issue, which requires a decision by this Court.

Defendants claim this matter is moot. "South Carolina courts have recognized three exceptions to the doctrine of mootness. First, if the issue raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction." *Sloan v. Department of Transp.*, 365 S.C. 299, 303, 618 S.E.2d 876, 878 (2005); *Byrd v. Irmo High Sch.*, 321 S.C. 426,

*of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

<sup>2</sup> The Supreme Court's decision in *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017) has now specifically addressed the issue regarding the use of public funds for private purpose. Nevertheless, public interest standing for Plaintiffs was warranted at the time this matter was heard in 2015.

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468 S.E.2d 861 (1996). "Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). Third, "if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id.*; *Sloan v. Department of Transp.*, 365 S.C. at 303, 618 S.E.2d at 878. Certainly the Department's action that gave rise to this controversy has already occurred and any ruling at this point would have no practical effect. Nevertheless, this Court will address the issues because they are subject to repetition yet evading review.

Therefore, Plaintiffs have standing to bring this action and this Court will consider the issues because the controversy is one that is capable of repetition yet will evade review.

### **FINDINGS OF FACTS**

Based on the pleadings, exhibits, testimony of the witnesses, and arguments of counsel, the Court makes the following findings of fact based upon the preponderance of the evidence.

Five witnesses testified during the trial. They were Holly Marie Guy (described originally as "Jane Doe"), Jeffrey Lee Stroud, Willie James Walls ("Bill Walls"), James Fred Jackson ("Freddie Jackson"), and David Brian Cook.

In November 2012, two SCDOT employees (Jeffrey Stroud - crew supervisor and Willie Walls - backhoe operator) were inspecting roads and performing work near the home of Holly Roof (nee Holly Guy), an SCDOT Chester maintenance inspector. She asked Stroud, who was leaving the job site, to push rock that had washed from her driveway into the road back up her driveway off the apron of the highway. The slope of the driveway caused the material to drift off her property into the roadway. Roof previously had made work requests on two occasions to for the same type of work because the rain washed the rocks into the road.

When Stroud's crew finished its work for the day, he asked Walls to go to Guy's house in Richburg, South Carolina. Stroud also went there to inspect the area. Guy's house is located on the highway heading back to the Chester Maintenance shop. Roof met Stroud and Walls at her driveway. Stroud determined that the rock and debris that washed into the roadway was a safety hazard and removal of the debris was appropriate. They performed the work moving the rocks back into the driveway and "feathering" it out covering the ruts in the driveway and working both on and off the right of way. Guy did not direct how the work was to be done or supervise the work

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at the site. As DOT employees, Roof is not Stroud's supervisor. The rock and gravel were pushed and dragged up the driveway and the remainder was "feathered" out in the right of way on the road. While the work was being done, a neighbor was seen taking pictures. Roof then took three photographs showing the location of the rocks in the roadway and the work being done in her driveway using her mobile telephone.

Later that afternoon, Roof met with her supervisor, James Jackson. She told him about the work performed on her driveway and gave him copies of the three photographs. Roof also reported to Jackson that a neighbor had been taking photographs of the DOT personnel and equipment working on her driveway. Jackson put the photographs away, took no disciplinary action against Roof, and did not report any of this activity to his superiors. Jackson testified that he had decided to keep the pictures, in case the neighbor made an official report to DOT. Jackson took no action, for three months, even though he was aware that DOT personnel and equipment had made improvements to Roof's driveway.

The DOT uses a record-keeping and information system called the Highway Maintenance Management System (HMMS). Both Roof and Stroud are responsible to enter any work request into the HMMS and, after the work is finished, to record into the HMMS the materials used, the equipment and supplies used, the personnel utilized for each job, as well as a narrative description of the work performed. Roof and Stroud failed to enter the request for work on Roof's driveway into the HMMS. Roof and Stroud also failed to record the required reporting information about the work done on Roof's driveway into the HMMS.

Jackson was the DOT official responsible for taking the information from the HMMS and making periodic departmental reports of the work done by that office to the DOT, including the personnel, supplies, and equipment used for carrying out such work. Jackson knew that the DOT had performed work on Roof's driveway two times previously, and he knew that there was no information in the HMMS either requesting the previous work or recording the details of the previous work on the two previous occasions when DOT personnel had worked on Roof's driveway. He also knew there was no record of the work being requested or reported on this occasion in November 2012.

This matter came to the attention of SCDOT management after receipt of a complaint. In February 2013, in response to information submitted, DOT personnel from Columbia went to Chester to investigate the improvements to Roof's driveway, including the work done beyond the

DOT right-of-way. As a result of the investigation, DOT issued a report and disciplined the employees. Roof was suspended without pay for one week. A written reprimand was issued to Stroud, and oral reprimands were given to Walls and Jackson. Roof, Stroud and Walls were disciplined for performing work off the right of way and failing to enter information into SCDOT's database, which violated SCDOT policy. Jackson, the Resident Maintenance Engineer for Chester, was disciplined for failing to administer appropriate disciplinary action.

The evidence showed that the work lasted about 20 - 30 minutes. Defendants submitted evidence that, based on DOT figures, the value of the work performed on Roof's driveway amounted to \$123.39. This figure includes the value of the three DOT employees' time expended on the project, and the rental value of the DOT pickup, the DOT dump truck, the DOT trailer, and the DOT backhoe/loader. The Court accepts this evidence as to the value of the services performed. The Department determined that the part of the work involved in cleaning the highway and the driveway entrance was necessary to remove mud and rocks which presented a hazard to the traveling public. Spreading the material out on the driveway violated Departmental Directive 49 since it did not fall within an exception to the prohibition against working off the State's right of way.

Directive 49 dated March 23, 2012 provides guidance on the use of Department resources on private property, including private roads and bridges. Direction 49 provides "[t]he use of Department resources (personnel and equipment) on privately owned property is prohibited unless there is a legitimate Department purpose involved. Each case must be decided on its own facts based upon the applicable laws and regulations." The Directive further states, "Use of Department resources (equipment or personnel) for an employee's personal financial benefit is prohibited by S.C. Code Section 8-13-700." The Directive informs employees of criminal penalties for violations of law and possible disciplinary action ranging from oral reprimand to termination of employment.

DOT employees testified there was a cost savings in not having to haul material to a disposal site or the shop yard. They also testified that S.C. Code Ann. § 57-3-770 does permit a gift of dirt and topsoil to a landowner, which can result in cost savings to the DOT.

Defendants admitted in their Answer the allegations of paragraphs 11 and 12 of the Complaint: that a DOT employee requested a DOT maintenance supervisor or similar personnel to grade, rebuild or work on her residential driveway in the Fall of 2012 and that a DOT supervisor

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and two DOT employees used a DOT grader, backhoe, dump truck, and/or other DOT equipment or materials or personnel to work on or rebuild the driveway.

A "Report Regarding Alleged Fraudulent Use of SCDOT Personnel and Equipment in Chester County" ("Report") was introduced as Exhibit 1 at trial. The Report describes the conduct of four DOT personnel: Holly Roof, Jeffery Stroud, Bill Walls, and Freddie Jackson in more detail. As to Ms. Roof, the Report states in part:

Holly Roof—Ms. Roof is a Maintenance Inspector with over 20 years of experience at Chester Maintenance. On the day of the incident, Holly Roof was inspecting roads in the vicinity of Cornwell Road when she saw Foreman Jeffery Stroud and his crew working a couple of miles from her home. She called Foreman Stroud and asked him to go by her residence and push the clay and rocks that had washed onto her driveway apron back up onto her driveway. Ms. Roof met Foreman Stroud at her residence and was present during a portion of the work. While it was being performed, Ms. Roof's neighbor . . . was observed taking pictures of the work being performed. Once this was observed, Ms. Roof decided to take photos with her cell phone of the work that was ongoing. . . .

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. . . She put Foreman Stroud in a bad position by requesting that he perform work on her driveway. She was on site and witnessed the work being performed beyond the right of way and did not stop it. She knew the work was improper because she took photos to support her position after she saw her neighbor taking pictures. Ms. Roof also personally received a service at taxpayer's expense. In addition, Ms. Roof did not log this work in as a work request into HMMS. As the SCDOT inspector, her job is to identify hazardous conditions and enter them into HMMS as requests. This indicates that she was intentionally attempting to hide this work.

Report, pp. 1-2.

As to Jeffery Stroud, the Report states:

Jeffery Stroud—Mr. Stroud was, at the time of this incident, a maintenance foreman with over 20 years of experience. Mr. Stroud stated that he was finishing work on Douglas School Road (S-12-296) when he received a phone call from Ms. Roof requesting that he come and clean the loose rocks and clay off of her driveway apron. He recalled that Ms. Roof stated that the loose rock and debris on the sloped driveway would cause her car to slide as she stopped, creating a hazardous condition. Mr. Stroud did as requested and he and his backhoe operator met Ms. Roof at her residence and performed the work. Mr. Stroud stated that the reason they worked beyond the right-of-way was because they were "back dragging" the rocks and clay back onto the driveway where it came from. He had the backhoe operator "back drag" the material from the apron onto the driveway and feather it out. He did not think it would have been a satisfactory job if he had just pushed the

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rocks and clay to the edge of the right-of-way and left a pile of rocks. Mr. Stroud did not document this work by recording it in the HMMS system.

Report, p. 2.

As to Bill Walls, the Report states:

Bill Walls—Mr. Walls was the backhoe operator and confirmed that he performed this work. He also confirmed that his crew was working nearby when Foreman Stroud received the phone call. He indicated that he was working beyond the right-of-way because he was following instructions of his foreman.

Report, p. 2.

The Report also discusses the actions James F. "Freddie" Jackson, who was the superior to all the foregoing persons. He received the report of the improper activity, failed to address it, and failed to report it. As to Mr. Jackson, the Report states:

James F. (Freddie) Jackson—Mr. Jackson is the Resident Maintenance Engineer in Chester County. Mr. Jackson stated that he did not direct nor was he aware of this work until after it had occurred. He stated that Ms. Roof informed him of what had occurred and provided him the pictures that she had taken. He stated that he kept the pictures for a while waiting for this to be reported by Ms. Roof's neighbor. He did not administer disciplinary action to any of his staff, nor did he report this incident to his supervisor.

Report, p. 2.

Cook conducted the investigation when he received an anonymous tip about the work performed. He determined that work had been done which had not been recorded into HMMS and that the work was beyond the right of way. As a result of his finding, disciplinary action was appropriate. Roof was suspended from work for five days, losing approximately \$500 in pay. Stroud was given a written reprimand for failing to use the HMMS and working beyond the right of way. No disciplinary action was taken against Walls. Jackson was given an oral reprimand for not taking disciplinary action against his staff and not reporting the incident to his supervisor.

According to Cook, some of the work would have been authorized with appropriate documentation because the rocks washed into the roadway and had to be removed. Approval is also required to work beyond the right of way. Any material removed would be hauled off but the property owner could allow disposal of the material on their property. Cook testified that disposal of the material on Roof's property would not be approved because she is a DOT employee and there would be the appearance that she was receiving special treatment. The labor and equipment

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costs associated with the work done on Roof's property was entered into HMMS and calculated as \$84.12 for labor and \$39.27 for equipment, a total cost of \$123.39.

### **CONCLUSIONS OF LAW**

In their Answer the Defendants admitted the important legal assertions in the Complaint, par. 7-10.

7. Article X, Section 5 of the State Constitution requires that public funds be expended only for public purposes.
8. Article X, Section 11 of the State Constitution provides that:  
(t)he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.
9. Article X, Section 11 of the State Constitution prohibits the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley*, 276 S.C. 323, 329, 278 S.E.2d 612 (1981).
10. The term "credit" has been construed as any "pecuniary liability" or "pecuniary involvement." *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967).

Answer, ¶7. The Court finds that these admissions in the Answer are binding on the Defendants, and that they are a proper statement of the law in South Carolina. Article X, § 11 proscribes the expenditure of public funds "for the primary benefit of private parties." *State ex rel. McLeod v. Riley* 276 S.C. 323, 329, 278 S.E. 2d 612, 615 (1981), *overruled on other grounds by WDW Prop. v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000). The Supreme Court ruled that "all legislative action must serve a public rather than a private purpose." *Id.*, 276 S.C. at 328, 278 S.E. 2d at 615. The removal of rocks from the roadway was certainly a public purpose promoting the public health and safety of the public using the public roadways of the State. The action of the Department became unlawful when it used the public resources to improve the condition of a private driveway.

Defendants contended that South Carolina Code Ann. § 57-3-770 justified their expenditure of public funds for a private purpose. However, the General Assembly may not enact a statute that contravenes the provisions of the South Carolina Constitution. Section 57-3-770 provides:

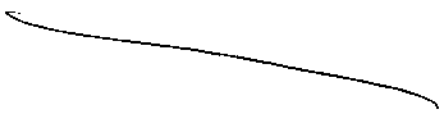
and  
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The department when cleaning or removing dirt and topsoil from ditches or roadbeds along roads, highways, and highway rights-of-way under its jurisdiction is authorized to give this dirt and topsoil to the landowner whose property adjoins the road which is being cleaned. The department is further authorized to haul this dirt and topsoil to a location on the adjoining landowner's property which location is designated by him; provided, that this location must be within one hundred yards of the road being cleaned.

Section 57-3-770 only allows for the gift of dirt or topsoil to a landowner when the Department is cleaning or removing material from the road, highway, or highway right of way. Section 57-3-770 only allows the Department to haul the material to a location on the landowner's property. It does not allow the Department to perform work on the landowner's property. The repair of a private driveway by filling the ruts, holes, and smoothing the driveway served a private rather than a public purpose. These expenditures did not further an improvement to the public as a whole, but rather functioned to benefit only an individual. The grading and smoothing of a private driveway did not serve a public purpose. The work being done at public expense violated South Carolina Constitution Article X, §§ 5 and 11.

Defendants have admitted that only a small part of their conduct was wrongful. In this litigation, they have not admitted their conduct was unconstitutional, but rather, they have consistently maintained that working on this private driveway was perfectly lawful and legitimate. It is the Department's position that only the record-keeping errors and the jumping to the front of the line were improper. As discussed above, the Defendants violated two sections of the South Carolina Constitution.

As stated earlier, this action is factually similar to the *Bridge Inspection* case. The same parties pursued claims and defenses on virtually the same issues raised in that case. The Supreme Court's decision resolved many of the issues also raised in this matter. SCDOT took disciplinary action against its employees for violation of state laws prior to this action being filed in 2013. Based upon all of the findings and conclusions in this matter, this Court does not find a basis to award attorney's fees and cost pursuant to S.C. Code Ann. § 15-77-300 and declines to do so.



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**ORDER**

Accordingly, based upon the foregoing, it is hereby **ORDERED**, that:

1. The South Carolina Department of Transportation violated Article X, §§ 5 and 11 of the South Carolina Constitution when it did construction work and improvements on a privately owned driveway at public expense; and
2. SCDOT shall seek reimbursement from Holly Roof for the fair value of its unlawful expenditure (\$123.39)<sup>3</sup> and to report payment to the Court within 30 days.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

January 29, 2018  
Columbia, South Carolina

<sup>3</sup> Holly Roof testified she has not paid any expenses for the work performed on her property and she has not been asked to pay any expenses. Counsel for the Department has stated that the Department has been reimbursed for the expenses.

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013-CP-40-03677

South Carolina Public Interest Foundation  
et al.

SCDOT et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);  
☐ Rule 43(k), SCRPC (Settled); ☐ Other \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other \_\_\_\_\_
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

## INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|-------------------------------------------|---------------------------------------|--------------------------------|
|                                           |                                       | \$                             |
|                                           |                                       | \$                             |
|                                           |                                       | \$                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Alfred Lee

Judge Code 2118

Date

1/29/2018

## For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of Jan, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter

Beacham Brooker, Natalie Moore

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Janette W. Bride