

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 2014-000847

Preservation Society of Charleston,
Historic Charleston Foundation, Historic
Ansonborough Neighborhood Association,
South Carolina Coastal Conservation
League, Charlestowne Neighborhood
Association, Charleston Chapter of the
Surfrider Foundation, and Charleston
Communities for Cruise Control, ... Appellants,

v.

South Carolina Department of Health and
Environmental Control and South Carolina
State Ports Authority, ... Respondents.

Motion and Memorandum in Support to Dismiss Appeal

Respondent South Carolina State Ports Authority (Ports Authority) moves to dismiss the appeal from the Order Denying Petitioners' Motion to Vacate, dated and filed December 20, 2013 (MTV Order) (attached as Exhibit 1), and the Order Denying Petitioners' Motion to Expand Discovery, dated and filed March 3, 2014 (Discovery Order) (attached as Exhibit 2). As explained more fully below, neither the MTV Order nor the Discovery Order is appealable and, moreover, Petitioners

RECEIVED

JUL 03 2014

SC Court of Appeals

may not appeal from any of the discovery rulings made by the Administrative Law Court (ALC).

Background

This was a *de novo* contested case proceeding brought by Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Historic Charleston Foundation (Cruise Opponents) challenging a decision of DHEC to authorize and permit a portion of a capital improvement project (Project) at the Union Pier Terminal (UPT) in Charleston, South Carolina by the Ports Authority. The overall planned improvements involve renovations to existing buildings on the terminal footprint, relocating certain port operations to other Ports Authority terminals, and shifting passenger cruise operations to the northern end of UPT. *See* Exh. 3, Map of Union Pier Terminal footprint (March 2012).

Specifically, UPT is a 63-acre property located along the Cooper River on the Charleston peninsula and is owned and operated by the Ports Authority as a fully operational marine terminal. As currently configured, UPT accommodates upwards of 200 cargo ships annually, in addition to the requisite trains and trucks necessary to service those cargo ships, and has a designated cruise passenger terminal on the southern end of the property. UPT accommodates significant roll-on/roll-off cargo facilities used for automobiles, trucks and heavy equipment and UPT can

accommodate passenger vessel calls for almost 100 years, including cruise vessels, which have called on the UPT cruise passenger facility every year since 1973, the date of dedication for the existing cruise passenger terminal facility. *See* Exh. 4, Aff. of Peter Lehman. Pursuant to its statutory obligations under, *inter alia*, S.C. Code Ann. § 53-3-130, the Ports Authority has sought to foster, stimulate, and increase water-borne commerce through cruise ship calls at UPT.

In order to accommodate the cruise passenger demand, the Ports Authority undertook the instant capital improvement plan for UPT. The planned improvements will be undertaken in an economically efficient and environmentally sustainable way, including renovating existing buildings on the terminal footprint, demolishing older structures, the proposed redevelopment of much of the existing terminal acreage, including public green spaces, restoration of the natural waterfront and other public and private development undertakings. *See* Exh. 4, Aff. of Peter Lehman; Exh. 5, Aff. of James Newsome.

Replacement of cargo facilities with a renovated cruise terminal at the northern end of the UPT footprint will allow the cessation of existing rail operations, and accompanying traffic impediments, that service the existing cargo operations. This reduction in rail traffic and associated street closures on embarkation/debarkation days, will be made as a part of an overall traffic management plan put into place by the Ports Authority. Further, the effect of traffic management plan, which includes the removal of current cargo traffic and rail impediments to the UPT area—even assuming an increase in traffic to the relocated

cruise terminal (which the traffic management plan is designed to alleviate)—is a net neutral traffic impact on the areas surrounding UPT. *See* Exh. 6, Ports Authority Ltr. to DHEC Bd., Jan. 7, 2013, Ex. G (traffic diagram comparison). Further, air emissions at and around the UPT will decrease as a direct result of the UPT Project, including for the areas represented by Cruise Opponents. *See* Exh. 7, OCRM Technical Review at 8; Exh. 8, Trinity Consultants Study: Historical, Current and Future Criteria Pollutant Emissions at Union Pier Terminal (Dec. 23, 2013). In short, the Ports Authority's capital improvement plan will aid the economic development and improve the environment of Charleston.¹ *See* Exh. 6, Ports Authority Ltr. to DHEC Bd., Jan. 7, 2013 at 4 (comparing impacts between the status quo and planned redevelopment of UPT); *see also* Exh. 9, Voluntary Cruise Management Plan (agreeing, *inter alia*, to limits on the size and frequency of cruise operations at UPT).

This administrative matter began when the Ports Authority submitted a joint federal and state application (Application) to the United States Army Corps of Engineers (Corps) and to DHEC (through its Office of Coastal Resource Management (OCRM)) in January 2012, seeking a permit to engage in activities affecting the waters of the United States and critical areas of South Carolina. The action ostensibly implicating DHEC's permitting jurisdiction for the Project is the

¹ However, should the renovated northern end of the UPT not be utilized for cruise operations, it will continue to be used for cargo operations, along with the accompanying resumption and continuation of air emissions and truck and rail traffic necessary to operate a dynamic and productive terminal facility and promote maritime commerce in Charleston and for the State. *See* Exh. 4, Aff. of Peter Lehman.

installation of five pile clusters driven into the marl to support the construction of three elevators and two escalators in a renovated warehouse located on the northern end of the UPT footprint, Building #322, which will house the relocated cruise passenger operations. *See* Exh. 10, Map of Pile Clusters; *see also* Exh. 6, Ports Authority Ltr. dated Jan. 7, 2013 to DHEC Bd. at 3 (providing a perspective of the current concentration of support pilings currently under Building #322). Federal jurisdiction was implicated through the proposed installation of pilings in a navigable water of the United States, which is an undertaking subject to Section 10 of the Rivers and Harbors Act (RHA). *See* 33 U.S.C.A. §§ 401 *et seq.*²

The Project was issued federal and state authorizations. The Corps granted Section 10 authorization of the Project pursuant to Nationwide Permit 3 (NWP 3) on April 20, 2012.³ DHEC issued a water quality certification for the Project three days later when it granted a water quality certification for NWP 3 activities on

² The RHA requires authorization by the Corps prior to the obstruction or alteration of any navigable water of the United States. *See* 33 U.S.C.A. §§ 401 *et seq.* The RHA prohibits, *inter alia*, the (1) construction of any structure in or over any navigable water of the United States; (2) excavation or deposition of dredge or fill material; and (3) the accomplishment of any other work affecting the course, location, condition, or capacity of a navigable water. 33 U.S.C.A. § 403; *see also* 33 C.F.R. § 320.2(b). The instrument through which obstruction or alteration of navigable waters may be approved is a Section 10 permit from the Corps. *See* 33 C.F.R. § 320.2(b).

³ The federal Clean Water Act (CWA) generally exempts maintenance activities from the requirement that a permit be obtained to discharge dredged or fill material. 33 U.S.C.A. § 1344(f). To this end, the Corps has issued a series of nationwide permits with respect to these types of activities, among which is NWP 3—the basis for the federal authorization of the Project.

April 23, 2012.⁴ Thereafter, on December 18, 2012, DHEC issued an individual critical area permit and coastal zone consistency determination authorizing the construction and installation of the five pilings as part of the Project (Permit No. ORCM-12-054-B) (Permit) (attached as Exhibit 11).⁵ After the DHEC Board denied Cruise Opponents' Requests for a Final Review Conference of the staff decision by the DHEC Board, Cruise Opponents filed a request for contested case hearing with the ALC on February 11, 2013.⁶

⁴ Before issuing any federal permit with respect to a project that may result in a discharge into navigable waters of the United States, the Corps is required to obtain either a water quality certification from the state in which the discharge is to take place or waiver of such water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C.A. § 1341 (401 Certification). *See* S.C. Code Ann. Regs. 61-101. The 401 Certification must be issued, denied, or waived by DHEC within one year after its receipt of the request for certification. If no action is taken by the state—DHEC in this instance—within one year after it receives the request, the state waives its right to act on the request for certification. *See* 33 U.S.C.A. § 1341(a)(1) ("If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application.").

⁵ Arguably, the Permit serves as an additional 401 Certification for the Project as a matter of law. S.C. Code Ann. Regs. 30-2(H); S.C. Code Ann. Regs. 61-101.A.8 ("The Department will not issue a separate 401 water quality certification for an activity which requires a direct permit for alteration of the critical area of the coastal zone.... The direct permit will serve as the 401 water quality certification for an associated Federal permit.").

⁶ The Corps' NWP 3 authorization was challenged in Federal District Court and, on September 18, 2013, remanded to the Corps for reconsideration using a broader scope of analysis. Order, *Preservation Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, No. 2:12-2942-RMG (Sept. 18, 2013). That action with respect to the federal authorization does not impact the issuance or validity of the state-issued Permit.

The parties engaged in discovery during the time periods provided in Rule 21.A, RPALC (allowing 90 days for discovery absent an order from the ALC). Both parties also filed several pretrial motions. Pertinent to this motion, Cruise Opponents filed their Motion to Vacate on or about November 1, 2013 and their Motion to Expand Discovery on or about December 23, 2013. The Ports Authority filed a Motion for Summary Judgment for Lack of Standing on December 27, 2013. The Cruise Opponents' motions were denied in the MTV Order issued on December 20, 2013 and the Discovery Order issued on March 3, 2014. The ALC thereafter granted the Ports Authority's Motion for Summary Judgment for Lack of Standing by Order dated April 11, 2014 (Standing Order). Cruise Opponents thereafter appealed to this Court, challenging the Standing Order; the Amended Order Granting Sanctions, dated and filed April 11, 2014 (Sanctions Order);⁷ the MTV Order; and the Discovery Order.

Although maintaining that the Standing Order and the Sanctions Order should be affirmed, the Ports Authority is not challenging Cruise Opponents' right to appeal from those orders except with respect to the ALC's ruling on certain discovery issues included in the Standing Order. *See* discussion *infra* Part B(2). The Ports Authority contends that Cruise Opponents are not entitled to appeal from the

⁷ The Ports Authority filed a motion to dismiss and for sanctions on July 1, 2013, arguing that Cruise Opponents' February 27, 2013 Motion to Remand was frivolous. After briefing by the parties and oral argument on September 6, 2013, the ALC granted the motion and awarded sanctions against Cruise Opponents in the amount of \$9,300 by Order dated March 3, 2014. Cruise Opponents moved to reconsider that Order and the ALC issued the Sanctions Order.

MTV Order, *see* discussion *infra* Part A, and the Discovery Order, *see* discussion *infra* Part B.

Argument

A. The MTV Order is not properly before this Court because it is the equivalent of the denial of a motion for summary judgment and, as such, is never appealable.

Although the MTV Order denied a request for relief captioned as a Motion to Vacate, it is necessary to consider the substance of the relief sought in that motion for purposes of determining whether the MTV Order may be appealed to this Court. *See Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (2002) (“Accordingly, because the relief sought was more in the nature of a request for an injunction than a mandamus, we will treat this action as an appeal from the denial of injunctive relief.”). The Supreme Court and this Court have repeatedly looked to the substance of a motion to ascertain appealability. *See id.*; *see also, e.g., Fields v. Reg’l Med. Ctr. Orangeburg*, 363 S.C. 19, 27, 608 S.E.2d 506, 510 (2005) (holding that appeal was timely because “[i]t is proper to treat Plaintiff’s written motion as a Rule 59(e) motion even though it was erroneously captioned as a motion for new trial.”); *Lucey v. Meyer*, 401 S.C. 122, 131-33, 736 S.E.2d 274, 279-80 (Ct. App. 2012) (holding that appeal was timely because Rule 59(a) motion was in substance a Rule 59(e) motion that stayed the time for appeal).

Although not captioned as such, Cruise Opponents’ Motion to Vacate actually is a motion for summary judgment because their substantive argument is that Cruise Opponents are entitled to judgment as a matter of law with respect to their claims. *See* S.C. R. Civ. P. 56(b). In their request for contested case hearing, Cruise

Opponents claimed that the ALC should reverse the decision to issue the permit or, alternatively, remand the decision to DHEC to review additional issues. *See* Pet'rs' Req. Contested Case Hrg. p.13. In the Motion to Vacate, Cruise Opponents argued that, because the Federal District Court "issued an order vacating the Corps' NWP 3 authorization" for the Project, the Permit "should be immediately vacated" or, "[a]lternatively, proceedings in relation to the state permit should be remanded to DHEC." Exh. 12, Cruise Opponents' Mot. Vacate pp.2, 3; *see also* Exh. 13, Ports Authority Resp. to Mot. to Vacate.⁸

In other words, the Motion to Vacate in substance contends that "there is no genuine issue of material fact [with respect to their claims for relief] and that [they are] entitled to judgment as a matter of law." S.C. R. Civ. P. 56(b). That request for relief makes the Motion to Vacate a motion for summary judgment. *Kaiser*, 351 S.C. at 94, 567 S.E.2d at 262 ("It is the substance of the requested relief that matters regardless of the form in which the relief was framed.") (internal quotation marks omitted); *see Sanford v. S. Carolina State Ethics Comm'n*, 385 S.C. 483, 495-96, 685 S.E.2d 600, 607 (2002) (treating petition for writ of mandamus as request for

⁸ At this point, the Motion to Vacate is in any event moot. DHEC issued the required 401 Certification for the Project within one year after it received the Application when it issued the 401 Certification for NWP 3 undertakings on April 23, 2013 or, alternatively, when it issued the Permit (which as a matter of law serves as a 401 Certification) on December 18, 2012. The Cruise Opponents argue that no 401 Certification exists for the Project. However, in such event, DHEC's one-year period under Section 401 of the CWA to issue such 401 Certification closed in January 2013 (as the application was filed in January 2012). In that case, the 401 Certification has been waived as a matter of law. Under either scenario, the Project either has an affirmative 401 Certification (imposing no conditions) or it has a waiver from the requirements of Section 401 of the Clean Water Act. *See generally* Exh. 13, Ports Authority Resp. to Mot. to Vacate

injunctive relief for purposes of reviewing claims on appeal because “that is substantively what he is requesting”); *see also Rowe v. Advance America*, No. 2006-UP-057, 2006 WL 7285680 *1 (S.C. Ct. App. Jan. 20, 2006) (unpublished) (“It is a well-recognized legal concept in South Carolina that motions should be treated based on substance and effect as opposed to how they are styled by the moving party.”).

The conclusion that the Motion to Vacate actually is a motion for summary judgment is further demonstrated by a review of the findings in the MTV Order. An order denying summary judgment decides “nothing about the merits”; allows the moving party to raise the issues again at a later stage of the proceedings; and “simply decides the case should proceed to trial.” *Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994). This is exactly what the ALC did in the MTV Order:

At this stage of the litigation, there is not sufficient evidence for this Court to determine the extent of DHEC’s review or the procedures that were followed in issuing the permit. Moreover, *in presenting their challenge to DHEC’s determination*, Petitioners *can certainly dispute* whether review of this matter should be based, in part, on the 401 Certification associated with NWP3 or the critical area permit and CZC Certification. The ALC *can then* determine *based upon the facts of this case* in keeping with its de novo review what is the appropriate scope of review for this project and whether the project complies with the standards of that review. Thus, the motion to vacate must be denied *at this stage of the litigation*.”

Exh. 1, MTV Order p.7 (emphasis added). The ALC thus determined that there was a genuine issue of material fact with respect to issues presented in the Motion to Vacate, that the challenge to the Permit could be raised later in the litigation, and

that the ALC could make a final determination at that time based on the facts of the case.

Consequently, the MTV Order denying that motion is not appealable because the Motion to Vacate in substance is a motion for summary judgment. *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 167-68, 580 S.E.2d 440, 443-44 (2003) (“The denial of summary judgment is not appealable, even after final judgment.”); *Ballenger*, 313 S.C. at 476-78, 443 S.E.2d at 380 (“This Court has repeatedly held that the denial of summary judgment is not directly appealable.”). Based on its express language, the MTV Order “does not finally determine anything about the merits of the case” and the issues presented in the underlying motion “may be raised again later in the proceedings.” *Ballenger*, 313 S.C. at 477, 443 S.E.2d at 380. If Cruise Opponents prevail on their challenge to the Standing Order, they can raise on remand the same issues presented in the Motion to Vacate. *See id.* If they do not prevail in that challenge, the issues presented in the Motion to Vacate are irrelevant because Cruise Opponents never had standing to raise those issues in the first instance and should not be permitted to challenge them on appeal. Regardless, the MTV Order is an order denying summary judgment and may not be appealed even though there is a final judgment in the case.

In sum, Cruise Opponents’ Motion to Vacate was in substance a motion for summary judgment in all but name and the MTV Order denying that motion therefore denied a motion for summary judgment. Cruise Opponents’ appeal from

the MTV Order must be dismissed because they may not appeal from the denial of summary judgment.

- B. Cruise Opponents may not appeal any of the ALC's determinations with respect to their Motion to Expand Discovery.

Cruise Opponents filed a Motion to Expand Discovery on December 23, 2013. Following the filing of a response in objection to the motion by the Ports Authority and a reply, the Court denied the motion to re-open discovery. Cruise Opponents thereafter moved to reconsider the Discovery Order. In the Standing Order, the ALC made the following determination with respect to the motion to reconsider the March 3, 2014 Order:

Petitioners filed a Motion for Reconsideration of this Court's Order of March 3, 2014, denying Petitioner's Motion to Expand Discovery on March 13, 2014. In response to the Court's e-mail inquiry on March 24, 2014, counsel for Petitioners represented to the Court that Petitioners sought expanded discovery in order to prepare for the hearing on the merits and not for purposes of responding to the Motion for Summary Judgment. Therefore, the Order denying Petitioners' Motion to Expand Discovery is vacated. Nevertheless, in light of the disposition of the summary judgment motion, the Motion for Expanded Discovery is moot and is thus denied. Likewise, all remaining outstanding motions are moot and are also denied.

Exh. 2, Standing Order p.19 n.23 (emphasis added). In short, the ALC vacated the Discovery Order and then denied the Motion to Expand Discovery as moot based on the purposes for which Cruise Opponents sought discovery. Neither the Discovery Order nor the ALC's denial of the Motion to Expand Discovery as moot may be appealed to this Court.

- (1) *The Discovery Order is not properly before this Court because the ALC vacated the order.*

Although valid and effective, discovery orders generally are appealable after a final judgment,⁹ *Hamm v. S. Carolina Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994), the ALC vacated the Discovery Order as part of the final judgment, rendering the order “void and of no effect.” *Friend-Novorska v. Novorska*, 545 S.E.2d 788, 793 (N.C. Ct. App. 2001); BLACK’S LAW DICTIONARY (9th ed. 2009) (defining vacate as to “nullify or cancel; make void; invalidate <the court vacated the judgment>”); see *Ware v. Ware*, 404 S.C. 1, 11, 743 S.E.2d 817, 822 (2013) (“A void judgment is one that, from its inception, is a complete nullity and is without legal effect.”) (internal quotation marks omitted). A void order is without effect. *Webster v. Clanton*, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972) (holding that order awarding custody of child to aunt without notice to the father “was clearly void, and of no effect whatever and no appeal therefrom was necessary to protect the rights of the father”); see *Rice v. Alpha Sec., Inc.*, 13-1644, 2014 WL 703760 (4th Cir. Feb. 25, 2014) (“Once Rice successfully moved to have her nonsuit vacated, it ceased to exist, and effectively, it never did. It therefore could not have any further effect on the litigation, because it is as if it never occurred.”).

Because the Discovery Order now is a nullity and in effect never existed, Cruise Opponents may not appeal from that order. See *Leviner v. Sonoco Products Co.*, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) (holding that court of appeals

⁹ When it was issued, the Discovery Order was “interlocutory and not immediately appealable.” *Hamm*, 312 S.C. at 241, 439 S.E.2d at 853; *Lowndes Prods., Inc. v. Brower*, 262 S.C. 431, 433, 205 S.E.2d 184, 184-85 (1974).

should have dismissed an appeal from a void order and left intact a prior order by the lower court remanding the case to a single workers' compensation commissioner); *see also Brennan's, Inc. v. Colbert*, 125 So. 3d 537, 541, *on reh'g* (Nov. 15, 2013) ("Since the order of 8 March 2013 is an absolute nullity, it follows that an order permitting an appeal of that order is likewise null and void because no appeal lies from an absolutely null order.") (emphasis added); *Freedom Commc'ns, Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012) ("[A]ppellate courts do not have jurisdiction to address the merits of appeals from void orders or judgments; rather, they have jurisdiction only to determine that the order or judgment underlying the appeal is void and make appropriate orders based on that determination."); *cf. Hudson v. S. Carolina Dep't of Highways & Pub. Transp.*, 324 S.C. 245, 246, 478 S.E.2d 839, 840 (1996) (dismissing appeal from void order issued without jurisdiction); *Wingate v. Wingate*, 289 S.C. 574, 575, 347 S.E.2d 878 (1985) ("The Family Court order on changed circumstances is void. Wife's appeal is therefore dismissed, and her petition for supersedeas is necessarily denied."). A vacated order does not establish a ruling on any issues by the lower court that may be reviewed by this Court. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 235, 612 S.E.2d 719, 726 (Ct. App. 2005) ("An issue is not preserved where the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to alter or amend the judgment."). As such, an order that has been vacated is a legal nullity and therefore is not an appealable order. *See S.C. R.*

Civ. P. 72 (“Appeal may be taken, as provided by law, from any final judgment or appealable order.”) (emphasis added).

- (2) *Cruise Opponents also may not challenge the ALC’s final ruling denying their discovery motion as moot because the Standing Order determined that they were not entitled to a trial and Cruise Opponents expressly stated they sought discovery for trial preparation only.*

Cruise Opponents also cannot appeal from the ALC’s final ruling denying the Cruise Opponents’ Motion to Expand Discovery as moot (Discovery Ruling). Exh. 2, Standing Order p.19 n.23. The basis for the Discovery Ruling was the affirmative representation by counsel for Cruise Opponents that the “discovery motion was directed mainly towards trial preparation” and that “the pending summary judgment motions ... could properly be resolved after a hearing on the materials filed.” *Id.* (“[C]ounsel for Petitioners represented to the Court that Petitioners sought expanded discovery in order to prepare for the hearing on the merits and not for purposes of responding to the Motion for Summary Judgment”); see Exh. 13, Email from Cruise Opponents’ counsel to Judge Anderson’s inquiry (March 25, 2014). Because the ALC determined that Cruise Opponents lacked standing, they were not entitled to a trial and, thus, were not entitled to the relief they sought: expanded discovery for trial purposes.

Consequently, Cruise Opponents cannot now challenge the Discovery Ruling on appeal. The basis for the Discovery Ruling was the representation by Cruise Opponents’ counsel that expanded discovery was needed only for trial. See Exh. 2, Standing Order p.19 n.23. Because Cruise Opponents did not raise any additional issues as part of a motion for reconsideration, they may only challenge the

Discovery Ruling on appeal by asserting that they in fact needed discovery for purposes of the summary judgment motions pending at the time counsel responded to the Court's inquiry. *See, e.g., Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (holding that an issue may not be addressed by an appellate court if the lower court did not explicitly rule on an argument and the appellant did not make a Rule 59(e) motion). But having expressly stated that they needed expanded discovery only for trial preparation, and acknowledging that the discovery would be ripe for resolution after the standing issue was resolved, Cruise Opponents cannot now take the contrary position. In fact, they are judicially estopped from doing so. *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) ("Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation."); *see Cothran v. Brown*, 357 S.C. 210, 216, 592 S.E.2d 629, 632 (2003) (evaluating elements of judicial estoppel by considering, among other things, whether a statement made by a party's counsel as part of a related plea hearing represented an inconsistent statement); *see also, e.g., New Hampshire v. Maine*, 532 U.S. 742, 753 (2001) (considering whether New Hampshire should be judicially estopped from asserting a position based on statements by counsel in oral argument). Accordingly, Cruise Opponents may not challenge the Discovery Ruling on appeal.

- (3) *In conclusion, none of the of the ALC's determinations with respect to their Motion to Expand Discovery are appealable.*

Cruise Opponents may not appeal from the Discovery Order because the ALC vacated the Discovery Order in favor of a different disposition as set forth in the

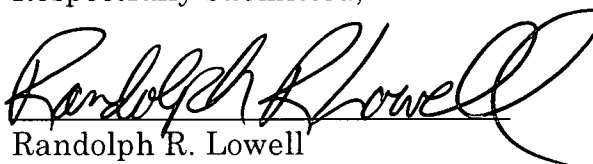
Standing Order, making that order a nullity that in effect never existed. Furthermore, because Cruise Opponents disavowed any need for discovery with respect to the summary judgment motion and because they are not entitled to a trial based on the Standing Order, Cruise Opponents also may not challenge the Discovery Ruling on appeal because to do so would require them to take a position contrary to that asserted by counsel below.

Conclusion

For the reasons explained above, Petitioners' attempted appeal from the MTV Order, the Discovery Order, and the rulings on discovery in the Standing Order should be dismissed.

[Signature Page Follows]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randolph R. Lowell", written over a horizontal line.

Randolph R. Lowell

Tracey C. Green

Chad N. Johnston

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

rllowell@willoughbyhoefer.com

tgreen@willoughbyhoefer.com

cjohnston@willoughbyhoefer.com

Philip L. Lawrence

General Counsel

S.C. STATE PORTS AUTHORITY

Post Office Box 22287

Charleston, South Carolina 29413-2287

plawrence@scspa.com

*Attorneys for Respondent South Carolina
State Ports Authority*

July 3, 2014

Columbia, South Carolina

Exhibit 1

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Preservation Society of Charleston, Historic)
Charleston Foundation, Historic)
Ansonborough Neighborhood Association,)
South Carolina Coastal Conservation)
League, Charlestowne Neighborhood)
Association, Charleston Chapter of the)
Surfrider Foundation, and Charleston)
Communities for Cruise Control,)
Petitioners,)

v.

South Carolina Department of Health and)
Environmental Control and South Carolina)
State Ports Authority,)
Respondents.)

Docket No. 13-ALJ-07-0056-CC

**ORDER DENYING PETITIONERS'
MOTION TO VACATE**

APPEARANCES: For the Petitioners:

Amy E. Armstrong, Esquire
W. Jefferson Leath, Jr., Esquire
J. Blanding Holman, IV Esquire

For the Respondents:

Randolph R. Lowell, Esquire
Chad N. Johnston, Esquire
Bradley D. Churdar, Esquire

FILED

December 20, 2013

SC ADMIN. LAW COURT

This matter comes before the South Carolina Administrative Law Court (ALC or Court) on the Motion to Vacate (Motion) filed on November 1, 2013. In this Motion, Petitioners moved for an Order vacating the Critical Area Permit and Coastal Zone Consistency Certification issued by the South Carolina Department of Health and Environmental Control (DHEC) to the South Carolina State Ports Authority (Ports Authority). On November 25, 2013, the Ports Authority filed a response to this motion. DHEC concurred with the analysis in the Ports Authority's response but did not agree with two of the conclusions contained therein.

BACKGROUND

On December 18, 2012, DHEC staff, through the Office of Ocean and Coastal Resource Management (OCRM), issued a Critical Area Permit and Coastal Zone Consistency Certification (Permit No. OCRM-12-054-B) authorizing the Ports Authority to make improvements to

Building #322, an existing waterfront building in the Union Pier Terminal (UPT), for the purpose of relocating a cruise passenger facility. The permit authorizes the installation of five pilings within the existing footprint of Building #322 to support the installation of three elevators and two escalators. The permit also authorizes other structural changes to Building #322 as well as the construction of two covered staging areas designed to handle passengers, luggage, and the loading and unloading of ship supplies.

Petitioners filed a request for contested case hearing at the ALC to challenge DHEC's decision to issue the permit. In this case, Petitioners allege that DHEC's decision violates the South Carolina Coastal Zone Management Act, S.C. Code Ann. 48-39-10, et seq., the South Carolina Code of Regulations 30-1, et seq., and the Coastal Management Program (CMP). Some of the Petitioners in this case also filed a separate action in federal court challenging the decision of the United States Army Corps of Engineers (Corps) to authorize the Ports Authority's project based on a nationwide permit. By Order dated September 18, 2013, the federal court granted Petitioners' motion for summary judgment and remanded the case to the Corps to conduct further analysis. Petitioners subsequently filed this motion, requesting this Court vacate the Critical Area Permit and Coastal Zone Consistency Certification or, in the alternative, remand this case to DHEC to review the project using a proper scope of analysis.

DISCUSSION

This case involves permit applications for the Union Pier Terminal Project (Project) at both State and Federal regulatory bodies. While factually intertwined in the same project, the jurisdiction of the State and Federal permitting agencies are distinct.

Federal Permitting Requirements

Section 10 of the Rivers and Harbors Act (RHA) requires the authorization of the Corps prior to the obstruction or alteration of any navigable water of the United States. *See* 33 U.S.C.A. § 403. Specifically, Section 403 prohibits, *inter alia*, the (1) construction of any structure in or over any navigable water of the United States; (2) excavation or deposition of dredge or fill material; and (3) the accomplishment of any other work affecting the course, location, condition, or capacity of a navigable water. 33 U.S.C.A. § 403; *see also* 33 C.F.R. § 320.2(b). The instrument through which obstruction or alteration of navigable waters may be approved is a Section 10 permit from the Corps. *See* 33 C.F.R. § 320.2(b).

Congress has allowed the Corps to streamline some of its permitting responsibilities for similar categories of activities by authorizing the Corps to issue general permits that do not require applicants to undergo the individual permit review process. *See* 33 U.S.C.A. § 1344(e). These general permits are known as nationwide permits (NWP), and authorize certain activities that require Corps approval under, *inter alia*, Section 10 of the RHA. The purpose of NWPs is to “regulate with little, if any, delay or paperwork certain activities having minimal impacts.” 33 C.F.R. § 330.1(b) - 2(b).

In instances in which a Federal permit or license is sought for construction or operation of facilities that may result in a discharge into navigable waters, the applicant is required to obtain a water quality certification (401 Certification) from the State in which the proposed discharge is to take place pursuant to Section 401 of the Clean Water Act (CWA). 33 U.S.C.A. § 1341. Therefore, in order for the Corps to finally issue a Section 10 permit to the Ports Authority authorizing the Project to move forward under the RHA, the Corps must first obtain a 401 Certification from the State of South Carolina. In South Carolina, the agency that assesses and issues 401 Certifications under the CWA is DHEC.¹ *See* S.C. Code Ann. Regs. 61-101.A.2 (“Any applicant for a Federal license or permit to conduct any activity which during construction or operation may result in any discharge to navigable waters is required by Federal law to first obtain a certification from the Department.”). In response to and in conjunction with NWPs issued by the Corps, state agencies like DHEC are permitted to review the Corps’ NWPs and issue similarly streamlined 401 Certifications that offer authorization for projects determined by the Corps to fall under the general NWPs.

¹ The CWA’s requirement that a State provide a certification that a project complies with the State’s water quality standards is also subject to additional parameters; namely, the State must issue a 401 Certification within one year of the submission of the permit application. Specifically, the CWA provides:

If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence.

33 U.S.C.A. § 1341(a)(1). Similarly, Regulation 61-101.A.6 provides that “[t]he Department is required by Federal law to issue, deny, or waive certification for Federal licenses or permits within one (1) year of acceptance of a completed application unless processing of the application is suspended.” This requirement imposes a consequence on the failure to “act” within the one year, as DHEC is deemed to have waived its responsibilities under the CWA and the Corps is under no obligation to incorporate into its Section 10 permit any of the terms and conditions that may have been imposed in the 401 Certification.

State Permitting Requirements

In addition to the Federal permitting requirements, projects that occur within a “critical area”² of the coastal zone³ of South Carolina require additional review and State permitting requirements. Specifically, a person proposing to implement such a project must obtain a critical area permit from OCRM prior to the utilization of the critical area. *See* S.C. Code Ann. § 48-39-130(A).⁴ These permits are subject to the requirements of the Coastal Zone Management Act, S.C. Code Ann. §§ 48-39-10 to -360 (CZMA), and associated regulations that govern the management, development, and protection of the critical areas and coastal zone of the State. S.C. Code Ann. Regs. 30-1 to -21. Further, the CZMA requires DHEC to certify State and Federal permits for consistency with the Coastal Management Program (CMP), commonly referred to as a Coastal Zone Consistency Certification (CZC Certification). *See* S.C. Code Ann. § 48-39-80(B)(11).⁵

Thus, projects requiring a Federal permit or license and implicating DHEC’s 401 Certification requirement which *also* take place within the coastal zone require a critical area permit under the CZMA and a CZC Certification certifying the project’s compliance with the CMP. When 401 Certification is required, Regulation 30-2(H) provides that the OCRM staff should coordinate with the appropriate DHEC staff regarding water quality impacts, and that ultimately the *critical area permit serves as the 401 Certification*. S.C. Code Ann. Regs. 30-2(H) (emphasis added); *See also* S.C. Code Ann. Regs. 61-101.A.8 (“The Department will not issue a separate 401 water quality certification for an activity which requires a direct permit for

² “Critical area” is defined as coastal waters, tidelands, beaches, and the beach/dune system. *See* S.C. Code Ann. § 48-39-10(J). “Coastal waters” are defined as “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.” *See* S.C. Code Ann. § 48-39-10(F). “Tidelands” are defined to include “all areas at or below mean high tide....” *See* S.C. Code Ann. § 48-39-10(G).

³ The “coastal zone” is defined as all coastal waters and submerged lands seaward to the State’s jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas (i.e., Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown counties). *See* S.C. Code Ann. § 48-39-10(B).

⁴ OCRM is charged with carrying out South Carolina’s coastal zone policies and issuing permits in the critical areas of the coastal tidelands and waters. *See* S.C. Code Ann. Regs. 30-4(C); *S.C. Coastal Conservation League v. S.C. Dep’t of Health and Envtl. Control*, 363 S.C. 67, 74, 610 S.E.2d 482, 485 (2005).

⁵ Although the CMP has neither been codified nor made part of a DHEC regulation, it has been applied and enforced by the Supreme Court of South Carolina. *See, e.g., Spectre, LLC v. S.C. Dep’t of Health & Envtl. Control*, 386 S.C. 357, 370, 688 S.E.2d 844, 851 (2010) (holding the General Assembly meant the CMP policies to be enforceable in the consistency review of state and federal permits).

alteration of the critical area of the coastal zone. . . . The direct permit will serve as the 401 water quality certification for an associated Federal permit.”). Additionally, for permit applications that require both a 401 Certification and a CZC Certification—i.e., projects that are both located within the coastal zone and require a Federal permit—“the [CZC Certification] shall be issued as a component of, and concurrently with, the [401] water quality certification” in accordance with the requirements of a CZC Certification under the CMP, and “the [401] water quality certification will serve also as the [CZC Certification].” S.C. Code Ann. Regs. 61-101.A.7. In other words, the analysis by OCRM of the criteria found in the CMP is to be conducted in conjunction with and as a part of the water quality certification analysis, essentially merging the two authorizations into one license document. Thus, in coordination with other DHEC staff, OCRM issues the critical area permit, which serves as the 401 Certification, and issues the CZC Certification as a component of and concurrently with a 401 Certification.

Analysis of this Permit under State Law

Petitioners argue that because the Federal Order vacated the Corps’ NWP 3 authorization for the Project, DHEC’s statewide 401 Certification for NWP 3 does not exist. Petitioners next argue that the Federal Order vacating the authorization under NWP 3 removed the predicate for exempting the Ports Authority from obtaining a separate, individual 401 Certification. Finally, Petitioners argue that the Ports Authority did not seek a separate 401 Certification and the Critical Area Permit and CZC Certification issued by DHEC did not include the required 401 Certification.

There is no dispute that in January 2012, the Ports Authority submitted joint applications for federal and state permits to the Corps and DHEC, respectively, regarding the Project. Because the Project involves driving pilings in a navigable water, it implicates the Corps’ jurisdiction under Section 10 of the RHA. In April 2012, the Corps notified the Ports Authority that the Project was authorized under NWP 3, although the authorization was provisional pending receipt from DHEC of verification of the Project’s compliance with Section 401 of the CWA and the CMP. Pursuant to its certification requirements under Section 401 of the CWA, DHEC evaluated, *inter alia*, NWP 3 for its compliance with State water quality standards, and on April 23, 2012, certified activities authorized under NWP 3 as compliant with the State’s water quality standards.

Separate from the necessary Federal permits, because the Project takes place in the coastal zone and involves the alteration of a critical area, the Project also required a critical area permit and a CZC Certification certifying the Project's compliance with the CMP. As discussed, OCRM issues the critical area permit in coordination with other DHEC staff and issues the CZC Certification as a component of and concurrently with the 401 Certification. Under state law, the critical area permit serves as the 401 Certification and the 401 Certification serves as the CZC Certification.

On December 18, 2012, DHEC issued the critical area permit and CZC Certification for the Project. This was separate from the 401 Certification regarding NWP 3 as issued by DHEC in April 2012. Consequently, and notwithstanding the applicability of DHEC's 401 Certification for NWP 3, water quality issues were a part of DHEC's analysis in its critical area permit evaluation, *see* S.C. Code Ann. Regs. 30-2(H), and the critical area permit issued by DHEC for the Project also serves as the 401 Certification. Moreover, since the critical area permit is "project specific" and by law it "serves as the 401 water quality certification," it appears that the existing critical area permit document may serve as the 401 Certification as it was issued later in time and subsequent to DHEC's general certification for NWP 3.

Effect of the Federal District Court Order

Petitioners contend that the Federal Court vacated the Corps' determination that NWP 3 would be applicable to the Project. However, the Federal Court found that the Corps did not use the proper scope of analysis in evaluating the Project, and thus remanded the Project to the Corps for reconsideration under a broadened scope of analysis. In fact, the Federal Order distinctly held that:

In reversing and remanding the Army Corps' authorization in this matter, *the Court does not reach or in any way address the type of permit or level of review which the Corps must undertake* once it evaluates the proposed project under the proper 'scope of analysis.'

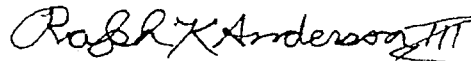
(emphasis added). Therefore, the Federal Order does not negate the critical area permit and CZC Certification at issue in this case.

Since the Project may still be eligible for general, NWP approval, it appears premature to dismiss this case upon the presumption that an analysis under NWP 3 is improper. Furthermore, the application form for the Project submitted by the Ports Authority includes a reference to "33 USC 403" and "33 USC 1341," which is the Section 10 permit required under the RHA and the

attendant 401 Certification. At this stage of the litigation, there is not sufficient evidence for this Court to determine the extent of DHEC's review or the procedures that were followed in issuing the permit. Moreover, in presenting their challenge to DHEC's determination, Petitioners can certainly dispute whether review of this matter should be based, in part, on the 401 Certification associated with NWP3 or the critical area permit and CZC Certification. The ALC can then determine based upon the facts of this case in keeping with its *de novo* review what is the appropriate scope of review for this project and whether the project complies with the standards of that review. Thus, the motion to vacate must be denied at this stage of the litigation.

ORDER

IT IS HEREBY ORDERED that the Petitioners' Motion to Vacate is **DENIED**.
AND IT IS SO ORDERED.



Ralph K. Anderson, III
Chief Administrative Law Judge

December 20, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

December 20, 2013
Columbia, South Carolina

Exhibit 2

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Preservation Society of Charleston, Historic)
Charleston Foundation, Historic)
Ansonborough Neighborhood Association,)
South Carolina Coastal Conservation)
League, Charlestowne Neighborhood)
Association, Charleston Chapter of the)
Surfrider Foundation, and Charleston)
Communities for Cruise Control,)

Petitioners,)

v.)

South Carolina Department of Health and)
Environmental Control and South Carolina)
State Ports Authority,)

Respondents.)

Docket No. 13-ALJ-07-0056-CC

**ORDER DENYING PETITIONERS'
MOTION TO EXPAND DISCOVERY AND
GRANTING PETITIONERS' MOTION
TO FILE A SURREPLY**

APPEARANCES: For the Petitioners:

Amy E. Armstrong, Esquire
W. Jefferson Leath, Jr., Esquire
J. Blanding Holman, IV Esquire
Randolph R. Lowell, Esquire
Chad N. Johnston, Esquire
Bradley D. Churdar, Esquire

For the Respondents:

This case is before the South Carolina Administrative Law Court (ALC or Court) on Petitioners' request for contest case hearing to challenge the Critical Area Permit and Coastal Zone Consistency Certification (Permit No. OCRM-12-054-B) issued by the Department of Health and Environmental Control (DHEC) staff, through the Office of Ocean and Coastal Resource Management (OCRМ) on December 18, 2012. The Permit authorizes the South Carolina State Ports Authority (Ports Authority) to make improvements to Building #322, an existing waterfront building in the Union Pier Terminal.

Motion to Expand Discovery

Petitioners filed the request for contested case hearing on February 11, 2013. The Notice of Assignment was issued on February 19, 2013. The Rules of Procedure for the Court provide

FILED

March 3, 2014

SC ADMIN. LAW COURT

[d]iscovery shall be conducted according to the procedures in Rules 26-37, SCRCP, except that only the standard interrogatories provided by SCRCP 33(b), as applicable to the pending contested case, are permitted; there shall be no more than three (3) depositions per party under Rule 30, SCRCP; and no more than ten (10) requests to admit per party, including subparts under Rule 36, SCRCP. All discovery shall be completed within 90 days of the receipt of the Notice of Assignment and Request for Information. Upon motion for good cause shown or upon his own motion, discovery may be expanded or curtailed by the administrative law judge.

ALC Rule 21(A). Thus, according to the ALC Rules, the discovery period in this case ended on or about May 20, 2013. The parties indeed participated in discovery during this period. While the parties discussed possibly expanding the discovery period, no party filed a motion with this Court to expand discovery until Petitioners filed this motion on December 23, 2013, more than seven months after the discovery period ended.

This Court finds disingenuous Petitioners' argument that it was not practical or cost effective to conduct discovery during the original discovery period due to the dispositive nature of the Ports Authority's Motion to Dismiss for lack of standing. The Ports Authority filed its Motion to Dismiss for lack of standing on July 1, 2013. Given that the discovery period under Rule 21(A) ended in May 2013,¹ the Petitioners could not have decided to postpone discovery based on the Ports Authority's Motion to Dismiss and the possibility that the Court's ruling on that motion could have disposed of this case. Furthermore, as Petitioners point out in their motion, both parties filed motions that could have been dispositive in this case. In fact, within days of filing the request for contested case hearing, Petitioners filed a Motion to Remand this case to the DHEC Board for review. In July 2013, the Ports Authority filed two Motions to Dismiss and in November 2013, Petitioners filed a Motion to Vacate. As a result of the extensive briefing of these motions by both parties as well as a motions hearing and a status conference to discuss at least six pending motions, there has been a dispositive motion pending in this case for most of the time this case has been pending with this Court. If the Court accepts Petitioners' argument that a dispositive motion effectively stays discovery until resolution of that motion by this Court, then the parties would have barely begun discovery at this stage of the litigation.

¹ In the Order Denying Ports Authority's Motion to Dismiss, this Court referenced that discovery was ongoing at the time of the motions hearing in September 2013. This finding was based on statements made at the motions hearing that, upon reflection, only referred to the fact that the parties were continuing to supplement responses to discovery requests that were made during the original discovery period that ended May 20, 2013.

The Court also does not accept Petitioners' argument that all parties knew that discovery was ongoing beyond May 20, 2013. There was no scheduling order in this case to expand or curtail the discovery period set forth in ALC Rule 21(A).² Although the parties have continued to supplement responses to discovery beyond the May 20 deadline, it appears no party attempted to initiate additional discovery, including noticing depositions, after that deadline. Petitioners have been afforded ample opportunity to conduct discovery and in no way have been hindered from seeking to expand the length and/or scope of discovery within the applicable ninety-day discovery period.

In sum, Petitioners are seeking to extend discovery on the eve of the filing of a Motion for Summary Judgment. Their request at this stage of the proceeding is simply unjustified and would unfairly prolong the advancement of this case.

Motion to File Surreply

On December 27, 2013, the Ports Authority filed a Motion for Summary Judgment asserting Petitioners lack standing to proceed with this case. Petitioners filed their response on January 21, 2014. The next day, the South Carolina Supreme Court issued a decision in a separate case brought in that Court's original jurisdiction. *Carnival Corp. v. Historic Ansonborough Neighborhood Assoc.*, Opinion No. 27355, 2014 WL 229894 (S.C. Sup. Ct. filed Jan. 22, 2014). In that case, the Historic Ansonborough Neighborhood Association, Coastal Conservation League, and Preservation Society of Charleston brought suit against the Ports Authority, *inter alios*, alleging unlawful use of the Union Pier Terminal by the Carnival Corporation's cruise ship. The Supreme Court concluded those parties did not have standing to bring that particular action alleging nuisance and zoning claims.

² Originally, the Court scheduled a hearing on the merits for November 12-18, 2013, and served the Notice of Hearing on the parties on May 31, 2013. After receiving the Hearing Notice, attorney for the Petitioner emailed the Court about rescheduling the hearing due to a scheduling conflict and noted a need for additional time for discovery. In response, the Court's Law Clerk in an e-mail requested dates and times for a rescheduled hearing, noting that:

As the scheduled date provided over four months for discovery, the Court was hopeful the parties could complete discovery within the time period.

Petitioners argue that this response by the Court's Law Clerk showed that no one understood discovery to have closed on May 20, 2013. However, that comment did not indicate that the Court was extending discovery. Clearly, the parties may have informally agreed to a discovery schedule. More importantly, the response emphasized that the Court believed that a hearing beginning on November 12, 2013 more than adequately provided sufficient time for discovery. Furthermore, if Petitioners believed that extending the date of the trial would have extended the discovery period, the Petitioners should have taken steps to protect their position by filing a Motion to Extend Discovery or requesting a Scheduling Order.

On February 5, 2014, the Ports Authority filed its Reply to Petitioners' Response in this case, including arguments regarding the analysis contained in the Supreme Court's decision. Petitioners thereafter filed a Motion to File Surreply and a proposed surreply, asserting the Ports Authority included a significant new argument regarding the Supreme Court's decision. In response, the Ports Authority consented to a surreply limited to the discrete argument made in the Ports Authority's Reply regarding the Supreme Court's decision but challenged the proposed surreply on the basis that it is beyond the scope of that distinct argument.

This Court will accept those portions of the Surreply that address the implications of the Supreme Court's holding in *Carnival Corp. v. Historic Ansonborough*, Op. No. 27355, 2014 WL 229894, (S.C. Sup. Ct. filed Jan. 22, 2014). Nevertheless, arguments that exceed the parameters of that holding will not be considered. For example, the argument in Petitioners' Surreply in Opposition to Motion for Summary Judgment that are stricken in Exhibit 3 of the Port's Authority's response to Petitioner's Surreply relating to the argument of collateral estoppel will not be considered.³

ORDER

IT IS HEREBY ORDERED that the Petitioners' Motion to Expand Discovery is **DENIED**.

IT IS FURTHER ORDERED that the Petitioners' Motion to File a Surreply is **GRANTED IN PART**. The Court will consider the arguments in the proposed surreply as filed by Petitioners distinguishing the decision of *Carnival Corporation*.

IT IS FURTHER ORDERED that the Ports Authority's Response to Surreply is due no later than March 10, 2014.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

March 3, 2014
Columbia, South Carolina

³ This Court does not find that the holding in the *Carnival Corporation* case collaterally estops this case any more than the holding in the federal court case of *Preservation Society of Charleston v. United States Army Corps of Engineers*, C/A No. 2:12-CV-02942-RMG (Sept. 18, 2013).

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

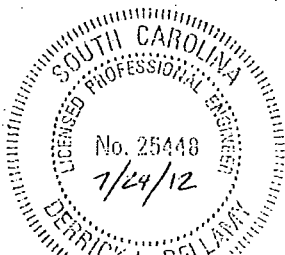
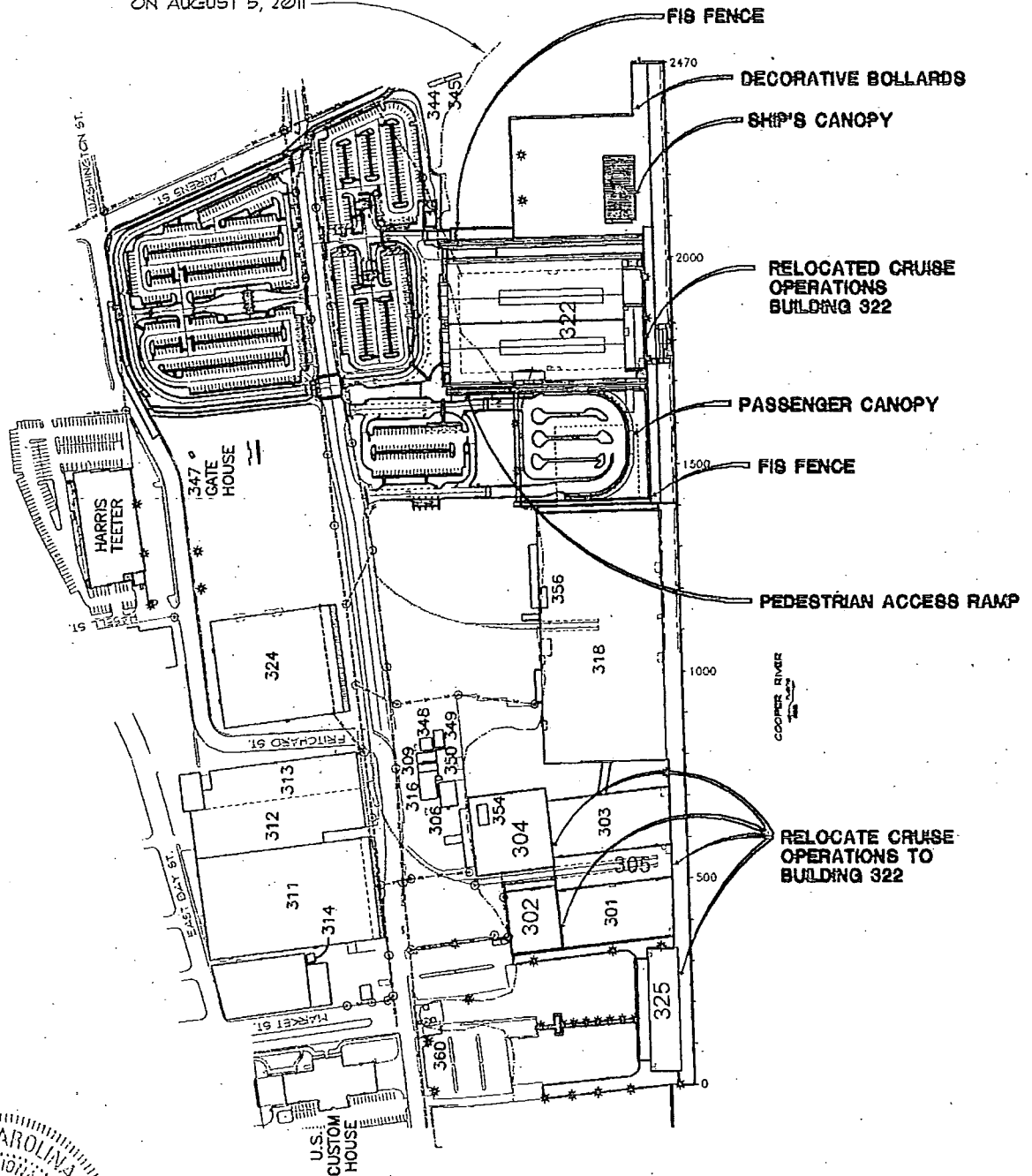
E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

March 3, 2014
Columbia, South Carolina

Exhibit 3

DHEC/OCRM CRITICAL LINE
 LOCATED JUNE 2011
 APPROVED BY S. BROOKS
 ON AUGUST 5, 2011



Derrick L. Bellamy



NEW BUILDING LOCATION PLAN UNION PIER TERMINAL

South Carolina State **PORTS AUTHORITY**
 176 CONCORD STREET
 P.O. BOX 22287
 CHARLESTON, S.C. 29413-2287

PROJECT NO.: CIF11E005B
 FILE NAME: Upcptp3
 DATE: MARCH 2012
 SHEET: 3 OF 11

Exhibit 4

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Preservation Society of Charleston,)
Historic Charleston Foundation, Historic)
Ansonborough Neighborhood Association,)
South Carolina Coastal Conservation)
League, Charlestowne Neighborhood)
Association, Charleston Chapter of the)
Surfrider Foundation, and Charleston)
Communities for Cruise Control,)

Petitioners,)

v.)

Docket No. 13-ALJ-07-0056-CC)

South Carolina Department of Health and)
Environmental Control and South Carolina)
State Ports Authority,)

Respondents.)

AFFIDAVIT OF PETER O. LEHMAN

PERSONALLY APPEARED BEFORE ME, Peter O. Lehman, who first being
duly sworn, deposes and states as follows:

1. I am over eighteen (18) years of age and competent to make this affidavit.
The facts stated within this affidavit are within my personal knowledge and are true and
correct.

2. I am the Vice President of Cruise and Real Estate at the South Carolina
State Ports Authority.

3. I earned a bachelor's degree in business administration from Stetson
University, a certificate of advanced study from the American Graduate School of
International Management (Thunderbird), and a juris doctor degree from the New
England School of Law. I am a licensed attorney and a member of the South Carolina,

New Jersey, New York, and District of Columbia Bars as well as numerous Federal Courts, including The Supreme Court of the United States.

4. Before joining the Authority in 1997 I was executive director of the S.C. World Trade Center-Charleston for over four years. I have prior experience in international trade and marketing with two private companies and as a senior foreign-trade representative for the State of New Jersey's Department of Commerce. I am a past president of the Propeller Club of the Port of Charleston and a past chair of the American Association of Port Authorities' Planning and Research Committee.

5. My duties and responsibilities include, but are not limited to, management of all aspects of the administration of the cruise industry for the South Carolina State Ports Authority.

6. I am familiar with the construction and operation of cruise facilities on the Union Pier Terminal (UPT) in Charleston, South Carolina. I am also familiar with the general history of passenger vessels calling on Charleston, South Carolina. On information and belief, the UPT has accommodated passenger vessels for at least 100 years. On information and belief, the UPT has accommodated cruise vessels since at least 1973.

7. The UPT currently accommodates both cruise vessels and operations and cargo vessels and operations. Exhibit A to this affidavit is a picture of the Carnival *Fantasy* and the Liberty *Pride*, a cargo vessel that handles roll-on, roll-off cargo such as vehicles, berthed at the UPT on or about August 25, 2011.

8. The Ports Authority is implementing a renovation plan for the UPT, which includes the transfer of cruise operations from the south end to the north end of the UPT.

Exhibit B to this affidavit is the *Concept Plan For Union Pier Waterfront* dated September 2010, submitted to the Ports Authority and on which the renovation plan is based, subject to change as the plan is implemented.

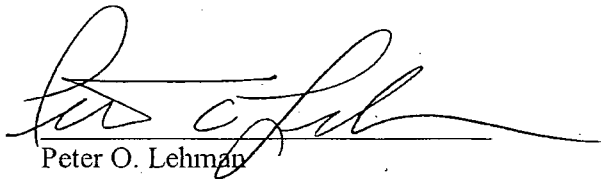
9. In the event that the federal or state environmental permits are reversed or denied, the Ports Authority will continue to accommodate and berth cruise vessels at the UPT, including but not limited to the *Carnival Fantasy*.

10. In the event that the federal or state environmental permits are reversed or denied, cruise lines will continue to operate at the UPT, including but not limited to the *Carnival Fantasy*.

11. Regardless of whether cruise operations occur on the south end or north end of the UPT, those cruise operations will not be affected by the location, including, for example, the frequency of and the size of cruise vessels that can be berthed.

12. The exhibits attached to this affidavit are compiled by the Ports Authority as these documents are created, received, and obtained by the Ports Authority and are maintained in the regular course of business by the Ports Authority. It is the regular practice of the Ports Authority to maintain these documents as part of the file concerning these matters.

FURTHER AFFIANT SAYETH NOT.


Peter O. Lehman

Sworn to and subscribed before me
this 2nd day of August 2013.

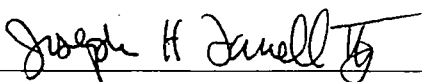
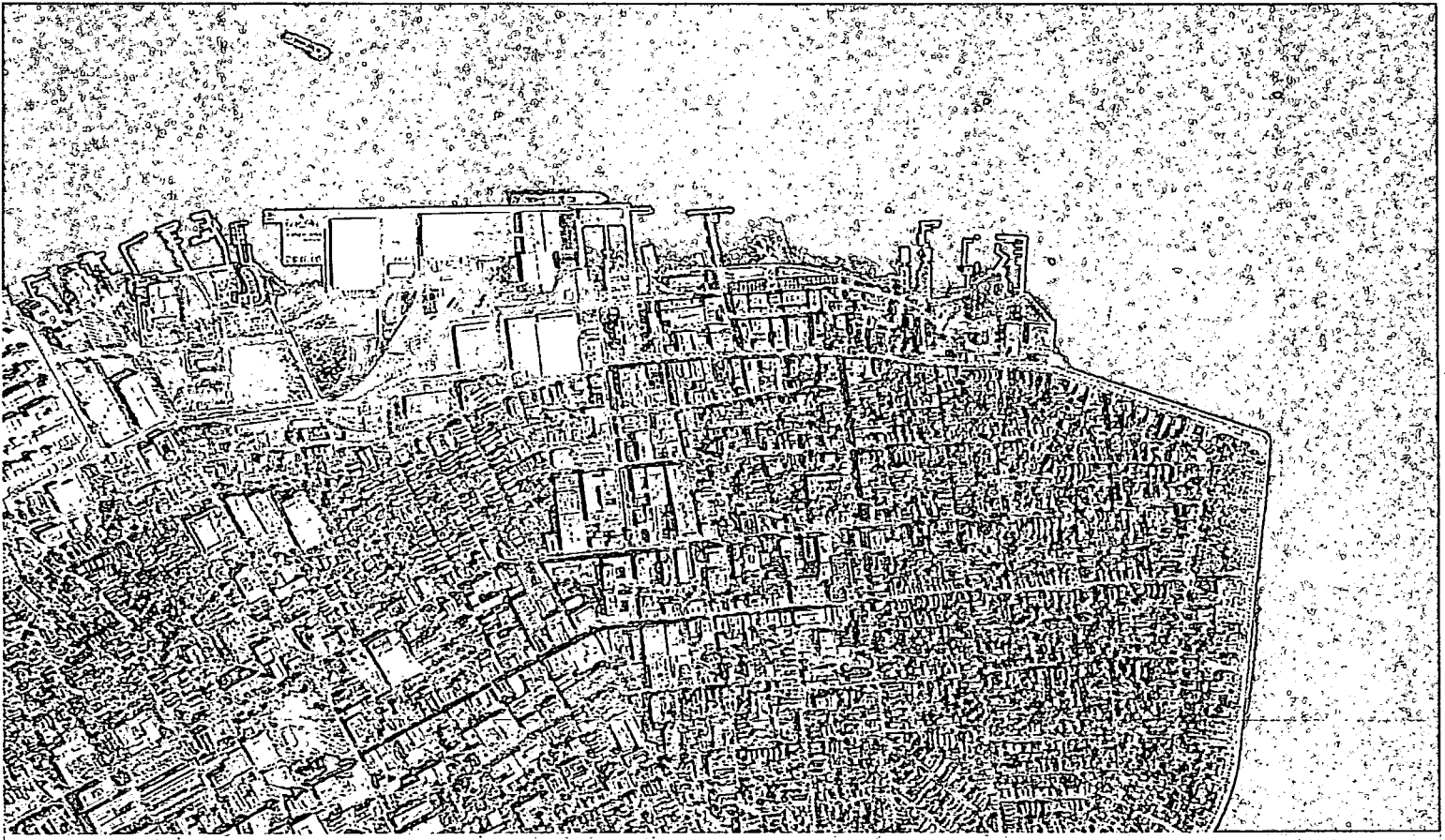

Notary Public for the State of South Carolina
My Commission expires: September 18, 2016

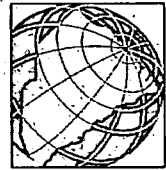
EXHIBIT A



EXHIBIT B



SOUTH CAROLINA STATE PORTS AUTHORITY
CONCEPT PLAN FOR UNION PIER WATERFRONT • SEPTEMBER 2010



Cooper; Robertson & Partners *Architecture, Urban Design*

All images and information contained herein are concepts and are intended for general reference purposes only, do not represent an approved development plan for Union Pier or any part thereof and are subject to change at any time without notice. This material, and the information contained herein, does not constitute an offer or commitment to sell real property.

CONCEPT PLAN FOR UNION PIER WATERFRONT • SEPTEMBER 2010

Submitted to the South Carolina State Ports Authority Port of Charleston

ACKNOWLEDGEMENTS

South Carolina State Ports Authority Port of Charleston
James I. Newsome, III
President and Chief Executive Officer

City of Charleston
Mayor Joseph P. Riley, Jr.

Master Planners and Architects
Cooper, Robertson & Partners

Joe J. Bryant, PE
Vice President, Terminal Development
Project Manager

Tim Keane
Director of Planning, Preservation & Sustainability

Cruise Industry Consultants
Bermello Ajamil & Partners

Peter N. Hughes
Senior Vice President and Chief Financial Officer

Yvonne Fortenberry
Director, Design, Development & Preservation

Transportation Consultants
Kimley-Horn and Associates, Inc.

Peter O. Lehman, Esq.
Director, Planning and Business Development

Michael Maher
Director, Civic Design Center

Engineering Consultant
Thomas & Hutton Engineering Co.

Byron D. Miller
Director, marketing, Public Relations & Planning

Hernan E. Pena, Jr.
Director, Traffic & Transportation

Marine Engineers
Moffatt and Nichol

Barbara L. Melvin
Vice President, Government Relations

Environmental Consultants
Newkirk Environmental

Derrick L. Bellamy, PE
Project Engineer

Financial Consultants
HR & A Advisors

Financial Consultants
Permar Inc.

Development Advisor
Mr. Peter Rummell

Community Outreach
Rawle Murdy



TABLE OF CONTENTS

I. EXECUTIVE SUMMARY

Executive Summary

1.01

Recommendations

1.03

II. SITE ANALYSIS

Context

II.01

History

II.03

Site

II.05

III. CRUISE TERMINAL DISTRICT

Introduction

III.01

Site Selection

III.03

Conceptual Site Plan

III.05

Cruise Terminal Program

III.11

Transportation and Traffic

III.15

IV. CONCEPT PLAN DISTRICT

Concept Plan

IV.01

Urban Design Diagrams

IV.05

Transportation

IV.18

Infrastructure

IV.28

Special Initiatives

IV.35

V. COMMUNITY OUTREACH

Introduction

V.01

Components

V.02

CREDITS

EXECUTIVE SUMMARY

In the Concept Plan team's written response to the South Carolina State Ports Authority (SCSPA or Port) RFP, we put forward that a Concept Plan for the Union Pier Waterfront would require four different but interconnected plans:

- A Concept Plan (Revision of the 1996 Plan)
- A Cruise Terminal Plan
- A Business Plan
- A Community Outreach Plan

We also recognized that while the SCSPA is our formal client for this study, two entities, the SCSPA, the state entity that owns the property, and the City, the municipality in which the property is situated, shared a vital interest in any Concept Plan proposal. In addition, the citizens of Charleston are a significant stakeholder and would be involved and listened to throughout the planning process. The current proposal has been developed in light of this concern and reflects our commitment to an open and iterative work process. From the start we have attempted to work closely with and meet the needs and interests of both the Port and the City while seeking out, carefully listening, and responding to what we heard from Charleston's various interest groups and individual citizens.

What follows is a summary of our planning goals and assumptions, what we heard, and absorbed, and our resulting recommendations. We and our consultants would like to thank the CEO of the Port, James Newsome, and Major Joseph Riley and their respective staffs for their leadership, cooperative support, and sound judgment during the planning process. All good projects start with good clients which we have had. We believe these proposals are sound and will serve the long-term interests of the Port, the City, and the citizens of Charleston.

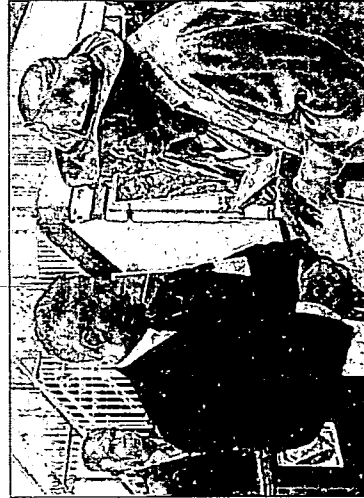
GOALS

- Create a financially viable plan including a new cruise terminal that is attractive and in keeping with the character of historic Charleston
- Comply with today's enhanced cruise security requirements
- Mitigate impacts on existing infrastructure and traffic
- Identify additional uses for the Union Pier property that bring enjoyment to Charlestonians and enhance the local economy
- Increase public access to Charleston's historic waterfront

PUBLIC INPUT

We've Heard People Want:

- A more attractive cruise terminal.
- More public access to the waterfront.
- Additional uses for the Union Pier property.
- A plan to address traffic issues.
- A plan that is contextual.



SCSPA CEO Jim Newsome discusses planning efforts for Union Pier with local residents. Kick-off Meeting - October 8, 2009

INTRODUCTION

PLAN VARIABLES

- Cruise Terminal location and layout
- Site Access/Circulation
- Future development

PLAN ASSUMPTIONS

FINANCIAL VIABILITY

- Plan must balance the economic development mission of the SCSPA

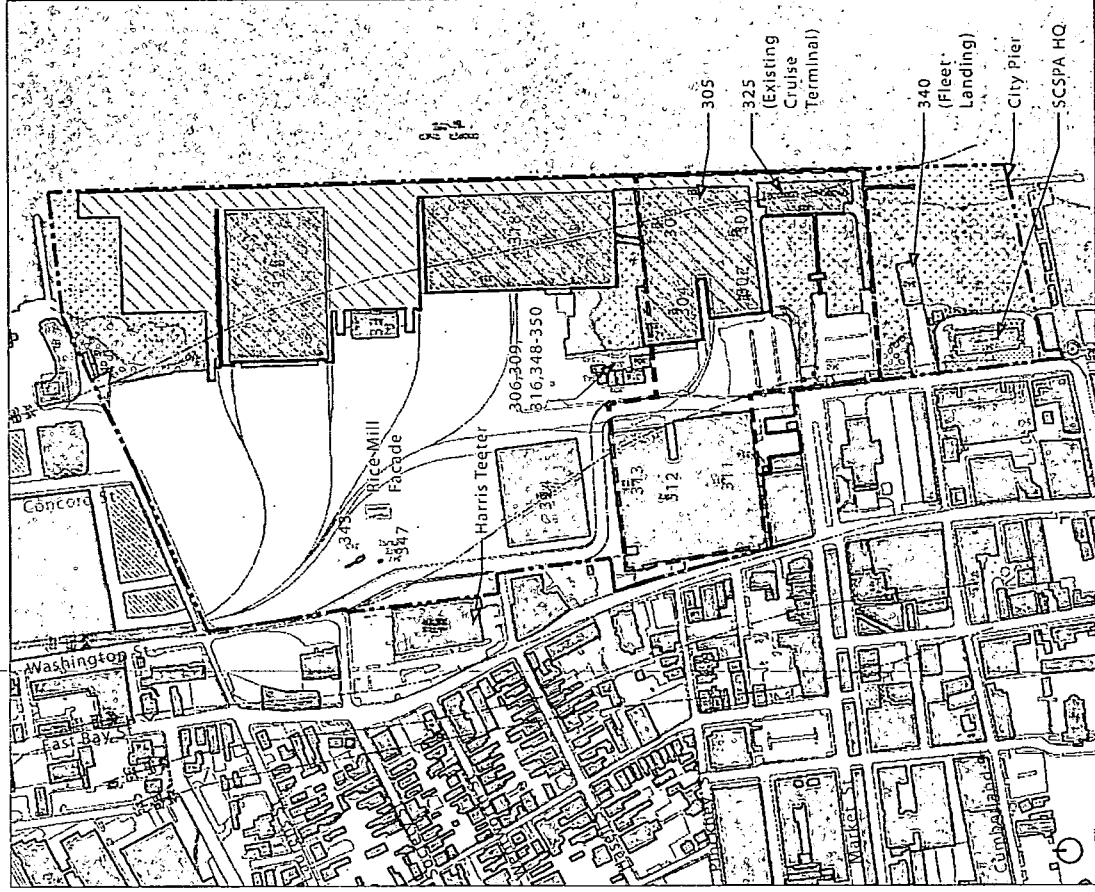
CRUISE TERMINAL

- Identify optimal cruise terminal location within the site of Union Pier
- Accommodate cruise passenger pick-up and drop-off within Port property
- Accommodate cruise parking and circulation to, through, and around the terminal site
- Allow public access to cruise terminal and adjacent waterfront on non-cruise days

POTENTIAL ADDITIONAL USES

- Residential
- Commercial (retail and office)
- Hotel
- Institutional
- Parking
- Public Parks/Playgrounds

PUBLIC ACCESS TO THE HISTORIC WATERFRONT



Existing Conditions

----- Portion of Union Pier currently utilized for Cruise Facilities

INTRODUCTION

EXECUTIVE SUMMARY

RECOMMENDATIONS

- **Cruise Terminal Location & Layout**

The Cruise Terminal should relocate to the northern end of Union Pier where the terminal can be accommodated in Building 322 and where the parking can be accommodated at grade, and the Ground Transportation Area (GTA) and service areas can be located adjacent to the terminal building.

- **Revised access/circulation/transportation systems**

Concord Street should be added back to the City's grid; Washington and East Bay Street should act as a couplet from Chapel Street to Pinckney Street; and the intersections of Washington Street and East Bay Street at Pinckney Street, and Washington Street and Chapel Street should be improved for ease of use.

- **Creation of historic landing at east end of Market Street**

The historic public landing at the Custom House should be restored to reveal the granite slips. Along with improvements at the east end of Market Street, a public plaza at the foot of the Custom House should be created to provide an appropriate front door to Charleston.

- **Conceptual Plan for developable land, streets, parks, public open space**

Those portions of Union Pier Terminal currently used for Cruise Terminal and cargo business should be made available for private development and public infrastructure once they have been relocated.

- **Phased redevelopment of SPA buildings and decks outside of Cruise Terminal District**

Redevelopment of existing port facilities, including buildings and deck area, should be phased to allow interim use of the site once current uses are relocated.

- **Coordination of City infrastructure improvements**

The construction of new streets and open spaces as well as the improvements at Concord Street should be coordinated with the City's planned infrastructure improvements, including the Market Street Drainage Project and the Washington and East Bay Street improvements.

- **Potential for phased reestablishment of natural waterfront**

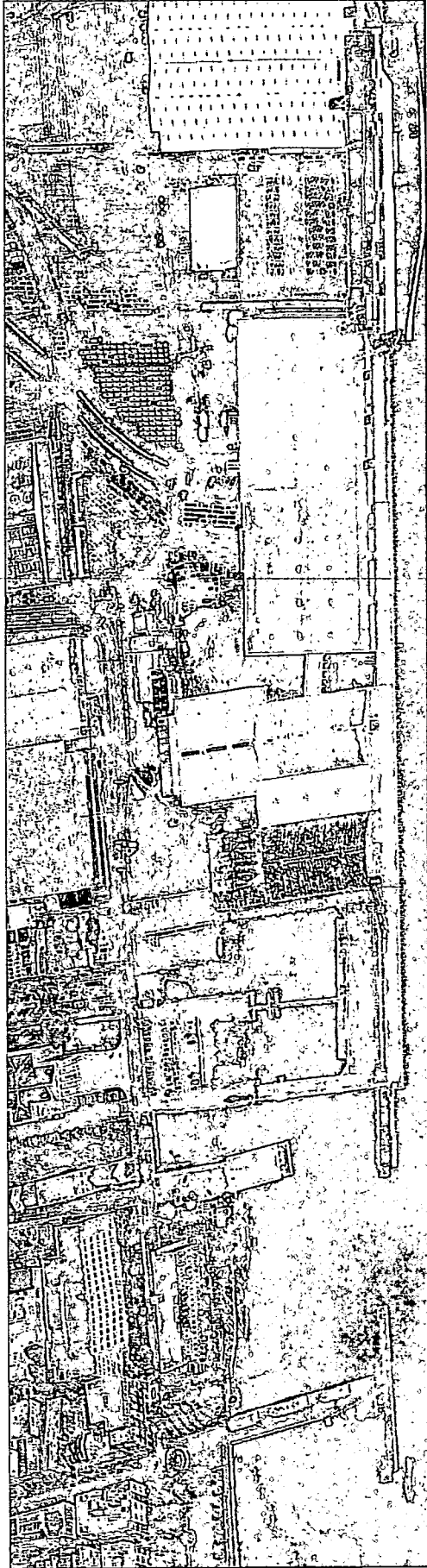
The reestablishment of a natural waterfront should be phased to coordinate with the construction of the public access to the Cooper River.

- **Creation of a vibrant, mixed-use waterfront neighborhood**

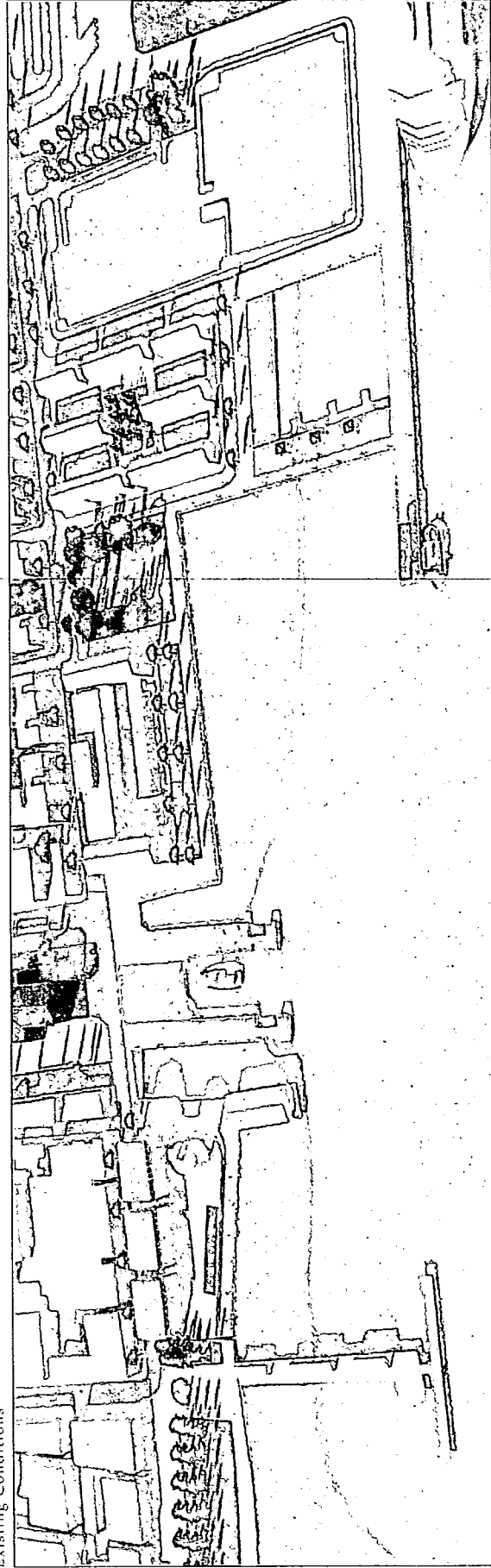
- **Honor the history of Charleston's waterfront through civic uses**

- **Extend existing city streets to the water's edge to facilitate views and connections from historic neighborhoods to the waterfront**

INTRODUCTION



Existing Conditions



Concept Plan for Union Pier Waterfront - an illustrative concept

II. SITE ANALYSIS

CONTEXT

HISTORY

SITE

CONTEXT

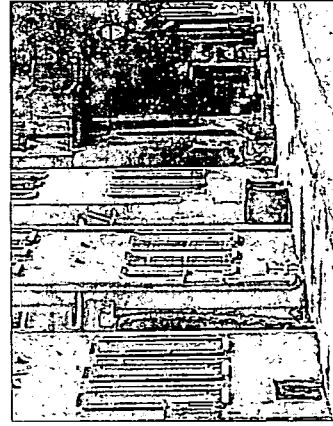
REGIONAL CONTEXT

The City of Charleston enjoys its place at the center of a diverse and storied region that typifies what is meant by the Lowcountry. Encompassing a vast array of preserved forests, marshlands and meandering rivers, stunningly beautiful beaches, historic plantation properties, charming agrarian communities, and diverse towns and cities, the Charleston Region is abundant with some of our nation's best examples of historic sites, cultural offerings, regional craft, cuisine, and architecture. Not surprisingly, Charleston is the fastest growing city in South Carolina, as visitors from across the country have succumbed to its charms to settle here, and its urban area is the most populous in the state.

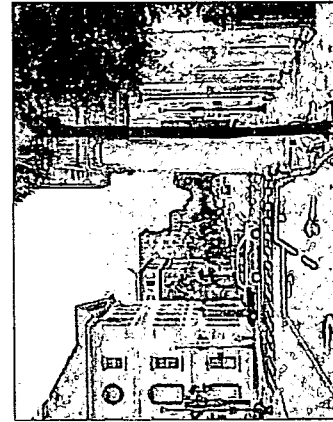
Much of Charleston's historical importance and wealth was derived from its position as a "great port towne," as its Lord Proprietor, Anthony Ashley-Cooper, destined it to become. Charles Towne soon became a bustling center of trade and commerce as the fourth largest port in the colonies, after Boston, New York, and Philadelphia. And still today, Port activity is second only to tourism as the leading source of revenue for Charleston.



Charleston region



Downtown Charleston



Downtown Charleston

SITE ANALYSIS

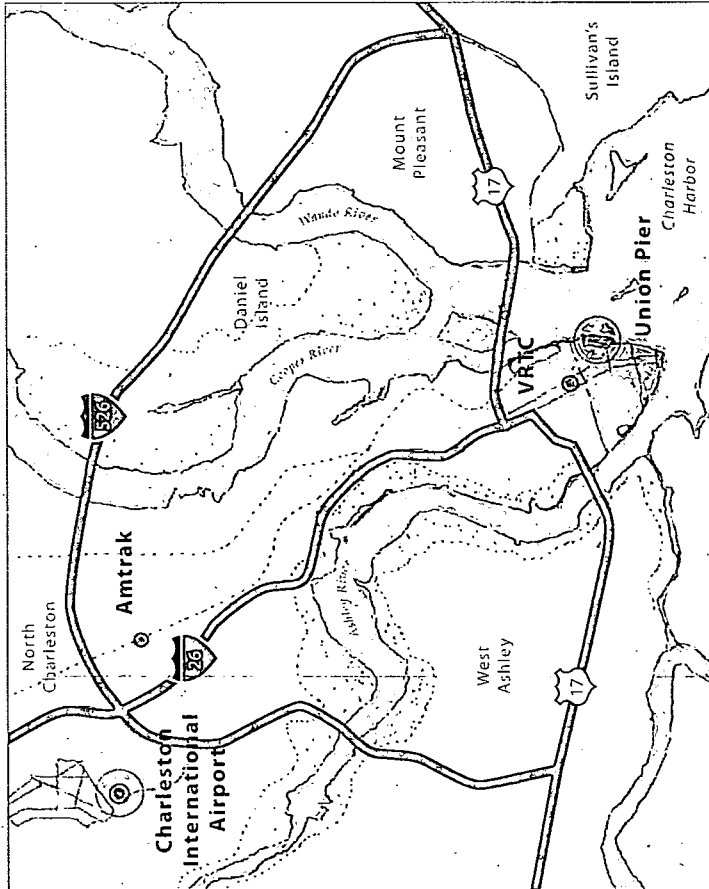
ENTRY POINTS TO THE PENINSULA

At one time, arrival by boat was the primary access to Charleston. Today, it is largely a drive-to destination and is well served by a network of interstate and US highways that form a framework around the region. Interstate 26 and US Highway 17 intersect at the Peninsula and connect the region to Interstate 95 to the north and west. Interstate 526 forms a loop around the urban center, connecting West Ashley, North Charleston, Daniel Island, and Mount Pleasant. Visitors by automobile often begin their tour of Charleston at the Visitor Reception and Transportation Center (VRTC), once an historic rail shed, where they can learn about the city's history and board motor coaches to tour the city's many attractions. Often the first impression for a visitor, Charleston's VRTC employs an architecture that is reflective of the history and richness of this great port city. The VRTC also serves as a venue for events attended by residents of the city.

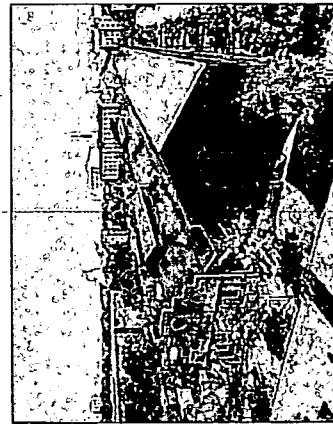
Charleston International Airport serves the region's air traffic and is the state's busiest passenger airport. The region is also served by rail with an Amtrak station located in North Charleston. Charleston Station is served by trains that complete routes from New York to Savannah and New York to Miami.

Charleston's Cruise Terminal is also one of the many ways tourists arrive in Charleston. As a port of call, tourists from other locales are offered the opportunity to explore Charleston's sites and enjoy its offerings from their cruise ship as a home base. Home port ships, on the other hand, begin and end their voyage at Charleston's Terminal.

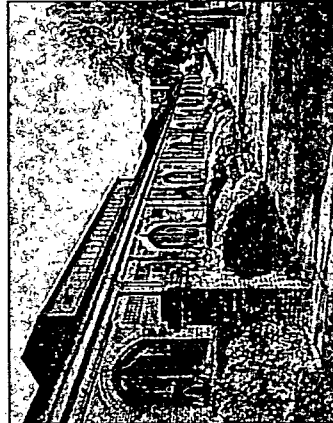
The building of a new cruise terminal in Charleston will provide an opportunity, as at the VRTC, to create a setting that reflects the character of Charleston and the history of the Port. Also, as with the VRTC, many of Charleston's residents have expressed an interest in a new terminal that could serve as a venue for events and increase public access to the waterfront.



Access to the Peninsula



VRTC

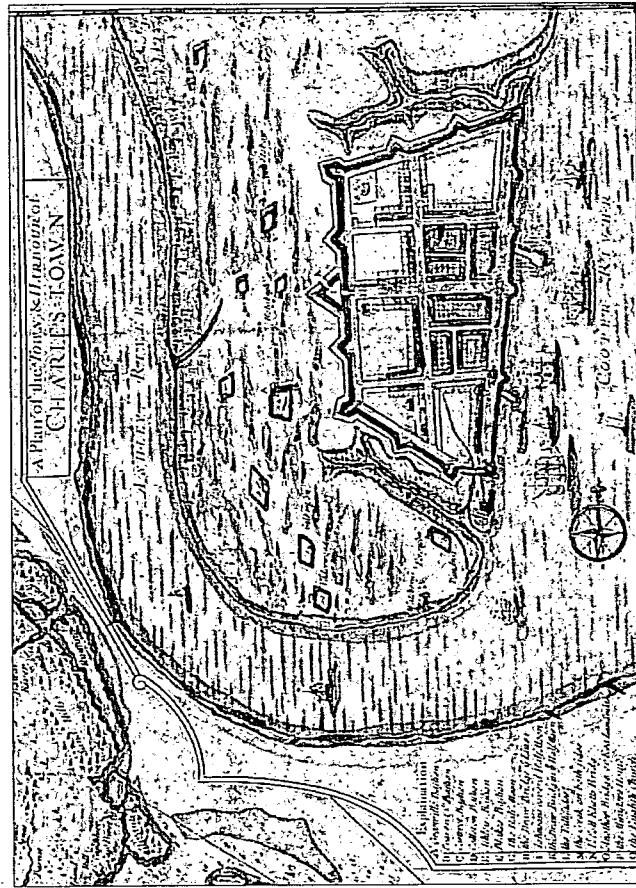


VRTC

CONTEXT

PENINSULA

The Charleston Peninsula is formed by the confluence of the Ashley and the Cooper Rivers. Charles Towne was founded in 1670 on the west bank of the Ashley River, but soon moved to its present location along the Cooper River. A walled city arose on higher ground along the shoreline with its waterfront dominated by the port. Today, much of the original peninsula is skirted by lower land created from landfill. A chronological inspection of historic maps of Charleston illustrates an ongoing outward growth of the city's shoreline into areas formerly marsh, mud, or even water. As a result, much of Charleston's historic urban fabric is upland of its waterfront, with the exception of the Battery. Waterfront land is often held in large tracts of ownership, either by the city, the state, or by institutions, typically limiting or precluding access by the public.

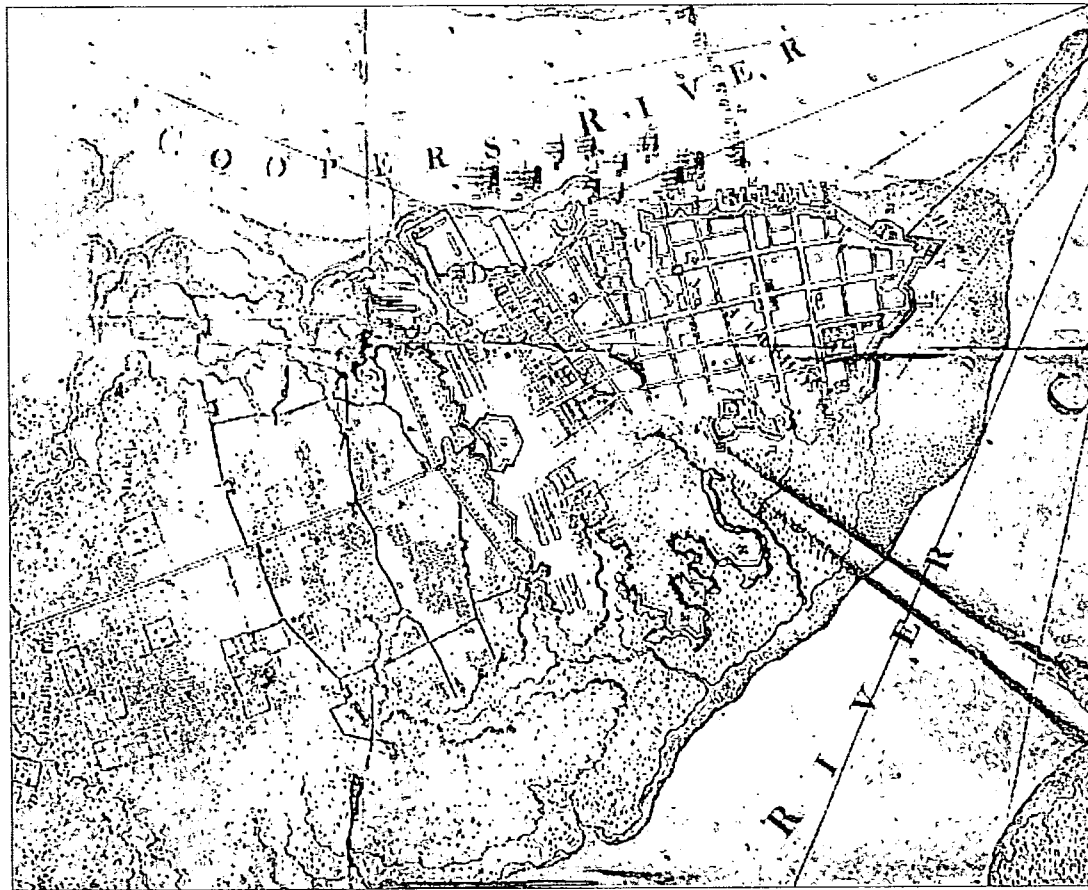


Charles Towne circa 1711

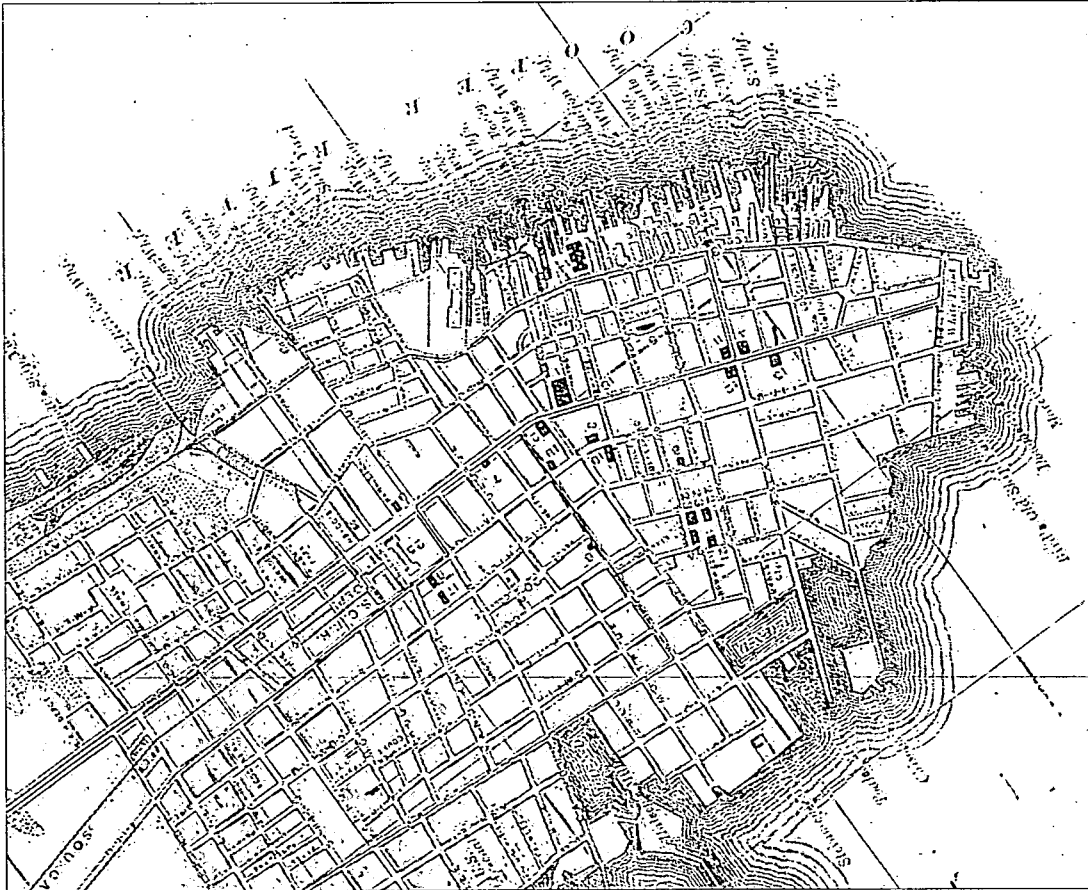
SITE ANALYSIS



Aerial image of Charleston Peninsula with the "Urban Fabric Boundary" and the Union Pier Terminal indicated



Historic map circa 1780



Historic map circa 1885

CONTEXT

PENINSULA EDGES AND WATER VIEWS

As a result of historic patterns of development and land accretion, the edges of the Peninsula vary from natural marsh edges, typically north of US 17, to urban edges along the Battery and along newer waterfront developments, to industrial edges in the areas controlled by the Port, notably Union Pier Terminal and the Columbus Street Terminal.

As a consequence of these edge conditions, waterfront views are either facilitated by street corridors and opens spaces, as along the Battery and in areas north of the historic district along marsh edges, or restricted or precluded by larger users, such as the Port terminals and the MUSC campus. A concept plan that includes new uses at Union Pier can transform an area with restricted views and access of the water to one that celebrates the waterfront.



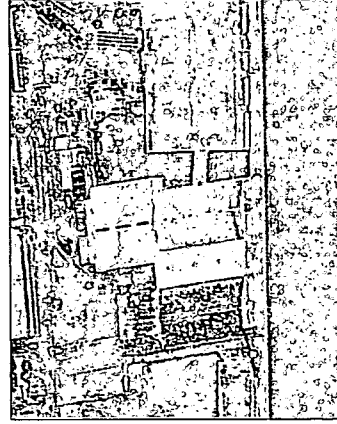
Charleston's natural edge



Charleston's urban edge

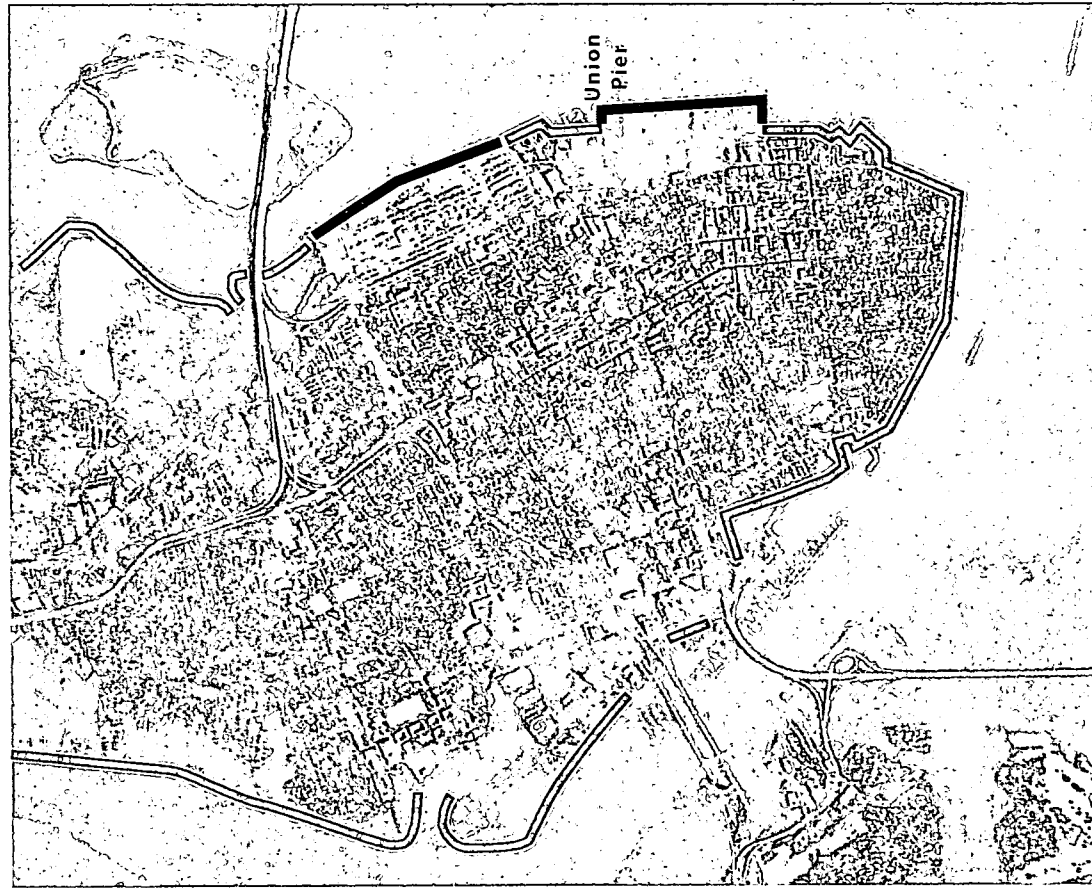


Charleston's urban edge at Waterfront Park



Charleston's industrial edge at Union Pier

SITE ANALYSIS

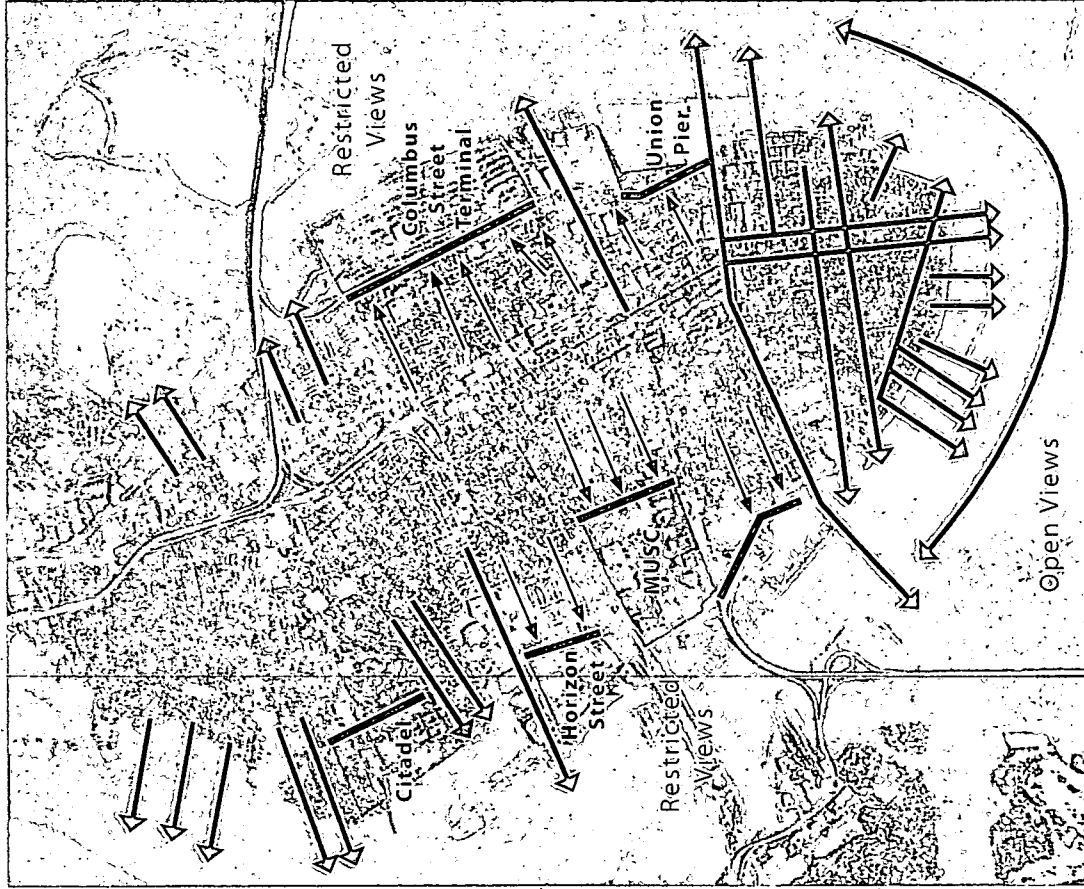


Peninsula edges

Natural edge

Industrial edge

Urban edge



Water views

SITE ANALYSIS

CONTEXT

NEIGHBORHOOD

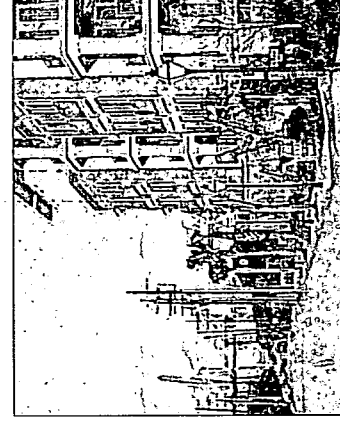
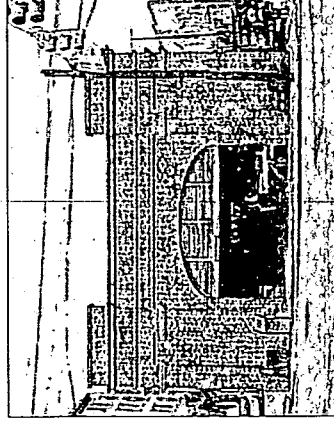
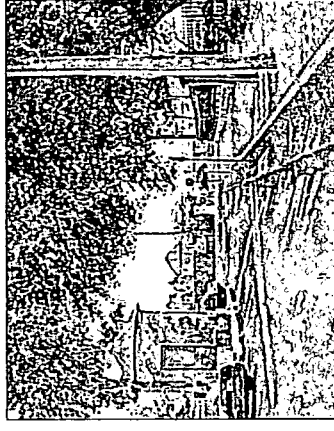
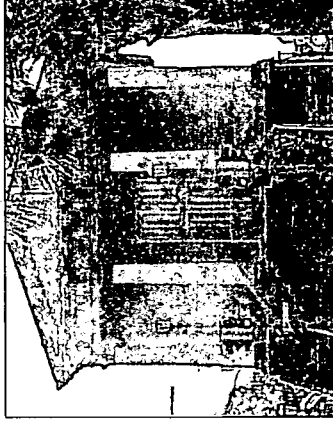
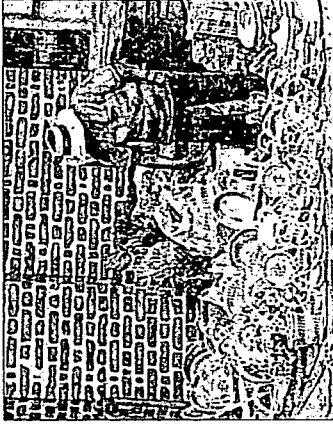
Sites along waterfronts are almost always considered valuable. As if its waterfront location weren't enough of a draw, Union Pier Terminal is a rare find in America cities as a large, active industrial site poised for redevelopment and adjacent to some of the most cherished, historically important, and valued neighborhoods.

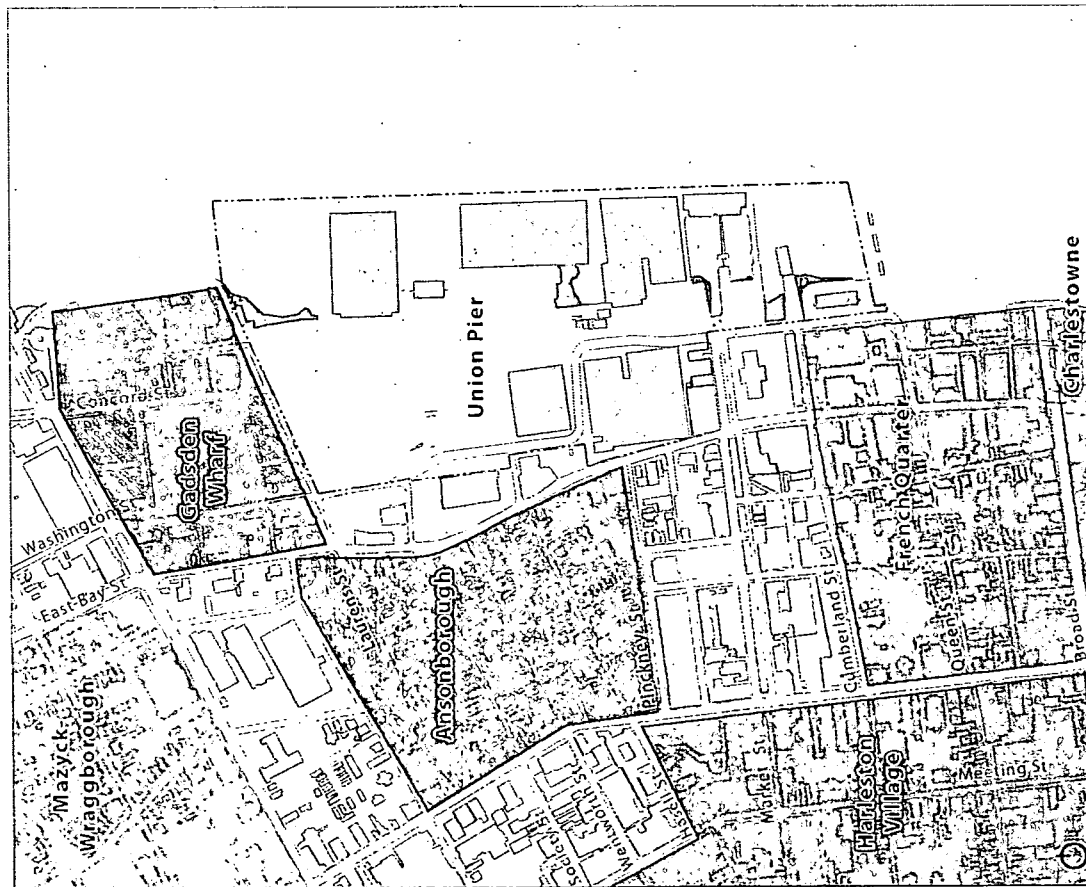
Situated to the north of the original walled city, Union Pier is today in the center of Charleston's historic waterfront, where it was once its edge. Market Street, originally a drainage way and later filled, connects Union Pier's waterfront to the city's core, a reflection of when goods arrived on boats and were traded or sold in the historic sheds. Today, the market sheds house vendors of regional craft and food, making the location a visitor hot spot. Recently under new management, the City Market is poised for a renaissance.

The French Quarter to the south, a remnant of the walled city, is typified by street upon street of historically significant architecture and dominated by the spire of St. Phillip's Church, which commands Church Street to deflect around its portico. Over the last twenty years, the French Quarter's waterfront has been revived by the creation of Waterfront Park, adjacent to Union Pier's southern boundary.

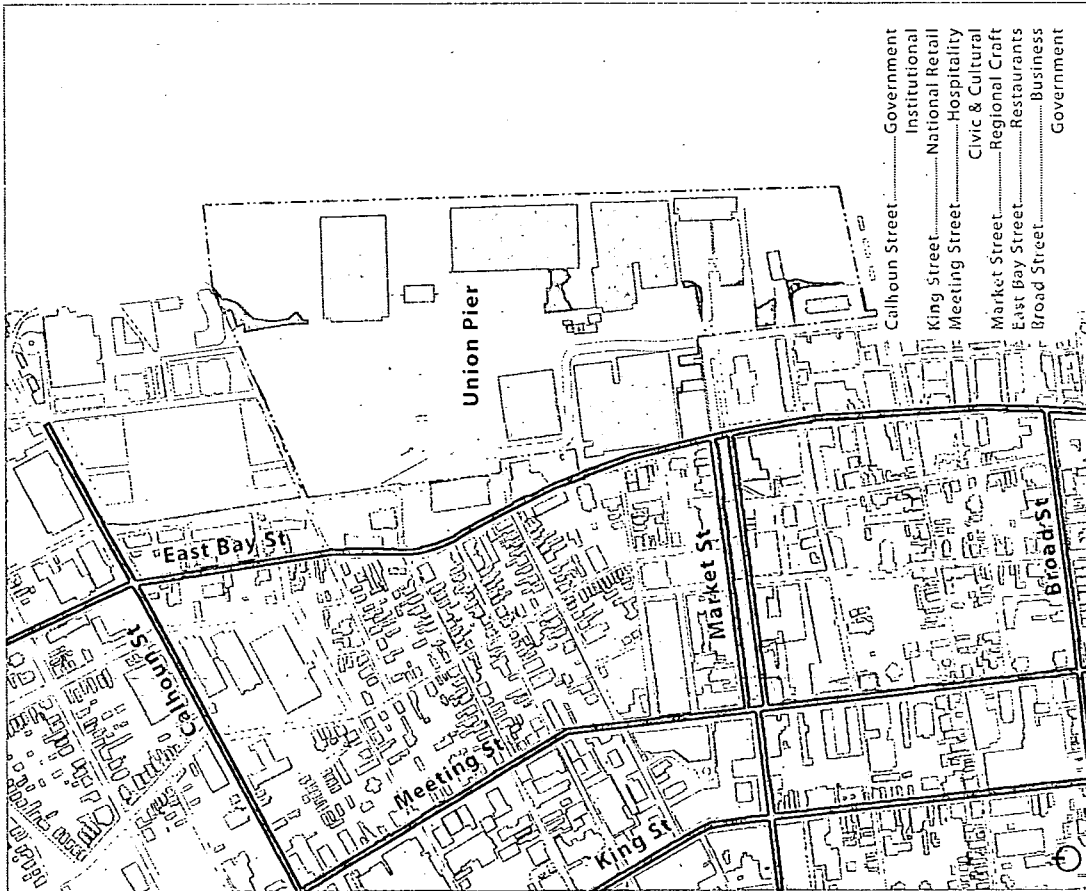
Similar in charm to the French Quarter, the tree-canopied neighborhood of Ansonborough is Union Pier's western neighbor. To the north, the neighborhood of Gadsden Wharf contains the emerging Concord Park development, formerly known as Ansonborough Fields, and is the site for the South Carolina Aquarium and the Charleston Maritime Center.

Neighborhoods are typically edged by or centered upon one of Charleston's primary streets. These streets, more than public open spaces, form the primary public experience, or public realm, that characterizes Charleston. The primary streets often have their own identity, stemming from the uses and activities that line them. Within the immediate vicinity of the Union Pier site are several of the city's most important streets. Union Pier Terminal is poised to connect to this cherished public realm through new street connections.





Adjacent neighborhoods



Street character

- Government
- Institutional
- National Retail
- Hospitality
- Civic & Cultural
- Regional Craft
- Restaurants
- Business
- Government

SITE ANALYSIS

HISTORY

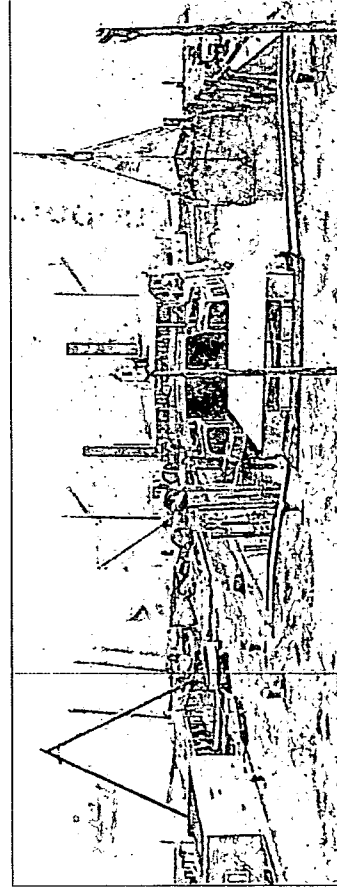
HISTORIC WATERFRONT

The rich and varied history of Charleston has been significantly shaped by the history of its harbor and its port. All maps and written accounts attest to this maritime focus. The Peninsula's eastern marshy shore, where land and water meet, was from the start a place of great and constantly changing activity which involved many of the city's most prominent names. Here wharves, piers, landings, storage areas, and warehouses vied for a waterfront site in which to load, unload, and process. The trade in indigo, rice, cotton, and naval stores as well as slaves account for much of the city's wealth, which over time resulted in the creation of some of our country's most beautiful public and private buildings, from churches and courthouses to private houses and gardens. This sophisticated urban setting became Charleston's hallmark. The working waterfront remained a driving commercial force which required continuous change in order to meet new needs, ship and cargo types, and required equipment from the 17th century to now. Oddly in a city which became obsessed with the history and preservation of old buildings, there was little interest in saving what was built on the waterfront. That was a place that had to do with business, where change was necessary to economic survival. The city's monopoly board had to be redone to continue to play the game of maritime money. At one time or another, what was land had become water and vice versa to this end. The only sure thing was that the waterfront remained a place of commerce and activity which continued to help support the city.



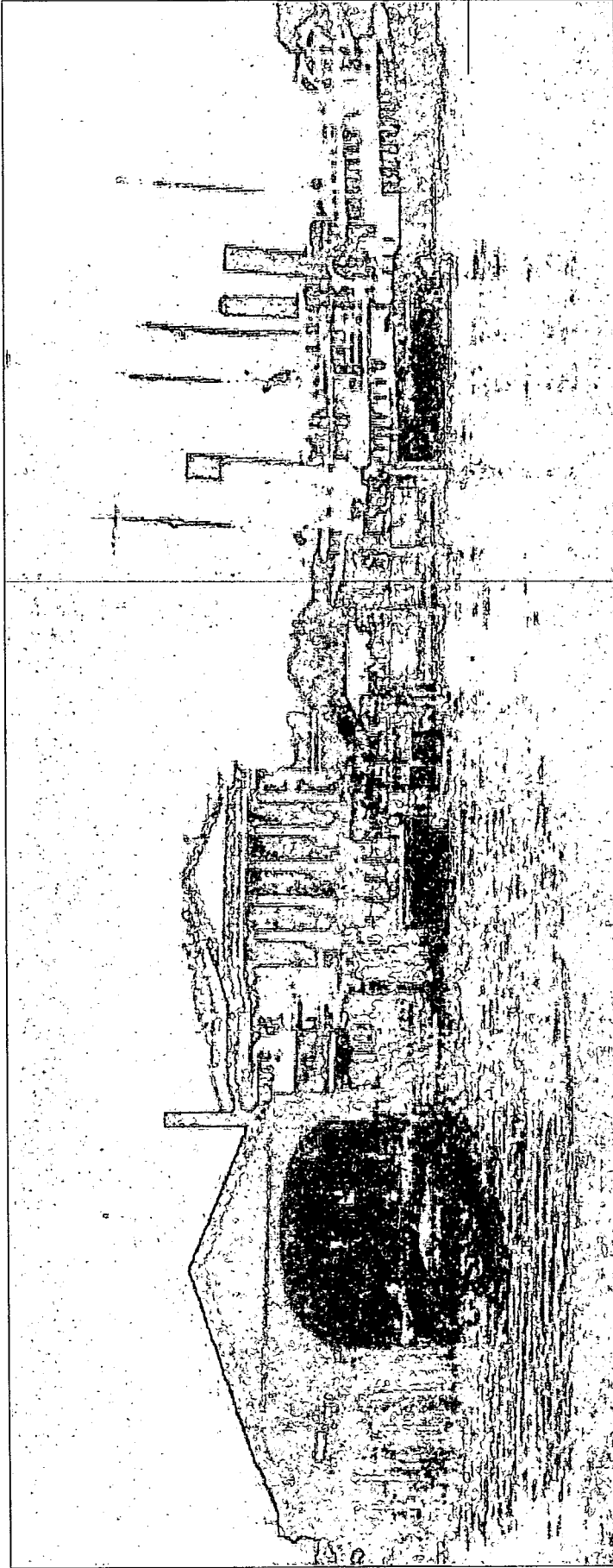
Mosquito Fleet daily landing

Today the Union Pier is due to have yet another change in its character, one which combines a new cruise ship terminal with real estate development and public access to the waterfront giving the city a new and valuable relationship to its history-making harbor. At the eastern end of Market Street, the granite lined landing on axis with the Custom House, now covered over with a parking lot, will be restored. The city will regain its formal front door to the ocean - a long overdue acknowledgement of the port's role in Charleston's ongoing success.

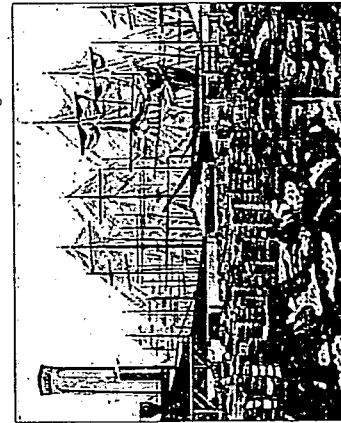


Public Landing - early 20th century

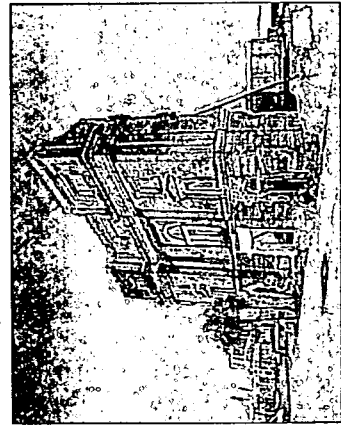
SITE ANALYSIS



Custom House and Public Landing at the turn of the century



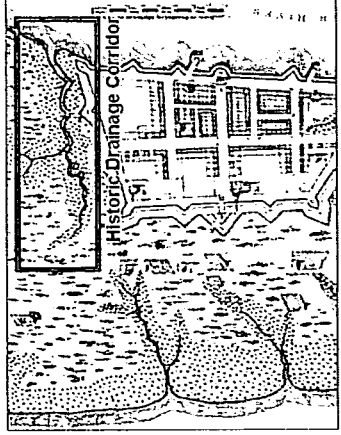
Union Cotton Press & Wharf Company, one of many private wharves at Union Pier in the 19th century



Bennett's Rice Mill facade today, constructed 1844



Site of Bennett's Rice Mill and Mill Pond



Historic Market Street drainage corridor

SITE ANALYSIS

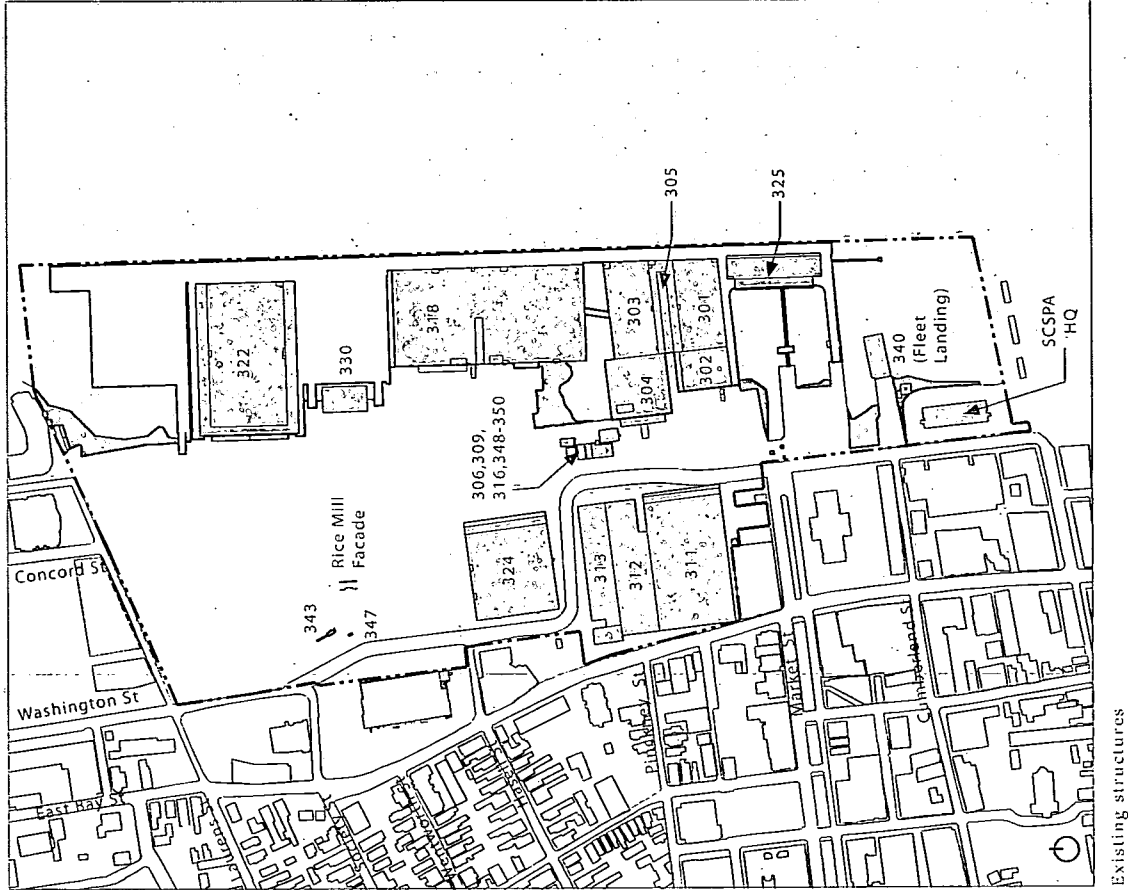
SITE

EXISTING CONDITIONS

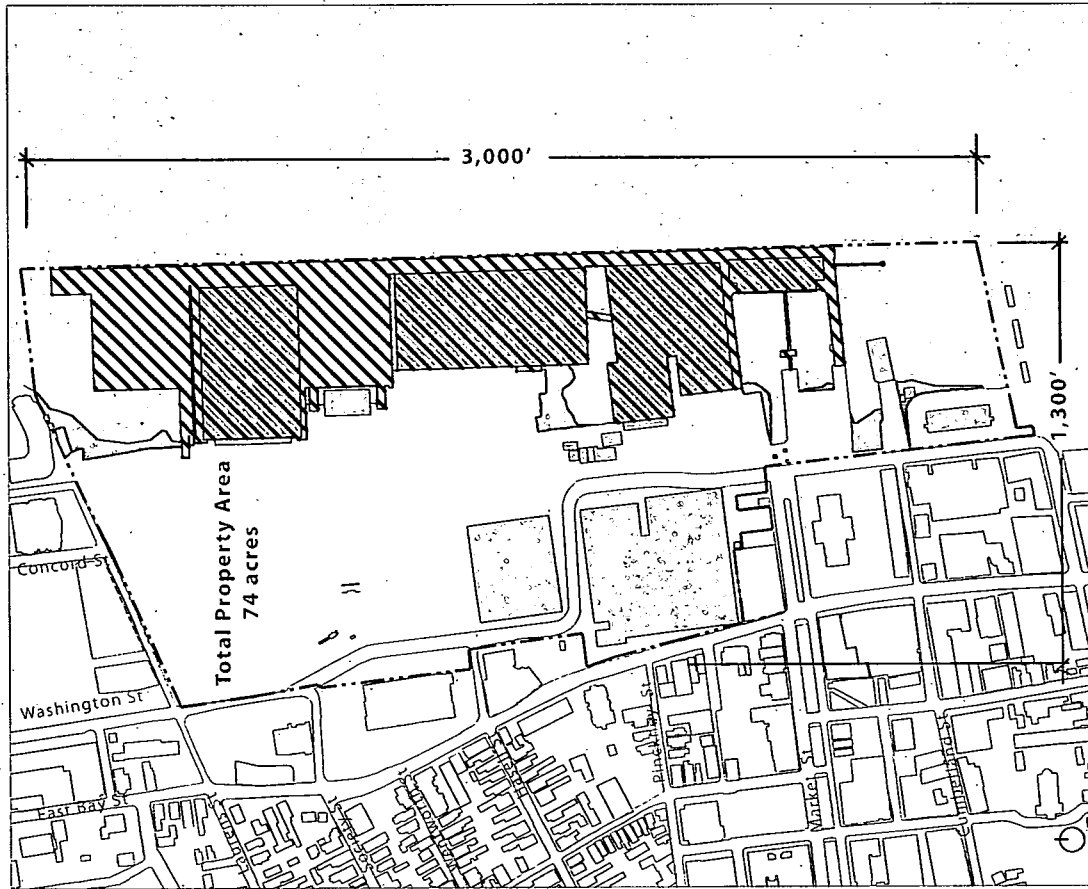
The Union Pier Terminal site is roughly 74 acres in area, of which 43 acres are land, 20 acres are constructed deck over water, and 11 acres are portions of the Cooper River contained in the tax lot. The site is roughly 3,000' long north-south and 1,300' at its widest point. The constructed wharf is 2,470' long.

BUILDING INVENTORY

Building Number	Area (sf)
301	39,685
302	21,350
303	41,246
304	39,428
306	2,421
309	1,150
311	106,155
312	46,900
313	37,853
314	381
316	2,757
318	92,605
322	108,480
324	80,366
325	30,216
330	11,505
341A	1,351
341	13,464
343	288
344	412
345	412
347	105
348	900
349	1,098
350	961
360	108



SITE ANALYSIS



Dimensions

Existing Deck Area

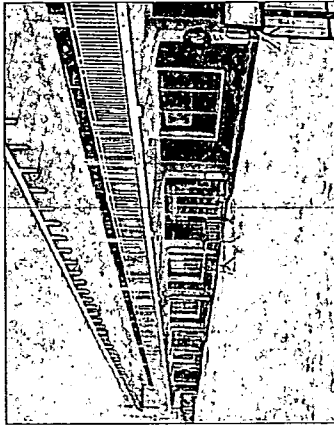


Aerial

SITE

The site has three primary uses today, which include the location of the SCSPA headquarters building, the Cruise Ship Terminal and its associated parking and service facilities, and a large roll-on/roll-off cargo operation. The majority of the site is dedicated to the roll-on/roll-off operation, currently serving the import and export of BMW motor vehicles. Over 680,000 SF of shed structures dot the terminal. Many of the sheds are served by multiple rail lines that cross the site.

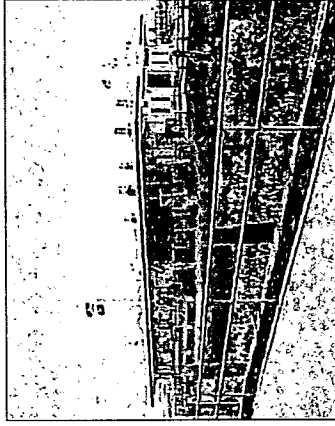
Other buildings and uses on the site include a restaurant, Fleet Landing, which occupies a former Navy building built in 1942 at the foot of Cumberland Street, and the historic Bennett's Rice Mill façade. Bennett's Rice Mill opened in 1845 during the heyday of South Carolina's rice production. In the early 20th century, the Bennett family sold the mill and it was eventually acquired by the SCSPA in 1958. Nearly destroyed by a hurricane in 1960, the façade is supported today by a steel frame and surrounded by a fence. Through agreements with the SCSPA, local preservationist groups have assumed the stewardship of the façade.



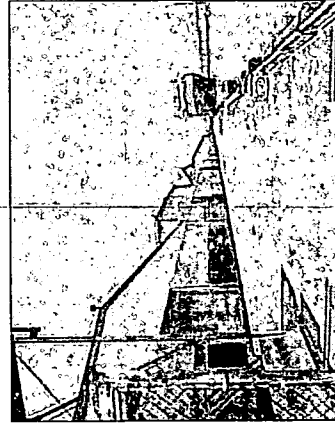
SCSPA Headquarters



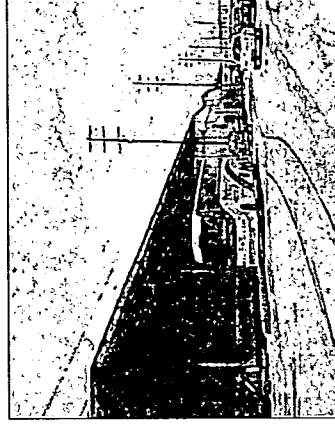
Existing Cruise Terminal



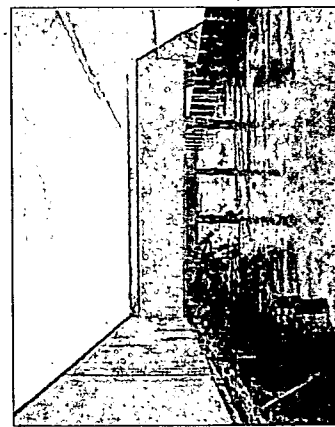
Fleet Landing restaurant



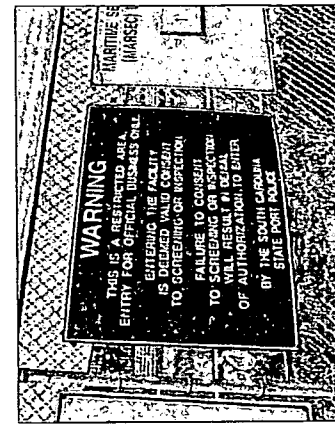
Existing warehouses and wharf



Existing warehouses along Concord Street



Existing warehouse and deck structures



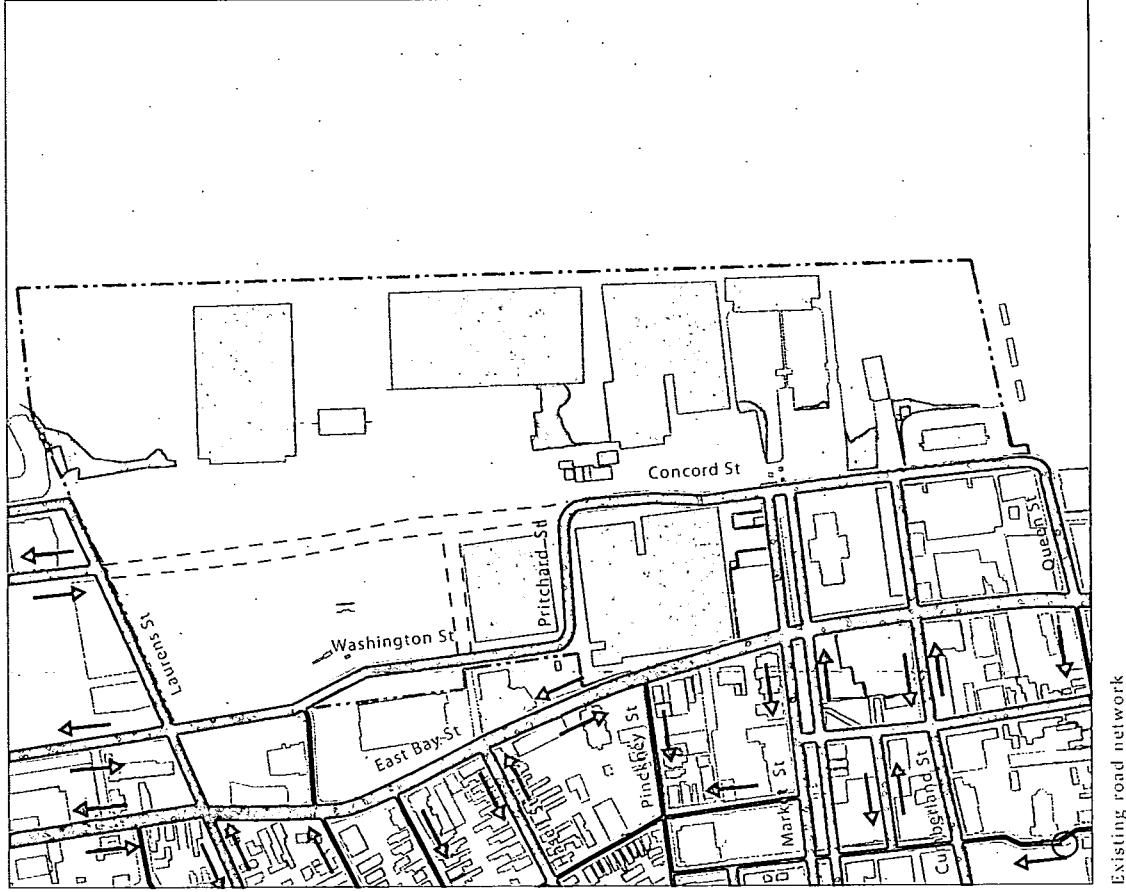
Existing restricted access at site

SITE ANALYSIS

EXISTING ACCESS AND STUDY AREA ROADWAYS

Charleston is served by a primary and local street network that forms an imperfect grid over the Peninsula. Transportation in the Peninsula is multi-modal; visitor and local passenger vehicles, charter buses, transit, and pedestrians and bicyclists share the roadways.

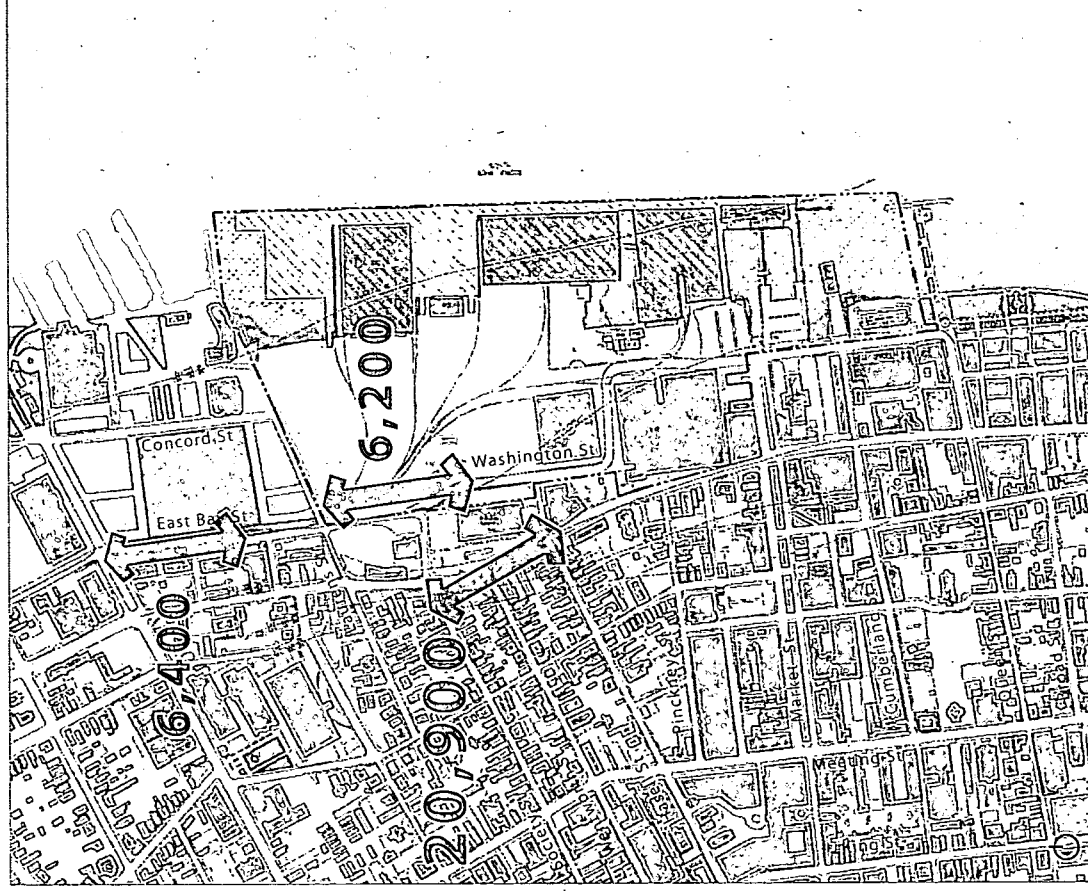
The primary regional access to the Concept Plan area is via I-26 and US17. Traffic from these highways make their way to the Concept Plan area on East Bay and Calhoun Streets. Local access to the Concept Plan area is provided by a number of east-west streets including Laurens Street, Society Street, Hasell Street, and Market Street. North-south travel within the Concept Plan area is accommodated by Washington Street and Concord Street.



SITE

The following section describes the primary regional and local streets serving the Concept Plan area:

- East Bay Street is a four-lane roadway throughout most of the study area. It provides a critical north-south link on the east side of the Peninsula, carrying approximately 21,000 vehicles per day (see Figure this page). On the northern end of the study area, East Bay Street becomes Morrison Drive, then Mount Pleasant Street as it reaches I-26.
- Washington Street is a two-lane roadway in the northern section of the study area with parking on both sides of the roadway in most of the study area. Washington Street carries approximately 6,000 vehicles per day (see Figure). In the middle of the study area, Washington Street makes a series of sharp turns and becomes Concord Street.
- Concord Street is a two-lane roadway in the southern section of the study area. There is on-street parking on both sides of the roadway on the southernmost block.
- Major east-west streets include Calhoun Street and Market Street. Calhoun Street is a four-lane roadway that traverses the Peninsula and provides direct access to US 17 to the south. Market Street is a two-lane roadway providing east-west access between King Street and Concord Street.



Study Area Daily Traffic Volumes

The transportation analysis for the Concept Plan reviews traffic conditions on the primary streets accessing the Concept Plan area. The ability of these streets to accommodate traffic is defined by the capacity of their intersections, thus the transportation analysis focuses on the operation of the following intersections:

1. Mt. Pleasant Street at I-26 Off-ramp
2. Mt. Pleasant Street at I-26 On-ramp
3. Morrison Drive at US 17 Off-ramp
4. East Bay Street at Chapel Street
5. East Bay Street at Calhoun Street
6. East Bay Street at Market Street
7. Washington Street at Calhoun Street
8. Washington Street at Laurens Street



Study Area Intersections

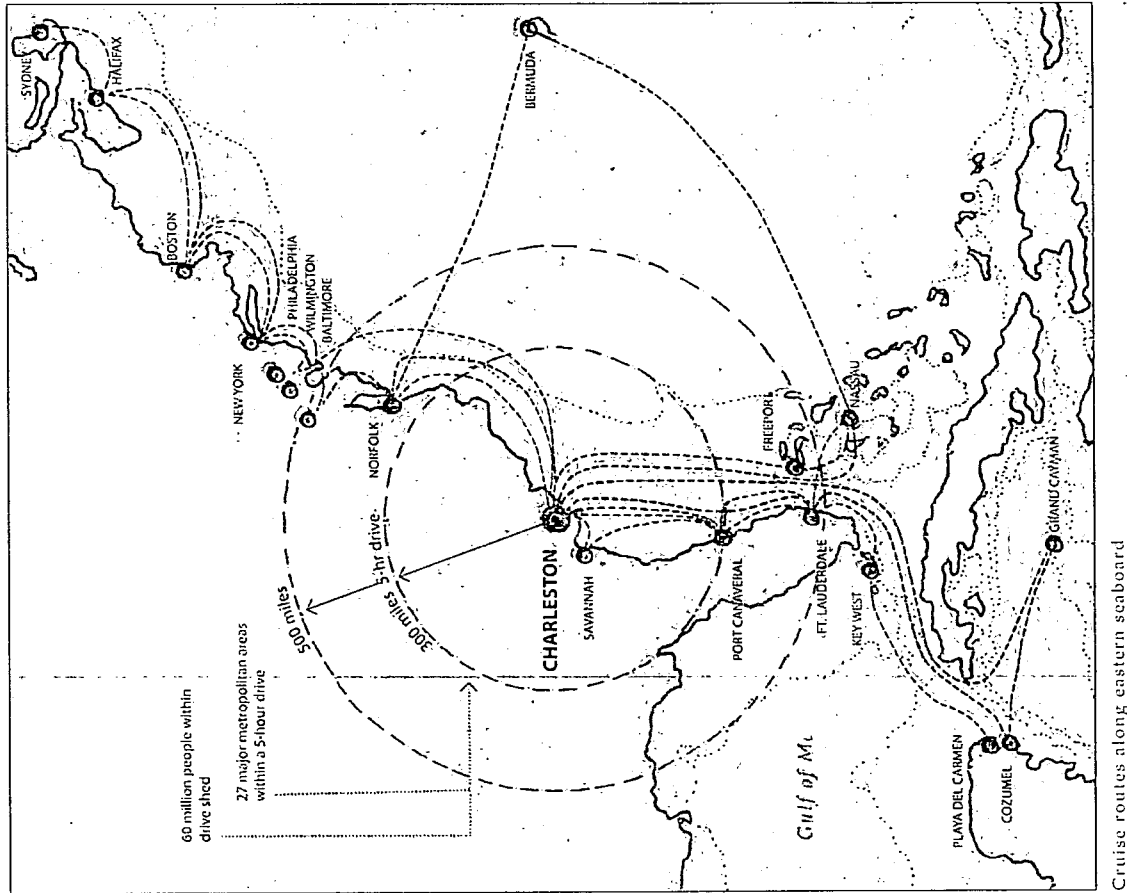
III. CRUISE TERMINAL DISTRICT

INTRODUCTION
SITE SELECTION
CONCEPTUAL SITE PLAN
CRUISE TERMINAL PROGRAM
TRANSPORTATION AND TRAFFIC

INTRODUCTION

Charleston is located on the eastern seaboard, approximately halfway between the Florida deepwater ports and the Northeastern centers of population, including the ports of Baltimore, Philadelphia, New York and Boston. Charleston provides the southeast United States with the ability to serve a very active drive market, unique to the region. A limited airline connection for Charleston assists cruise lines in capping their passenger loads from Charleston homeport.

Charleston has been identified as a single vessel, single cruise passenger homeport terminal location. Charleston does not lend itself to multi-vessel homeporting, but does allow for the possibility of homeporting and port of call activities. It is not anticipated that both homeporting and port of call take place at the same time, except for in the event of emergencies, weather conditions, and other nautical events.



VESSEL CHARACTERISTICS

The design vessel requirements listed in the Concept Plan Request for Proposal (RFP) is for homeporting a 3,450 passenger ship at a Cruise Passenger Terminal. All Cruise Terminal operations, including parking, Customs and Border Protection (CBP), and other program elements have been considered and will accommodate the passenger capacity as listed. Additional considerations and information will be needed beyond the Concept Plan level to identify and address specific ship needs.

RECOMMENDED DESIGN VESSEL SIZE (POST-PANAMAX)

Passenger Capacity	3,000 to 3,500
Crew	Up to 1,200
Gross Tonnage	100,000 - 150,000
LOA (ft)	950' - 1,100'
Beam (ft)	120' - 160'
Draft (ft)	28' - 32'
Air Draft (ft)	Up to 200'

VESSEL BERTHING REQUIREMENTS

B&A recommends providing 3 x 200 - 250 ton, high-capacity wind bollards, 3 x 100 - 150 ton mooring bollards and additional spring bollards. These requirements will need to be refined during the design of the terminal renovations with additional studies to ensure that placement and capacity will serve all future ships calling on Charleston.

GANGWAY REQUIREMENTS

B&A recommends the use of two telescoping, fixed rotunda gangways with wheel bogies to manipulate the gangways in place. Building 322 layouts provided on page III.14 indicate the proposed placement of the gangways' fixed points. Final gangway locations, tide variation, connections to ship for passenger loading and other specifics should be studied with the design of the terminal.

CRITERIA	ASSESSMENT
Marine Access (short channel)	↑
Terminal Location	↑
Pier/Berthing (length and use of berths)	□
Apron	□
Gangways	□
Terminal Structure	↓
Terminal Operations	□/↓
Ground Transportation Area (GTA)	□
Parking (proximity to terminal)	□/↓
Provisioning	□
Security	□/↑
Landside Access (roadway access)	↑
Airport and Airlift	↓
Lodging	↑
Attractions and Venues	↑
Access to Consumers	□/↑
General Appeal	↑
Marketing/Communications	□

Cruise market - 2008 Assessment of Attractiveness of Port of Charleston

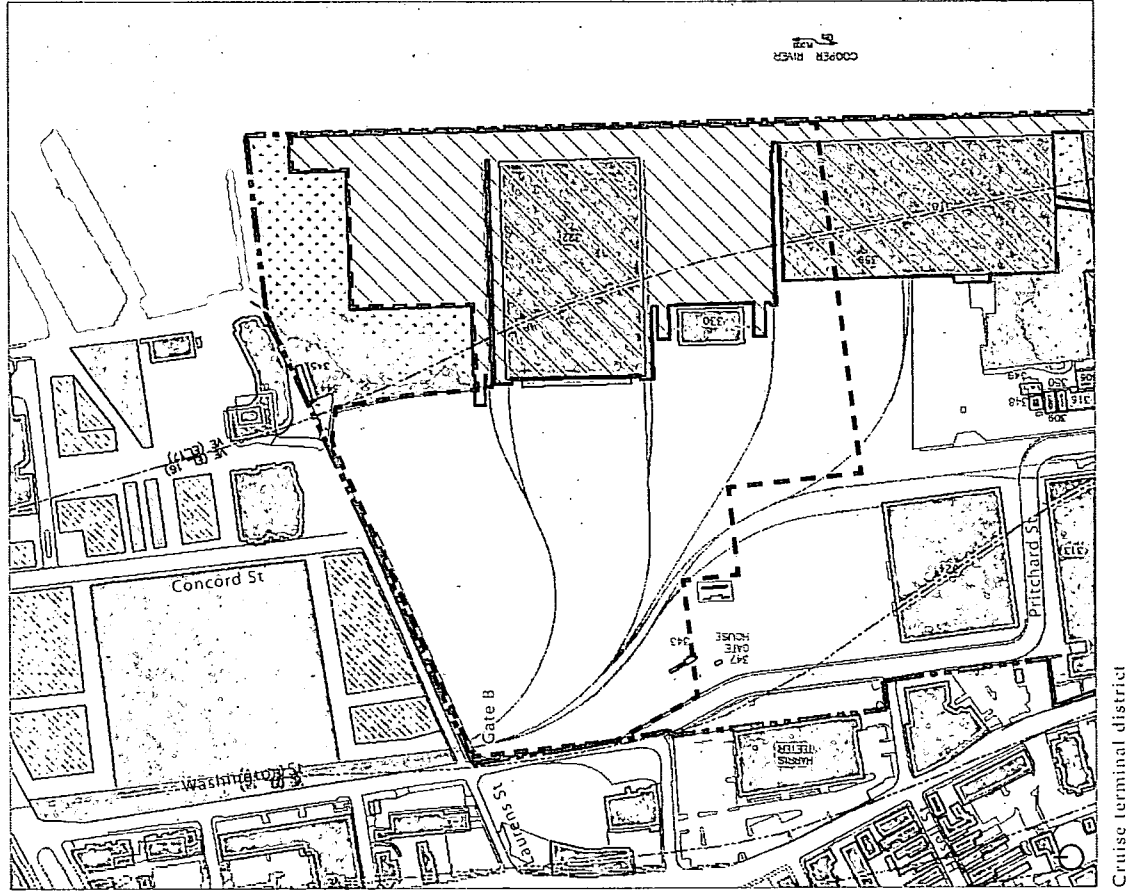
↑ Strong □ Fair ↓ Weak

SITE SELECTION

During the initial process of planning Union Pier, the site area was limited to the south end of the pier. Buildings 301, 302, 303, 304, 305, 306, 309, 311, 312, 313, 316, 324, 325, 348, 350 and 354 were included in the study area and formed the basis for the Cruise Passenger Terminal. In early November of 2009 the Concept Plan study area was expanded to include the entirety of Union Pier. Building 322 was identified for consideration to be renovated into a Cruise Passenger Terminal.

Building 322 and the surrounding site afford the ability to contain cruise operations to an area within the SCSPA property, eliminating the need to extend cruise operations to public streets. Among the positive elements of the site, existing conditions can easily accommodate at-grade parking, ground transportation areas for buses, taxis, private-owned vehicles, service trucks, and security and government agencies. Building 322 provides sufficient area within its footprint to be renovated into a cruise passenger terminal. Based on the vessel size listed in the SCSPA's RFP the building's size can provide all necessary spaces to successfully process a cruise ship. Additionally, the location of the building within Union Pier is ideal because of its longer surface dock apron, closer proximity to the interstate highway, and the ability to remove cruise traffic from historic Downtown Charleston. From the maritime standpoint, the channel and berth already accept large service and car carrier ships making the location ideal for cruise ships to berth.

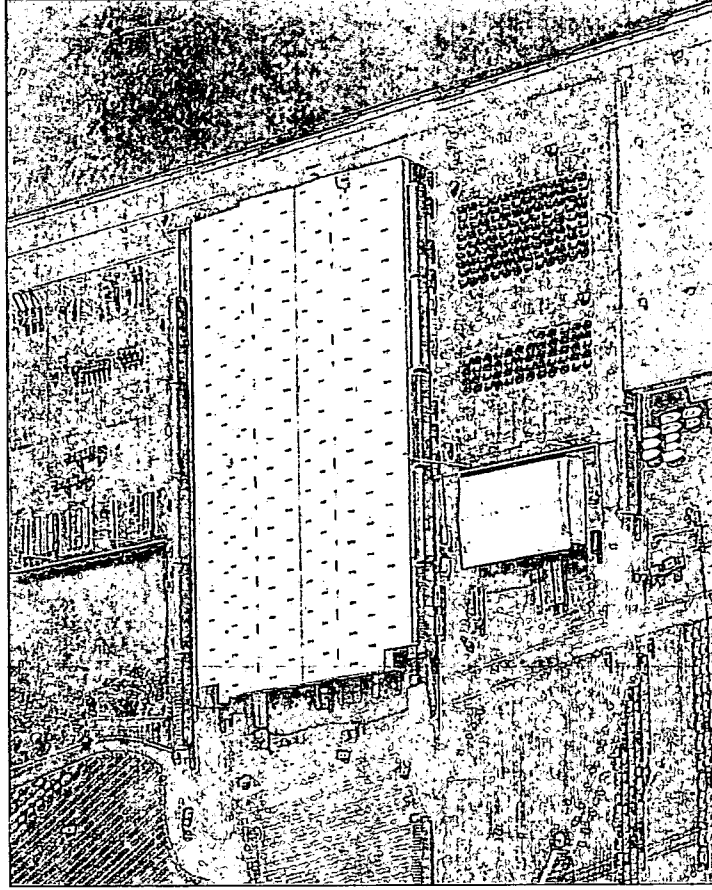
Any construction, renovation, or improvement to the area selected for cruise passenger operations needs to be based on sound economic models, with viable return on investment. Additionally, these improvements need to be tailored towards the SCSPA's cruise business and the ability to welcome more than one cruise line from a single cruise berth.



From the operational standpoint the site offers the following:

- The ability to minimize traffic congestion by separating passenger drop-off and pick-up zones from all other forms of traffic, local or cruise related,
- The ability to separate cruise-generated pedestrian traffic from vehicles serving the cruise terminal,
- The ability to store queued vehicles on the site without obstructing local traffic flow,
- The ability to bring service vehicles to the cruise ship without disruption to passenger traffic, by utilizing available ramps and roads.
- The ability to provide separate areas for buses, taxis, and passenger pick-up/drop-off zones within proximity of the entrance to the terminal.
- The ability to provide passenger parking in the immediate proximity to the terminal by utilizing existing paved areas currently being used for vehicle storage. In essence, this is a positive to both operations and cost of construction, since paved areas already exist and small modifications are all that would be needed.
- A great deal of flexibility is added with the removal of railroad lines and spurs entering the site and building by the elimination of limitations to parking, drives and deck height configurations.
- A proposed site plan and terminal conceptual layout was presented to the cruise lines and was well received. Of particular interest to the cruise lines is the ability to embark and disembark passengers simultaneously within the site and more significantly inside the building, by using two gangways and clearly separating embarkation and disembarkation areas.

B&A believes Building 322 and its adjoining site area are prime candidates to be renovated into a modern day Cruise Passenger Terminal serving Charleston's cruise business for years to come.



Building 322



Building 322

CONCEPTUAL SITE PLAN

UNION PIER - CONCEPTUAL SITE PLAN

The Cruise Terminal District is an area zoned to address the operations of cruise embarkation and disembarkation and port of call operations.

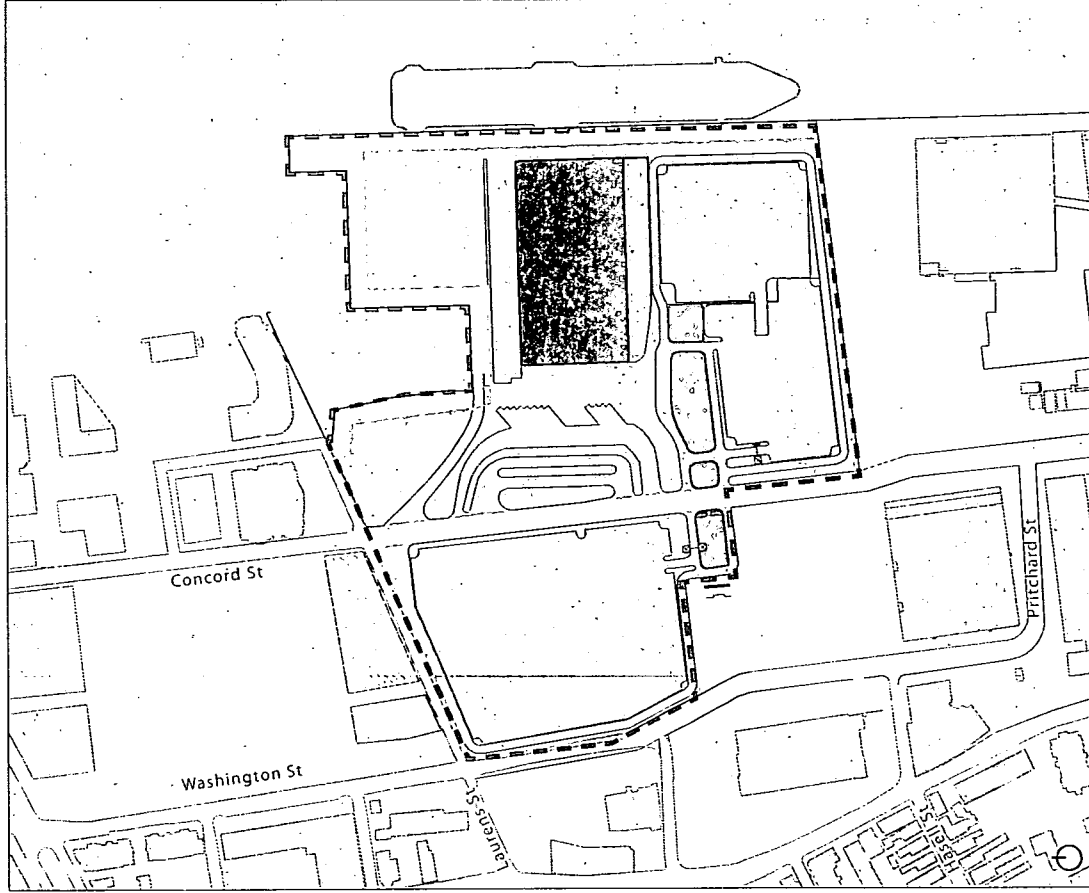
- Cruise passenger terminal,
- At-grade parking for the anticipated passenger size vessel,
- Separate areas for drop-off and pick-up by buses, taxis, and private owned vehicles,
- Roads and drives to allow service trucks to reach the dock apron,
- Parking for cruise line employees, government agencies, and security personnel,
- Elevated deck for servicing the cruise vessel and to operate as a dock apron.

BUILDING 322 - CRUISE TERMINAL

Building 322 is presently a warehouse used to store household goods in transit located within the South Carolina State Ports Authority's Union Pier, at its north end. The footprint of Building 322 is a 240' x 450', or approximately 108,000 SF, in a single story building with a small suite of offices located on the second floor, southeast corner of the building. Construction of the warehouse is elevated cast-in-place concrete deck over piles above the Cooper River. The load bearing capacity design for the deck is 600 LB/SF, as evidenced by the painted markings in the interior of the structure. The building's exterior, from 8' above the finished floor up is steel framing with painted galvanized stamped steel cladding for both vertical and roof surfaces. Skylights are evenly spaced throughout the roof and bring limited natural light to the interior. From the finished floor to 8' of height, walls are cast-in-place concrete. There is a row of columns through the middle of the building in the east-west axis; all other structural supports are at the perimeter, on top of the 8' high concrete wall. On the north and south sides of the building railroad spurs allow railroad cars to serve under the building's roof. A loading dock extends into the railroad area at the same elevation as the interior of the building. Railroad lines are set up lower than the finished floor so cars can transfer goods to the building at the same height as the building's interior by matching the railroad car's floor to the building's finished floor.

CRUISE DISTRICT

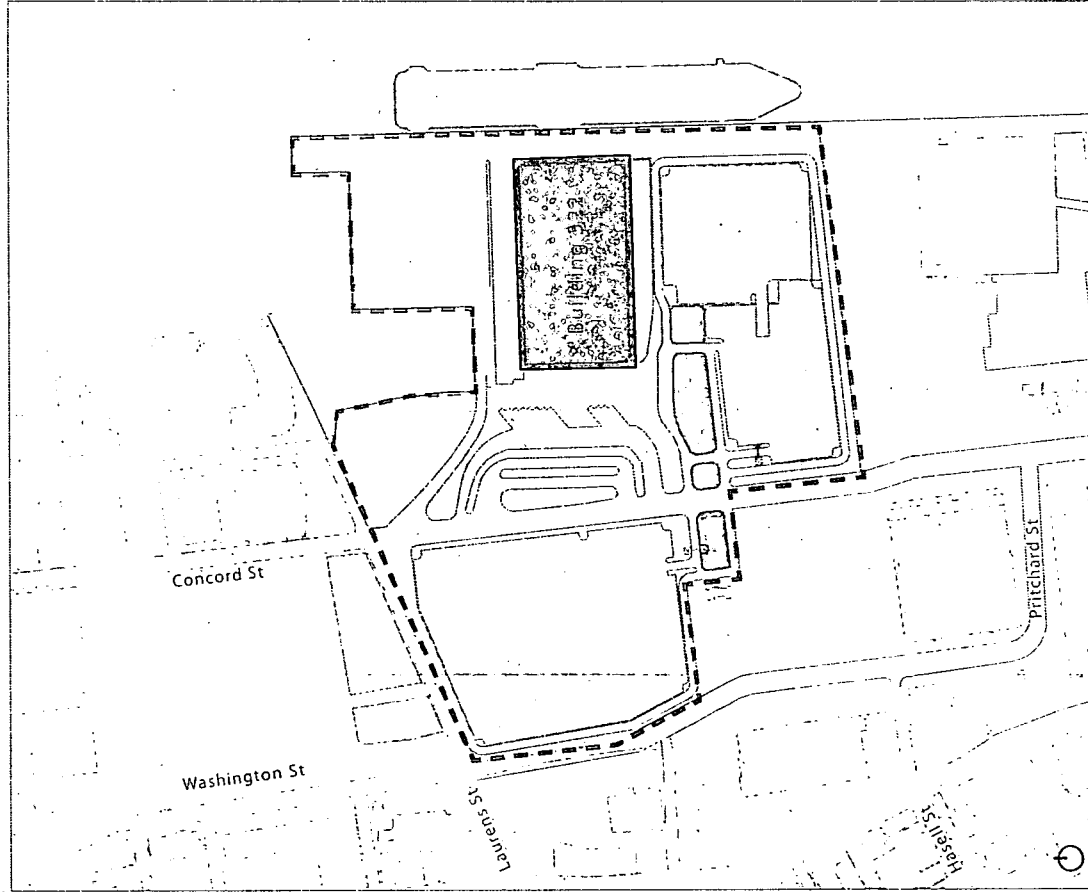
III.5



Concept plan

Large overhead coiling doors and personnel doors provide access on all 4 sides. There are three sets of restrooms, two are located on the west side of the building on the north and south sides, and the third one is part of the suite of offices and serves the dock area at the same level as the dock. Electric service provides power to lighting, fans and outlets. The building has a fire suppression system with fire sprinklers, fire risers, and fire control equipment. General warehouse lighting is by large roof structure suspended fixtures. Roof mounted electrically operated fans provide air movement. The building and its systems appear to be in good condition, based on our visual observations. Elevated concrete deck, exterior walls, including both concrete and steel frame, and cladding are in very good shape. Further in-depth analysis of the structure's design and condition are needed to establish if the building can be used as a cruise passenger terminal, with the main concern focused on the steel structure's ability to meet building codes for both high wind and seismic conditions.

As presently configured, the existing building provides a flexible platform to renovate into a workable cruise passenger terminal. There is adequate floor area and the fact that the space is uninterrupted, except for a single row of columns, makes Building 322 a good candidate for conversion.



Cruise terminal

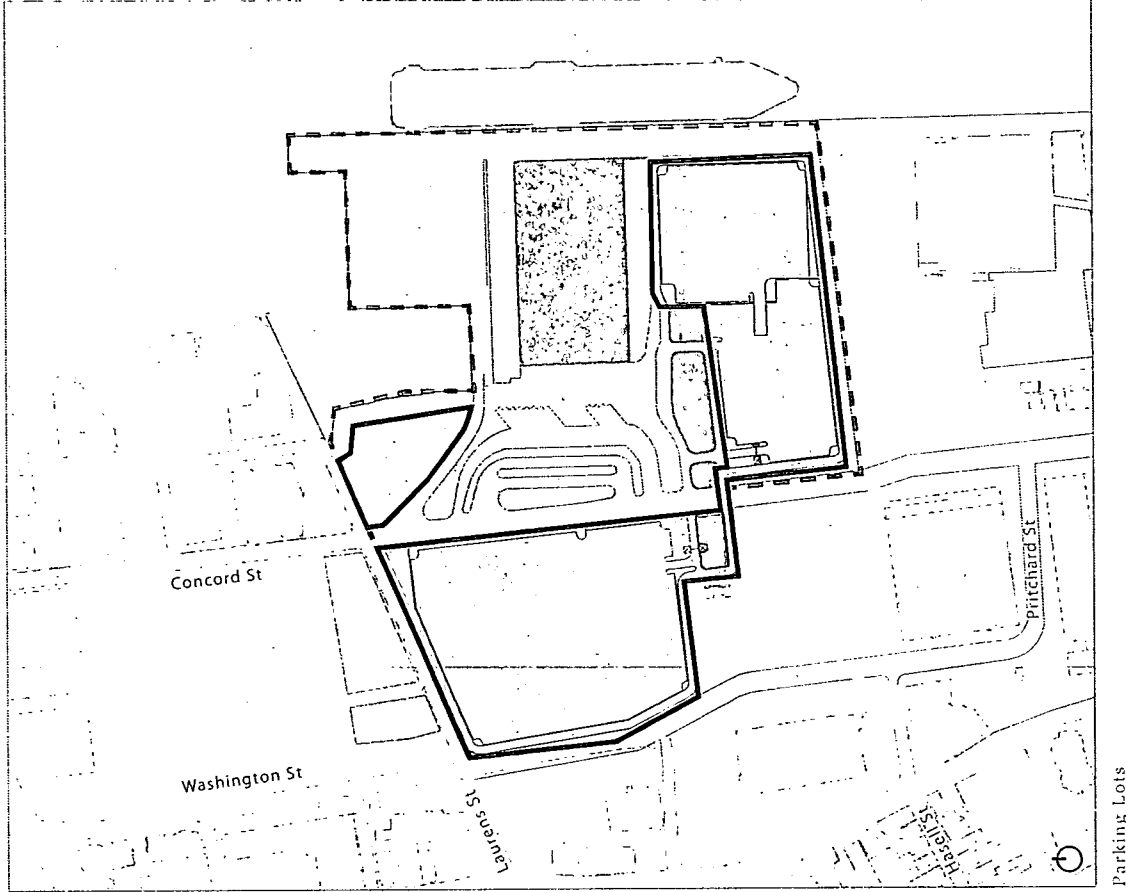
CONCEPTUAL SITE PLAN

PARKING LOTS

The site located directly west of Building 322 is presently asphalt paved and is part of the SCSPA property. There are numerous railroad lines that enter the site from the northwest at a gate referred to as Gate B. The area is used by BMW to load vehicles to car carrier ships that dock at the north end of Union Pier. Vehicles arrive at Union Pier via railroad, are driven off the railroad cars, and marshaled for shipping. Storage of vehicles takes place on the elevated decks to the north and south of Building 322, in adjacent Building 318 and at-grade paved areas west, north, and south of Building 322. Access to the dock apron is through existing ramps connecting paved areas to the elevated deck. There are two large cast-in-place concrete ramps to the north and south of Building 322, with a third ramp south of Building 330. Two large open elevated decks at the same elevation as the interior of Building 322 exist to the north and south of building 322. The one on the north side serves as staging for heavy equipment, buses and motor coaches. The one on the south side is primarily used for BMW vehicles.

Building 330, referred to as the 'boat storage', is located south of Building 322. The structure is an open building with its main floor matching adjacent grade to the west. Building 330 has permanent walls to the north, east, and south, and a roof. Long trailers are stored inside. This structure provides no useful value in the cruise passenger terminal and should be removed to provide for surface parking.

From the west to the east, starting at Washington Street, uplands and paved areas slope to the river, creating a height difference to the elevated deck in Building 322. Approximately 5' separate land area from the building's finished floor elevation. That height varies through the length of Building 322's west façade. A network of railroad lines and spurs is also located in this area. A topographic survey to confirm elevation differences is needed to accurately establish grade differences throughout the existing paved upland. Between Concord and Washington streets, directly west of Building 322 is South Carolina Electric & Gas Company property currently leased by the SCSPA. SCSPA advised the Concept Plan team that the area cannot be used



for building permanent structures; parking and other surface-only uses may be allowed.

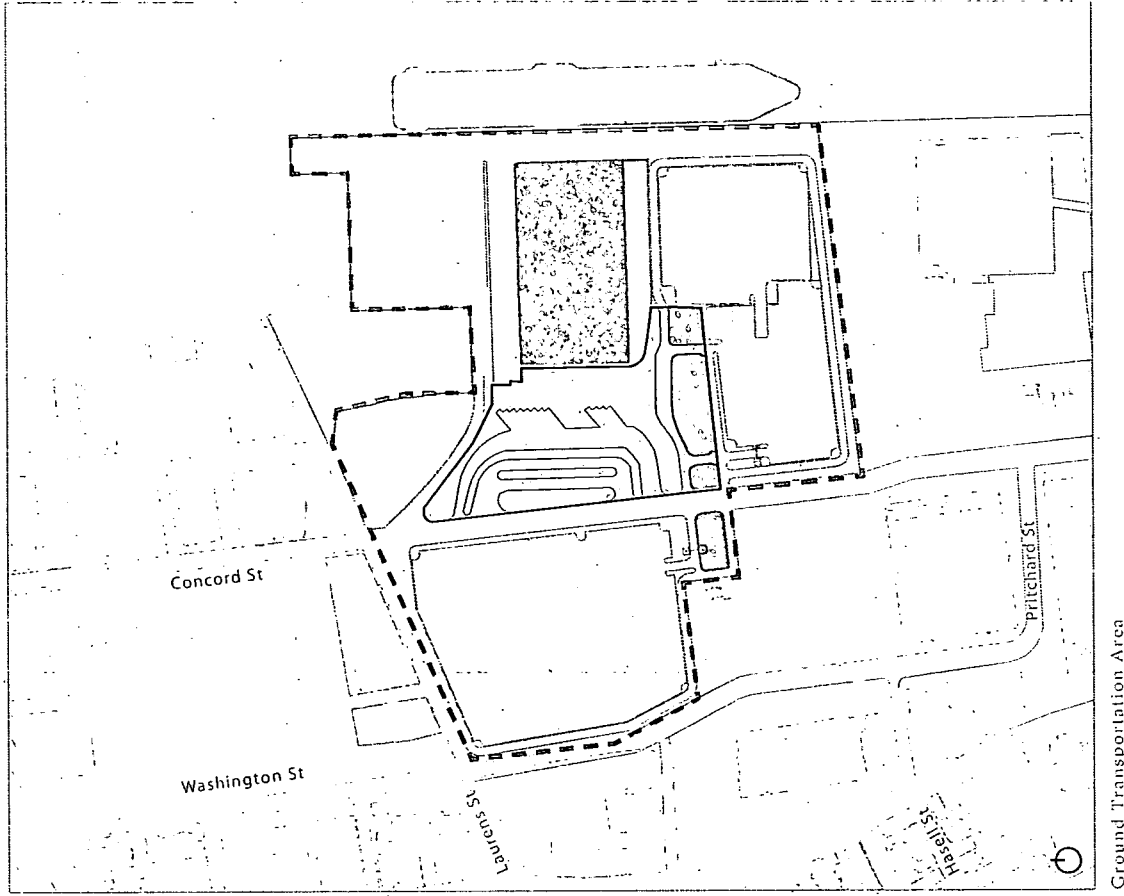
SCSPA constructed a gatehouse north and west of the Rice Mill façade to control access to the north end of Union Pier. The gatehouses are identified as buildings 343 and 347 and appear to be pre-engineered structures surrounded by concrete barriers and gate arms that control access and direct traffic to the pier.

GROUND TRANSPORTATION AREA

Managing vehicles transporting passengers, products, and services to the Terminal needs to be accomplished with a great deal of efficiency. Ground transportation area [GTA] addresses each type of vehicle and service provided separately in order to maintain efficiency, avoid tie-ups and delays, and to make the passenger's experience pleasant. Separate driveways and waiting areas are provided for motorcoaches / buses / mini-buses, taxis, private automobiles, and service trucks. By separating each of the vehicle types, functions and services are separated. This allows for efficiencies in each of the vehicular movements since they are not mixed. Traffic flows are improved and the time needed to process disembarkation and embarkation is reduced, since reaching the Terminal and ship are accomplished without overlapping traffic functions.

Motorcoaches, Buses, Mini-buses or Shuttles

Since these vehicles transport the greatest volume of people and luggage, the area closest to the Terminal building's main doors is the best suited location. Twelve spaces for these vehicles have been placed just west of the western face of Building 322. An ample plaza area is provided between bus parking and the building to allow disembarking passengers to gather their belongings and companions and be given direction to proceed to a determined vehicle based on destination. When passengers are embarking, this same area allows them to hand over their luggage, gather their travel documents, and proceed to the Terminal away from other passengers and their luggage.



CONCEPTUAL SITE PLAN

Also, these larger vehicles require larger paved areas to make turns and navigate through traffic. Wider turning radii, longer approaches, deeper parking spaces, and an area where passengers and bags can be loaded and unloaded into the vehicles is provided. Angled parking is used to allow for easier arrival and departure. In addition to vehicle back-up space, a bypass lane is provided. This feature allows for continuous movements without interruptions while a bus backs up from its stall.

Taxis

An area where passengers arriving by taxi are loaded and unloaded is provided just west of the bus parking area. The most efficient way to move taxis is by providing linear sections where taxis pull in, passengers step out, bags are handled by stewards, and passengers proceed to the Terminal. Two drop-off linear lanes are provided in order to accommodate approximately twelve taxis. Each of the drop-off lanes is next to an area wide enough to have passengers, companions, and bags out of the way of traffic during embarkation, and where passengers waiting to get into taxis can safely wait out of traffic lanes. Bypass lanes are provided to each of the taxi lanes, much like in the case of motorcoaches, buses, and mini-buses, these lanes allow for standing vehicles to load and unload without impacting the flow of cars that have completed their process.

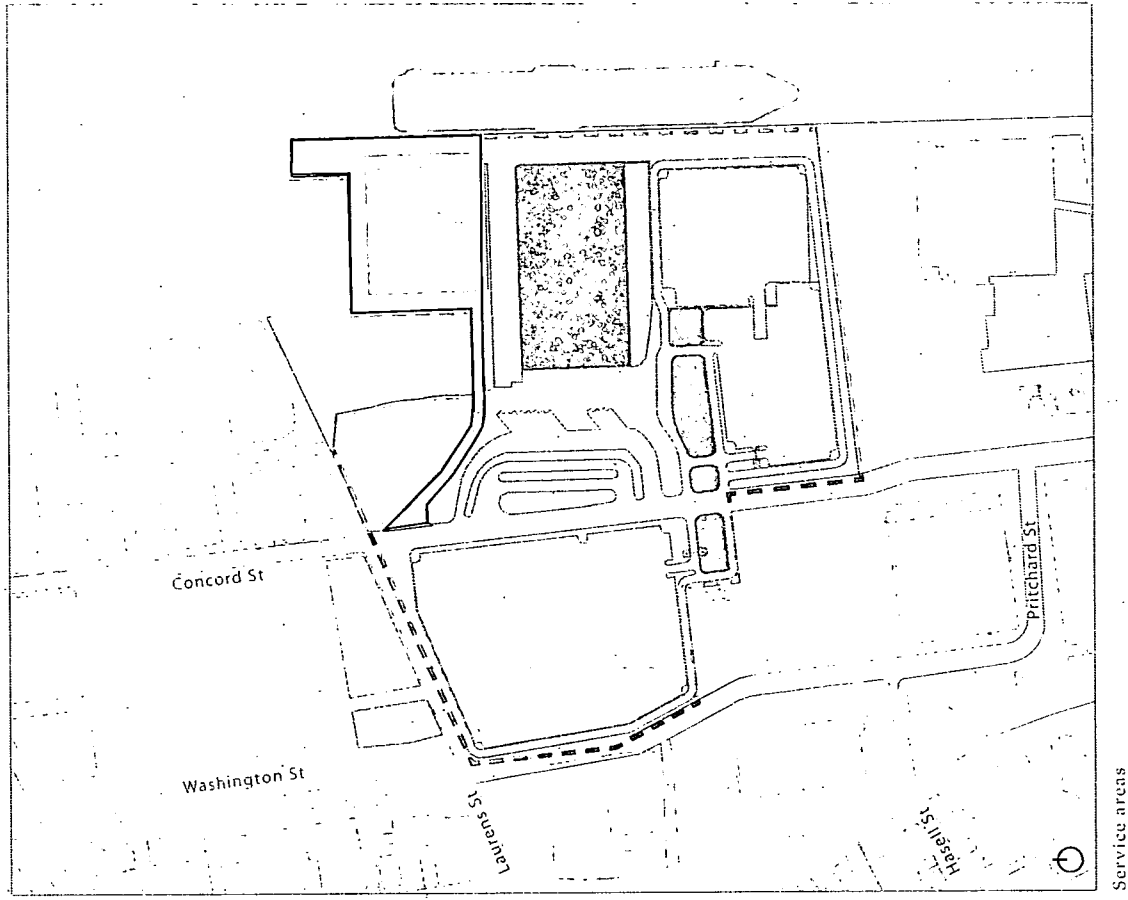
Automobiles

In order to manage the drive market served by Charleston's cruise business a large area dedicated to serve the private passenger drop-off is provided. The south side of Building 322, starting west of the existing elevated ramp, is designated for private drop-off. Arriving passengers will loop around the internal drive system, cross over Concord Street and proceed to the south side of the Terminal. Driver's companions and their bags will be dropped off at the curb, the bags will be taken to screening, and the passengers to the Terminal. The driver will park in the adjacent parking lots, walk to the Terminal where they will join their companions to enter the building. As in the case of buses and taxis, a bypass lane is provided to ensure rapid movement of cars without the delays associated with stopped cars while their passengers are unloaded.

CRUISE DISTRICT

SERVICE AREA

Service and provisioning trucks are provided with a separate drive for their use. These trucks need to get to the dock apron to be staged and unloaded after clearing security and a direct driveway is the best and fastest way to accomplish this goal. Given that most of the traffic reaching Union Pier comes from I-26 to the north, getting service trucks off city streets as soon as possible, as well as providing trucks with the first and most convenient access driveway, will improve both city and terminal traffic. Most provisioning trucks are long and slow, requiring long drives with easy turning radii. The northernmost drive entering the Terminal site provides stores trucks with dedicated direct access to the dock apron using the existing ramp located on the north side of Building 322. By placing trucks on the north side, interaction with other vehicles is eliminated. Once trucks reach the dock apron, there's ample space for them to stage and be directed to the cruise ship. In some cases, the aft section of the ship will be immediately located within the staging area, making the loading process even easier. Exiting the Terminal is just as simple; just reverse the ingress operation to leave the area.



CRUISE TERMINAL PROGRAM

Based on the original SCSA direction, the Terminal was designed for a 3,450 passenger vessel conducting Homeport operations. Listed below are the interior spaces and related areas needed to process such a vessel:

EMBARKATION AREAS

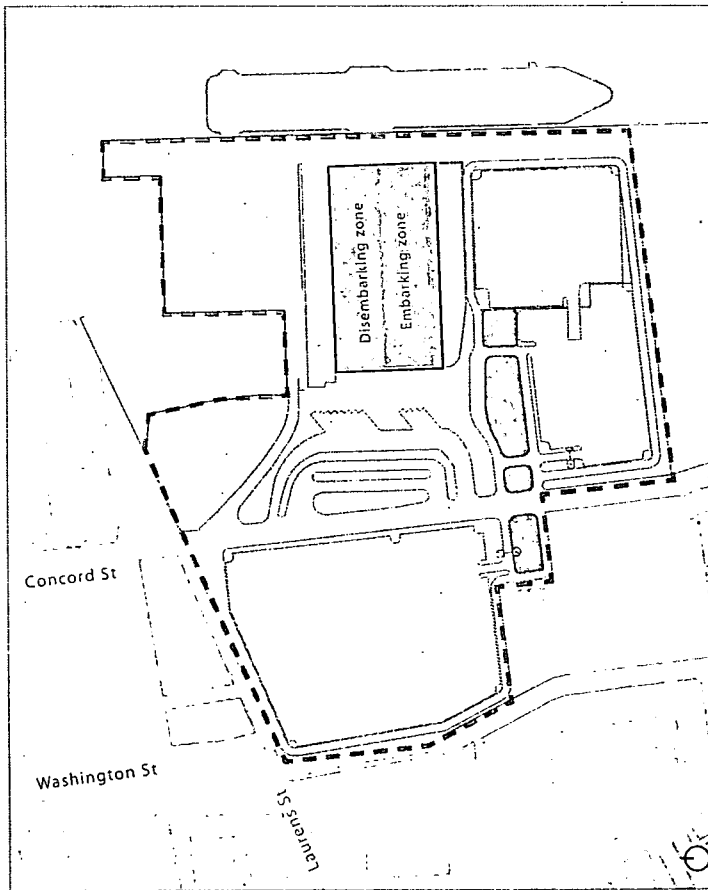
Passenger screening, cruise line check-in, waiting, restrooms, cruise line offices, and vertical circulation are needed for embarkation at the ground floor and would require approximately 54,000 SF to move passengers through a 2 1/2 hour embarkation process parameter.

A second level / mezzanine concourse connecting vertical circulation with the gangway, including restrooms and vertical circulation, will require about 4,400 SF. This is a transitional space that serves the purpose of providing passengers a way to go from the second level / mezzanine to the gangway. In this space passengers will leave the gangway, enter the building, and find vertical circulation into the Baggage Claim area.

Baggage handling and screening requires arriving passengers to transfer their luggage to the cruise line. Operator and stevedores will take passenger luggage to the Baggage Handling area where x-ray equipment will scan all bags. Luggage will then be moved to the dock and into the cruise ship. An area large enough to screen luggage, with two or three x-ray scanners will require 10,700 SF. When in use during Homeport, forklifts, baggage cages, and other equipment will move luggage inside the space. When not in use, the space will store forklifts, baggage rollers, [if used], cages, and other equipment used in the handling of passenger luggage.

BAGGAGE CLAIM

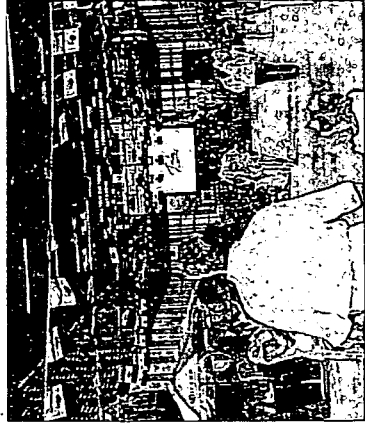
Baggage Claim is where disembarking passengers collect their baggage. Restrooms and vertical circulation are included in this space. Operator and stevedores will place passenger's bags on the floor. Passengers will reach the ground floor of the building, collect their bags, and proceed to CBP. In approximately 37,600 SF, 1,880 passengers should be processed per hour, allowing for complete disembarkation in approximately 2 hours. Baggage is brought into the space through large doors connecting the dock apron with the terminal. Forklifts carrying cages-filled with bags will be laid down throughout the space for passengers to find them. A progressive baggage laydown is anticipated, but the space will need to be flexible enough to allow for other baggage laydown when needed.



Key Plan



Charleston began homeporting Carnival Cruise Line's *Fantasy* in May 2010



Civic uses where large open spaces are needed are potential uses of the building when it is not in use as a Cruise Terminal. The Charleston VRTC is available for private functions and civic events outside of normal operating hours.

CRUISE DISTRICT

CRUISE TERMINAL PROGRAM

CUSTOMS AND BORDER PROTECTION (CBP)

Under the current CBP regulations, passengers must go through the one-stop Federal Inspection Services [FIS] as described in the Cruise Terminal Design Standards [CTDS] promulgated by CBP in May of 2008. CTDS describes one-stop processes with its required spaces which can be broken down into two main areas; Primary Inspections and Secondary Inspections. Under current regulations immigrations, customs, agriculture, and all other federal inspections take place in one location and are based on having passengers, family members, and their luggage together to inspect at one time.

During October of 2009, SCSA, B&A, & CRP held preliminary meetings with CBP officials from Charleston and Headquarters to gain an understanding of the expectations for this size terminal and location. Although the first meeting discussed the SCSA's site for the Terminal at the south end of Union Pier, a subsequent meeting in February 2010 brought to light the option of renovating Building 322. In either case, CBP will look for the design vessel to establish passenger capacities which directly relate to described needs to be met under CTDS. Based on our conversations, Primary Processing will require approximately 19,000 SF, Secondary Processing approximately 9,600 SF. The approximate total area adds up to 28,600 SF. Further design considerations and the entire process of meeting with CBP Project Managers responsible for ensuring CTDS is met will result in space layouts and total areas needed to conduct inspections. That process will follow the Concept Plan once SCSA pursues renovations to Building 322.

REQUIRED CBP/FIS PROGRAM

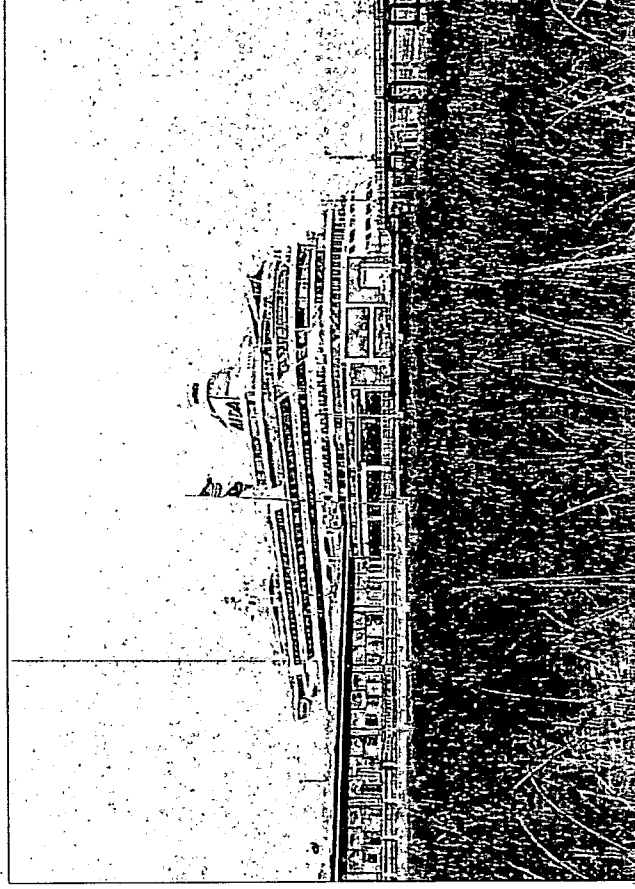
Primary Processing	19,228 NSF
Secondary Processing	4,502 NSF
Secondary Operations and Support	535 NSF
CBP Administration and Support	4,309 NSF
Exit Podium	315 NSF
Total CBP/FIS	28,889 NSF

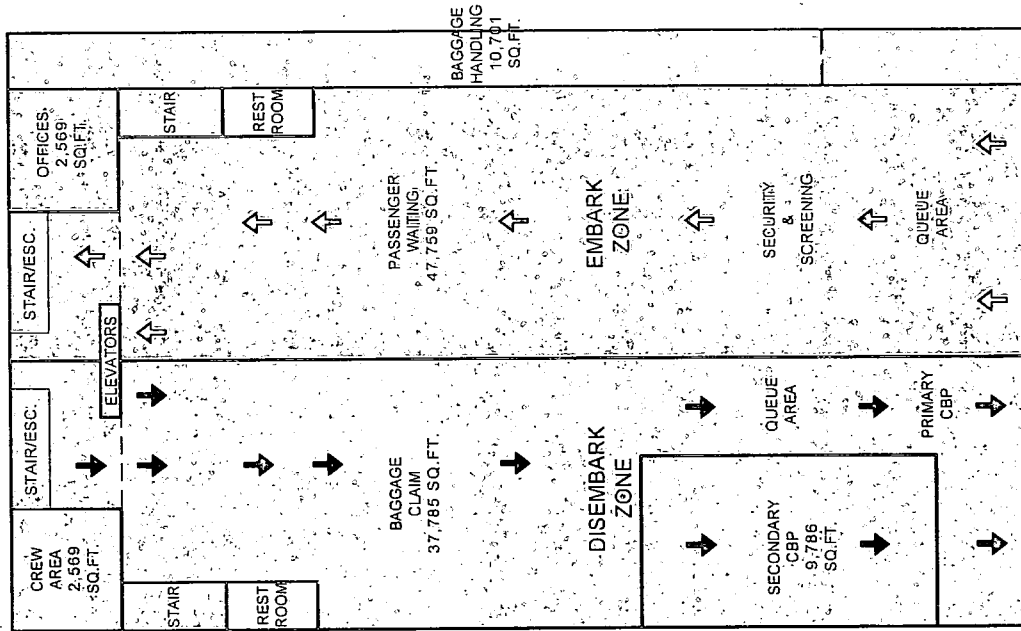
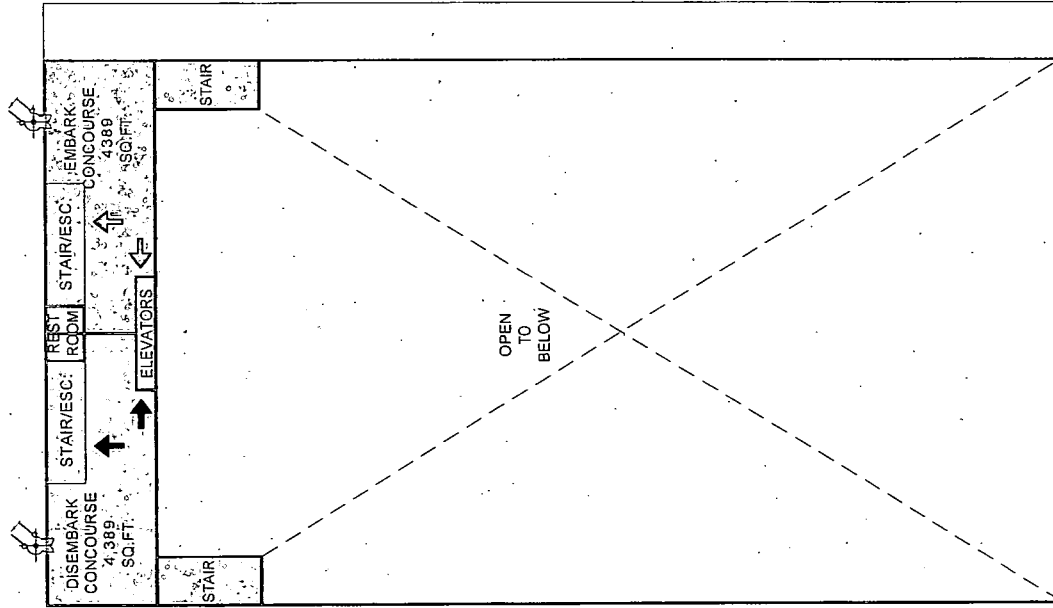
CREW AREA

Processing crew during disembarkation is proposed to be located on the ground floor in the northeast corner, close to the dock apron. A separate entrance will allow crew leaving the ship to enter the Terminal where CBP and cruise line processing will take place. Embarking crew will use the same area once disembarkation is complete. Equipment for vetting and screening bags and individuals needs to be included in the space.

CONCLUSION

Building 322 offers sufficient area within its footprint to be renovated into a cruise passenger terminal capable of processing vessels of the size and capacity listed in the RFP.





First Floor Plan

Second Floor Plan

Embarking zone
 Disembarking zone
 Service
 Vertical circulation
 Baggage

CRUISE DISTRICT

TRANSPORTATION AND TRAFFIC

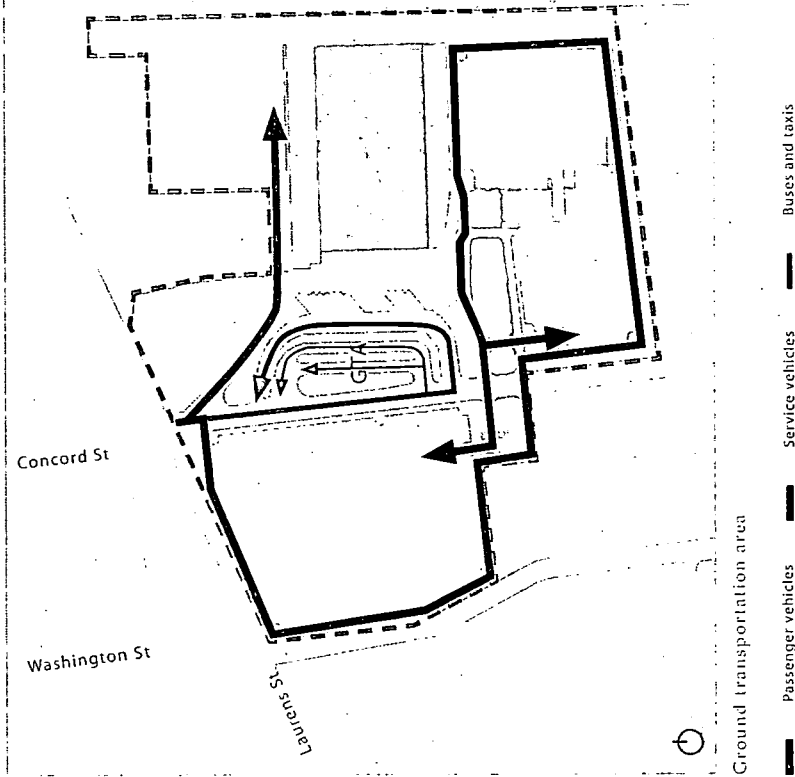
TRANSPORTATION GUIDING PRINCIPLE

Transportation planning for the Cruise Terminal area is directed by a singular guiding principle:

- Minimize cruise terminal traffic impacts on Charleston streets by creating additional access routes and retaining terminal traffic on-site

CRUISE SHIP TERMINAL ACCESS AND CIRCULATION

The Cruise Ship Terminal access is designed to accommodate the peak demands of embarking and disembarking passengers, buses, shuttles, taxis, and delivery vehicles. As stated previously, access to the terminal and parking areas eliminates conflicts between circulating vehicles to maximize efficiency between the loading and unloading of passengers and access to parking areas. Freight delivery to the cruise ships is separated from the Ground Transportation Area to improve safety and passenger convenience. All traffic will access the cruise ship area via Concord Street on the northern side of the property. Once on the site, delivery trucks are provided a separate drive to access the ship and their holding area (provided on the north side of the cruise ship building for trucks not actively loading or unloading at the ship). Passenger and luggage loading and unloading occurs within the Ground Transportation Area. This area is comprised of a one-way circulation system designed to separate the activity of buses, taxis, and carriages from that of passenger vehicles. Buses and taxis serve the terminal via the Ground Transportation Area in front of the terminal building. Passenger vehicles, whether drop-offs or parking for the duration of the cruise, circulate around the parking area to the passenger vehicle drop-off area. The main drop-off area is supplemented with a secondary drop-off area to be used during peak times. Once passenger vehicles have dropped their passengers and luggage off at the Ground Transportation Area curbfront, they proceed into the parking area or north on Concord Street to exit the property. Disembarking passengers are picked up from the curbfront by vehicles exiting the parking area or vehicles arriving from off-site. Embarkation and disembarkation activities are timed so that they do not coincide.



PROJECTED TRAFFIC VOLUMES

On embarkation or disembarkation days, many different types of vehicles will access the cruise ship area to load and unload passengers or to service the ship. Table III.1 below shows the projected distribution of traffic by vehicle type for each hour of activity.

Historically, the embarkation event has had the most significant impact on the local transportation system due to the typical embarking passenger travel characteristics and the general steps of their experience as they arrive at the terminal. The midday period is the time period of most concern related to transportation impacts and was therefore studied. No PM peak hour impacts are anticipated.

Note that the chart below is an estimate as no surveys, counts, or other historical information specific to the Port of Charleston were used to generate the chart. The information provided requires confirmation of accuracy before proceeding with design based on the information provided for the Design Vessel capacity.

Time	Semi Tractors	Small Trucks	Passenger Coaches	Taxis	Debarb POV	Embark POV
6 - 7 AM	6 - 8					
7 - 8 AM	6 - 8	2 - 4	3 - 6	5 - 10		
8 - 9 AM	2 - 4	2 - 4	3 - 6	10 - 15	150 - 250	
9 - 10 AM		2 - 4	2 - 4	10 - 20	200 - 300	
10 - 11 AM					150 - 250	25 - 100
11 - 12 PM			2 - 4	5 - 10		150 - 250
12 - 1 PM		1 - 2	3 - 6	10 - 15		200 - 300
1 - 2 PM		1 - 2	2 - 4	10 - 20		50 - 100
2 - 3 PM			1 - 2			25 - 50
3 - 4 PM						
4 - 5 PM						
Totals	14 - 20	10 - 16	16 - 32	50 - 90	500 - 800	450 - 800

Table III.1 Traffic Related to Cruise Ship Embarkation and Disembarkation for a 3,450 passenger vessel.

QUEUING WITHIN SITE

Existing Conditions

At the current Cruise Terminal site, drop-off or parking passenger vehicles enter the cruise ship terminal area near the intersection of Laurens Street and Concord Street on the north side of the site. These vehicles then travel through the property to drop off passengers and baggage and either park or depart. The current plan allows 250 vehicles to queue within terminal property. The Port and the City of Charleston created a recently unveiled traffic plan to address issues of queuing on city streets. Passengers arriving by taxi or buses enter at the terminal's main gate on Washington Street. On embarkation days, Concord Street/Washington Street is closed from Hasell Street to Market Street. This roadway section is not closed for disembarkation or Port of Call days.

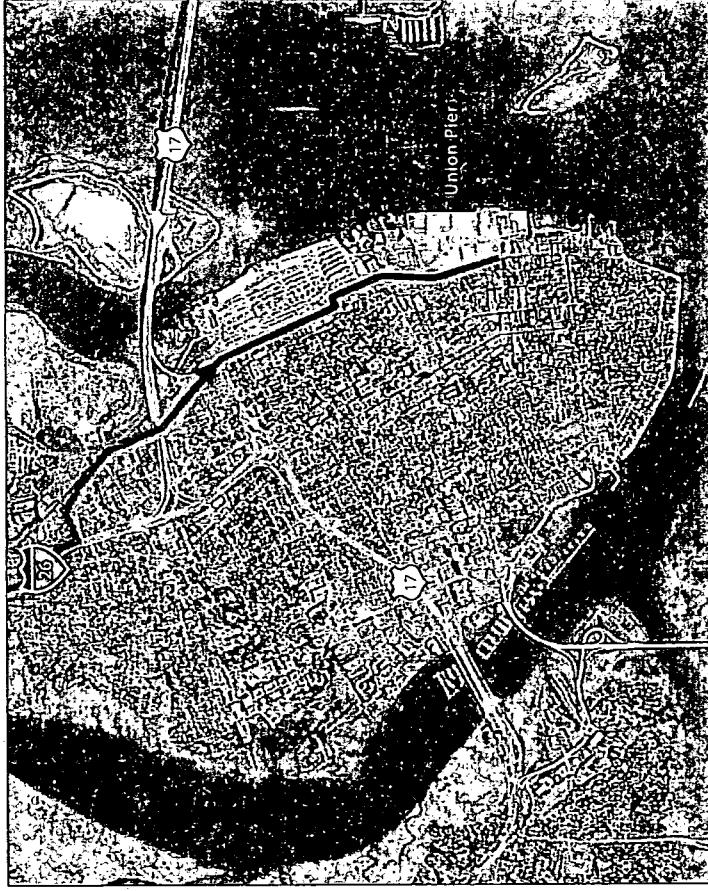
Proposed Plan

Based on the projected embarkation vehicles projected in Table III.1, the CTA curbside will be utilized from 10 AM - 3 PM. The curbside for passengers to drop off their baggage is 260 feet long. During the peak times of 11 AM - 2 PM, a secondary 260-foot curbside may be opened to facilitate additional speed in passenger bag drop-offs during this busier time. The access roadway to the curbside is 3,670 feet long and was designed to accommodate queuing within the cruise terminal site.

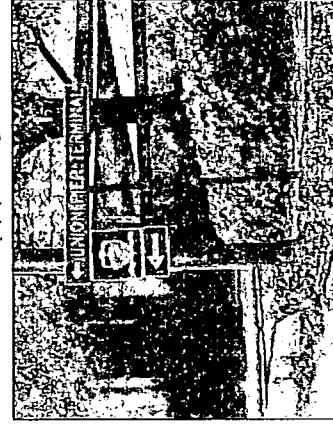
TRANSPORTATION AND TRAFFIC

REGIONAL AND LOCAL ACCESS

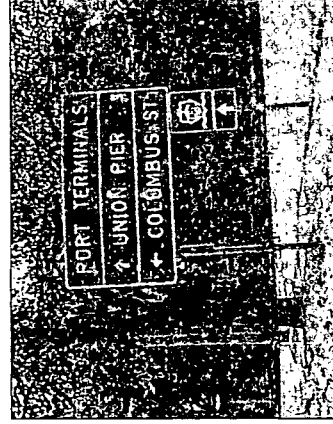
The 2007 Market Study for cruise ships out of Charleston indicates that 5% will originate from the south via US 17, and 5% will originate from the north via US 17 with 90% of the passengers originating via I-26. Based on past cruise experience, however, about 15% of the passengers will remain on the Peninsula overnight at local accommodations. The transportation analysis assumes the following distribution of arriving and departing vehicles: 20% via Calhoun Street to/from the rest of the Peninsula and US 17 to the south, 5% to US 17 to/from the north, with the remainder to/from I-26 using East Bay Street. Wayfinding signs will be used to direct traffic to use Concord Street to access the terminal.



Routes for cruise ship passengers



Wayfinding signs for cruise ship passengers

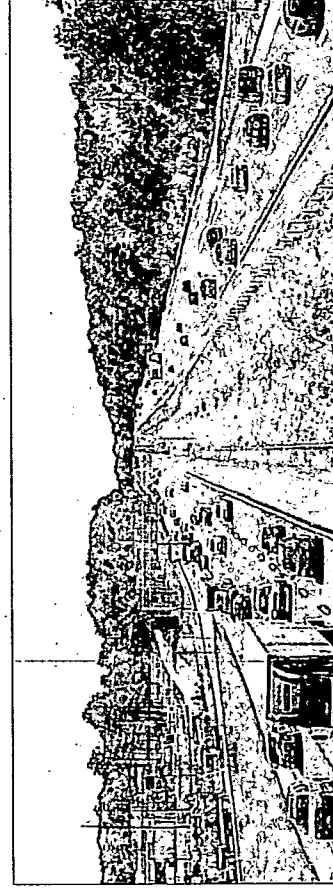
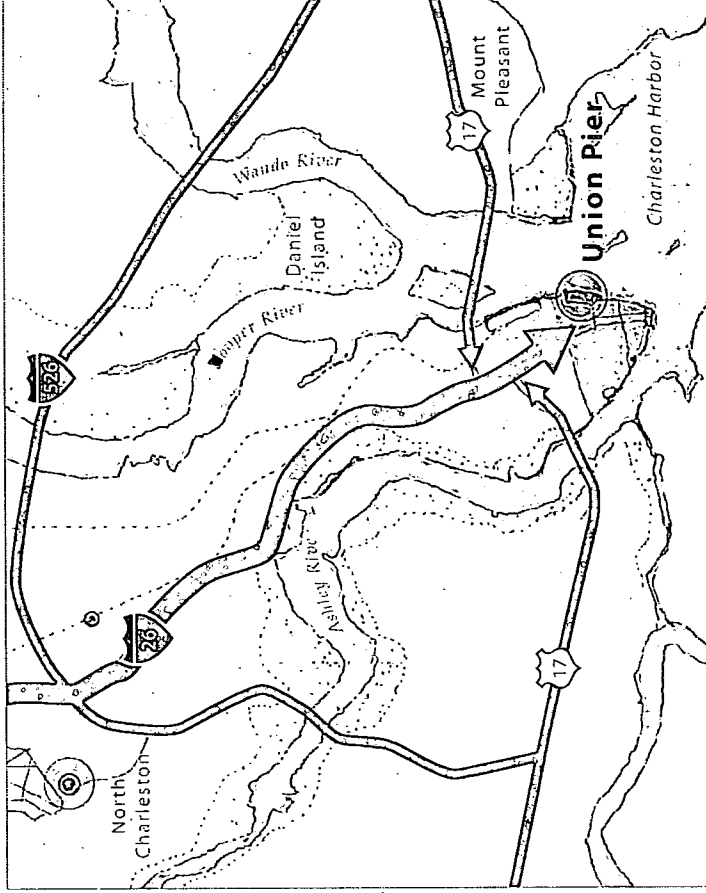


TRANSPORTATION ANALYSIS

Study Area

The study area for the transportation analysis evaluates the following intersections:

- East Bay Street and Market Street
- Washington Street and Laurens Street
- East Bay Street and Calhoun Street
- Washington Street and Calhoun Street
- East Bay Street and Chapel Street
- Morrison Street and US 17 Off-Ramp
- Morrison Street and I-26 On-Ramp
- Morrison Street and I-26 Off-Ramp.



I-26

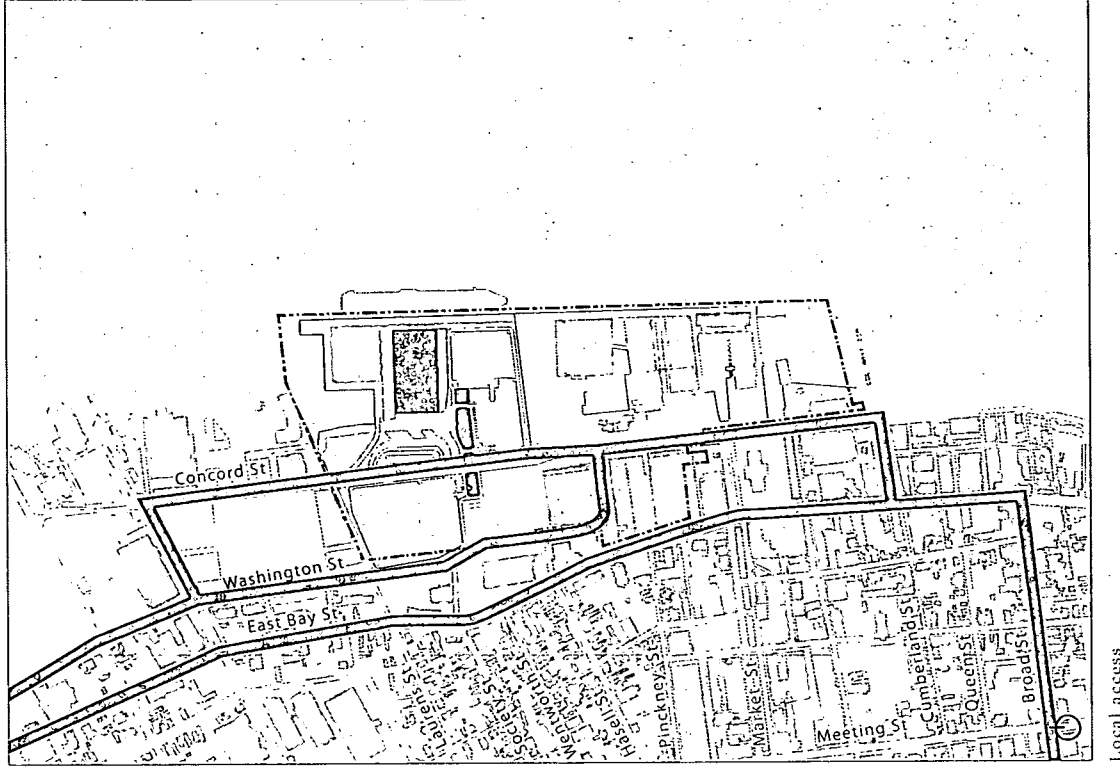
TRANSPORTATION AND TRAFFIC

The new cruise ship terminal is projected to open in 2012. The transportation analysis evaluates traffic conditions in the opening year and in a scenario projecting growth on the Peninsula through the year 2028.

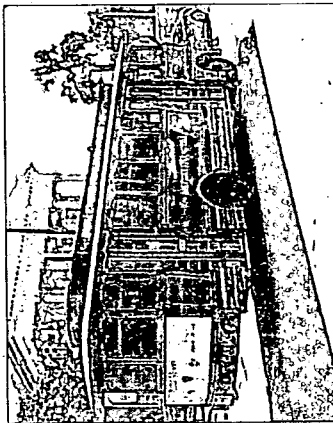
Key findings of the transportation analysis for the Cruise Ship Terminal include:

- Neighborhood impacts are expected to be negligible.
- The eastbound approach of Chapel Street and East Bay Street will require reconfiguration of lanes and retiming of the traffic signal.
- In 2028 background conditions, the intersection of Calhoun Street and East Bay Street will need lane re-striping and traffic signal timing and phasing changes.

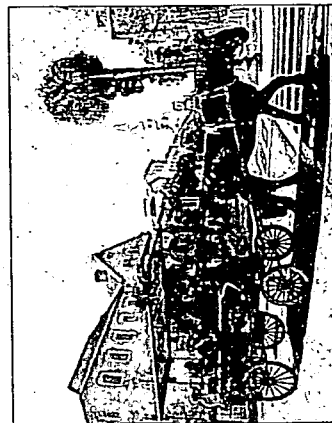
It is expected that there will be limited neighborhood impacts as a result of the Cruise Ship Terminal. The cruise ship passengers are instructed to travel using three distinct paths depending on how they access the site. In addition, the facility is designed so that cruise ship traffic will not queue on city streets.



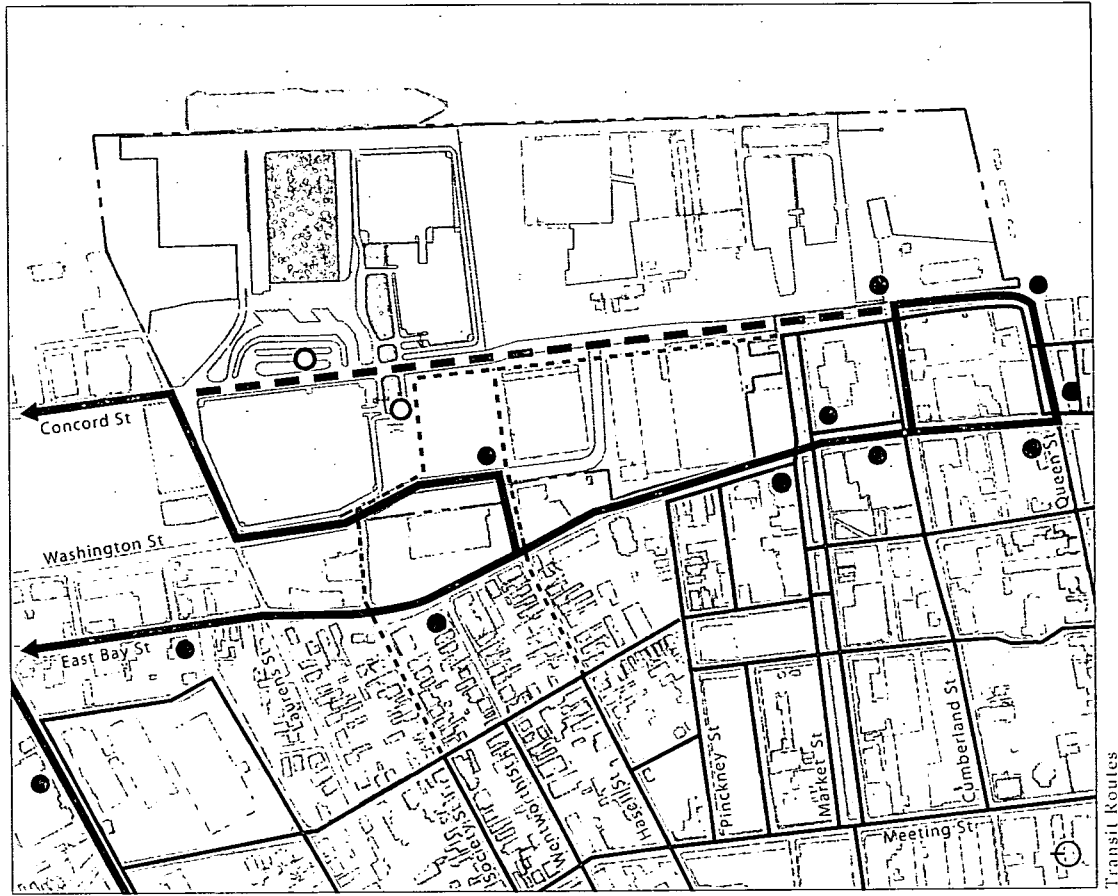
Local access



DASH Shuttle



Carriage



CRUISE DISTRICT

III.20

IV. CONCEPT PLAN DISTRICT

CONCEPT PLAN

URBAN DESIGN DIAGRAMS

TRANSPORTATION

INFRASTRUCTURE

SPECIAL INITIATIVES

CONCEPT PLAN

CONCEPT PLAN DISTRICT

Once the Concept Plan team identified the preferred location of the Cruise Ship Terminal facilities, the remainder of the Union Pier site became available for consideration of other uses and activities. The Concept Plan District encompasses that portion of the Union Pier site not required for the terminal building, its ground transportation and drop-off area, its parking and vehicle queuing areas, and its service areas.

CONCEPT PLAN

While the deck constructed over the Cooper River is essential for water-dependent uses, such as port cargo operations and cruise terminal operations, its role with respect to future uses at Union Pier was studied and considered carefully by the Concept Plan team. Even though the 1996 Concept Master Plan for Union Pier Terminal called the deck "an irreplaceable infrastructure resource," it raised questions of the insurability of non water-dependent structures that might be built atop the deck. Nor did the earlier plan consider the repair and upgrade to seismic standards required of the deck or the uncertainty of permitting uses in a critical area.

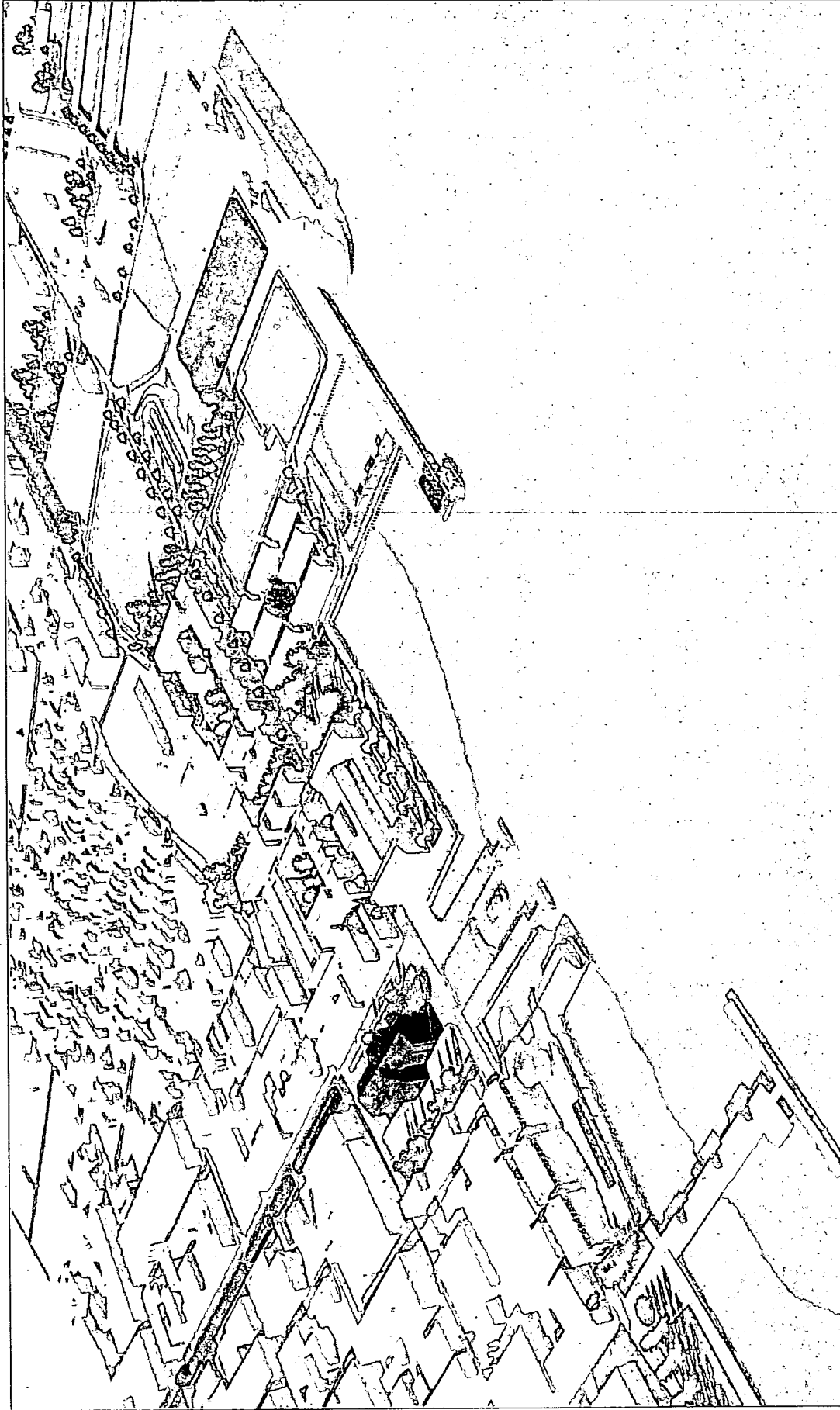
Upon consideration of these and other issues related to the deck, the Concept Plan team recommends the phased redevelopment of 8.4 acres of deck not required for the cruise terminal operations. In redeveloping this structure, a new waterfront on the existing shoreline is revealed. Reversing man's effort to push Charleston's shoreline further into the Cooper River over the last several centuries, this Concept Plan invites the river back to the land.

Perhaps the most important opportunity the redevelopment of the deck affords is the opportunity to restore the historic wharves at the foot of the Custom House, once known as the Public Landing, and create a terminus to Market Street befitting its context and historical importance. Charleston's 1999 Downtown Plan identified this location as one of a number of "nodes" across the Peninsula in need of a focal point. Certainly the restored Custom House Wharves, with their massive granite bulkheads, will serve as a node for the city and for this area.



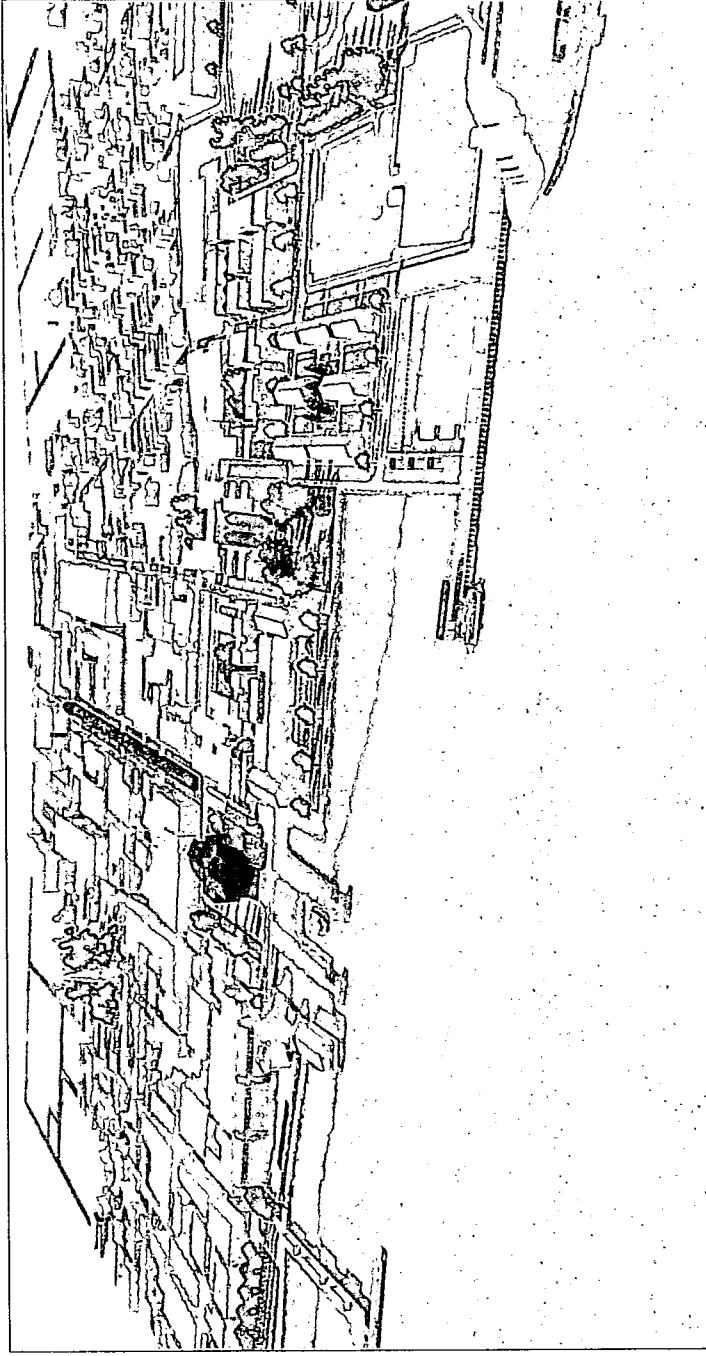
Concept Plan - an illustrative concept

CONCEPT PLAN DISTRICT

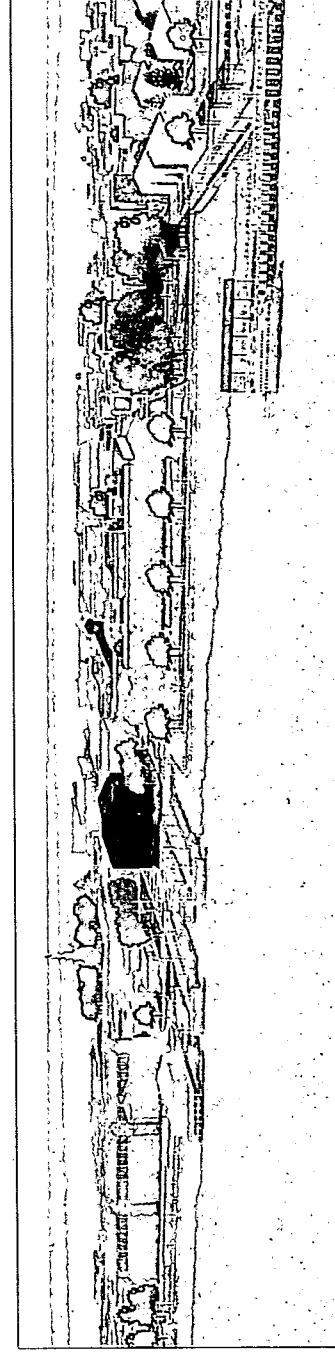


Conceptual illustration

CONCEPT PLAN



Conceptual illustration



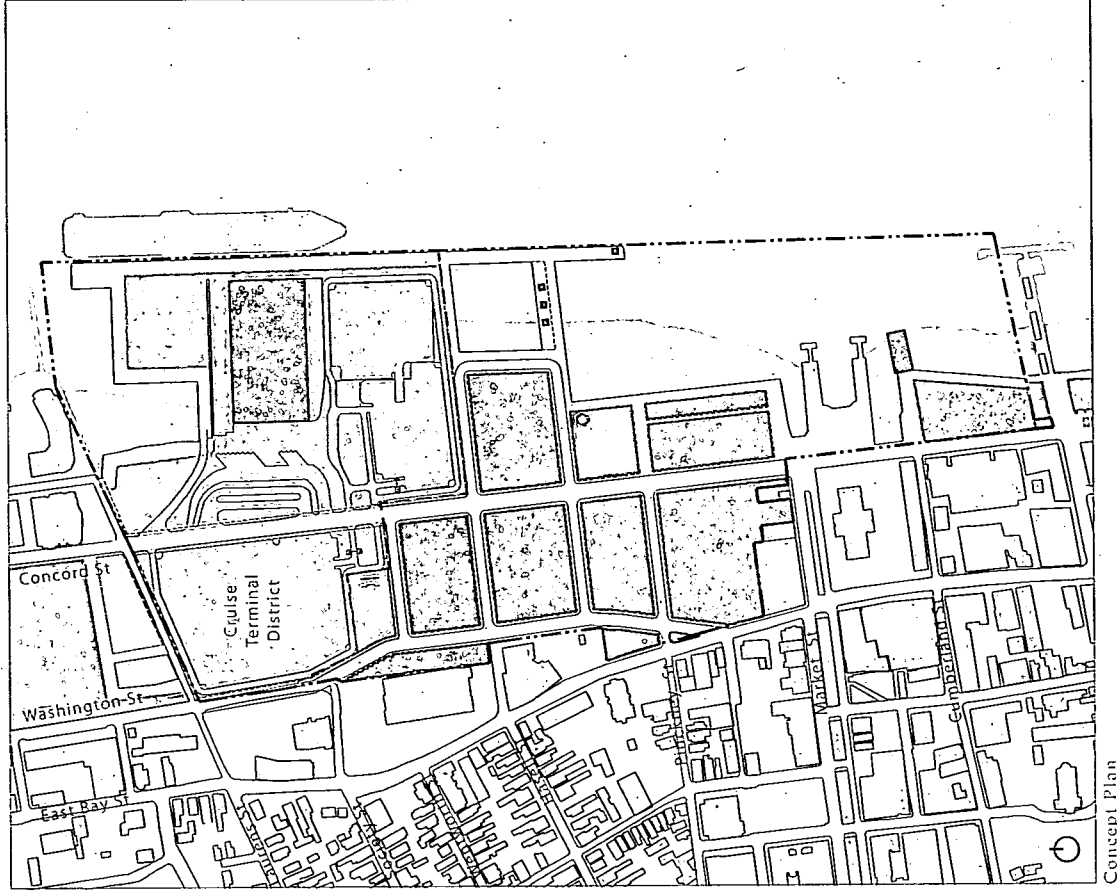
Conceptual illustration

The restored wharves will anchor a vast "water room" with unfettered views of the Cooper River. The water room, with the Custom House at its center, is formed by the buildings along Market Street, East Bay Street, and the row of buildings south of the Custom House. Two new development sites to the north and south of the restored wharves complete the room and frame the window to the water.

A new waterfront esplanade and park will line the revealed edge and link to the esplanade of Waterfront Park to the south. On those days when cruise ships are not in port, public access along the water's edge can connect to Wharf Street at the north end of the site, completing a valuable missing link in the waterfront trail along Charleston's urban edges. In this way, the Charleston waterfront will be connected continuously from the Battery to the South Carolina Aquarium.

Locations for civic uses are identified along the waterfront esplanade, either as a site reserved within a waterfront square between Pinckney and Pritchard Streets, or as covered pavilions along the wharf edge. A possible day dock or water taxi stop could be provided at the south end of the wharf. Bennett's Rice Mill façade is preserved in its own park, which could also serve as the location for outdoor performances. This park connects visually to a system of green spaces used to organize the Cruise Terminal facility, thereby visually connecting the façade to the waterfront it once served.

Where possible, existing east-west streets extend into the Concept Plan district, forming a network of walkable development blocks consistent in size with the surrounding context. These streets terminate in, connection points to the esplanade or in open views of the waterfront. Concord Street is reconnected from north of Market Street to Laurens Streets and Washington Street is extended to East Bay at Pinckney Street, forming a triangular open space. Washington Street is envisioned as a couplet to East Bay Street, similar to the road network initially proposed in the 1996 Master Plan for Union Pier and again in the recent Calhoun Street East Plan, which is intended to increase capacity within the local area while reducing the burden on East Bay Street.



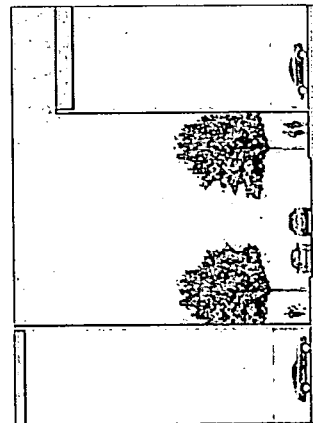
Concept Plan

URBAN DESIGN DIAGRAMS

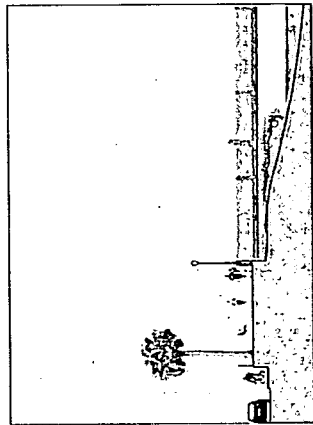
SITE ORGANIZATION

The Union Pier Concept Plan is comprised of one neighborhood (an extension of existing neighborhoods) designed and sized to be walkable within five minutes from center to edge or within ten minutes from edge to edge. In addition, the entire Union Pier Concept Plan site is within a five minute walk of the City Market and the Custom House Wharf and within a ten minute walk of King Street. Conversely, the connection to the existing city fabric extends the existing neighborhoods to the water and its planned public access within a comfortable walking distance. As the Charleston Downtown Plan recommended in 1999, the Union Pier Concept Plan "is envisioned as an extension to the existing downtown residential character - . . . and reinforces the priority of housing development on the lower peninsula."

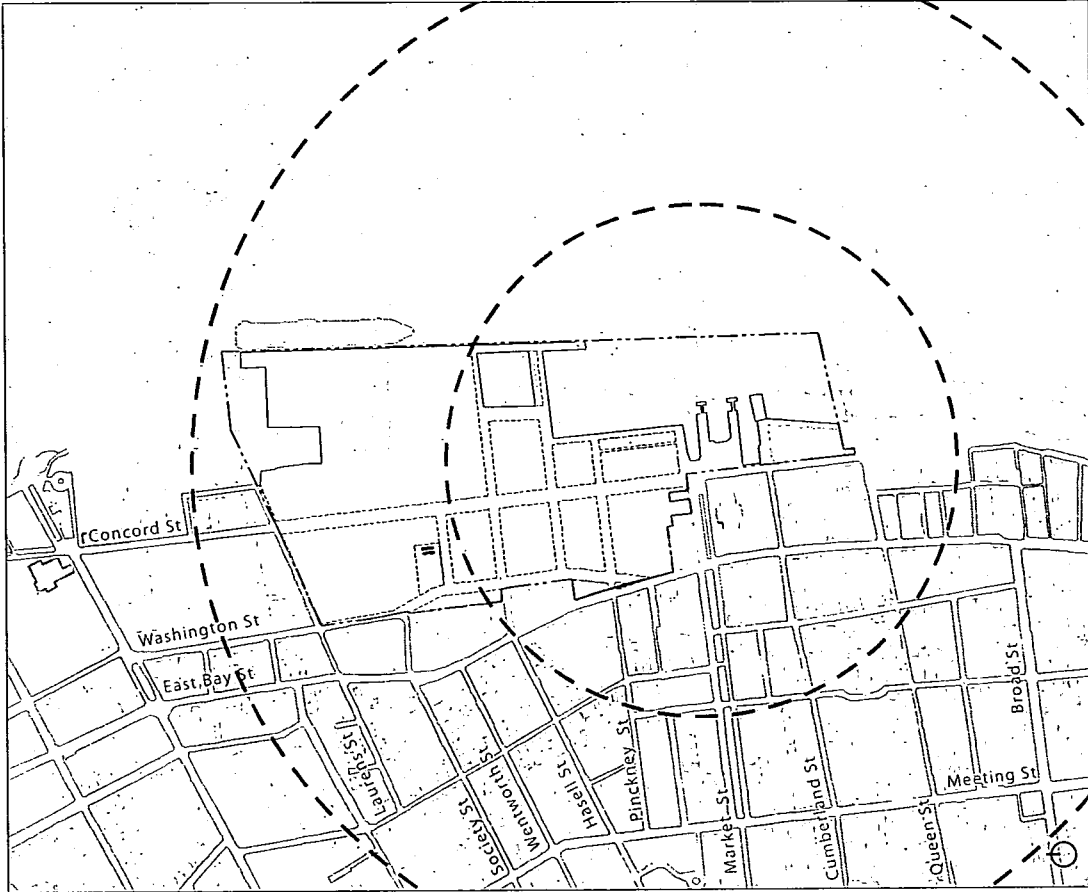
By employing good urban design principles, compact development within the site will promote regional sustainability. Relieving development pressure on the Peninsula by concentrating growth at this infill location focuses development where existing infrastructure capacity is in place. The plan reduces automobile dependence by placing public amenities within a comfortable walking distance, provides a compact street and block layout with street trees to engender a comfortable walking environment, and promotes a mix of uses to foster community livability and transportation efficiency. Opportunities to extend the West Ashley Greenway regional bike path and provide shared lanes within the street grid will expand access to multi-model options for the Peninsula resident.



Two-Way Residential Street



Public Esplanade

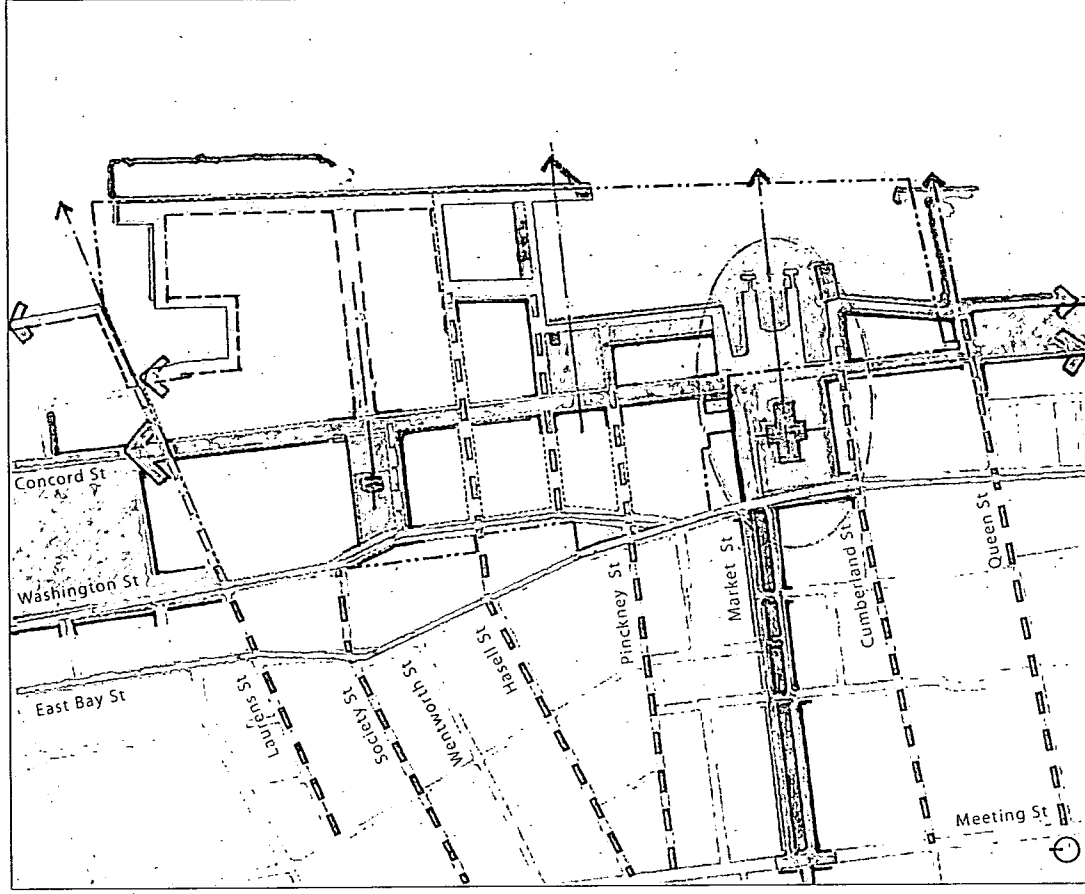


Walking Distances - a five minute walk is typically an area within a 1/4 mile radius

CONCEPT PLAN DISTRICT

PUBLIC REALM

The public open spaces of our cities provide amenities for residents, workers, and visitors. The extension of Charleston's public realm at Union Pier consists of inviting neighborhood streets which connect to existing neighborhoods, a series of neighborhood parks along Washington and Concord Street - each defined by a significant historic structure or the opportunity to celebrate the waterfront history, and the extension of a public waterfront walk from the north end of Waterfront Park to the Maritime Center and the South Carolina Aquarium. An emphatic directive of the Charleston Downtown Plan's vision for the Cooper River Waterfront, the waterfront walk provides opportunities for public interaction as well as interactions with the landscape of the river and marsh. As one walks from Waterfront Park north to Union Pier, one will encounter a number of public open spaces varying in width and scale which accommodate both passive and active recreation. In addition, the waterfront walk will allow an extension of a regional bike path to continue along the water's edge. While the connectivity of the waterfront walk is key to providing north-south access at the edge of the Peninsula, the termination of Market Street at the Custom House Wharf creates a historically significant new gathering space, overlooking the harbor which celebrates the coming together of the working waterfront with the city proper. This unique east-west street of market buildings and local crafts brings the legacies of the harbor to Charleston's heart at a street of Meeting. Nowhere else in this country is there such a short, direct and meaningful connection between the edge and the water; an urban gesture that best illustrates the meaning and purpose of Charleston's public realm.



Public Open Space and Public Realm

URBAN DESIGN DIAGRAMS

VIEW CORRIDORS

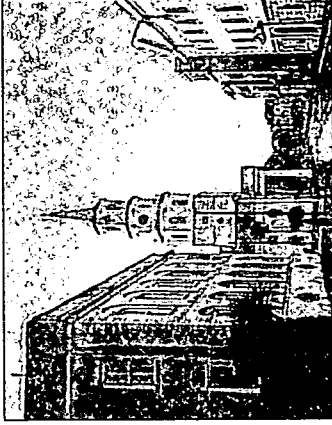
A peninsula is defined by its center and edge and Charleston is not an exception to that rule. However, for decades the center of Charleston has been cut off from large portions of its edge which have been dedicated to industrial uses. Contemporary cities are finding ways to return to a form which was successful for centuries; one where private and public access to the water can happen alongside one another, or as is the case at Union Pier on days when there will not be a cruise ship in port, private and public can also co-exist. Providing view corridors to the water's edge reinforces the city's connection of its center to its edge.

As explained in the Charleston Zoning Ordinance, the extension of streets towards the Cooper River from East Bay Street should also extend, and not block with structures, the view corridors from East Bay Street to the river.

As described in the map on the following page, the Union Pier Concept Plan is organized by a street and block plan formed by extending the existing street fabric to the Cooper River. Hasell, Pinckney, and Market Streets extend beyond East Bay Street and terminate with views of the water. In addition, Pritchard Street within the Union Pier plan does not extend into the city, but the plan preserves its view of the river as well. The Concept Plan also proposes that Cumberland Street terminate as it currently does at the existing Fleet Landing restaurant or a similar establishment housed within the 1942 former Navy building.

ARCHITECTURAL FEATURES

Architectural features may be treatment of massing, windows or other details on a building that is distinctive in order to signify and enhance a prominent location. These elements focus attention through special articulation at certain corners or vista terminations. Architectural features may have additional height (inhabited or uninhabited) for emphasis, subject to applicable height limits. Architectural features may utilize special massing, roof forms, windows, window patterns, entrance portals, balconies, bay windows, or other architectural devices to achieve emphasis.

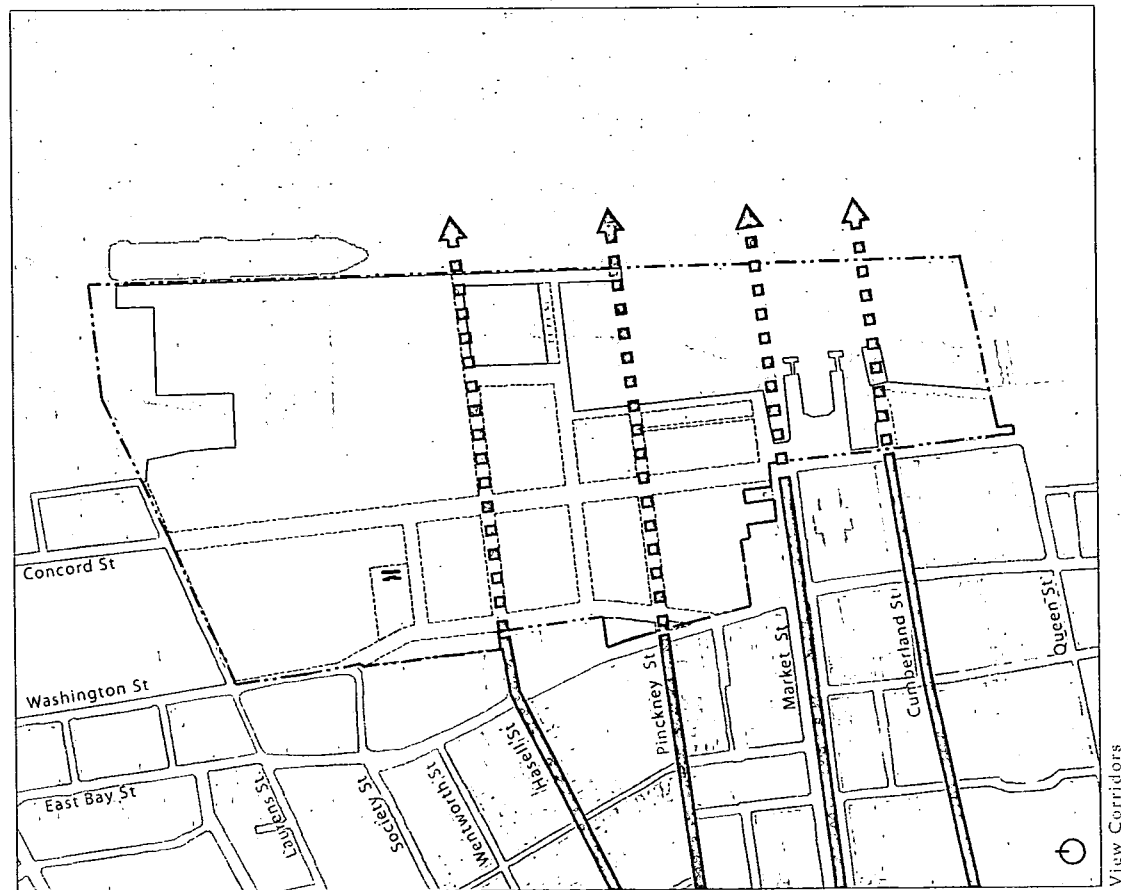


Architectural feature: frontage

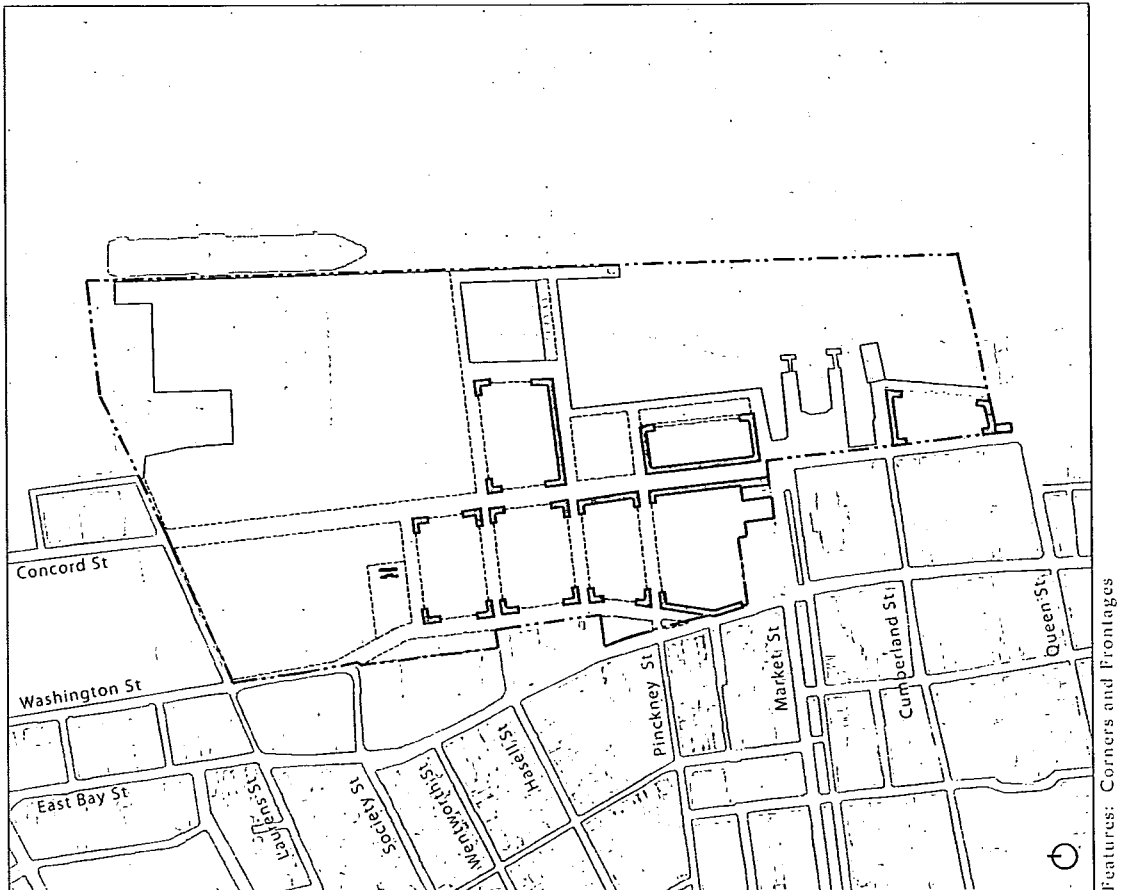


Architectural feature: corner

CONCEPT PLAN DISTRICT



View Corridors



Features: Corners and Frontages

URBAN DESIGN DIAGRAMS

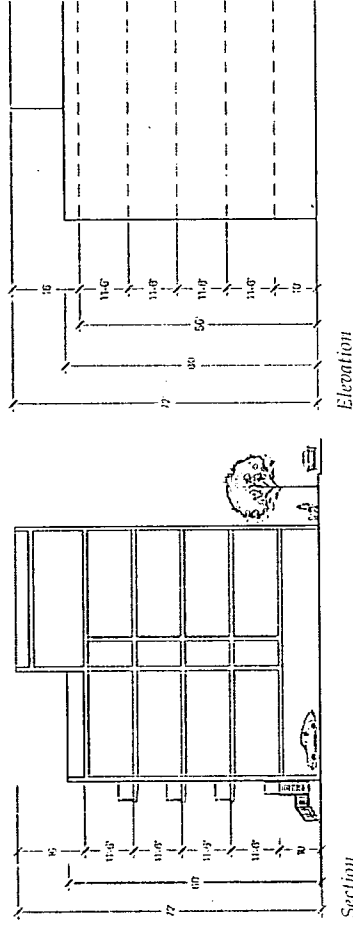
BUILDING HEIGHT

Generally, building walls should be no taller than 60', exclusive of elevator or mechanical penthouses. This height will allow for four habitable floors above any required FEMA flood elevation. Building heights should be varied in keeping with the context of the city's varied skyline. Heights are measured as the vertical distance from the adjacent curb to the top of parapet or to the mean height level of a sloped roof (between the eave and the ridge).

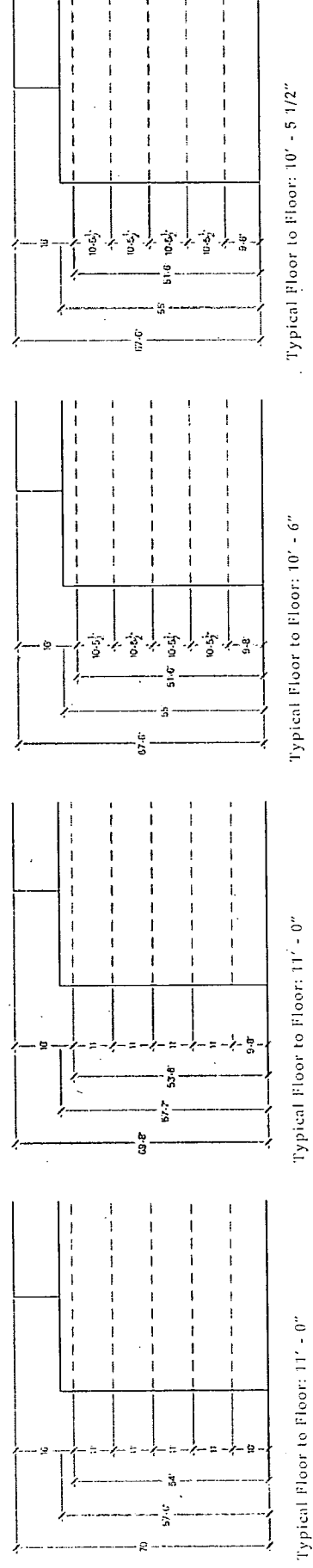
BENEFITS OF 60' HEIGHT:

- Greater variety in heights and roof profile
- More appropriate floor to floor heights
- Piano nobile (second floor/first floor of living) allowed a greater floor to floor height
- Greater variety in roof forms and shapes

RECOMMENDED ALLOWABLE BUILDING HEIGHTS AND RECOMMENDED FLOOR TO FLOOR HEIGHTS



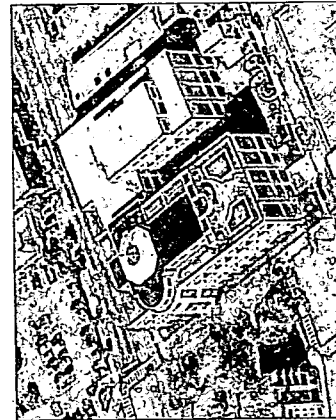
Height Case Studies



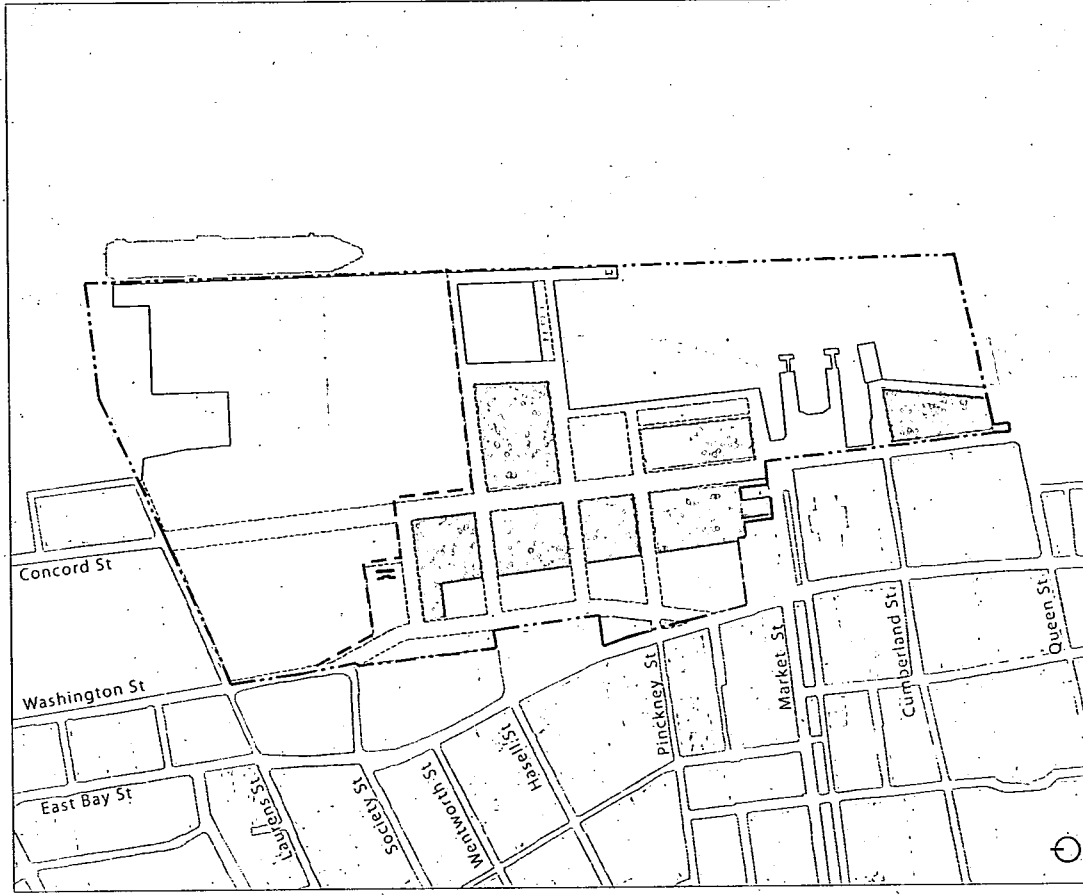
CONCEPT PLAN DISTRICT

BONUS FLOOR

Another way to preserve a varied skyline and a variety of heights at Union Pier, in keeping with the context of the city, is to allow some opportunities for habitable penthouses above the top floor of the building. Portions of buildings within the Bonus Height Zone may be higher than the typical building height. These zones are indicated on the map to the right and are located along major streets or parks. The heights can be no greater than 72', are limited to 40% of a building's footprint, and when the building wall of the bonus floor is built along primary or secondary frontage, the maximum uninterrupted length should be 60'. Heights are measured as the vertical distance from the adjacent curb to the top of parapet or to the mean height level of a sloped roof (between the eave and the ridge). Heights are exclusive of elevator or mechanical penthouses.



Penthouse and roof terrace



Height Overlay Diagram
Zones for potential bonus height

URBAN DESIGN DIAGRAMS

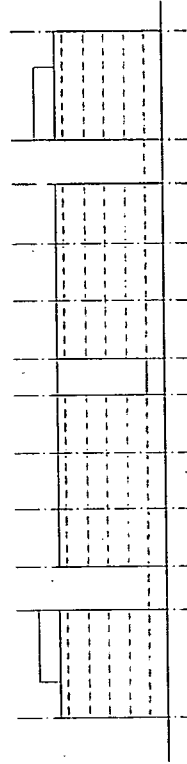
BUILDING MASSING

Monolithic buildings are not in keeping with the scale, look, and feel of the Peninsula. Devices such as vertical breaks, variation in height, composed roofscapes, and a coordinated range of details should be employed to help reduce the apparent mass of large buildings and articulate the architecture.

Building walls should not exceed 120' in length without a minimum 5' wide and 5' deep vertical plane change to help maintain an incremental urban fabric visually, even though blocks may be larger. The plane change must occur from the highest floor and may stop at the base level (flood elevation level) or may continue to the ground. Larger buildings or building on entire blocks should be articulated to appear as a collection of smaller buildings, each of which appear to have a longer and a narrower side.

MASSING BREAK

Major massing breaks within individual building forms should have significant vertical height difference (i.e., one full story) to ensure these breaks are perceived from the street level.



Massing Breaks

BUILDING PLACEMENT/FRONTAGE

Buildings should be placed on or as close to the front property line in order to define edges of streets and open spaces. Additional recommendations for frontage conditions which promote the vitality of the ground level within V-zones are included later in this section.

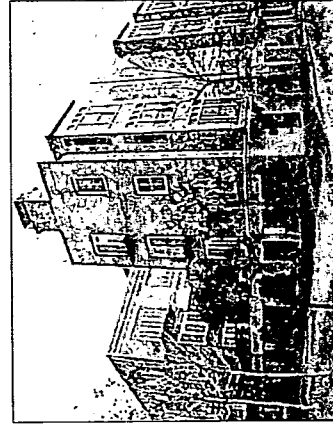
Building orientation should be predominantly east-west in keeping with the historic fine-grain east-west fabric of Charleston and to maximize the opportunities for passive cooling with natural ventilation.

STOOP

Stoops or porches can be provided when buildings are set back a minimum distance from the property line. Elevated stoops or porches can be used to provide direct access to the sidewalk from individual units above, which provides presence on the street while ensuring privacy for the first habitable level use.



Vertical proportions, articulated base, middle, top



Massing breaks allow for interior courts

CONCEPT PLAN DISTRICT

FORECOURT

A forecourt, or a courtyard in front of the building, is created when the building facade is aligned closely with the property line and a central portion is set back. Forecourts can be used to accommodate the change in level with stairs and terrace areas which are set back from the property line. The forecourt provides both the opportunity for a massing break within the building's frontage and an active entry point for a building on two levels (direct at-grade access into the building and stair access to an upper level lobby) which contributes to a more active street. A forecourt may also be suitable for vehicle drop-offs.

LOBBY

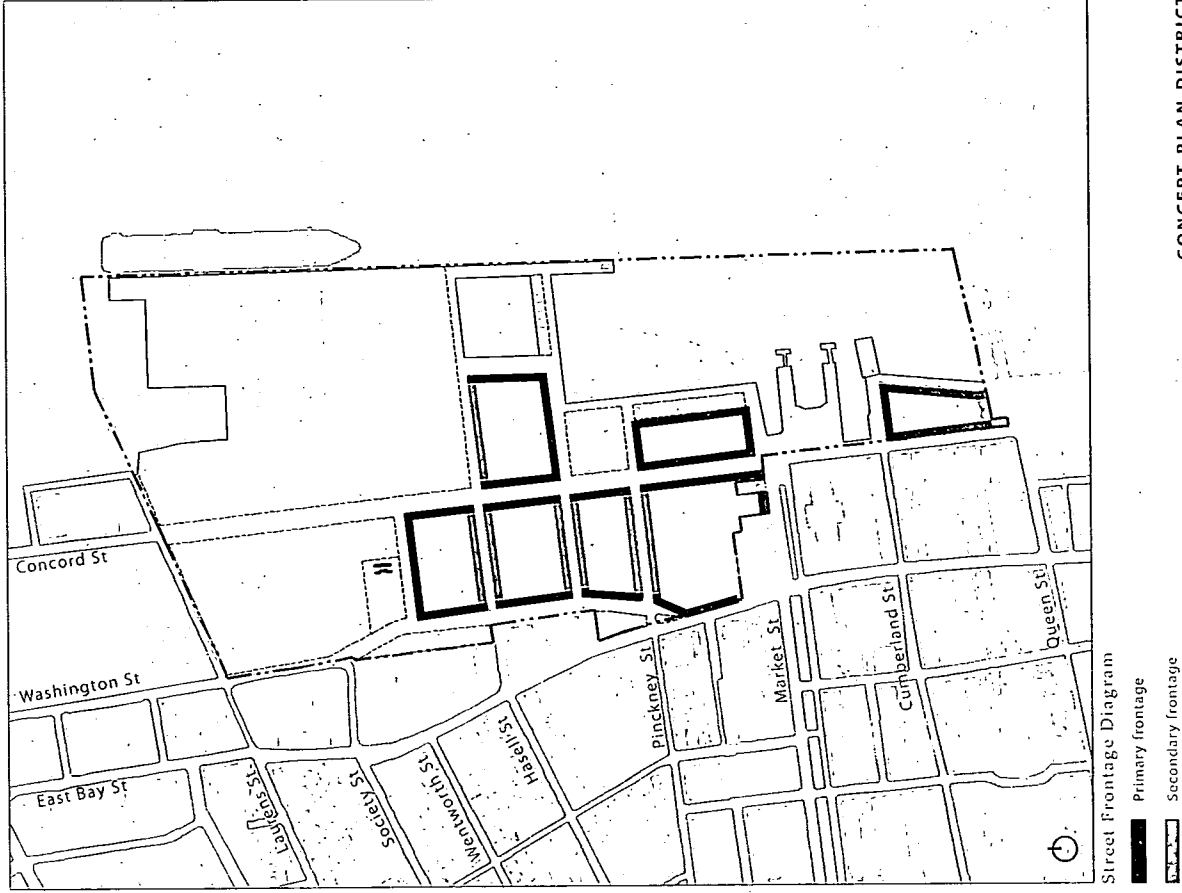
Lobbies can be located within the ground floor of a building situated in a VE-Zone. Lobbies should open directly onto the street and should also whenever possible utilize a double height volume to signify the presence of the lobby on the building facade. The vertical circulation between the ground floor and upper floors can be provided within the building.

GALLERY

A gallery is a cantilevered shed or lightweight colonnade overlapping the sidewalk and attached to the building facade, which is aligned closely with the property line. Galleries along the exterior wall of a building can provide visual interest, a shaded walkway, and accommodate outdoor dining activity at the second level which will create a more active building frontage.

SHOPFRONT

A shopfront is a portion of the building facade with considerable glazing on the sidewalk level and an awning that overlaps the sidewalk. Typically utilized for ground floor retail, a shopfront should be used to create opportunities for vendors to provide temporary seating or display areas for retail uses above. Providing activity within a shopfront ground floor will contribute to a more active public realm.

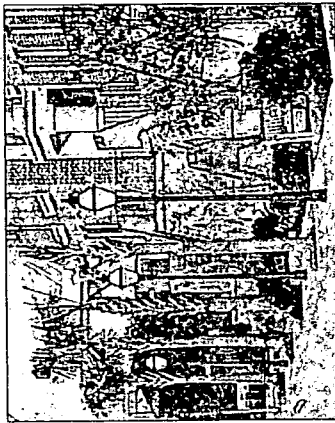


Street Frontage Diagram

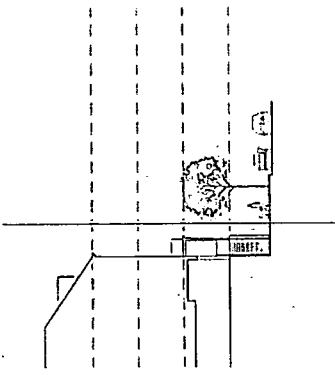
Primary frontage

Secondary frontage

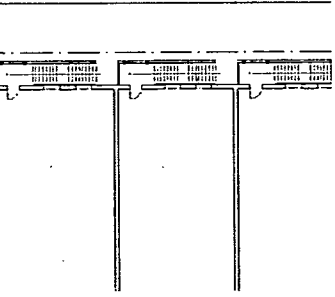
URBAN DESIGN DIAGRAMS



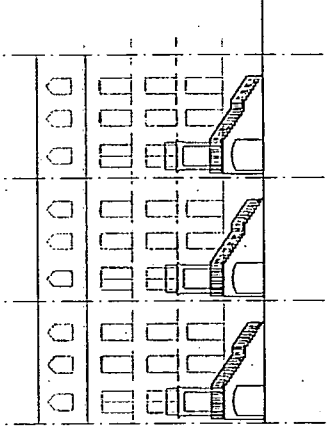
Sloops



Section



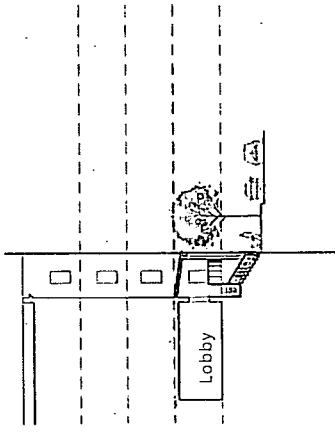
Plan



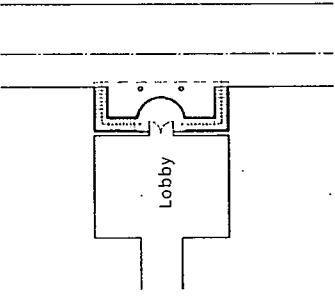
Elevation



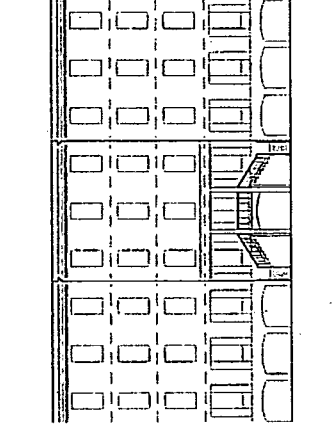
Forecourt



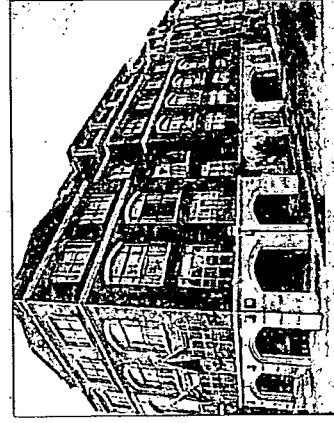
Section



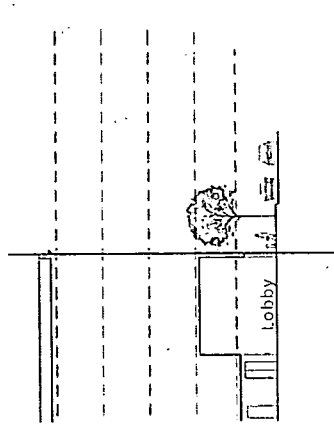
Plan



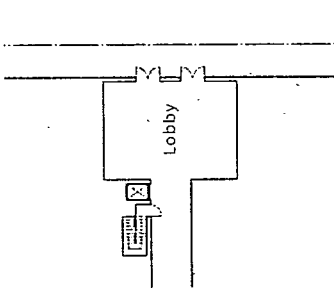
Elevation



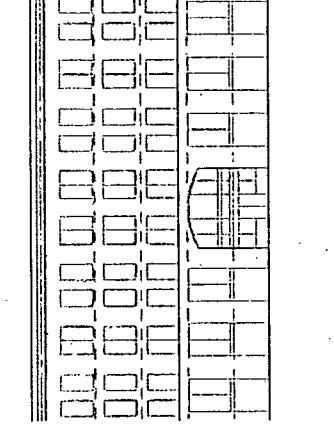
Lobby



Section



Plan



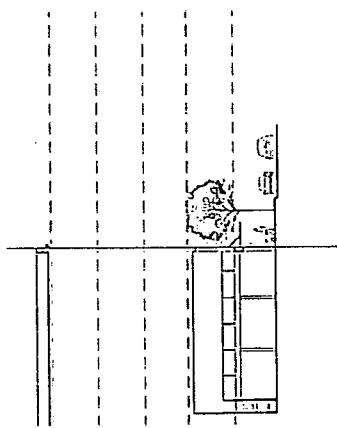
Elevation



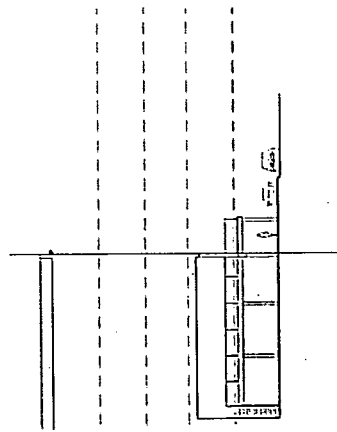
Shopfront



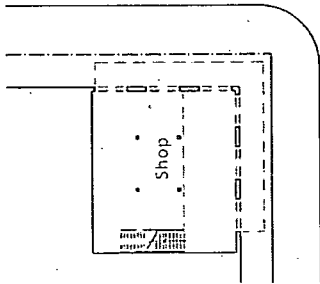
Gallery



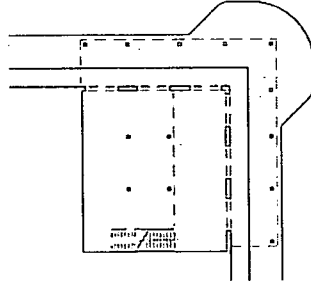
Section



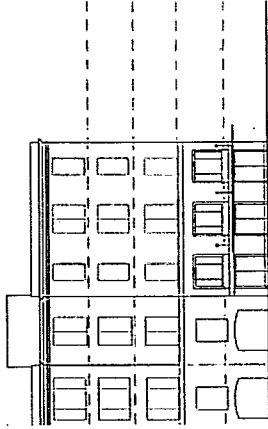
Section



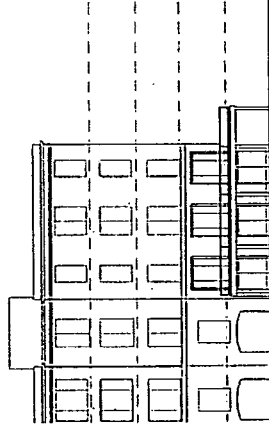
Plan



Plan

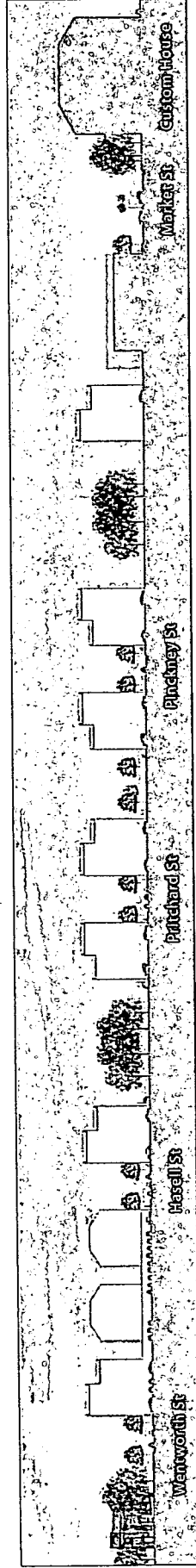


Elevation

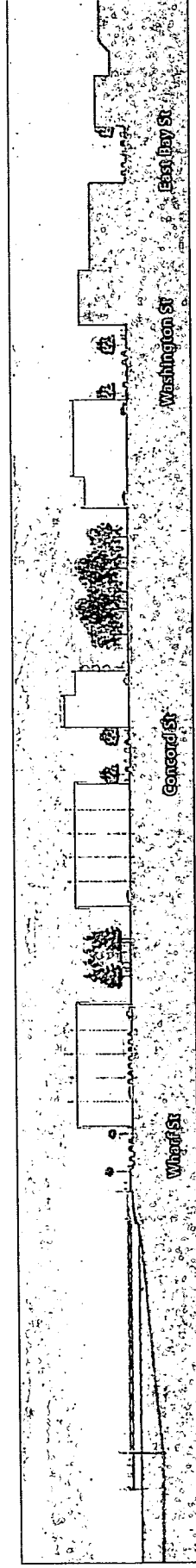


Elevation

URBAN DESIGN DIAGRAMS



North-south illustrative site section



East-west illustrative site section

SITE SECTIONS

The north-south section above is an illustrative example of the breadth of the Concept Plan area from its northern extent at the Rice Mill Park to its southern extent at the historic Custom House. The east-west site section extends from the public esplanade at the Cooper River to the interior edge of the Concept Plan at East Bay Street. Typical blocks are sized to provide for the dimensional requirements of building typologies and parking structures within the blocks. Both site sections illustrate the relationship between the street and block as well as the relationship of a block's structures to the block's interior private open space.

Private open space within development blocks is encouraged. The Concept Plan team also encourages the private open space maximize pervious area so that larger trees and courtyards, sideyards, and gardens more typical of the Peninsula may occur. The limits of the ground floor uses due to FEMA regulations and the use of the ground floor for parking may limit the potential for pervious areas within the development blocks. However, the use of green roofs and other sustainable building and site design strategies is encouraged.

Mid-block passages that are open to the public and consistent in character with Charleston's pedestrian alleys are encouraged.

CONCEPT PLAN DISTRICT

FAÇADE COMPOSITION AND ARTICULATION

Buildings should employ proportioning devices, such as a strong base, middle section, and a defined top through the use of horizontal expression lines and material changes; blank walls should be discouraged. Facades should be organized into vertically proportioned bays through fenestration patterns, plane changes, entrance locations, roof articulation, and other devices. Proportioning and articulation of the building should respond to, and express the type of use or unit type behind the facade.

Expression lines are horizontal elements on the facades of buildings used to differentiate between the base, middle and top of buildings. They emphasize a massing transition; or unify different buildings along a public frontage. Expression lines may employ elements such as cornices, shading devices, moldings, stepbacks, or a change of material or color.

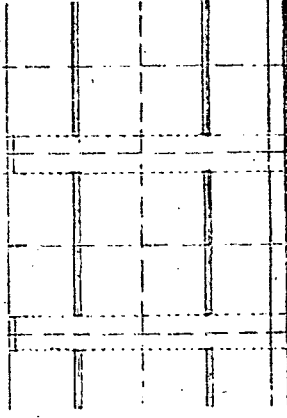
Building materials should reflect the same high quality palette consistent with the character of the Charleston Peninsula.

OPENINGS

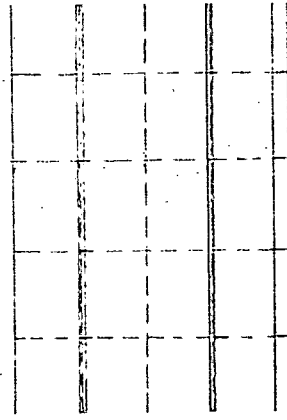
Regularized placement, proportions, and organization of windows, doors, and balconies are encouraged as they are applied to individual buildings. The use of architectural elements such as bays, porches, loggias, and shading devices can add interest to building facades, aid in relating the scale of any building to human dimension, and help break down the scale of large building blocks. Vehicular entries should be integrated architecturally into the building facade.

ROOFS

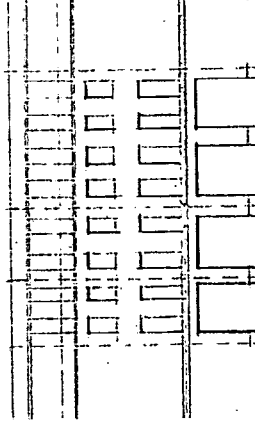
A variety of roof styles should be employed to ensure the varied skyline of the city. A variety of roof elements including tight cave overhangs, deep overhangs, cornices, exposed rafter tails, parapet walls, corbelling and other eave treatments or chimneys, dormers, lanterns, monitors, or other roof-top elements which give the buildings character should also be employed in the design of buildings. The appearance of the roof from above and the screening of rooftop mechanical equipment should be



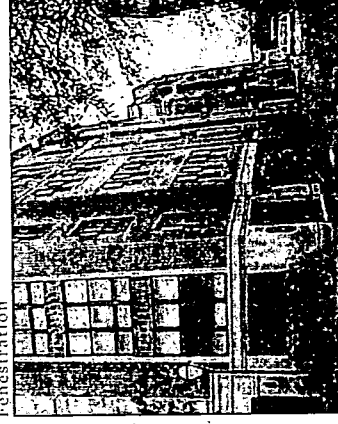
Broken Expression Lines:
Base, Middle, Top



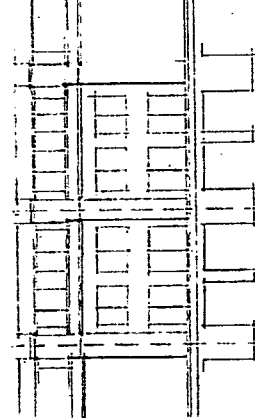
Continuous Expression Lines:
Base, Middle, Top



Example of Vertical Expression:
Fenestration



Garage Entries



Example of Vertical Expression:
Facade Articulation



Garage Entries

URBAN DESIGN DIAGRAMS

considered. Uniform and Modular Green Roof systems and designs that facilitate passive solar design, provide natural light to building interiors, or provide surfaces appropriate for energy generation should be used.

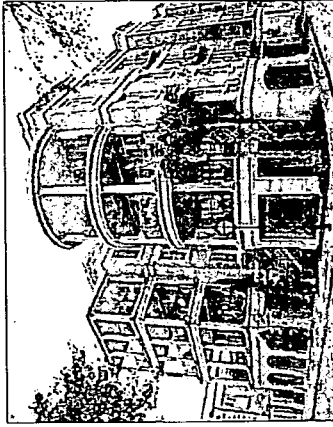
ALLOWABLE ENCROACHMENTS

Where buildings are setback from the Right-of-Way, allowable encroachments into the setback area may include:

- Stoops, porches, steps, and universal access ramps
- Marquees and canopies
- Decks and balconies
- Arcades
- Terraces
- Bay windows
- Awnings, patio covers, and other sun-control devices
- Arbors, trellises, and pergolas
- Architectural projections (eaves, cornices, moldings, gutters, etc.) and chimneys
- Walls, Fences, and gates
- Outdoor Seating and Merchandise Display
- Signs (including blade signs, awning signs, etc.)
- Flagpoles
- Bicycle Racks

FENCES AND WALLS

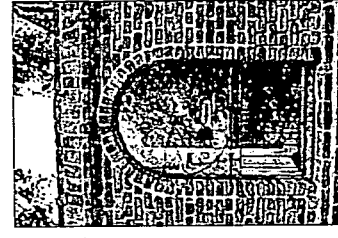
Fences and walls could play an integral role in developing the neighborhood character of Union Pier in the context of Downtown Charleston. Fences and walls in keeping with the material quality of the historic precedents in the neighboring communities would contribute to the quality of the neighborhoods at Union Pier. Fences and walls may be located along the public right of way.



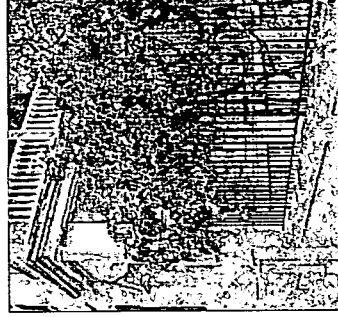
Allowable Encroachments



Allowable Encroachments



Fences and Walls



TRANSPORTATION

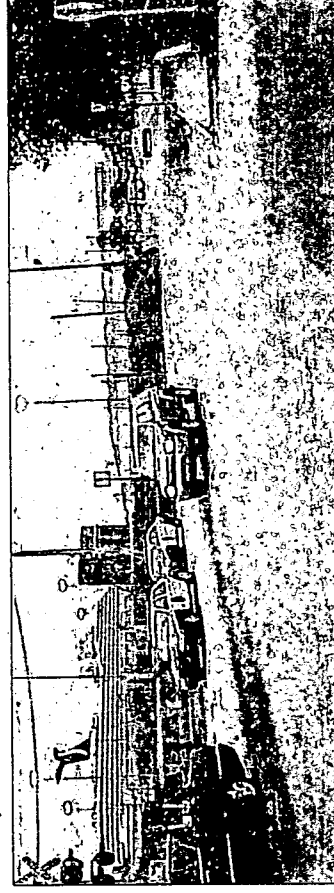
TRANSPORTATION GUIDING PRINCIPLES

Planning for the Concept Plan area is directed by a series of guiding principles. These principles focus on integrating the Concept Plan area into the historic fabric of Charleston, reconnecting multi-modal access to an area once thought inaccessible or undesirable, and allowing for a new cruise terminal and development while improving the future traffic flow into and out of Charleston. The principles include:

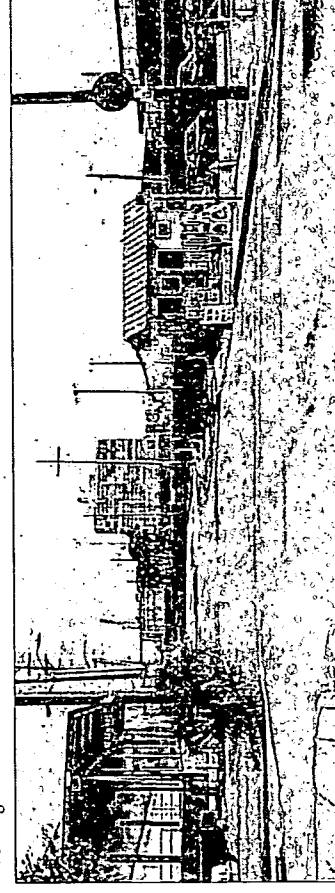
- Re-establish the historic grid of streets and pedestrian-scaled blocks in Charleston
- Provide pedestrian, bicycle, and vehicle access to the waterfront
- Provide multiple route choices for destinations within the Concept Plan area
- Provide a "park-once" environment allowing people to visit multiple destinations by walking
- Provide an efficient north-south thoroughfare system for vehicles without compromising pedestrian access to the Concept Plan area



East Bay Street



Washington Street



Concord Street

TRANSPORTATION

PROPOSED TRANSPORTATION IMPROVEMENTS

This section describes the transportation system improvements proposed as part of the Concept Plan.

CREATING MORE OPPORTUNITIES FOR NORTH/SOUTH TRAVEL

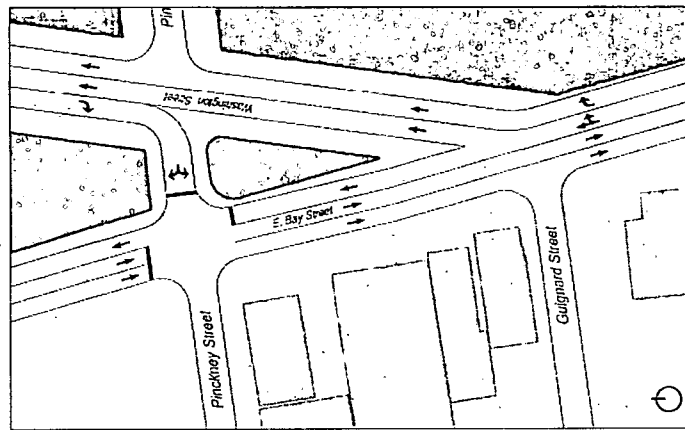
The Concept Plan creates two major improvements to north-south travel. Building from the concept presented in the "Special Area Plan - Calhoun Street-East/Cooper River Waterfront," this Concept Plan connects Washington Street to East Bay Street just south of Pinckney Street and creates a quasi one-way couplet. A one-way couplet is a pair of one-way streets, approximately one block apart, that operate as a single thoroughfare. Couplets are used to increase capacity without widening existing streets. In this concept, the two streets that would form the couplet (East Bay Street and Washington Street) would remain two-way streets, but each would emphasize its capacity in one direction. East Bay Street would be converted to two southbound travel lanes and one northbound lane with one lane of on-street parking. Washington Street would become two lanes northbound and one lane southbound with on-street parking on one side of the roadway. Supplementing the capacity of the East Bay Street/Washington Street couplet, Concord Street would be extended between its two existing sections. This will create two additional north-south lanes for traffic.

The intersection of East Bay Street and Washington Street would be configured as displayed to the right. It is expected that the intersection of East Bay Street and Pinckney Street would be signalized allowing left and right turns from southbound Washington Street onto East Bay Street. South of this intersection, northbound Washington Street traffic would flow unrestricted from East Bay Street. East of this intersection, Pinckney Street would be extended as a two-way street providing access to future private development and future public development which could include a City of Charleston owned and operated parking garage. Due to the proximity to the East Bay Street and Washington Street intersection, the intersection of Pinckney Street and Washington Street would operate as a right-in, right-out intersection.

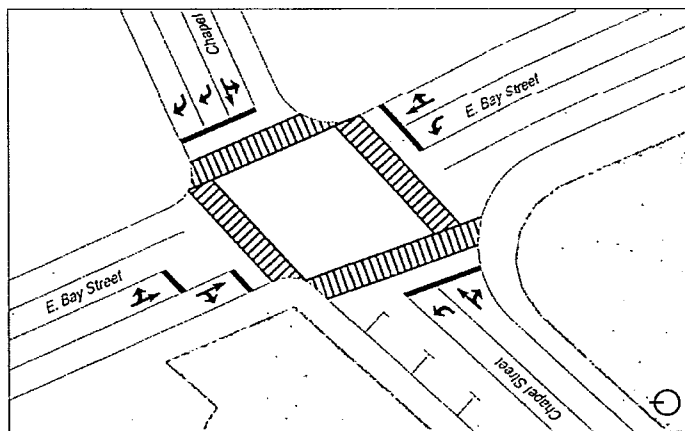
CONCEPT PLAN DISTRICT

IV.19

The proposed configuration of East Bay Street and Washington Street would move a majority of the northbound through traffic from East Bay Street to Washington Street, making East Bay Street more of a neighborhood street than it is today. The new northbound Washington Street traffic would join back with East Bay Street at Chapel Street. Since this will increase the number of right turns from westbound Chapel Street to northbound East Bay Street, the improvements displayed below are proposed at the intersection of East Bay Street/Chapel Street at buildout of the Concept Plan area.



Proposed Intersection at Washington and East Bay Streets



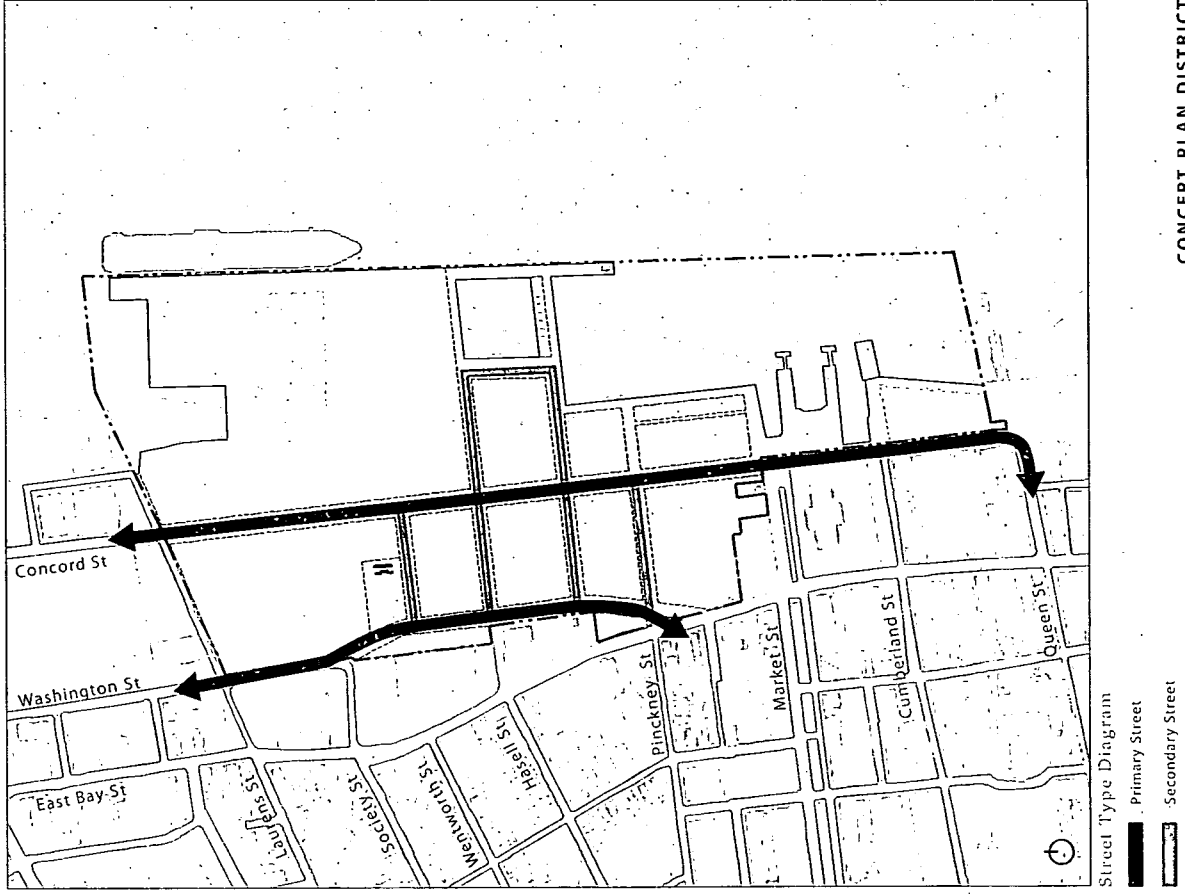
Proposed Intersection at Washington and Chapel Streets

Union Pier Waterfront

RESTORING THE HISTORIC STREET GRID

The Concept Plan restores the street grid east of East Bay Street. This will help facilitate connectivity for all modes within the city, and improve access to the waterfront. New east-west street extensions include Wentworth Street, Hasell Street, Pritchard Street, and Pinckney Street.

The street hierarchy establishes primary and secondary frontages for each of the blocks defined in the Concept Plan. Primary frontages are those facing major streets and parks. As is typical on the Charleston Peninsula, the primary roadways run north-south and the secondary roadways run east-west.



TRANSPORTATION

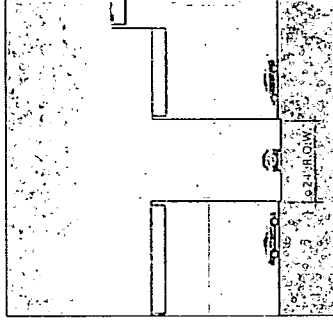
STREET SECTIONS

The following street sections were developed for the Concept Plan. Major streets will have 11-foot travel lanes with 7-foot parking lanes while residential streets will have 10-foot travel lanes with 7-foot parking lanes. All roadway sections will have sidewalks on both sides of the street.

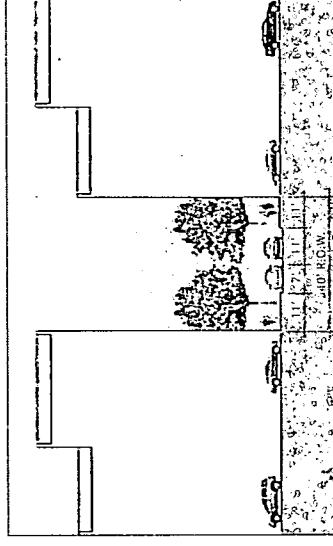
The Concept Plan recommends the proposed street sections shown in the diagrams on the following pages.

The City of Charleston Planning and Design Department has developed and proposed a series of street sections for the City that are generally similar to those presented in this Concept Plan but with smaller lane widths. In addition to the sections presented in this report, the Concept Plan would also recommend the proposed street sections developed by the City of Charleston.

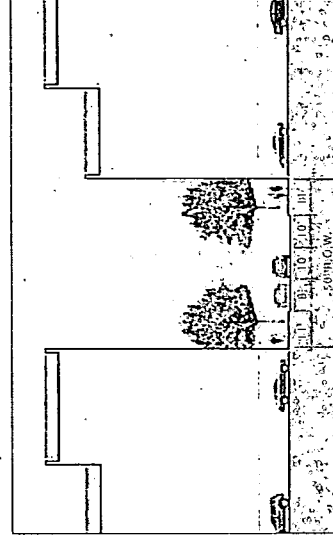
(City of Charleston Draft Ordinance to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance): Article 1, Part 3, Section 54-120; Article 8, Part 3, Section 54-831; Article 8, Part 4, Section 54-831 (streetdesignstandards_03032010draft_adh.pdf available at www.charlestoncityinfo.org/shared/docs/01))



Alley



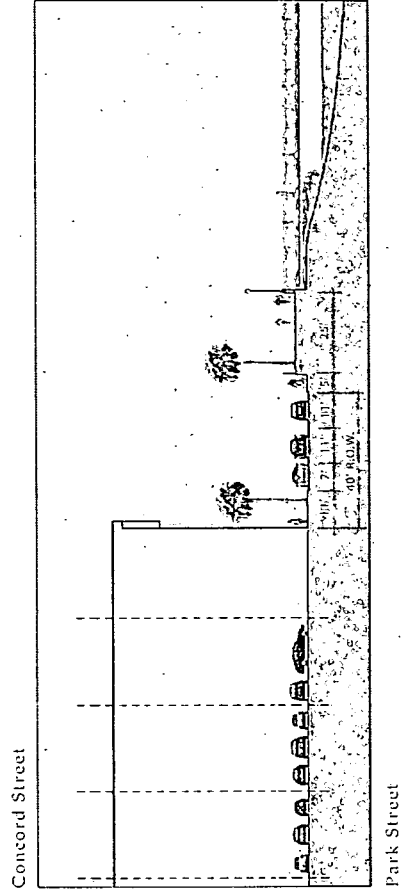
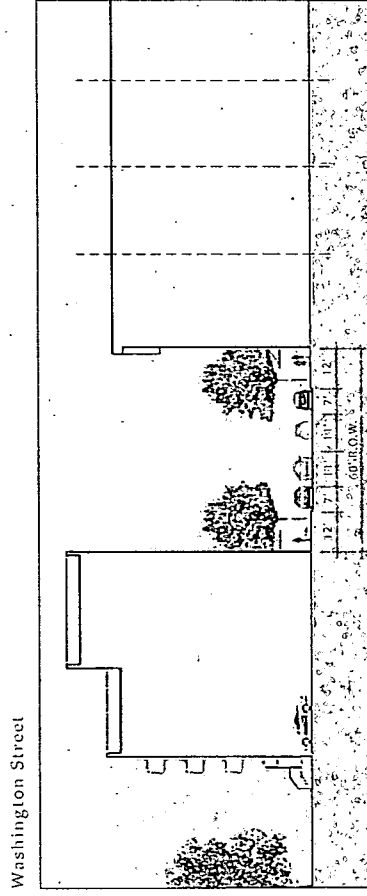
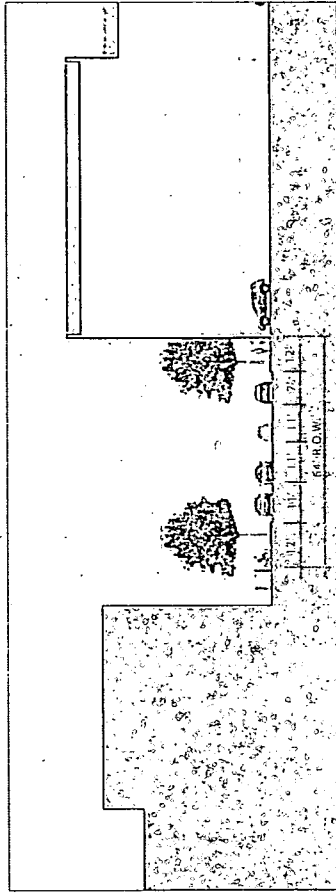
One-Way Residential Street



Two-Way Residential Street

In the vicinity of the Cruise Ship Terminal, Washington Street will have two 11-foot northbound travel lanes and one southbound 11-foot travel lane with 7-foot on-street parking southbound. Six-foot sidewalks will be provided on both sides of the street. Adjacent to the sidewalk to the east, fenced from Washington Street, the cruise ship property will begin. Within the cruise ship property there will be an 18-foot queuing lane for arriving passengers adjacent to the parking for the cruise ship passengers; this queuing lane will be separated from the parking area using fencing.

One of the illustrative street sections runs parallel to the waterfront walk esplanade. Similar to the Charleston Battery, the street section allows a five foot sidewalk or planted area immediately adjacent to the esplanade structure.



CONCEPT PLAN DISTRICT

TRANSPORTATION

PARKING

The Concept Plan recommends a "park-once" strategy, where vehicles entering the area park once and walk to multiple locations. For example, hotel patrons will come to Charleston, park their car and walk to various interests for the duration of their stay.

Parking ratios for new development in the concept plan area are based on the following City of Charleston Lower Peninsula ratios:

- Residential – 1.5 parking spaces per dwelling unit
- Commercial Office – 1 parking space per 500 square feet
- Hotel – 2 parking spaces for every 3 hotel rooms

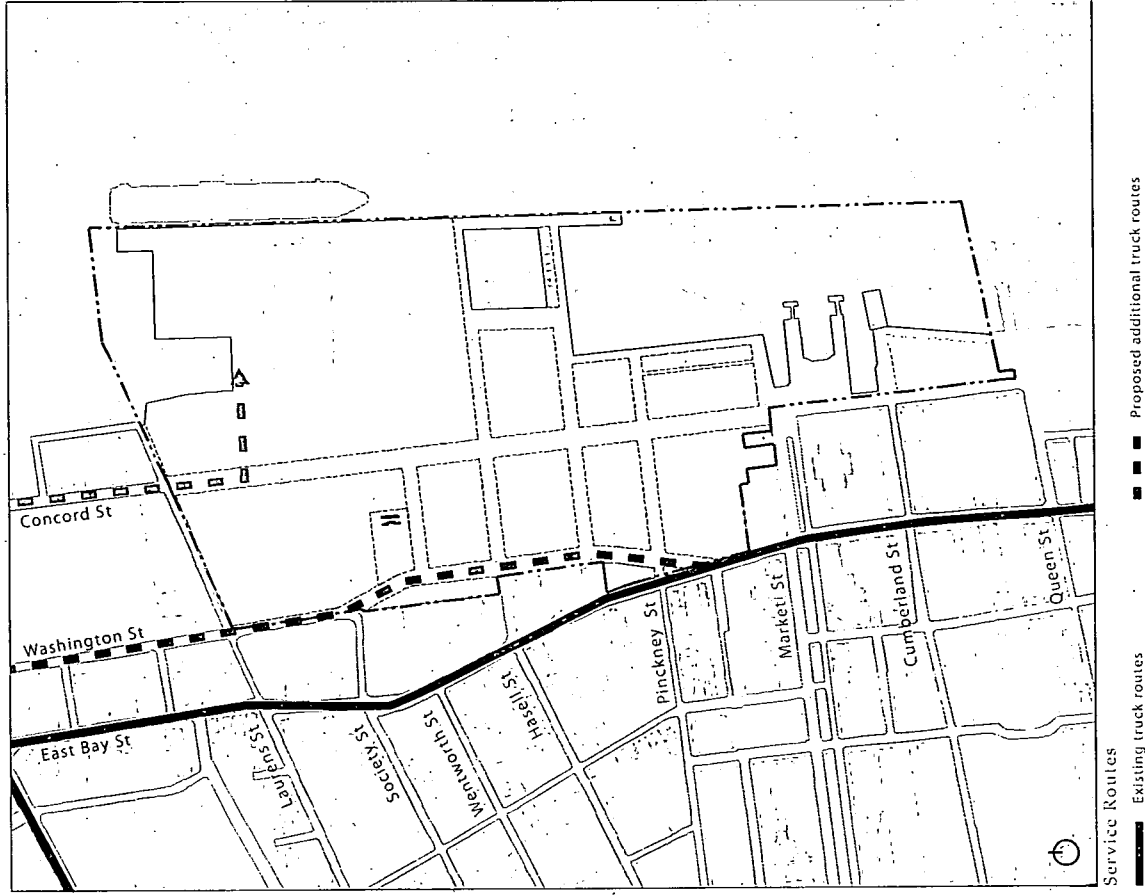
Parking for the residential units will be provided on the first floor of the buildings. Parking for the restaurants and office will be provided within the first floor of the buildings and/or within the public parking system which may include a City of Charleston parking deck. Hotel guests will park in garages at hotel site(s).

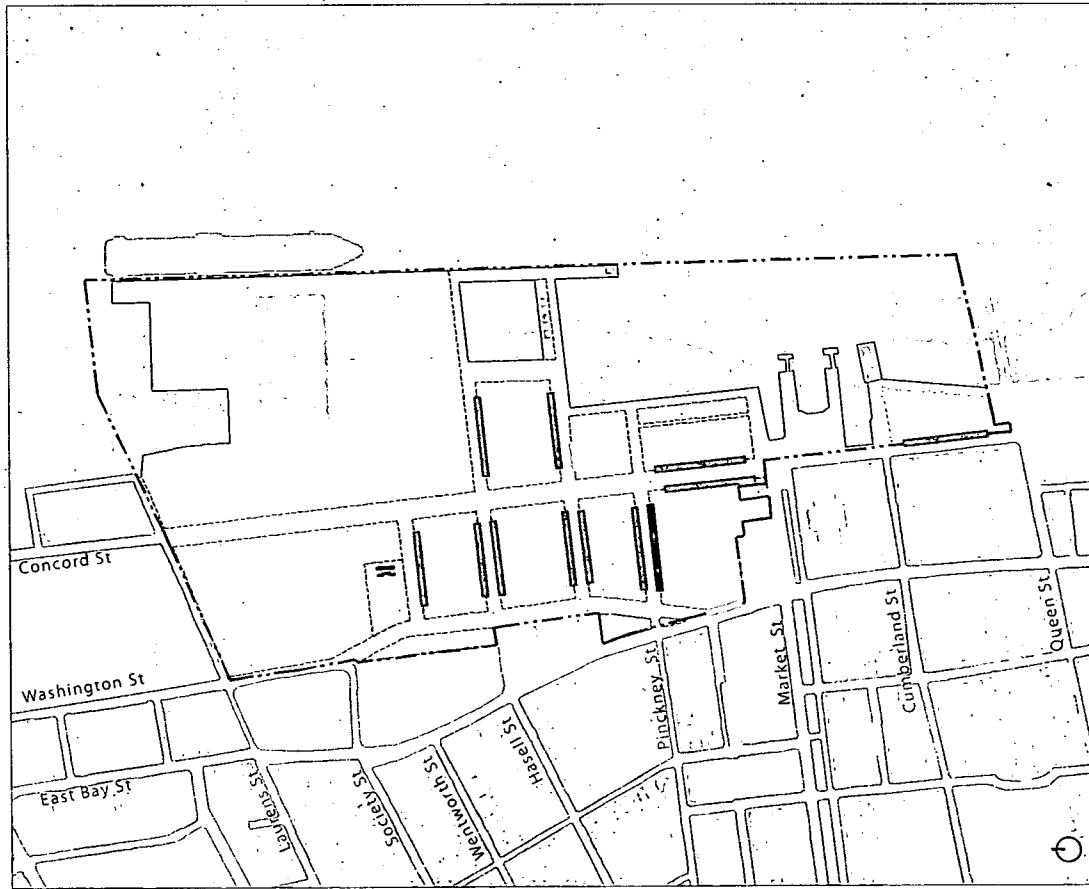
ACCESS

The Parking and Service plan indicates the locations of parking within the block and preferred access points from the surrounding streets, on secondary frontages where possible. Service and parking may also be accessed via alleys.

SERVICE ROUTES

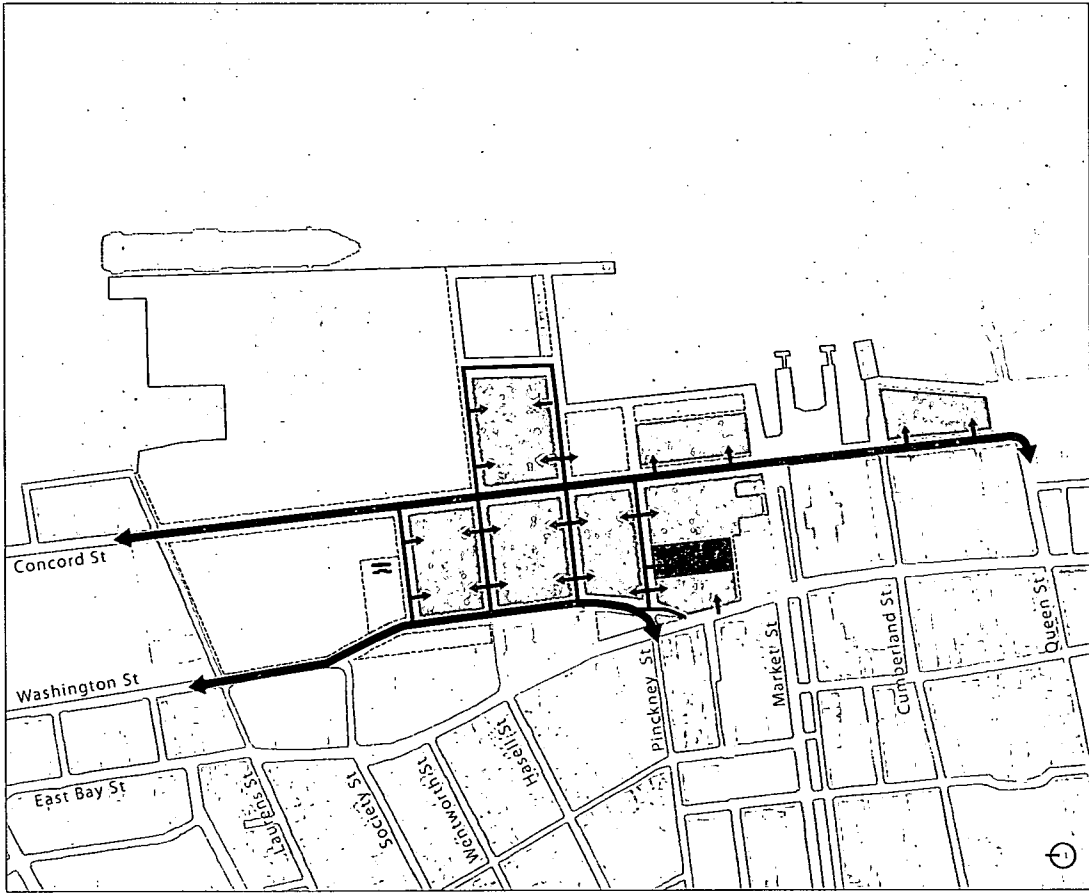
The Concept Plan has been designed to facilitate service vehicles accessing the properties. These service vehicles include garbage trucks, delivery trucks for the hotels and restaurants among others.





Access

- Maximum Allowable: 3 curb cuts @ 20' wide each
- Maximum Allowable: 2 curb cuts @ 20' wide each



Parking and Service

- Parking
- Service route
- Garage Entry
- Potential Site for a City Garage

CONCEPT PLAN DISTRICT

TRANSPORTATION

PUBLIC TRANSPORTATION

The Concept Plan area is served by various forms of public transportation.

Carriages

Carriage rides are a very popular attraction in Charleston. Carriage routes generally originate around Market Street and travel to various districts within the city. The following figure shows the locations of the existing carriage routes as well as proposed routes through the Concept Plan area.

DASH Shuttles

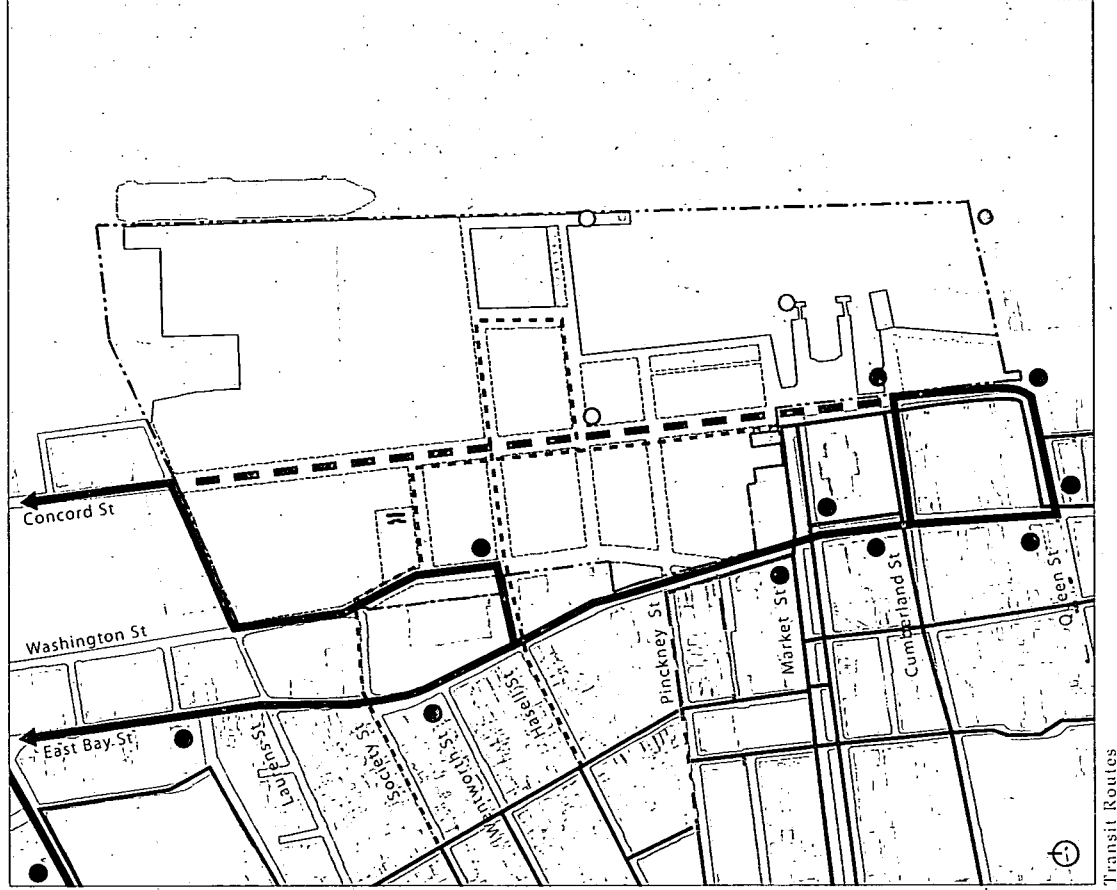
The Charleston Area Regional Transportation Authority (ARTA) runs the four Downtown Area Shuttle (DASH) routes. The existing DASH routes as well as proposed extensions and stops within the Concept Plan area are also shown.

Water Taxi

Water Taxi service is currently offered between Patriot's Point in Mt. Pleasant and the Maritime Center north of Union Pier. A water taxi stop further south on the Peninsula could be accommodated at Union Pier and would encourage greater use of other modes of transport, would bring visitors to the Custom House Wharf, provide visitors with more options for exploring the Peninsula, and add vitality to the Union Pier and Market Street area.



Carriages



Transit Routes

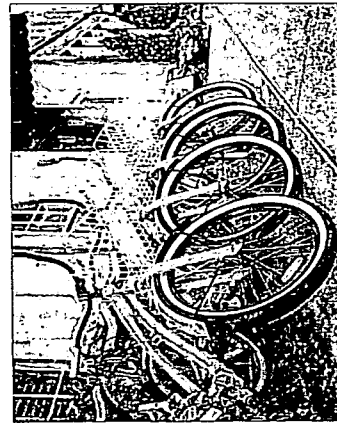
CONCEPT PLAN DISTRICT

BIKEWAYS

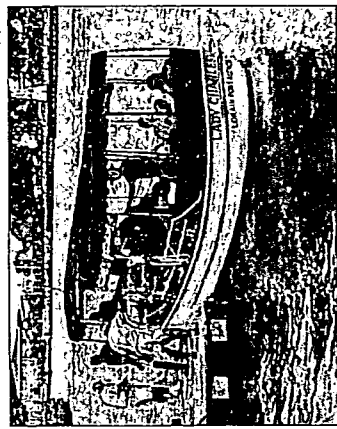
A bicycle network is an important contributor to a city's mobility plan. The network proposed connects to and augments the existing and planned bicycle routes within the City of Charleston. The shared bike lanes should be properly marked with "sharrows" and signage for motorists. Bike racks should be planned within the Concept Plan and located adjacent to the bike network to provide convenient bike storage.

The West Ashley Greenway is a regional bike route that connects to the East Coast Greenway (a bike route which stretches from Maine to Florida). The Greenway passes through urban and rural areas and currently links within Charleston at Liberty Square north of Union Pier. The Concept Plan would provide for the extension of the bike route through Union Pier along the public waterfront esplanade.

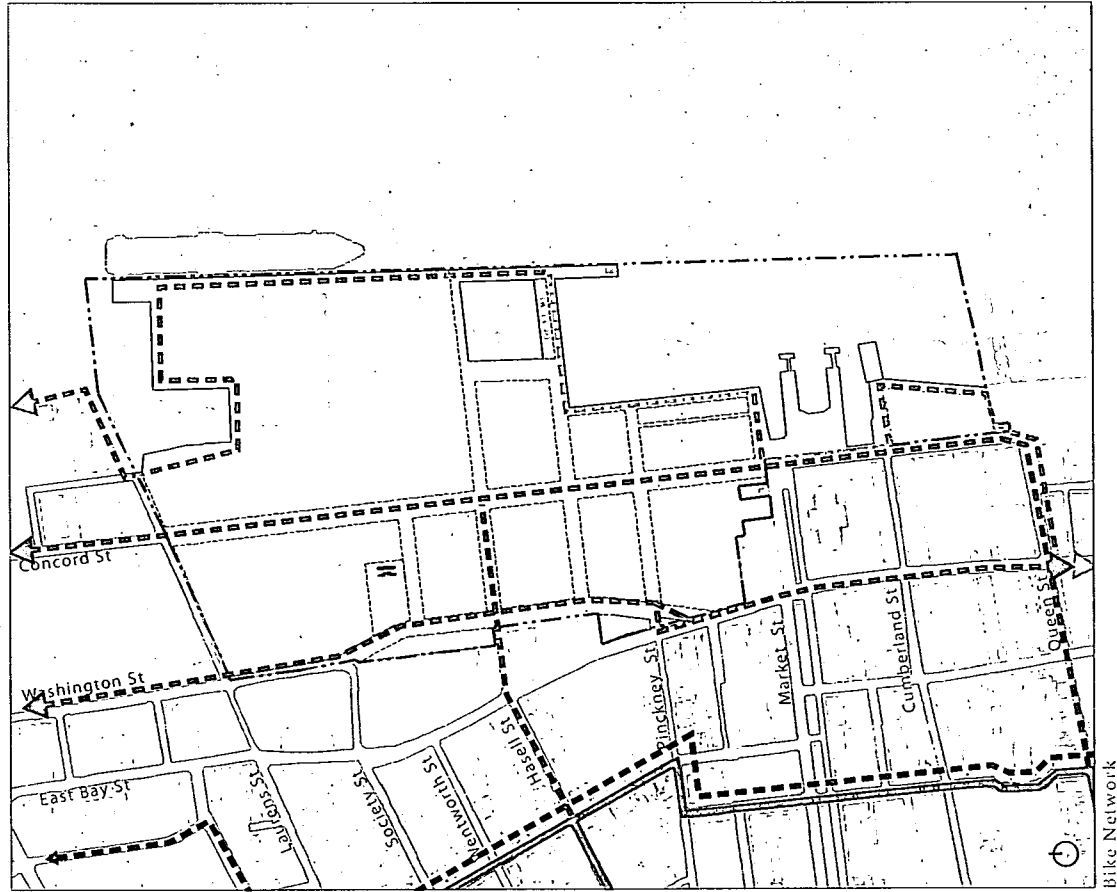
The Charleston Bicycle Friendly Community Task Force has authored a set of recommendations (May 2009) which include creating policy and standards for connections to future developments. Such standards should be coordinated with the potential for additional bikeways at Union Pier.



Bicycle racks



Water taxi



Bike Network

City bike routes

Proposed Museum Mile Bike Route

Proposed shared bike lanes

Proposed West Ashley Greenway extension

CONCEPT PLAN DISTRICT

TRANSPORTATION

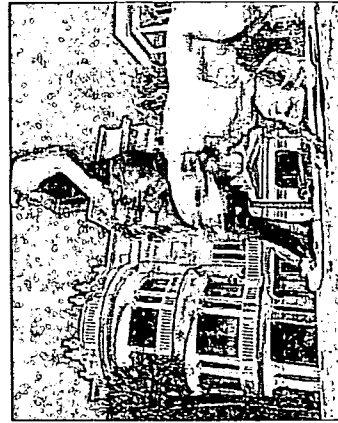
PEDESTRIAN ACCESS

Throughout the Peninsula there are existing sidewalks and paths linking various parts of the city and its green areas. The Concept Plan sidewalks will directly link to the existing pedestrian network. The Concept Plan streetscapes should be designed with a strong pedestrian focus as extensions of the park network. Streetscape amenities include benches and chairs, bike racks, lighting, trash receptacles, street trees, special paving at crosswalks, and designated locations for artwork.

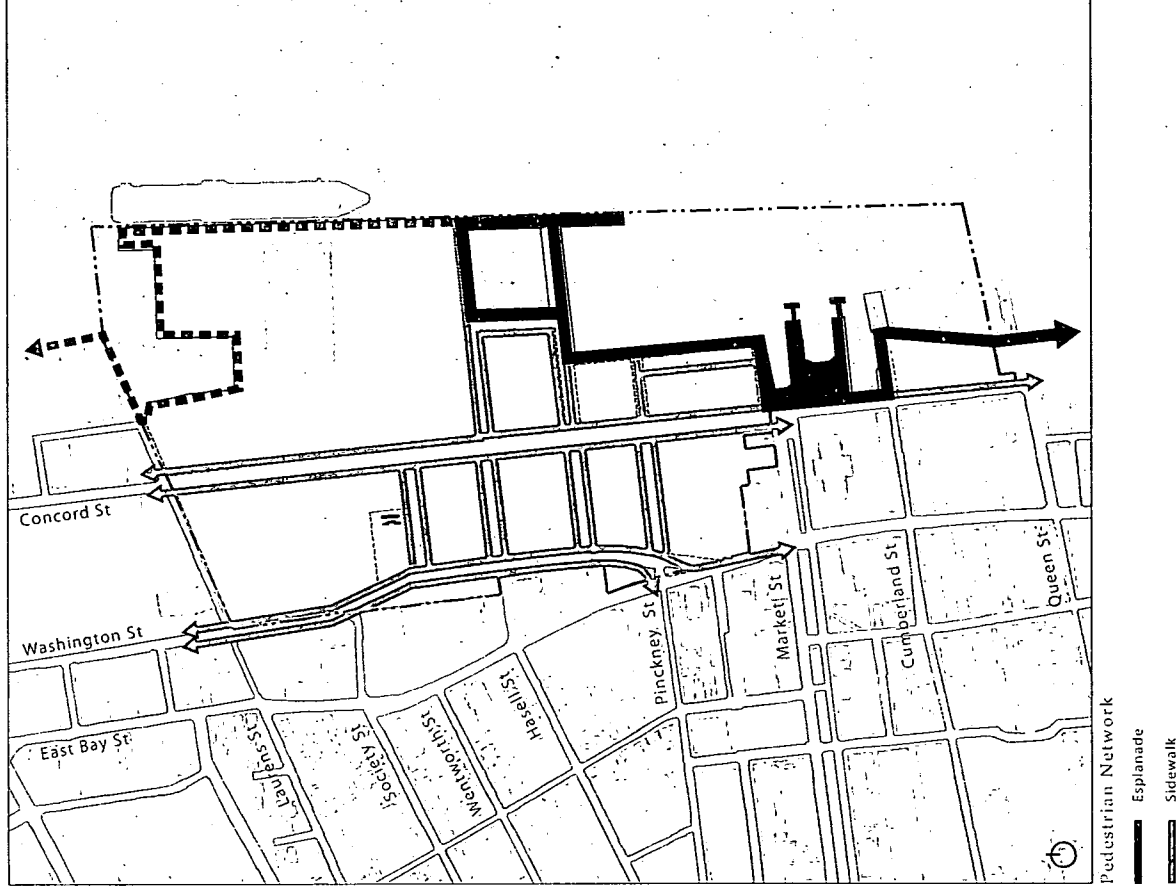
There are key intersections within the Concept Plan where vehicular, bicycle, and pedestrian will interact, creating the potential for conflict points. It is imperative that these intersections be designed to insure safe mobility of transit vehicles, cars, bikes, and pedestrians. Design elements that can raise driver awareness and reduce potential conflicts with other modes include distinctive paving, special lighting, minimizing curb cuts and driveways, and signage to announce pedestrian and bike crossings to motorists.

Pedestrian crossing distances should be minimized and curb radii kept at minimums. On-street parking and narrow vehicular travel lanes also serve to slow traffic and create a safer pedestrian environment.

Providing for the pedestrian will increase the multi-modal capacity of the site.



Pedestrian access



CONCEPT PLAN DISTRICT

INFRASTRUCTURE

Once the Concept Plan progresses to a Development Plan, early coordination with South Carolina Electric and Gas Company will be an essential step in creating a design in keeping with the vision of the Charleston Peninsula which has been illustrated by the concepts within this Concept Plan. There are existing electric and gas utilities within Union Pier that serve not only Union Pier but much of the surrounding neighborhoods and businesses. Disruption to these utilities due to relocation should be considered.

In addition, opportunities to create a sustainable site by efficient design should be one of the goals for this site. Some methods to obtain these goals are as follows:

- design building envelopes, HVAC units, lighting, hot water heaters and appliances to maximize energy performance
- specify HVAC systems that use no CFC refrigerants
- harvest free energy – Solar panels, windows, wind energy etc
- recover Waste Energy – Exhaust air energy recover, graywater heat recovery, etc.
- solar; thermal, bio-fuel based, geothermal heating, geothermal electric,
- renewable or green-power from off-site

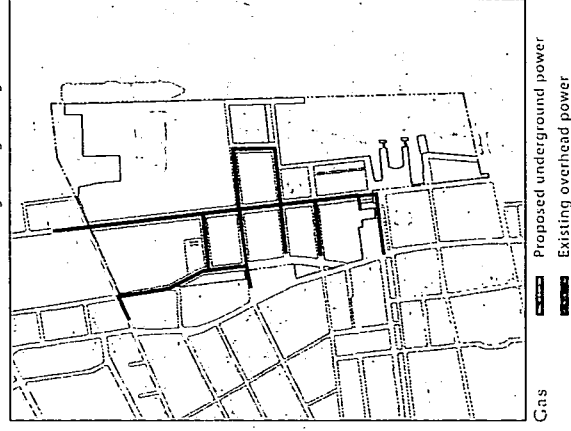
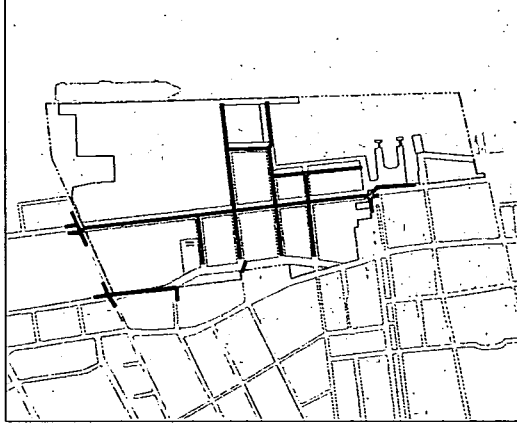
The use of sustainable methods could reduce long term cost and help reduce the carbon footprint for this site.

POWER

Electricity for Union Pier is provided by South Carolina Electric and Gas Company. Currently electric power serves the existing buildings by means of overhead power. It is recommended that future design relocate all overhead power within the Union Pier site underground and within the future road right of ways. It is further recommended that as the project develops, early coordination with SCE&G regarding availability occur.

GAS

Gas for Union Pier is provided by South Carolina Electric and Gas Company. Currently gas service to the Union Pier site is limited. The existing gas mains are located at the intersections of Market Street and Concord Street, Hassel Street and Washington Street, and Concord Street and Laurens Street. Service to future buildings will be provided by extending new gas mains through the site.



CONCEPT PLAN DISTRICT

INFRASTRUCTURE

WATER SUPPLY

Potable System

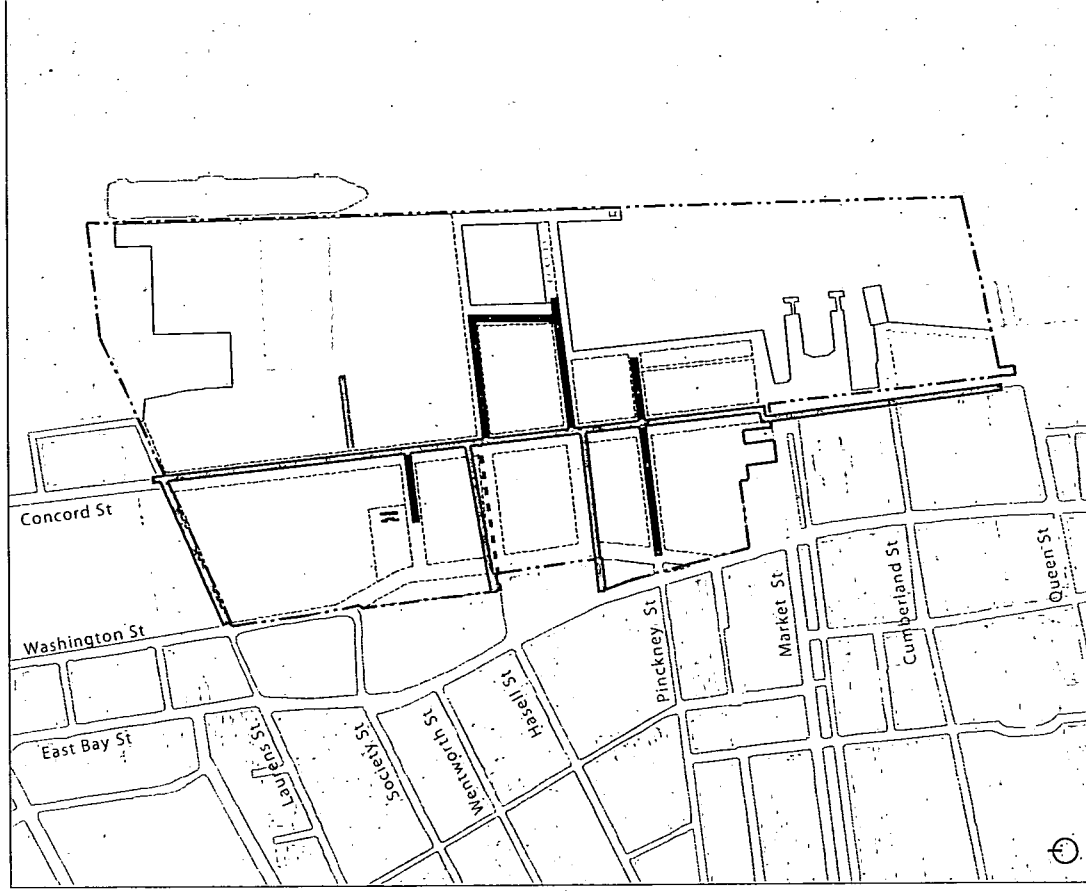
Union Pier lies within the service area of Charleston Water System (CWS). A hydrostatic flow test (conducted December 7, 2009) indicated the pressures in the area were low and the transmission system is currently limited and may need larger mains. These improvements will be completed concurrent with the demand.

An existing 12" main runs parallel to Concord Street all the way through the entire Port's property to Wharfside Street. There are three existing 12" mains that connect the 12" main along Concord Street to Washington Street and East Bay Street. This looped system provides the framework for a portion of the site. Sections of the existing line will need to be relocated to work with the Concept Plan and additional mains will need to be provided to serve the large site plan.

Through the existing and proposed potable water system, fire protection and irrigation water will be provided to this site.

Irrigation

The Concept Plan currently shows several open spaces with the intention that these zones would differ in the amount and types of vegetation requiring irrigation. The undefined specifics make estimations for irrigation difficult at this time; however, it is quite normal for customers of public utilities to use potable water for private irrigation needs. Some planned developments may use sources other than potable water for irrigation of common areas. Many locations use captured stormwater supplemented by well or utility water during periods of peak demand and low rainfall. In addition, vegetation that is drought resistant can be planted to reduce demands for irrigation water. One or a combination of these methods can help reduce long term costs for irrigation fees and promote sustainability within this site.



Water Infrastructure

Existing water main
Proposed relocated main
Proposed water main

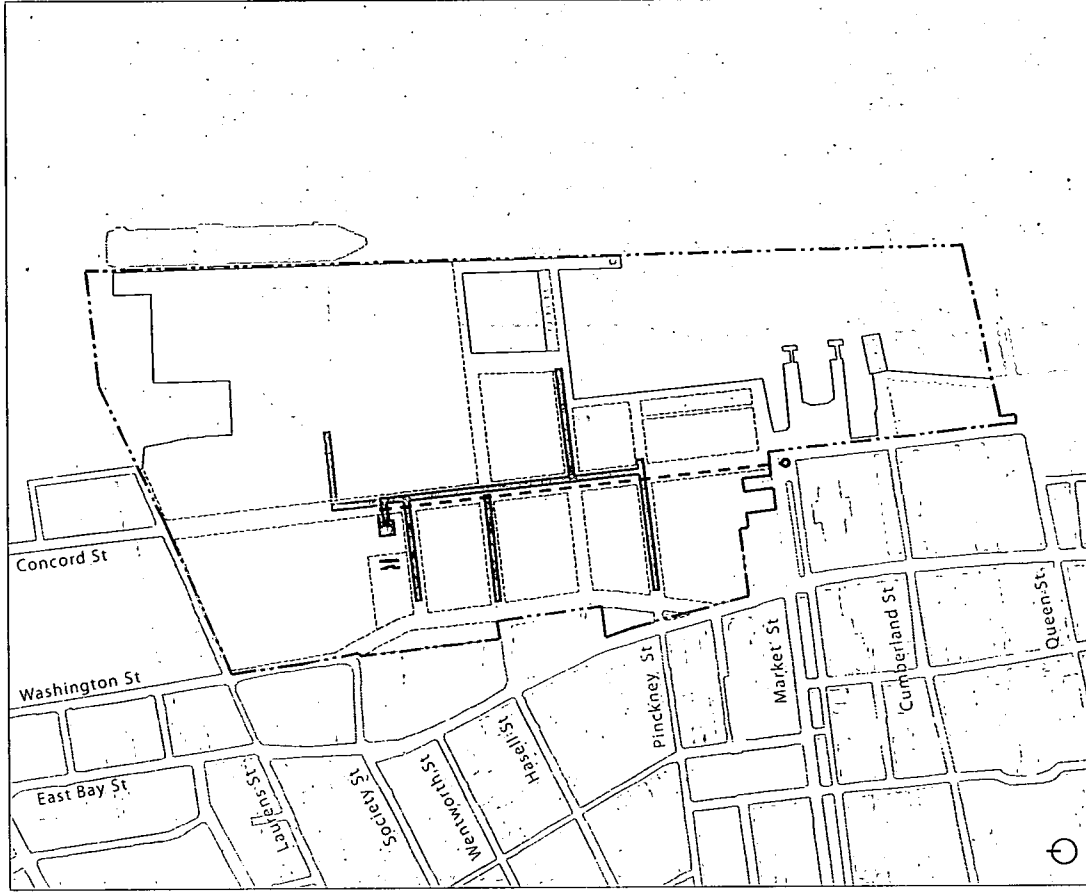
CONCEPT PLAN DISTRICT

WASTEWATER

Sanitary Sewer

Union Pier lies within the service area of Charleston Water System (CWS). CWS has infrastructure in and around the site to allow for points of connection to their sewer system. It should also be noted that all services and associated capacity that is currently provided to the Port property will be credited back to the future development in terms of impact fees.

The existing warehouses located within the Port property are currently served with a series of small pump stations or grinder pumps that force wastewater to the existing gravity lines located on the surrounding sites. It has been determined that the future development would require the addition of a central pump station to handle the future cruise terminal and the future private development. A series of gravity sewer mains would capture the wastewater from this proposed site and route it to the central pump station. The pump station would then pump the wastewater to an existing CWS gravity system.



Sewer

Proposed gravity sewer main
Proposed force main

Proposed pump station
Existing sanitary sewer manhole

CONCEPT PLAN DISTRICT

IV/30

INFRASTRUCTURE

STORMWATER

Existing Conditions

Union Pier is approximately a 63 acre site located on the eastern side of the Peninsula of Charleston, SC. Union Pier currently drains to the Charleston Harbor and eventually to the Atlantic Ocean.

The Concept Plan area is generally "developed", with existing warehouses to support South Carolina State Port Authority uses. Existing land cover within the Concept Plan area are open parking lots, warehouse buildings, and existing infrastructure to support its intended uses. Approximately 98% of the site is impervious.

The topography of Union Pier is very characteristic of the South Carolina "low country" – with elevations ranging from elevation 5ft to 12ft. In general the gentle relief results in very low slopes in the drainage ways across the Concept Plan area.

The drainage within the Concept Plan area is a system of existing catch basins and pipes ranging in size and materials. The current system has eight points from which that the pipes directly discharges to the Charleston Harbor (See Attached Existing Storm Drainage Exhibit).

The City of Charleston has been coordinating with the Port for a future drainage tunnel known as the Market Street Drainage project. The drainage tunnel will collect stormwater runoff from the Market Street basin and tie to a drainage shaft at the corner of Market Street and Concord Street. A drainage tunnel connects this shaft, paralleling Concord Street, through the Port's property and discharges to the Concord Street Pump Station located across from Concord Park. The current design for the Market Street Drainage study does not account for any runoff drainage from the Union Pier project area.

Regulatory Context

Applicable stormwater regulations for the Union Pier Concept Plan areas are related to the following regulatory programs:

- Federal Clean Water Act / National Pollution Discharge Elimination System (NPDES) Storm Water Program
- South Carolina Pollution Control Act
- South Carolina Storm Water Management and Sediment Reduction Act
- South Carolina Coastal Zone Regulations
- South Carolina Anti-Degradation Rules
- City of Charleston's MS4 Review

In South Carolina, the South Carolina Department of Health and Environmental Control (SCDHEC) is responsible for administering the state's stormwater management program. In the eight coastal counties, SCDHEC has delegated the stormwater management program authority to the South Carolina Office of Ocean and Coastal Resource Management (OCRM). Recently, as part of the NPDES Phase II stormwater implementation (for small and medium sized municipalities and counties), OCRM has delegated portions of the stormwater management program authority to local jurisdictions (as part of their NPDES municipal separate storm sewer system (MS4) permit). The City of Charleston has delegated NPDES MS4 stormwater programs.

Land disturbing activities (including the construction of roads, residential neighborhoods, commercial areas, etc.) are required to apply for and receive a NPDES Phase II Construction General Permit (CGP). These permits address water quality and quantity using thresholds based on the project's land disturbance footprint, distance to receiving water, and proximity to sensitive areas. Generally, permits are required if a land disturbing project is:

- ≥ 1 acre and not within ½ mile of a receiving water or
- if a project is > ½ acre and within ½ mile of a receiving water.

CONCEPT PLAN DISTRICT

However, a permit could be required even if the project is $\leq \frac{1}{2}$ mile of a receiving water if it meets defined criteria that are outlined in the regulations.

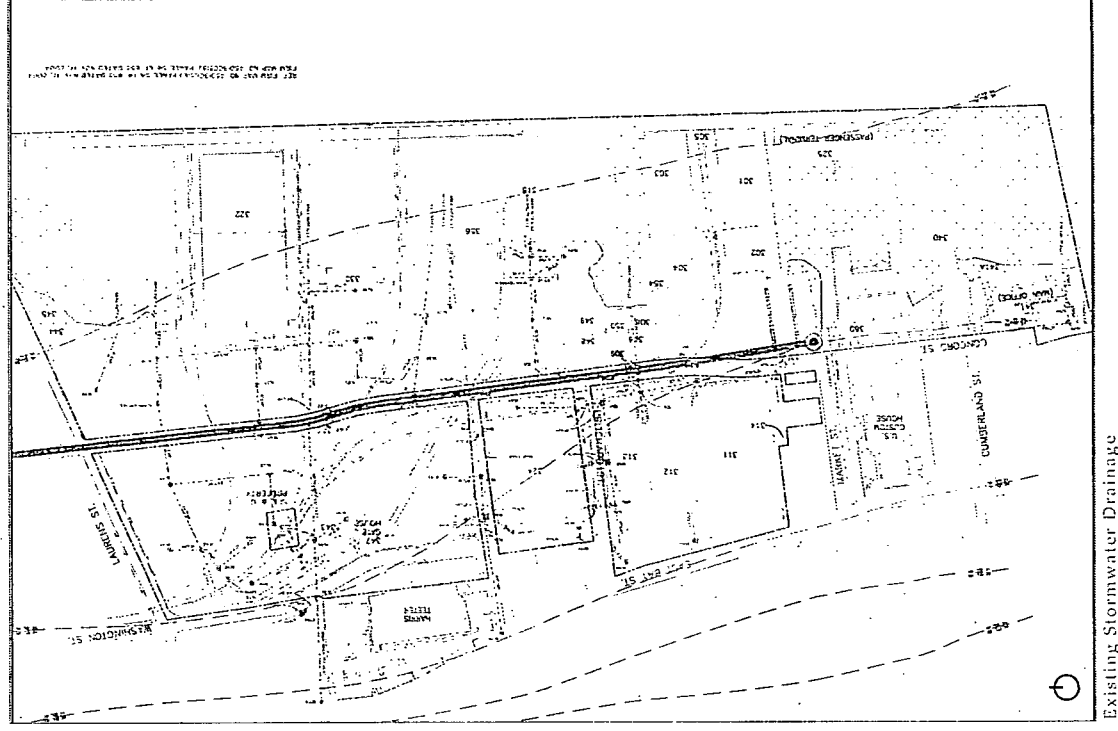
For nearly all acreages of disturbance the regulations require that peak post-development discharge rates from the basin shall be at or below pre-development rates for the 2- and 10-year 24-hour storm events (4.5 and 6 inches, respectively).

The regulations also specify that a "water quality volume" be detained to improve water quality from the site. The thresholds of the "water quality volume" are related to the project's size and relative location to the receiving water body. Projects that disturb ≥ 5 acres and are not within $\frac{1}{2}$ mile of a receiving water body are required to capture and detain on site the first $\frac{1}{2}$ inch of runoff and release that quantity over a 24 hour period. Projects within $\frac{1}{2}$ mile of a receiving water body are required to capture and detain on site:

- the first $\frac{1}{2}$ inch of runoff from the site, or
- the first 1 inch of runoff from the built upon area, whichever is greater.

During construction, larger projects (those > 10 acres and draining to a common point) are required to demonstrate an 80% sediment trapping efficiency for total suspended solids (TSS) for the 10-year, 24-hour storm event.

Additional state stormwater regulations pertain to the further degradation of impaired waters identified in the state's listing of impaired waters (303(d) list). Large scale development projects, those with more than 25 acres of disturbed land which have stormwater discharges directly into an impaired water body via structures or ditches, have the ability to further degrade the quality of that impaired water body. Therefore, additional assurance (in the form of stormwater best management practices (BMPs)) may be required to ensure runoff from that site will not cause or contribute to further degradation of the water body.



INFRASTRUCTURE

Additionally, there may be certain projects adjacent to some ecologically important or sensitive waters with disturbance of less than 25 acres which will require assurance that water quality will not be further degraded. The concern for water quality degradation pertains not only to runoff during construction, but also after the project is fully built-out.

In addition to the federal and state regulations pertaining to stormwater quantity and quality, additional regulations are imposed by other local jurisdictions – including the City of Charleston.

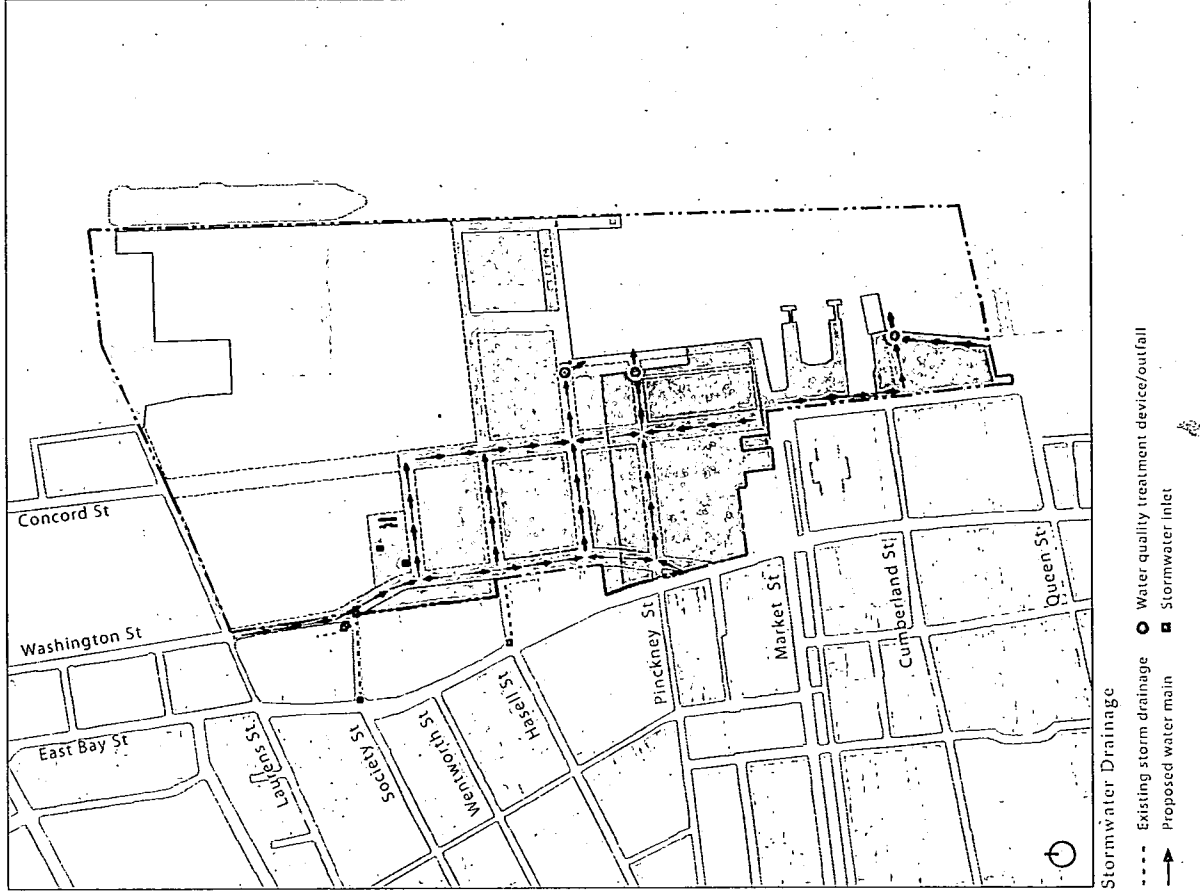
STORMWATER DRAINAGE

Collection and Conveyance

Stormwater runoff from the developed areas within Union Pier will be captured in stormwater conveyance infrastructure of various types – pipes, swales, etc. This infrastructure will be designed to meet the local and state regulations for the particular type of system.

For this site, the collection and conveyance system will be designed as a series of inlets and pipes to collect and convey the stormwater runoff, treat the water for quality standards set forth by the regulatory agencies, and discharge to the Charleston Harbor. Natural topography will be used wherever possible to maintain existing drainage patterns.

The proposed system does not connect to the planned Market Street Drainage project. However, it is the recommendation of the design team that any potential availability in the Market Street Drainage system be allotted for stormwater runoff drainage from the Union Pier project area to mitigate existing drainage issues around Union Pier and Washington Street.



Post-Development Detention

As discussed in the Regulatory Context section above, the peak post-development stormwater discharge rate must be equal to or lower than peak pre-development stormwater discharge rate for the developed areas. The Concept Plan proposes to increase pervious area therefore decreasing runoff rates. Any increased stormwater runoff will be mitigated through the design process, including:

- Using innovative design approaches,
- Maintaining site resources and natural undisturbed areas,
- Employing lower impact site layout techniques,
- Minimizing impervious cover,
- Utilizing natural features for stormwater management, and
- Implementing stormwater BMPs.

STORMWATER QUALITY

The management of potential non-point source pollution (from developed areas within the Union Pier Concept Plan areas) is essential for the protection of surrounding receiving waters. Currently, stormwater discharges directly to Charleston Harbor without detention or stormwater quality treatment.

Development within the Concept Plan area will be designed and constructed to maximize natural infiltration (where practical) and minimize site runoff.

Stormwater management practices will be designed to:

- Decrease the erosive potential of increased runoff volumes and velocities caused by land development,
- Remove sediment and other pollutants in stormwater,
- Preserve natural drainage patterns and other hydrologic conditions, and
- Preserve the natural systems that help stormwater quality.

Best Management Practices

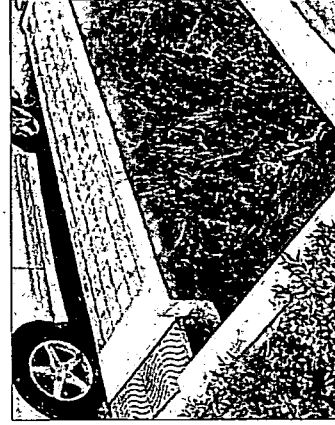
Due to the site constraints created by the urban context, traditional treatment methods such as wet and dry detention will most likely not be used. Stormwater quality best management practices that will be considered are listed below.

Non-structural BMPs that may be incorporated into the designs will include (but are not limited to):

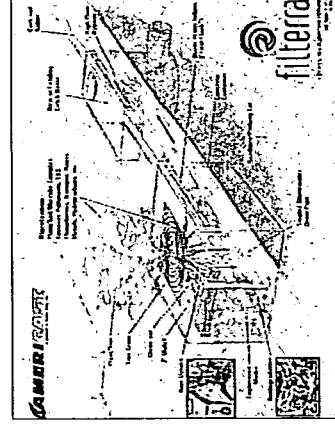
- Vegetated conveyance systems,
- Green roofs,
- Critical line buffers
- Disconnected roof top and other impervious area drainage to pervious areas, and
- Natural infiltration (where practical).

Structural BMPs that will be considered for incorporation into the designs will include (but are not limited to):

- Underground Detention Systems,
- Stormwater Wetlands,
- Bioretention Areas,
- Infiltration Trench,
- Pre-Fabricated Control Devices,
- Vegetated Filter Strips, and
- Grass Paving and Porous Paving Surfaces.



Example of a bioinfiltration planter box



Typical Filterra® layout, tree grates should be consistent with the adjacent street landscape

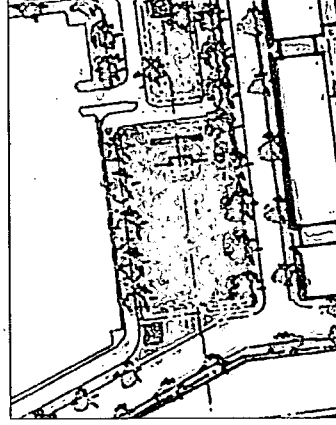
CONCEPT PLAN DISTRICT

SPECIAL INITIATIVES

There are four special initiatives, or special areas, within the Concept Plan. Each initiative is tied to the past, present, and the future of the working waterfront and therefore inextricably linked to industry and the residents of Charleston.

The four special initiatives of the Concept Plan are:

- Restoration of historic public landing
- Restoration of the natural shoreline
- Restoration of Bennett's Rice Mill and Creation of Rice Mill Park
- Creation of Pavilion for the History of the Waterfront in Union Pier Park

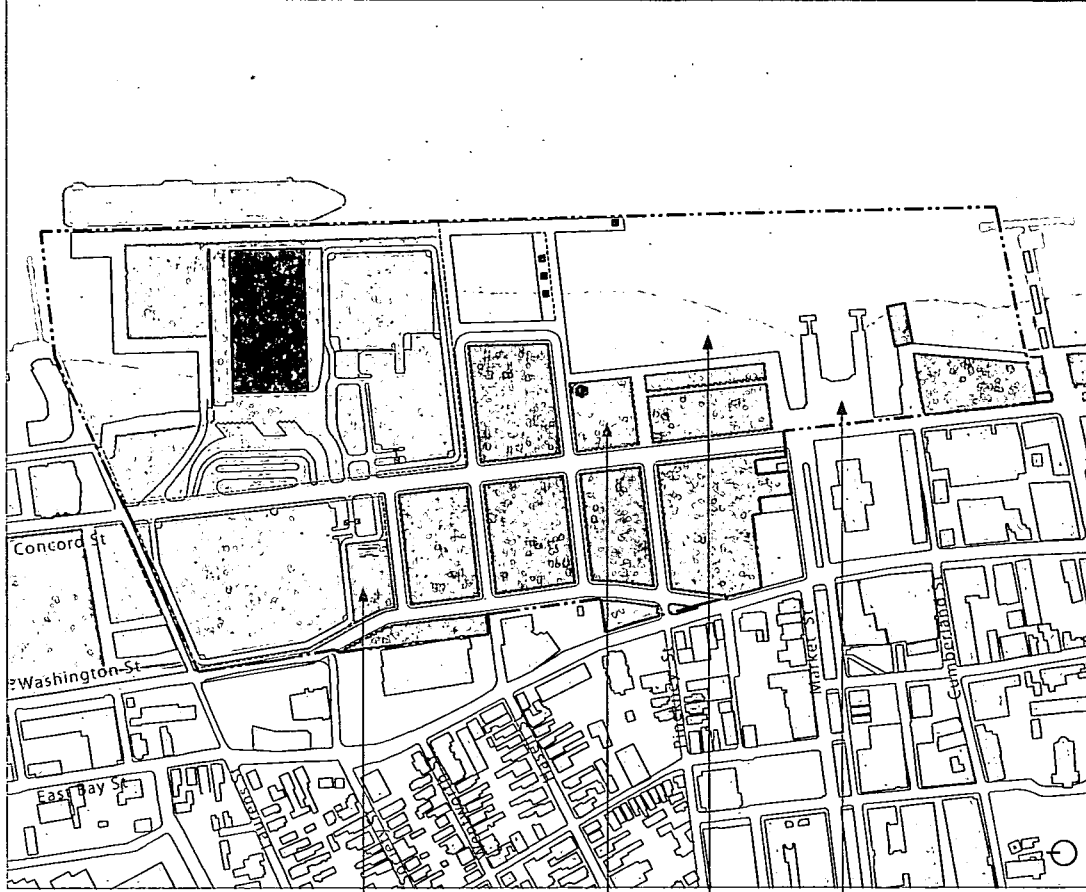


Restoration of Bennett's Rice Mill and
Creation of Rice Mill Park

Creation of Pavilion for the History of
the Waterfront in Union Pier Park

Restoration of the natural shoreline

Restoration of historic public landing

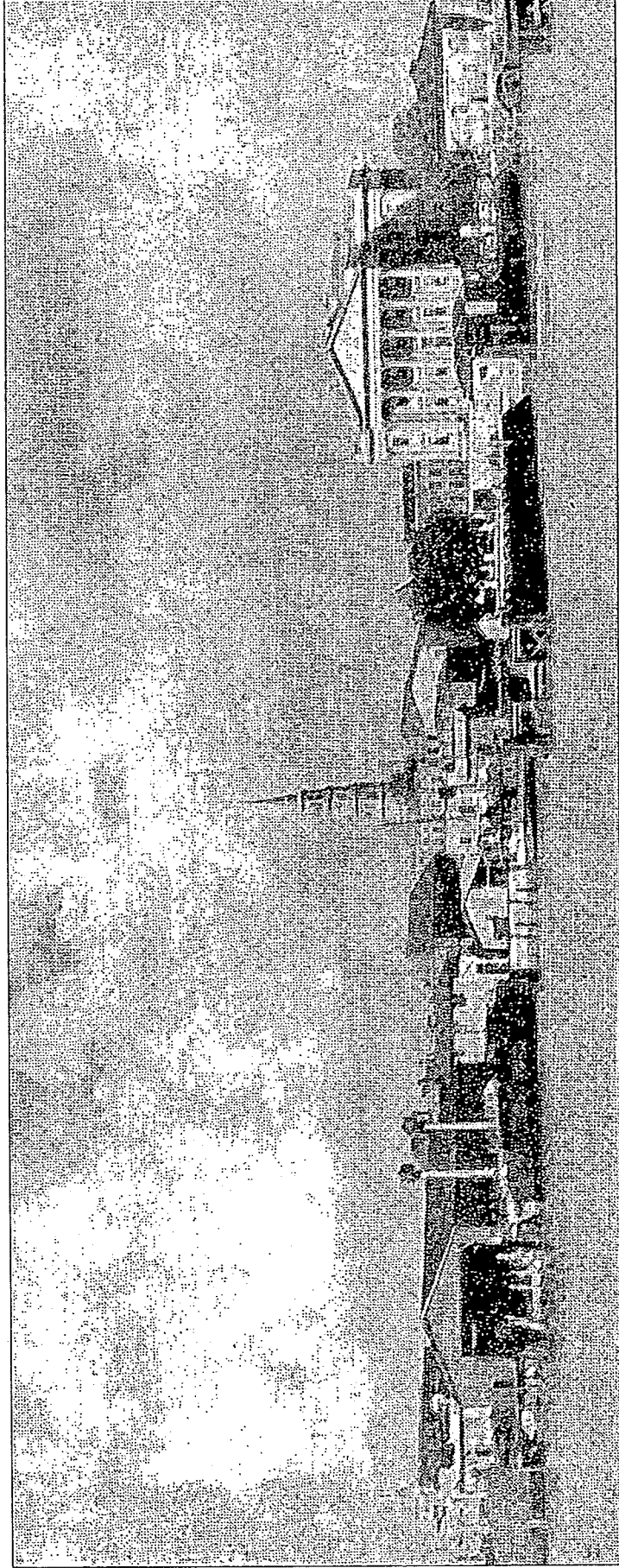


SPECIAL INITIATIVES

RESTORATION OF HISTORIC PUBLIC LANDING

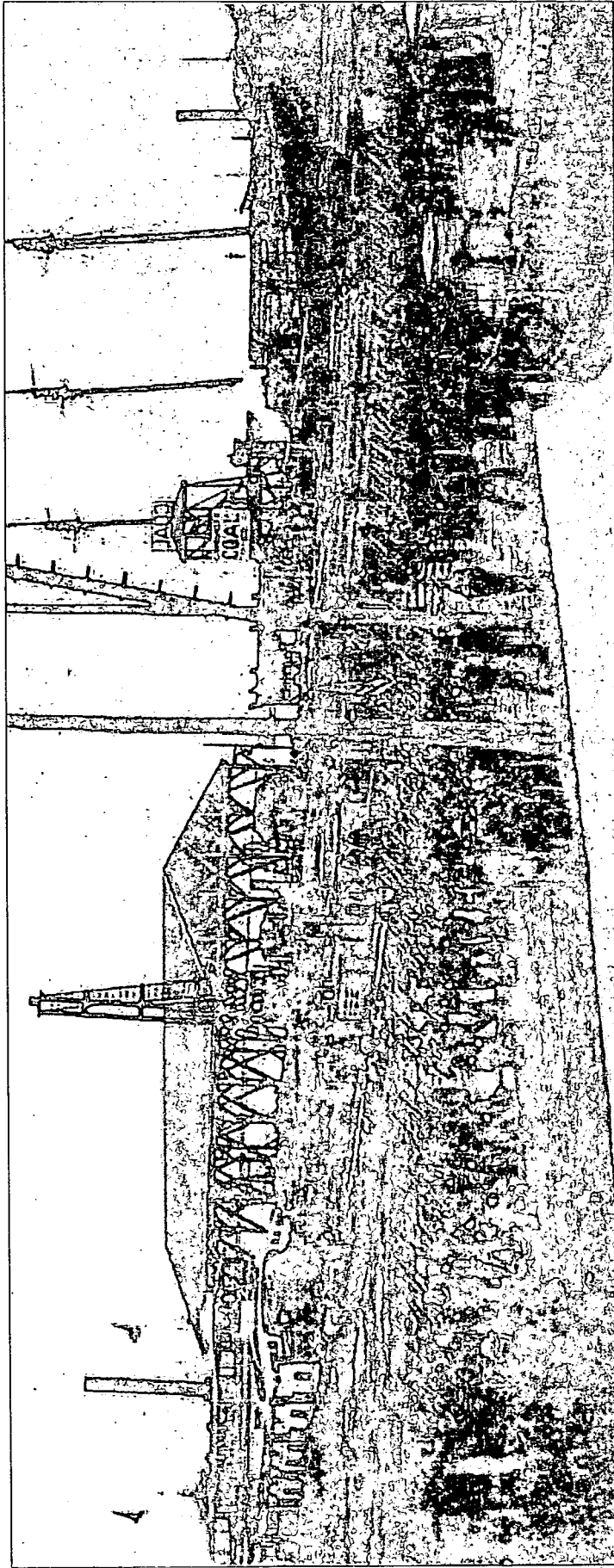
Seen as Charleston's front door from the water, the Custom House dominated the Charleston Cooper River waterfront and its skyline since construction of the federal building was completed in 1879. At that time, the Cooper River flowed past the city and could be accessed from a public boat landing. Pier 1 and Pier 2 are stacked granite partially obscured today by a State Ports Authority parking lot.

Soldiers paraded by the wharf, President Franklin Roosevelt addressed a crowd from Union Pier, torpedo boats and rum runners tied up at the docks, goods were shipped, and African-American water men brought a fleet of ships (the Mosquito Fleet) in daily with the day's catch.

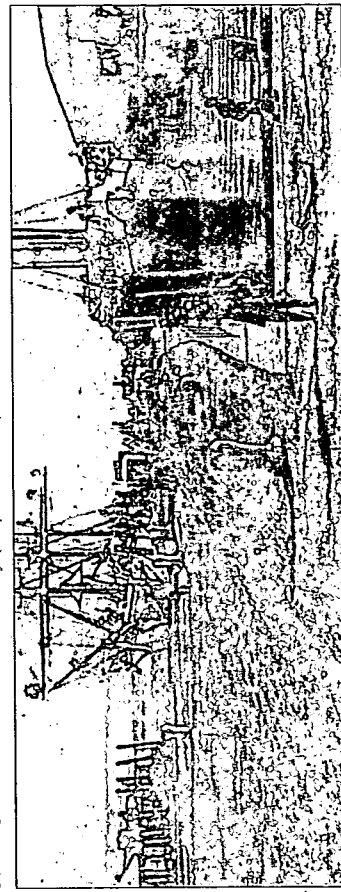


Waterfront view of Charleston and the Custom House

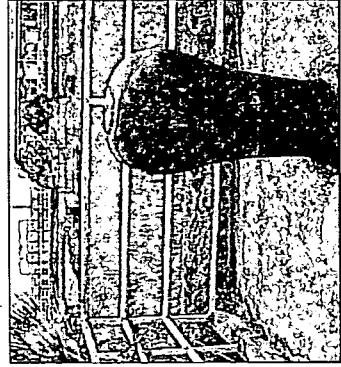
CONCEPT PLAN DISTRICT



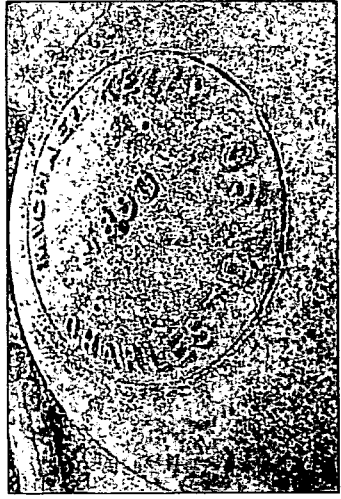
South Carolina Volunteer Artillery prepares for Spanish-American War circa 1898



Pier 2 at the Custom House Wharf, early 20th century



Remaining artifacts of the once vibrant wharf at Pier 1

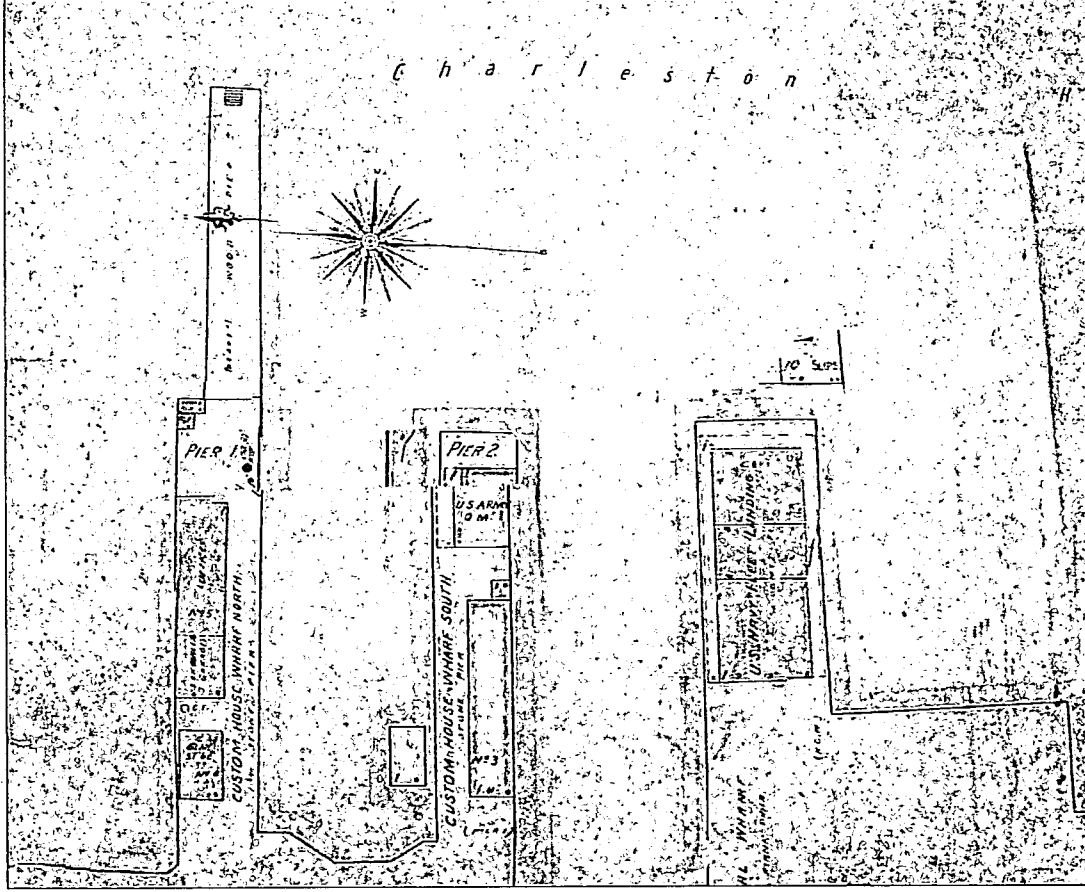


SPECIAL INITIATIVES

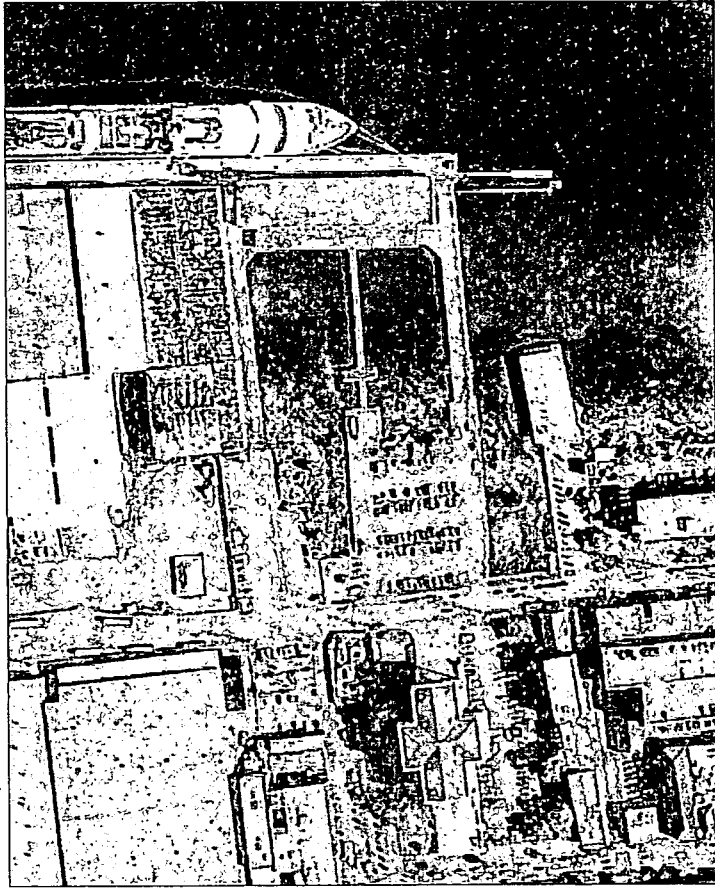
With the removal of the SPA Cruise Terminal from the south end of the State Ports Authority's Union Pier property, an opportunity to redevelop that portion of the site is illustrated in this Concept Plan Report. A key component of the Concept Plan is the restoration of the historic public landing, including the entire granite wharf edge of the landing, Pier 1, and Pier 2.

The Public Landing and the Custom House mark the waterfront terminus of Market Street. A restored public landing will provide the community with a public plaza at the foot of the Custom House - a place to gather and look out over the Cooper River. A restored boat landing will provide small craft access at the foot of Market Street and even perhaps foster the advent of a morning fish market.

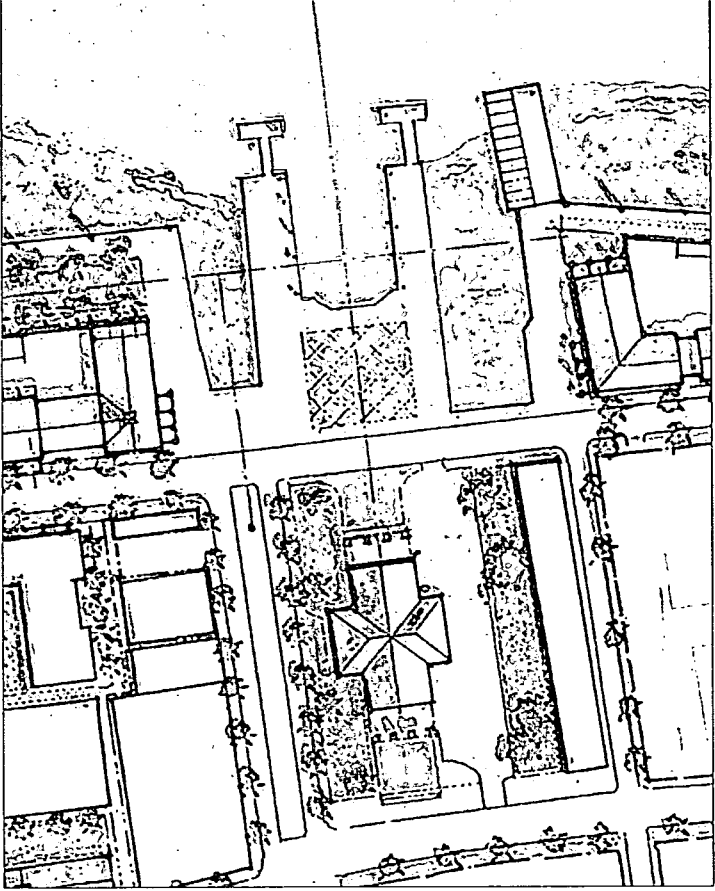
Seen from the steps of the Custom House or from the water, a restored public landing with a vibrant marsh will provide the postcard view of the city once more.



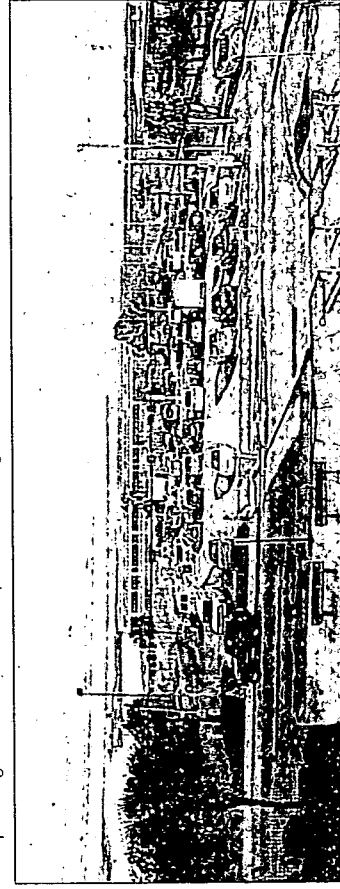
1902 Sanborn map with updates through 1951



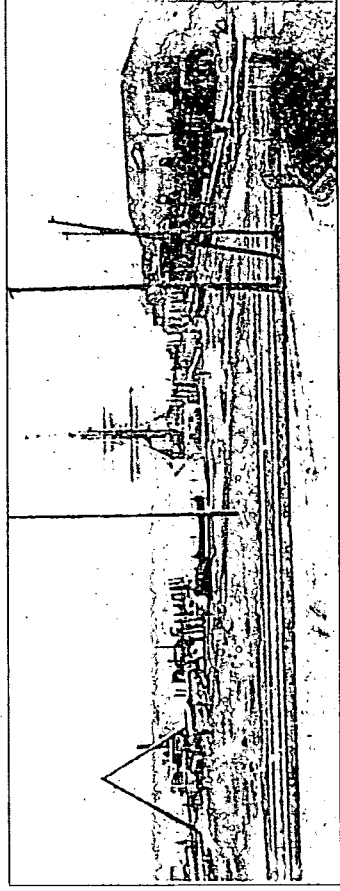
SPA parking lot at the historic public landing



Proposed public plaza and access at Custom House Wharf - an illustrative concept



Present day view from the steps of the Custom House



Early 20th century view from the steps of the Custom House

SPECIAL INITIATIVES

RESTORATION OF NATURAL SHORELINE

The Union Pier Concept Plan recommends the removal and relocation of a variety of in-water structures, primarily pier decking and pilings, resulting in great opportunity for the reclamation of natural shoreline habitats. Habitats that may be restored along the waterfront include salt marshes, oyster beds, tidal pool areas, mudflats, upland marginal habitat, and other estuarine habitats typical of the South Carolina coast. This section details opportunities that the deck removal presents from a natural restoration perspective and identifies strategies that should influence future planning.

History of Charleston Marshes

Large swaths of salt marsh once fringed the shores of Charleston Harbor and the Cooper River; however, many of these wetlands were filled for the developing city of Charleston and its waterfront activities. Today, patches of salt marsh still exist, including along the shore of beautiful Waterfront Park, but most have been encroached upon by centuries of development and the sedimentation and runoff that accompany such expansion. The Union Pier site historically supported shipping and industrial uses that required extensive dredging and pier construction, severely limiting the existence of marsh at the site. However, by the middle of the 20th century, shipping operations had declined. In 1942, the Santee River was dammed and diverted into the Cooper River as part of a hydroelectric project. The high water flows of the combined rivers increased sedimentation by up to eighteen times in Charleston Harbor. Most of the marsh seen on site today may have accreted following the diversion of the Santee. In 1985, the Army Corps redirected the majority of the flow back into the Santee River, significantly reducing discharge into Charleston Harbor.

Today, a patchwork of small isolated marshes and extensive mudflats exists behind, between, and within the bulkheads, pilings, and deck structures of the site. These small habitats are degraded due to stormwater runoff and poor tidal flushing, which causes inconsistent growth and mudflats where tidal marsh should be. However, their presence is a reminder of nature's ability to regenerate; an encouraging indication



Salt marsh with boardwalk.



Salt-tolerant vegetation like seaside goldenrod (*Solidago sempervirens*) and groundsel (*Baccharis halimifolia*) thrive in the marginal area between salt marsh and upland.



Oysters colonizing a toppled piling.

that, with some human reparation, salt marsh and other waterfront ecosystems can once again thrive on this site.

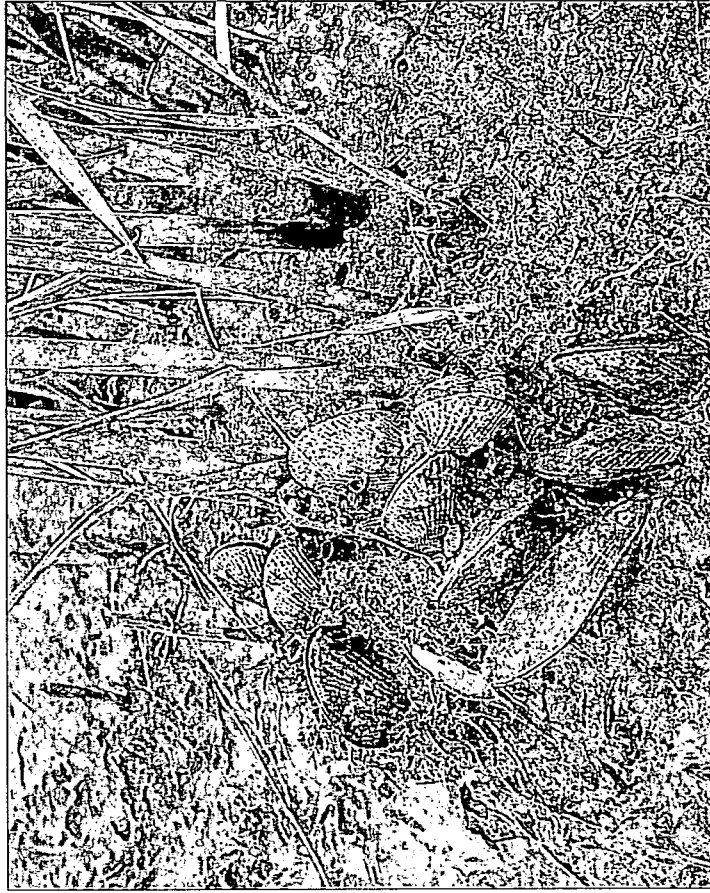
Benefits of Intertidal Habitat

Intertidal habitats, particularly salt marshes, bring a variety of benefits to the South Carolina coast. In general, salt marshes provide many functions, including:

- Providing wildlife, fish, and shellfish breeding and foraging habitat;
- Intercepting and processing sediment and debris from the land and water;
- Acting to limit and reduce coastal erosion;
- Acting as nitrogen and carbon sinks, thereby reducing pollution and slowing the effects of global warming; and
- Providing floodwater storage.

Structurally, marshes stabilize substrate against erosion and stimulate further sedimentation, helping to balance sea level rise. Aesthetically, marshes are beautiful habitat and enhance the urban environment of Charleston. They also provide excellent educational opportunities, especially on the Union Pier site, where existing pier structures may be used creatively to improve public interaction with intertidal habitat (discussed below).

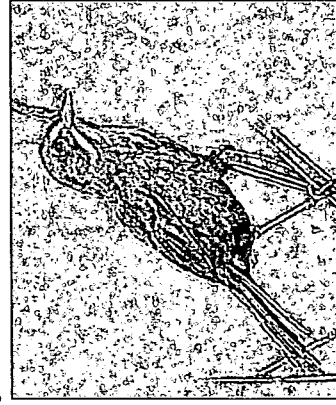
Intertidal ecosystems support an important variety of aquatic and terrestrial flora and fauna. Aquatic estuarine habitats support oysters and other shellfish. These animals are filter feeders, capable of improving the water quality of harbor systems when populations are sufficiently large. Other intertidal organisms, like crabs, eat marsh detritus and are preyed upon by shorebirds, fish, and other animals. Estuaries are critical spawning habitat for many fish that are important to local commercial fisheries.



Ribbed mussels among the roots of salt marsh cordgrass



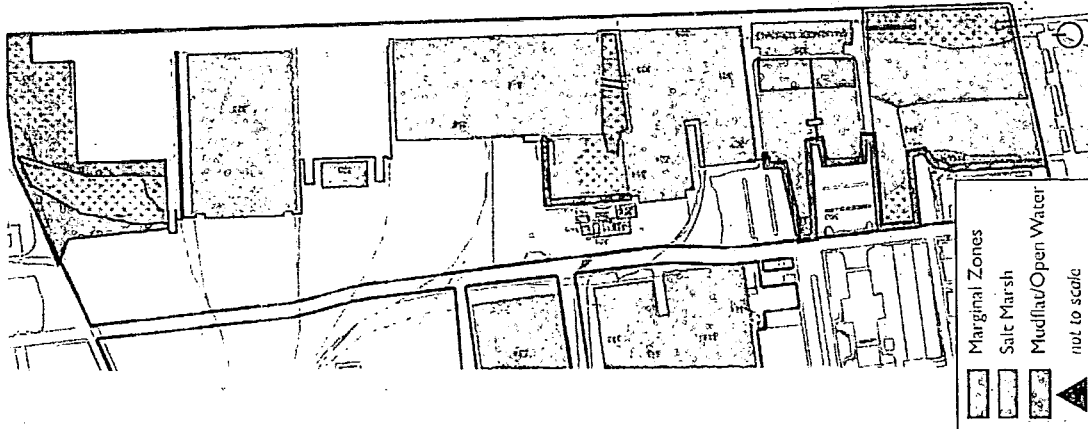
Sand fiddler crabs rely on salt marsh habitat (Credit: Ianaré Sévi)



Seaside sparrows, found only in salt marsh grasses in the coastal plain (Credit: Brian Small)

CONCEPT PLAN DISTRICT

SPECIAL INITIATIVES



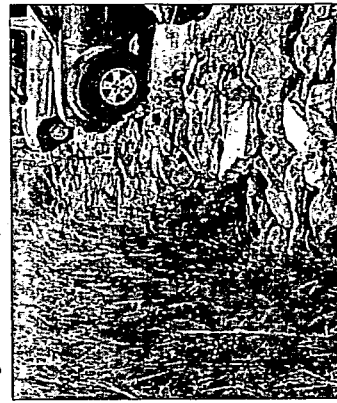
Existing conditions map showing ecological zones of opportunity. A patchwork of salt marsh habitats exists between the piers, but it is degraded by stormwater runoff and poor tidal flushing.

Marginal zones bridge the space between salt marsh and upland. Currently, these zones are minimal to nonexistent on the site, displaced by riprap or vertical walls or pier edges. This allows stormwater runoff to flow directly into the existing salt marsh.

Large expanses of mudflat are revealed between low and mean tides.



Degraded existing salt marsh



Riprap in the marginal zone allows stormwater to run directly into marsh

Shoreline Restoration

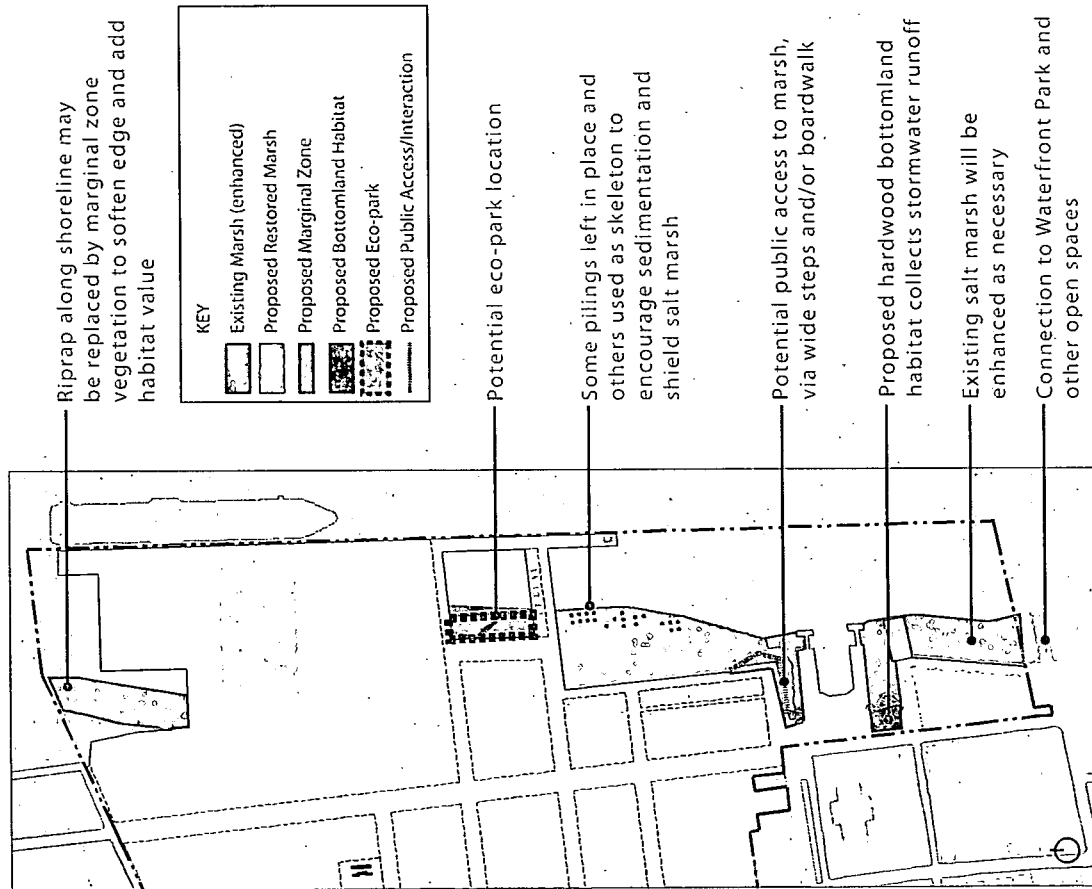
This project is an opportunity to reconnect Charleston's public to the natural waterfront by enhancing, protecting, and restoring the natural shoreline where appropriate and viable. To do this, several ecological strategies may be pursued, each consistent with the goal to create a self-sustaining restoration.

For example, in existing salt marsh areas with poor flushing, strategic removal of in-water structures and construction of naturalistic tidal channels may help restore hydrological connections. Using the pilings below grade as a skeleton to trap and support sediment may help enable the placement of substrate for planting native salt marsh vegetation. By leaving some pilings in place, we may encourage further sedimentation and ultimately protect marshes from wave energy.

Revealed shorelines previously covered by decking can be regraded to the desired elevation between mean and high tide, and then planted with native marsh vegetation (such as salt marsh cordgrass). Since established vegetation slows tidal flow locally, the restoration of a marsh helps to increase deposition of fine-grained sediment, expanding the marsh over time.

The grade in certain areas may be raised through relocation or addition of sediment to encourage cordgrass to grow on large expanses of mudflat currently located below mean tide. This regraded substrate may be held in place by pilings, bulkheads, berms or a variety of bio-engineered structures that would become less critical over time (see sketch on opposite page). Coir logs seeded with oysters may be used, providing living erosion control. Oysters and other shellfish are already found on existing pilings in significant numbers; beyond coir logs and pilings, additional habitat may be provided through strategic placement of debris, artificial reefs, or other structures.

Stormwater Best Management Practices (BMPs) may be used to protect restored salt marshes from runoff from parking lots and other impervious surfaces. Rainwater from these surfaces may contain suspended sediment with unwanted constituents.

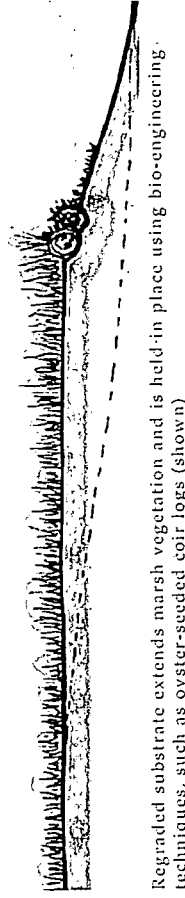


Illustrative conceptual ecological restoration plan

Vegetated bioswales planted with hardy native species, for example, can collect runoff and potentially improve water quality before water is released (see bottom sketch, below). Freshwater runoff may also be diverted into an upland area so as to create a pocket of bottomland hardwood forest reminiscent of South Carolina interior habitats. These plantings would likely attract birds and could themselves become educational sanctuaries.

Salt-tolerant shrubs and herbaceous species may be planted as a buffer in the marginal zone between salt marsh and upland; this creates a softer edge than stone rip-rap, reducing wave energy and erosion potential. The buffer also adds habitat value for birds and other wildlife, and protects marsh from direct upland stormwater runoff.

Finally, opportunities to connect to open spaces outside of the Union Pier site should be explored. For example, ensuring a seamless connection with Waterfront Park to the south will encourage local movement of wildlife species through restored habitat. Other local environmental and community groups should be involved as necessary.



Regraded substrate extends marsh vegetation and is held in place using bio-engineering techniques, such as oyster-seeded coir logs (shown)



Vegetated bioswales capture and treat stormwater runoff from parking lots

SPECIAL INITIATIVES

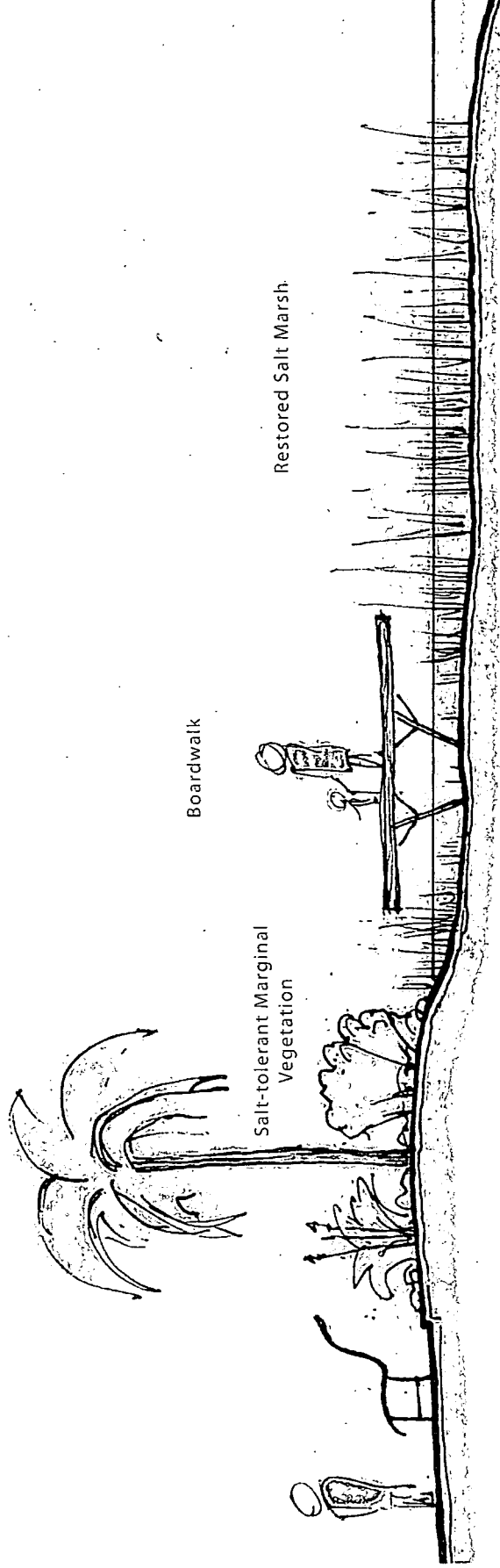
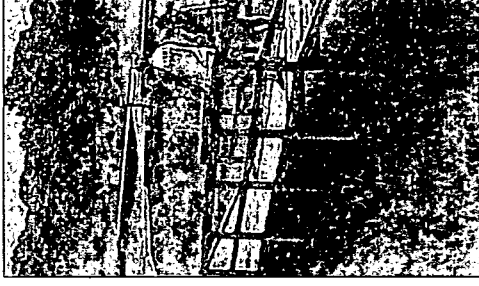
Bringing the Shoreline to Visitors

Opportunities for public interaction exist throughout the restored shoreline area. For example, boardwalks raised above the marsh may carry pedestrians though the thriving intertidal community (as shown in the sketch below); signage and place design may call attention to wildlife and natural patterns. Outlooks with good views of the restored marsh and other shore habitats can give visitors the chance to observe birds such as egrets, marsh wrens, and perhaps even seaside sparrows, which are found only in salt marsh grasses like cordgrass.

An "eco-park" that highlights, emphasizes, and celebrates South Carolina waterfront ecology, constructed on and within the pier decking, may provide an formal ecological experience through the creative integration of open water, intertidal, and upland habitat. Interactive exhibits, signage, and design may be used to highlight the ecological and aesthetic benefits of shellfish, salt marsh, salt shrubland, and other

waterfront communities. For example, a series of steps down into marsh habitat could lead the public into the ecological processes occurring on the waterfront. The steps could lead to open water or even to a small tidal pool area complete with a "touch tank" for children. Images on this page and the next provide sketches of these concepts.

The Concept Plan proposes significant changes to the Charleston waterfront by removal of the structures that impeded natural processes in the harbor -- specifically the natural development and maintenance of salt marshes and other South Carolina aquatic habitats. The proposed concepts detailed with this



Illustrative section showing transition through marginal zone at shoreline

CONCEPT PLAN DISTRICT

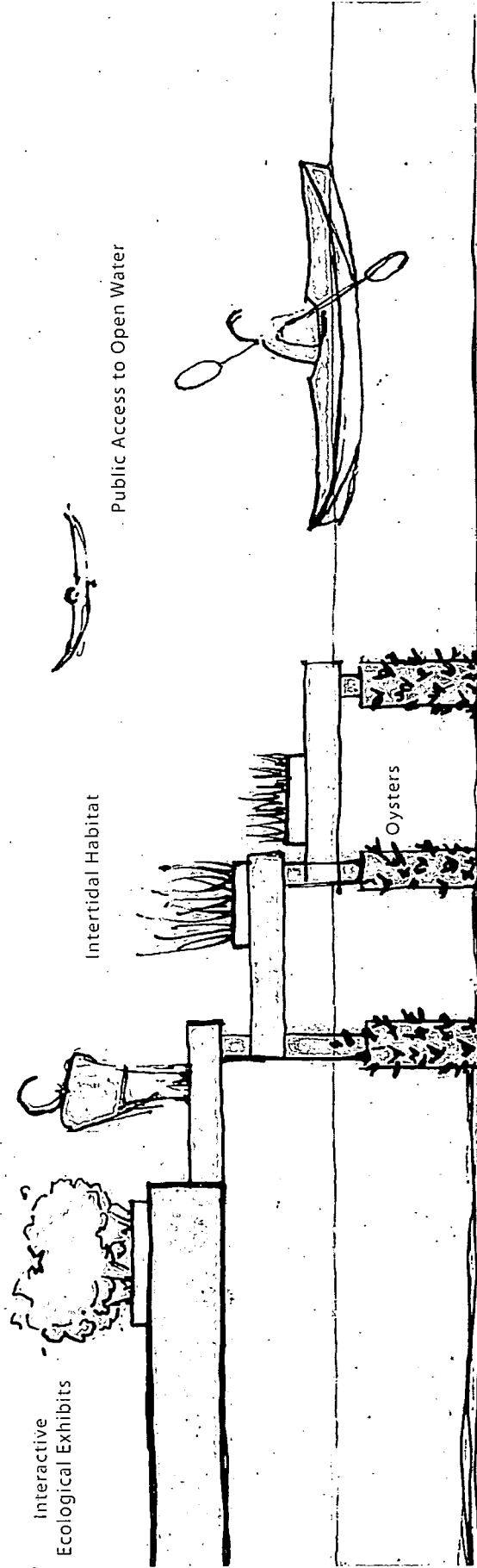
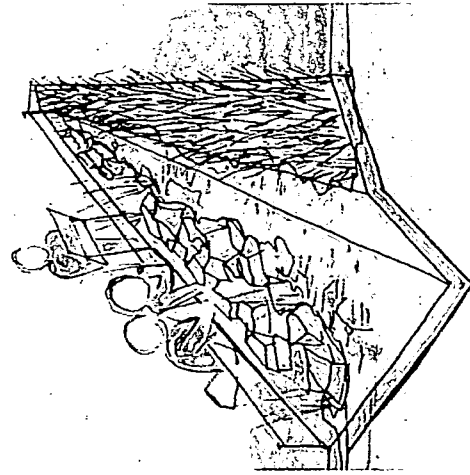
document allow us to explore restoring large sections of marsh, upland and marginal habitat, tide pools, and other important estuary features. There are several concepts that should be incorporated into the ecological components of the Concept Plan including:

- Restoration of a variety of viable habitats and connections to other open space;
- Policy of self-sustainability of ecosystems;
- No further net loss of aquatic or wetland habitat as a result of new development without compensation through mitigation;
- Public access to the restored habitats;
- Educational opportunities at the restoration sites;
- Incorporation of local environmental organizations in the planning and design of these areas; and
- Development of an eco-park.

Eco-parks seek to connect visitors to their environment through creative design strategies. The landscape of an eco-park is designed to showcase ecology through carefully chosen native plants and landforms evocative of local ecosystems. Educational signage is often integrated into the design, as well as interactive exhibits that allow the public to explore natural surroundings.

At the Union Pier site, access to the marsh may be provided by boardwalk paths or wide steps leading down to the shore. Tidepools (right) or intertidal habitat (below) could be built into existing pier decks. By reusing industrial structures, the eco-park may also highlight the cultural history of the site.

Finally, active public access to open water (for example, kayaking) may also be included within the eco-park.

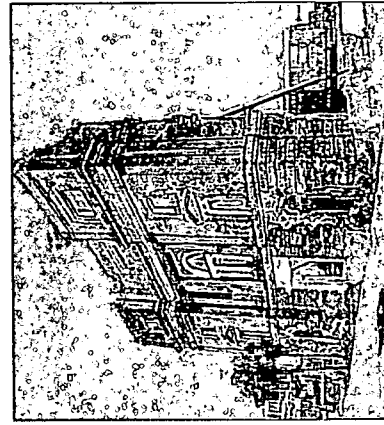


Illustrative section showing conceptual "eco-park" at pier's edge

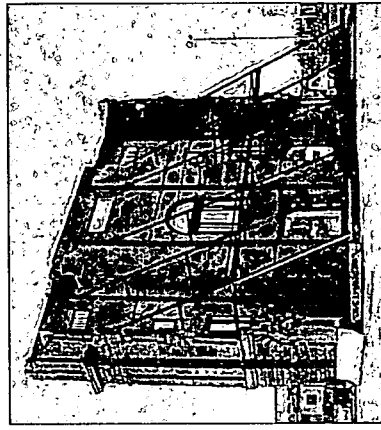
SPECIAL INITIATIVES

RESTORATION OF BENNETT'S RICE MILL & CREATION OF RICE MILL PARK
 The area now commonly referred to as Union Pier was once a collection and assortment of many private piers of varying lengths and widths. Private ownership of the shipyards, wharves, and piers began at Union Pier in the 18th century and continued until the city created a municipal port authority in 1934. The ownership and names of the various wharves and docks included Robert Pinckney's Union Wharves, Marsh's Wharf where the "Rice Bird" was built and sailed in 1809, Deveaux, Robb, McLaren, Patten's Wharf, and Bennett's Wharf which occupied a portion in the northern end of Union Pier.

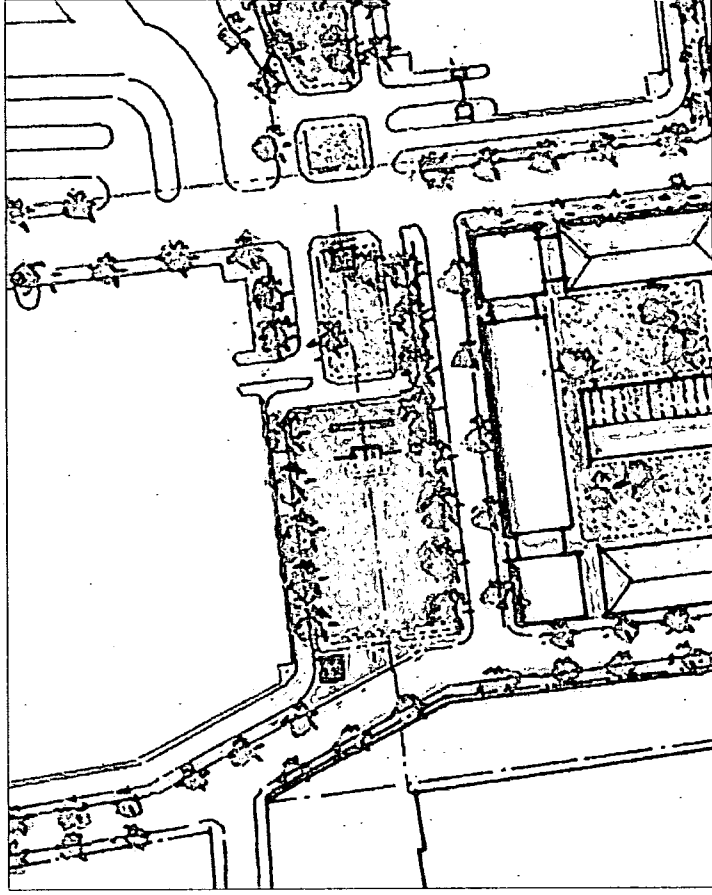
Names are all that remain but for the remnant facade of Bennett's Rice Mill which sat to the west of a constructed mill pond and between the long piers and slips which ran perpendicular to the river. Bennett's Rice Mill was constructed in 1844 though the area's commercial rice production had already begun to slow. An artifact of an earlier time, the Concept Plan celebrates the history of the working waterfront at Union Pier with a park setting for the Rice Mill facade. Restored and safe, the facade provides a gateway to and from the water and the adjacent Cruise Terminal. The park setting could provide opportunities for outdoor performances with the Rice Mill facade as a scenic backdrop.



Present day photograph of the Rice Mill
 Facade



Structural support at rear of facade



1884 Sanborn detail

V. COMMUNITY OUTREACH

INTRODUCTION

COMPONENTS

INTRODUCTION

The Union Pier Cruise Terminal Concept Plan process provided an opportunity for the South Carolina State Ports Authority to achieve two principle goals:

1. Generate community involvement and support for the Concept Plan for Union Pier Cruise Terminal
2. Enhance the reputation of the Ports Authority within the community not only in service of this initiative, but also to build positive public good will for the future.

Community outreach would be critical to fostering open, constructive dialogue, actively engaging the community, and building support for the planning process and eventual development. This involved three main principles:

- *Transparency*
Be open, transparent, and forthcoming throughout the process.
- *Collaboration*
Talk with people and listen. Work collaboratively with individuals and constituent groups to create a plan that meets their needs as well as the Port's.
- *Iteration*
Maintain an on-going 'conversation' with the community. Not a one-shot charrette, but rather a series of iterative opportunities for community input and engagement.

ACCOMPLISHMENTS

The Community Outreach initiative of the Union Pier Cruise Terminal Concept Plan included:

- Three major public meetings, two of which included extensive break-out sessions
- Upwards of 100 meetings with individuals and specific constituencies
- Major participation in Historic Charleston Foundation's 'Delicate Balance' Forum
- Outbound communications of status and progress through Website and more than 12,000 emails and letters
- Regular contact with the media, including two extensive media visits
- Three op-ed pieces in the Post and Courier

As a result, consistently favorable anecdotal feedback praised the Port for its process, its proactive and ongoing public engagement, and the Concept Plan itself.



Concept Plan Meeting - February 9, 2010

COMPONENTS

The Community Outreach effort consisted of a number of components, and included:

- Communications Plan
- Strategic Messaging
- Communication Materials
 - Website
 - Collateral Materials
 - Public Meetings
 - Meetings with Individuals and Specific Constituencies
 - Letters & Emails
 - Op-Eds
 - News Releases and Media Visits

COMMUNICATIONS PLAN

The Community Outreach plan was solidly grounded in the principles of transparency, collaboration, and iteration.

It was punctuated with a series of public meetings – from kick-off to conclusion – that would not only inform the community but also provide on-going opportunities for community input.

These plenary meetings were complemented with an on-going series of meetings with individuals and key constituent groups, including neighbors, preservation and environmental organizations, Market Street businesses, visitor industry leadership, general business leadership, Port-related businesses, etc.

Ongoing feedback was encouraged by the availability of a special Website, regularly distributed comment cards, and ample question-and-answer opportunities at every meeting.

On-going communications were implemented via personalized letters and e-mails.

Media engagement was assured by including the media in all public meetings, holding a series of special briefings with the media, and providing the media with news releases and op-ed pieces.

UNION PIER CRUISE TERMINAL

GOALS

- Create a financially viable plan for a new cruise terminal that is attractive and in keeping with the character of historic Charleston
- Comply with today's enhanced cruise security requirements
- Mitigate impacts on existing infrastructure and traffic
- Identify additional uses for the Union Pier property that bring enjoyment to Charlestonians and enhance the local economy
- Increase public access to Charleston's historic waterfront

STRATEGIC MESSAGING

Strategic messaging is the heart of an effective communications plan. Our first step was to articulate the Port's goals in a way that would resonate most powerfully with the community.

The Concept Plan process was initially focused solely on the cruise terminal facilities. It was important for our messaging to include distinct benefits to the community.

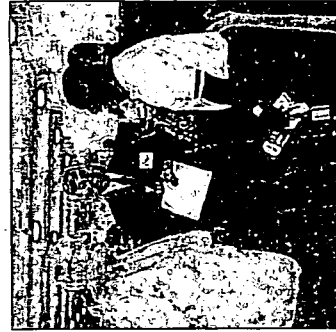
For example, with an attractive new terminal, in keeping with the character of historic Charleston, cruise visitors would be more likely to appreciate and respect the Peninsula's neighborhoods. And, if the plan successfully addresses the traffic challenges currently associated with cruise ships in Charleston, that too would be a big plus for the community.

Furthermore, increasing public access to Charleston's historic waterfront and developing additional uses for the Union Pier property (heretofore closed off to the community) would also be very favorably received.

The project's goals were articulated as follows:

- Create a financially viable plan for a new cruise terminal that is attractive and in keeping with the character of historic Charleston.
- Comply with today's enhanced cruise security requirements.
- Mitigate impacts on existing infrastructure and traffic.
- Develop additional uses for the Union Pier property that bring enjoyment to Charlestonians and enhance the local economy.
- Increase public access to Charleston's historic waterfront.

All messaging was tied back to these goals. As the process evolved, it became clear that the community wanted the Port to consider a larger context: looking beyond the current cruise terminal facilities and also considering other proposed developments on the Peninsula. But the goals never change, and – in fact – they fundamentally mirrored the goals expressed by the community throughout the planning process.

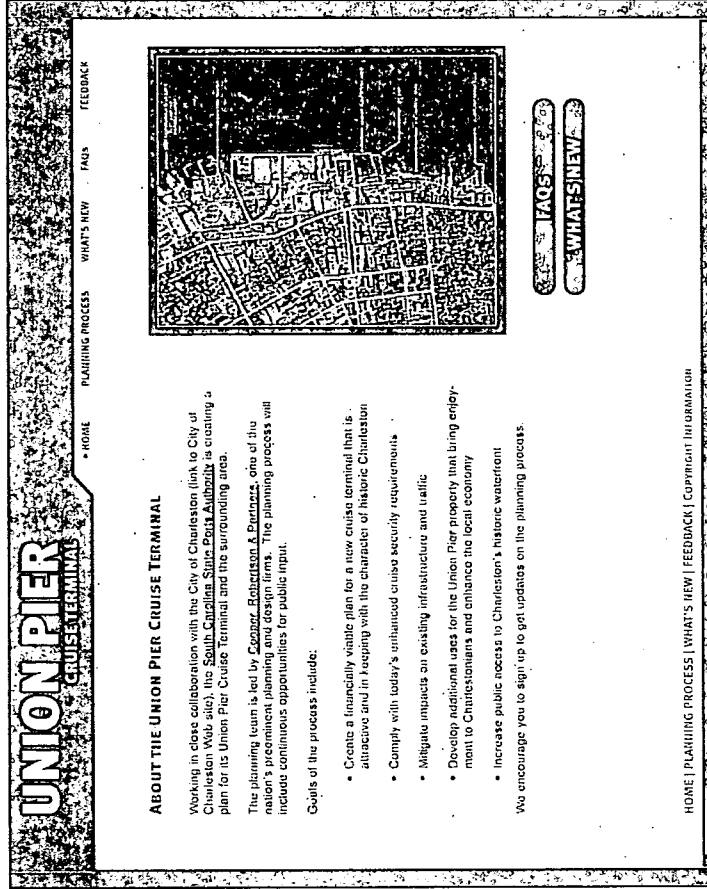


Union Pier Kick-off Meeting - October 8, 2009

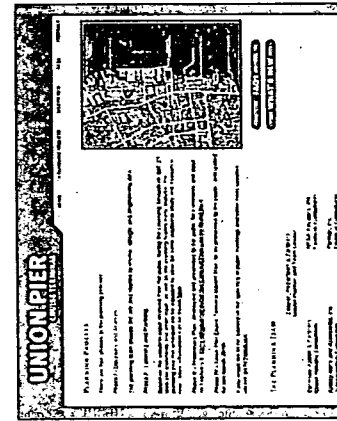
COMMUNITY OUTREACH

WEBSITE

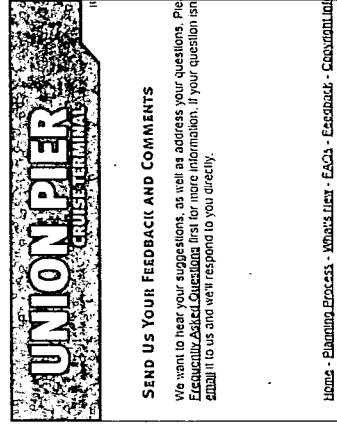
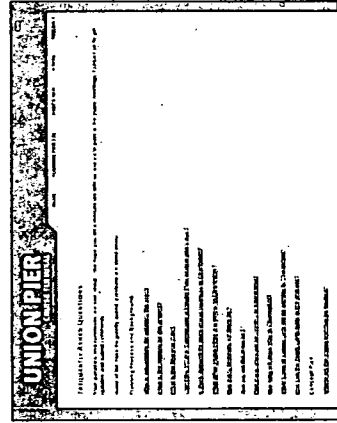
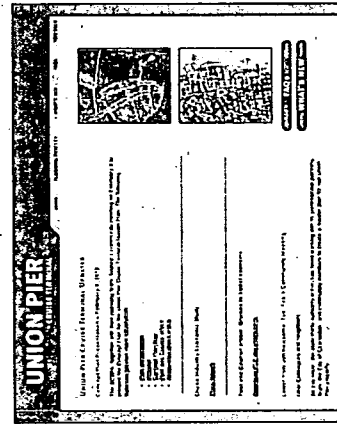
A special Website – www.UnionPierPlan.com – was created and launched the day of the Kick-Off Community Meeting. The Website provided information on the project and process, and it encouraged site visitors to submit comments and questions. The site was regularly updated throughout the process.



Home page for www.UnionPierPlan.com



Pages from www.UnionPierPlan.com



PUBLIC MEETINGS

There were three major public meetings. Each meeting was held at the current Passenger Terminal, so attendees could see both the need and the possibilities!

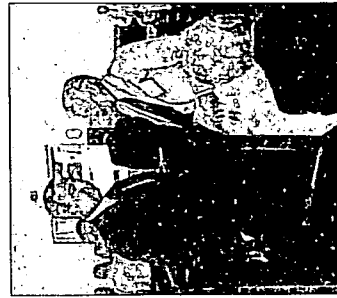
Kick-Off Meeting – October 8, 2009

The Kick-Off Meeting announced the project, its goals, and timetable. And the community was encouraged to become involved throughout the process. Participants included Jim Newsome, Mayor Riley, and Jaque Robertson. Attendees included members of the planning team, who were identified and available for discussions following the meeting.

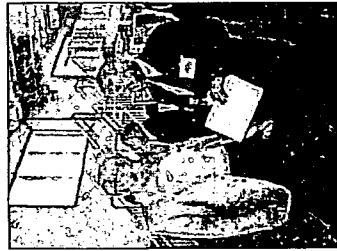
The public was invited, and invitations were sent to the entire database, including media. Meetings with individual constituent groups were held on the kick-off day and following days.

Listening Session – October 28, 2009

The Listening Session set the parameters for the project and then included a series of breakout sessions at which community members could express their interests and questions relating to the project and process. Participants included Jim Newsome, Jaque Robertson, and members of the planning team.



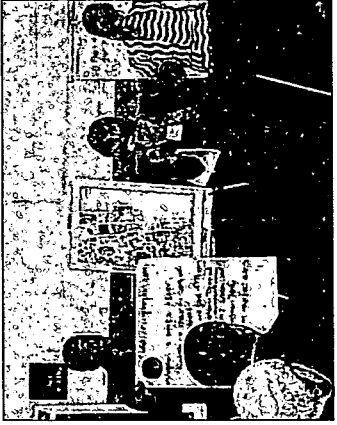
Kick-Off Meeting – October 8, 2009



Listening Session – October 28, 2009



Listening Session – October 28, 2009



Concept Plan Meeting – February 9, 2010

The public was invited, and invitations were sent to the entire database, including media.

Concept Plan Meeting – February 9, 2010

At this public meeting, the Concept Plan was presented, followed by a series of breakout sessions during which community members could discuss it with planning team members. Participants included Jim Newsome, Mayor Riley, Jaque Robertson, and members of the planning team.

The public was invited, and invitations were sent to the entire database, including media. Meetings with individual constituencies preceded the public concept meeting.

At each public meeting, comment cards were distributed so that community members could send in additional comments or questions. Also, notes and summaries of all meetings were posted on the Website.

More than 1,100 members of the public attended meetings and participated in the process.

COMMUNITY OUTREACH

MATERIALS

A basic brochure was created and updated to provide a brief description of the project, process, and planning team. It included maps and encouraged people to get more information on the Website. Presentation boards were produced for the various public meetings.

CONSTITUENT MEETINGS

Upwards of 100 meetings with individuals and special constituencies were held throughout the process. Typically there were multiple meetings with each constituency at different stages of the process.

Constituent groups included Historic Charleston Foundation, Preservation Society of Charleston, Coastal Conservation League, The Committee to Save the City, Historic Ansonborough Association, Gadsden Wharf, the Peninsula Consortium, Charlestowne Neighborhood Association, Eastside Neighborhood, French Quarter Neighborhood, Garden District, Harleston Neighborhood Association, Radcliffeborough Neighborhood Association, Market Preservation Trust, Travel Industry Leadership, King Street Merchants, Port-related businesses, Charleston Metro Chamber of Commerce, and Charleston Regional Development Alliance.



Historic Charleston Foundation's "Delicate Balance" Forum - January 8, 2010

E-MAILS & LETTERS

On a regular basis, e-mails and letters were sent to individuals on the database. These communications included updates and invitations to forthcoming meetings.

Below is a sample e-mail/letter. Eight e-mails and letters were sent to more than 12,000 recipients.

South Carolina State **PORTS AUTHORITY**

P.O. Box 12287
Charleston, S.C. 29413-2287 USA
(843) 743-8651
Fax: (843) 777-8191

Dear Colleagues and Neighbors:

On October 8, the S.C. State Ports Authority (SPA) began its Union Pier Cruise Terminal planning effort with a public Kickoff Event at the Passenger Terminal. As you may know, the project involves creating a plan for the Union Pier Cruise Terminal and the surrounding property – a great opportunity to consider the potential for this underused waterfront area.

Through an open, collaborative process, we aim to:

- Create a financially viable Union Pier Cruise Terminal plan that reflects the character and quality of historic Charleston
- Comply with today's enhanced cruise security requirements
- Identify additional uses of the property for the enjoyment of Charlestonians and betterment of the economy
- Mitigate impacts on existing infrastructure such as traffic
- Provide more access to the waterfront.

Our next step is a public "Listening Session" on Wednesday, October 28 at 7 p.m. at the Exhibition Hall at Gaillard Auditorium. During that time, you will be able to share suggestions and ask questions. Your input will inform our planning process and lead to a preliminary plan to be shared in mid-December.

You can also visit www.UnionPierPlan.com to learn about the planning process, the planning team, and the most up-to-date info on the project.

We encourage your participation throughout the process and look forward to seeing you October 28.

Regards,

Jim Newsome

SAMPLE COMMUNITY FEEDBACK

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: Tina Last Name: BRANDFORD

Comments: AS THIS PIER GOES FORWARD, TAKE GREAT PAINS TO ENSURE
TRANSPORTATION ALTERNATIVES THROUGHOUT THE SYSTEM SO
THAT PASSENGERS AND BUSINESSES HAVE ACCESS AT LEAST
EQUAL TO THAT OF AIRS.

2) STESS USE OF RECLAIMED WATERMENT FOR MINVAL COMMERCE
AND BOB PASSIVE AND ACTIVE RECREATION (WALKING,
BIKING, VILLAGEBALL)

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: Heidi Last Name: Schick

Comments: (1) Please make sure to be aware of parking areas
- by Stanley Park / Canada Place terminal in
Vancouver, BC Canada
& with parking areas both to & within the site.

(2) Use design as practical means of controlling cancer activity
allowed & wanted here (eg. state)

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: Tina Last Name: BRANDFORD

Comments: Outboard plan! Corridor of Highway, public access
to water, parking for bikes all around (especially well)

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: ISM Last Name: Mather

Comments: Appeals the port looking "outside the box" and consider public space
good. The open view from market is key as is the public access
to water edge.
Take a bill inspired beginning and one that characterizes

T. Mather

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: David B Last Name: Will

Comments: Great opportunity to get really better development & improve

the area & get rid of the old buildings to be green & LEED or

more green & better.

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: Dallen F. Last Name: Braun, Jr

Comments: The primary use of the proposed cruise

terminal is RESIDENTIAL - Low-rise, open space & the kids

also proposed condos on Acornby Field. Please keep it this

in mind when planning use of terminal.

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: Greg Last Name: Barnes

Comments: Walk along water, opening views (so at custom house) and

moving north great ideas

Hopefully we can move all waterfront activities and happen

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: FRANK Last Name: LEISTER

Comments: EXCELLENT PLAN! DO IT!

NEXT STEPS

Community Outreach is an iterative process. It never ends. Nor should it. The conversation will continue between the Port and the community, as the Concept Plan becomes refined and individual elements become implemented. Throughout this process, the Port has demonstrated its commitment to community engagement and has worked collaboratively with all interested parties. That commitment will continue.



CREDITS

IMAGE CREDITS SOURCES

IMAGE CREDITS

All photography courtesy of Cooper, Robertson & Partners unless otherwise noted.

Photography courtesy of:

Robert Benson Photography
Cooper, Robertson & Partners
Thomas & Hutton Engineering Co.

Rawle Murdy

Bermello Ajamil & Partners
Permar Inc.

Great Ecology and Environments
Historic Charleston Foundation, IV.35-38, II.9-10

Birds Eye images: NAVTEQ and Pictometry International Corp

Aerial images: Google, DigitalGlobe

Chapter cover maps: Sanborn Maps 1884 and 1888

Photography courtesy of Robert Benson Photography:

Page II.2, lower two images

Page III.20, DASH image: Smudye9000

Carriage image: scourmont 77

Page IV.12, gallery image: Lynn Barth

Page IV.24, water taxi image: Rona Proudfoot

All figures courtesy of Cooper, Robertson & Partners unless otherwise noted.

In Chapter III the following figures are courtesy of Bermello Ajamil & Partners:

Page 12, lower left image

Page 14

Page 16

Page IV.30, figure courtesy of Thomas and Hutton Engineering Co.

Page IV.17, figures courtesy of Kimley-Horn

Page IV.32, figure: Filterra (www.filterra.com)

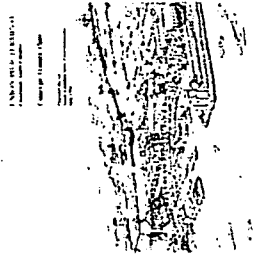
Page IV.32, image courtesy of ARUP

Pages IV.39-44, V.10 figures courtesy of Great Ecology and Environments

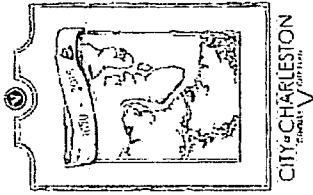
In Chapter V, images and exhibits are courtesy of Rawle Murdy

CREDITS

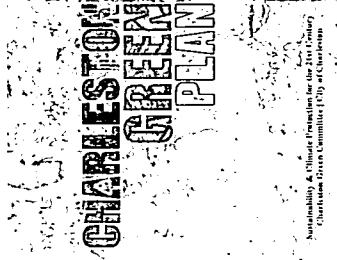
SOURCES



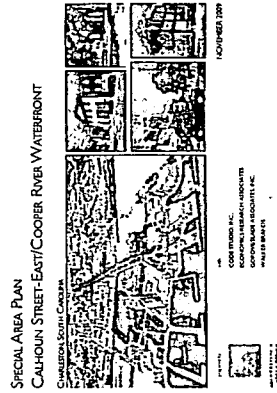
Concept Master Plan - 1996
Union Pier Terminal
Ehrenkrantz & Eckstut Architects, PC



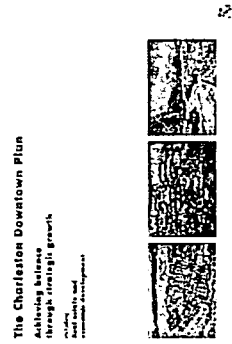
Century V Plan - working document
City of Charleston



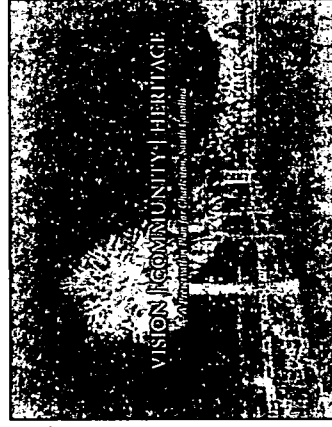
Charleston Green Plan - 2010
Charleston Green Committee
City of Charleston



Special Area Plan Calhoun Street-East/Cooper River Waterfront - 2009
Chan Krieger Steniewicz



The Charleston Downtown Plan - 1999
Urban Strategies Inc.



Vision | Community | Heritage
Charleston Preservation Plan - 2008
Page & Turnbull

CREDITS

Exhibit 5

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
|
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Carnival Corporation d/b/a Carnival Cruise Lines;
South Carolina State Ports Authority;
and City of Charleston.....Petitioners, Defendants

v.

Historic Ansonborough Neighborhood Association,
Charlestowne Neighborhood Association, the
Coastal Conservation League, and Preservation
Society of Charleston.....Respondents, Plaintiffs.

AFFIDAVIT OF JAMES I. NEWSOME, III

PERSONALLY, appeared before me, James I. Newsome, III, who, being duly sworn,
says:

1. That he is President and Chief Executive Officer for the South Carolina State Ports Authority, that he is over the age of eighteen years and the following statements are true from his own personal knowledge, except where it is expressly based on information and belief, in which case he is informed and believes that the statements are true..

2. SCSPA was created by 1942 Act No. 626 of the South Carolina General Assembly. See S. C. Code Ann. §54-3-110, et seq. The statutory scheme creating SCSPA details numerous responsibilities with respect to the South Carolina Port resources. However, a general synopsis of its overall charter is stated in §§ 54-3-110, -120 and -130 which provide:

§ 54-3-110. Improvement of certain harbor or seaports.

Through the authority the State may engage in promoting, developing, constructing, equipping, maintaining, and operating the harbors or seaports within the State, namely Charleston, Georgetown and Jasper, and works of internal improvement incident thereto, including the acquisition or construction, maintenance, and operation at such seaports of harbor watercraft and terminal railroads, as well as other kinds of terminal facilities, and belt line roads or highways and bridges thereon and other bridges and causeways necessary or useful in connection therewith.

§ 54-3-130. Purposes of Authority.

The Authority is created as an instrumentality of the State for the accomplishment of the following general purposes, all or any of them, which are intended to broaden and not to restrict any other powers given to it in this chapter, namely:

- (1) To develop and improve the harbors or seaports of Charleston, Georgetown, and Jasper for the handling of water-borne commerce from and to any part of the State and other states and foreign countries;
- (2) To acquire, construct, equip, maintain, develop and improve such harbors or seaports and their port facilities;
- (3) To foster and stimulate the shipment of freight and commerce through such ports, whether originating within or without the State, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;
- (4) To cooperate with the United States of America, and any agency or any department, corporation or instrumentality thereof in the maintenance, development, improvement and use of such harbors and seaports in connection with and in furtherance of the war operations and needs of the United States;...
- (9) In general to do and perform any act or function which may tend to or be useful toward the development and improvement of such harbors and seaports of this State and to the increase of water-borne commerce, foreign and domestic, through such harbors and seaports.

3. The jurisdiction of SCSA is established by § 54-3-120, S.C. Code Ann., which provides:

§ 54-3-120. Jurisdiction of Authority.

The jurisdiction of the Authority in any of said harbors or seaports within the State shall extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows and shall extend to the outer edge of the outer bar at such harbors or seaports.

4. Pursuant to the authority granted by the Legislature, SCSPA has utilized and operated Union Pier and the land adjacent thereto to promote maritime commerce, both in the commercial ocean going cargo trade and in the ocean going passenger cruise ship trade.

5. The Union Pier facility includes wharves, warehouses, rail sidings and other ancillary structures built thereon and thereabout, including a cruise passenger terminal and real property adjacent to the water's edge, all of which are properties owned, maintained, and operated by the SCSPA under its legislative mandate.

6. Cruise ships call at the Union Pier Terminal facility and the SCSPA, pursuant to its statutory obligation to promote maritime commerce has encouraged cruise ship calls and has planned to use the commercial ocean going cruise ship trade to support funding for SCSPA's mandated mission to effect improvements to the Union Pier facility, among other facilities and operations of SCSPA. The South Carolina General Assembly has recently emphasized the continued importance of cruise operations within the Ports Authority's statutory mandate, by stating in the Fiscal Year 2012 appropriations act: "The State Ports Authority will continue its cargo diversification strategy which enhances the marketing of all terminal capabilities in Charleston and Georgetown highlighting cruise, break-bulk, bulk, and roll-on/roll-off." H. 3700 (Rat #0106), Section 69.3.

7. Cruise ships have called at Union Pier Terminal every year since the dedication of the current passenger terminal in 1973; and, based on archived publications, I am informed and believe that historically cruise vessels have called at Union Pier since at least the early 1900's, prior to the creation of the State Ports Authority.

8. The planned improvements to the Union Pier facility include particular and detailed renovations to the existing buildings at the facility; demolition of older structures; dedication of much of Union Pier land to redevelopment to include public green spaces and private development undertakings thereby providing public and private access to the harbor which currently does not exist in the Union Pier Terminal, and done in a financially responsible manner that will generate revenues to be reinvested in the capital structures and operations to promote, facilitate and increase water-borne commerce in the State's harbors and seaports. In addition, cessation of rail operations at Union Pier is envisioned by the plan.

9. In furtherance of the plan to improve Union Pier much money and time have been expended in an effort to make the improvements something of which the State and City can be proud, and which provides significant positive economic impact to the benefit of the State and the City of Charleston.

10. To finance construction and improvement of a passenger cruise terminal at Union Pier, SCSPA revenue bonds have been issued and sold with proceeds generated of approximately \$35,000,000.

11. A key component of the Union Pier Passenger Terminal improvement is long-term, predictable, commercial ocean-going cruise vessel calls at Union Pier. Toward this end, SCSPA and Carnival had made considerable progress toward forging a long-term contract under

which Carnival would regularly call at Union Pier. Carnival has now suspended further action on the long-term contract discussions unless and until this lawsuit is expeditiously ended.

12. Respondents have brought suit against Carnival Cruise Lines, the leading cruise customer and user of the marine terminal passenger facility in the subject action, seeking a declaration that certain of the commercial ocean going vessels which call at Union Pier are subject to zoning, violate the Zoning Ordinance and therefore call illegally when docked at Union Pier. Plaintiffs seek injunctive relief against these alleged illegal calls, which by necessity would prevent the vessels from calling at Charleston, if such action were to be successful.

13. Without the long-term cruise line commitment, the Union Pier improvement plan will not be economically viable and will be ended by the Ports Authority. Not only has this lawsuit cut off discussions of such a long term arrangement with Carnival, it sends a negative message to other cruise lines, producing a dampening effect and discouraging calls and commerce in South Carolina.

14. The current lawsuit alleges that Carnival vessels cannot legally call at Union Pier because its vessels (a) violate Charleston City Zoning Ordinances; (b) the vessels operate illegally because of certain discharges incidental to vessel operations which are not permitted by the South Carolina Department Health and Environmental Control; and (c) the calls by Carnival vessels constitute a nuisance.

15. If successful, Plaintiffs will prevent calls by Carnival vessels and other cruise vessels, and will impact the ability of the SCSPA to improve its Union Pier passenger facility and carry out its statutory duties to promote, facilitate and increase water-borne commerce.

Carnival's suspending action on the long-term contract is understandable in light of the consequences if Plaintiffs are successful in the lawsuit.

16. Virtually all claims made by Plaintiffs with respect to the calls of Carnival Cruise Line vessels would apply to every traditional cargo vessel which call at the Union Pier Terminal as well as the Columbus Street Terminal on the Peninsula City. These claims would also apply to nearly all other tall ships, foreign and U.S. military vessels, and other vessels associated with events of national significance at Union Pier Terminal and Columbus Street Terminal. For instance, Ro-Ro vessels which call at Columbus Street and have called at Union Pier have air-drafts of between 125 feet and 171 feet, well above the 60-foot Height Ordinance restriction, if applicable. These Ro-Ro vessels carry, among other cargo, BMWs manufactured in the Upstate. In addition, the break-bulk/heavy lift vessels which call there have air drafts of between 101 and 106 feet well above the Height Ordinance restriction of 60 feet. And as can be seen below, if successful, shut down of Peninsula Port terminal operations would have an enormously negative economic impact to the State.

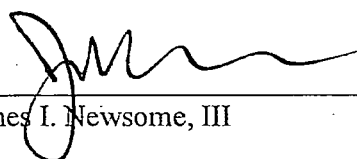
17. Cargo valued at \$50 billion passed through the Charleston Customs District in 2010. The total tonnage of cargo that passes through the Port of Charleston is approximately 15 million tons per year.

18. In calendar year 2010 approximately 64% of the SCSPA's total break-bulk, bulk and roll-on/roll-off cargoes in the Port of Charleston moved across piers at the Union Pier Terminal and Columbus Street Terminal, including large power generation projects for in-state companies and automobiles manufactured in South Carolina, which totaled \$4 billion of exports in 2010, a significant amount of which is generated by BMW vehicles manufactured in the

Upstate. Columbus Street is the only terminal through which BMW vehicles pass. Enjoining these operations would be devastating not only to the Port, but also to BMW. Moreover, in 2010 15 % of the Port's total revenues were generated from cruise, break-bulk, bulk and roll-on/roll-off activities at these Terminals. If the revenue streams from the Columbus Street Terminal and the Union Pier Terminal cease, not only will it place the Port of Charleston at a competitive disadvantage to other ports, it may be extremely harmful to the economic viability of the SCSPA.

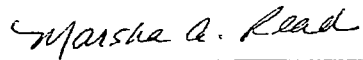
19. If the theories proposed by Plaintiffs are found to be legitimate, not only will the overall Union Pier improvement plan be scuttled, but all ocean going interstate and foreign maritime commerce, which is facilitated through the Ports Authority's Union Pier and Columbus Street Terminal facilities, will be at risk.

FURTHER AFFIANT SAITH NOT.


James I. Newsome, III

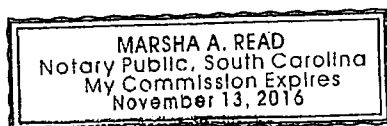
Sworn to and subscribed before me,

this 22nd day of August 2011.



Notary Public for South Carolina

My Commission Expires: Nov. 13, 2016



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 2014-000847

Preservation Society of Charleston,
Historic Charleston Foundation, Historic
Ansonborough Neighborhood Association,
South Carolina Coastal Conservation
League, Charlestowne Neighborhood
Association, Charleston Chapter of the
Surfrider Foundation, and Charleston
Communities for Cruise Control,..... Appellants,

v.

South Carolina Department of Health and
Environmental Control and South Carolina
State Ports Authority,..... Respondents.

Certificate of Service

This is to certify that I, a legal assistant with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of the **South Carolina Ports Authority's Motion and Memorandum in Support to Dismiss Appeal** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Amy Armstrong, Esquire
South Carolina Environmental Law Project
Post Office Box 1380
Pawley's Island, SC 29585

RECEIVED

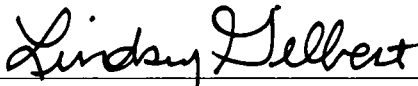
JUL 03 2014

SC Court of Appeals

Jefferson Leath, Esquire
Leath, Bouch & Seekings, LLP
92 Broad Street
Charleston, SC 29401

Bradley D. Churdar, Esquire
**South Carolina Department of
Health and Environmental Control**
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405

J. Blanding Holman, Esquire
Southern Environmental Law Center
43 Broad Street, Suite 300
Charleston, SC 29401



Lindsey A. Gilbert

Columbia, South Carolina
This 3rd day of July 2014

2

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS
ANDREW J. D'ANTONI

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

July 3, 2014

*ALSO ADMITTED IN TX

**ALSO ADMITTED IN THE DISTRICT OF COLUMBIA

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
1015 Sumter Street~
Columbia, South Carolina 29201

Re: *Preservation Society of Charleston v. S.C. State Ports Authority & SCDHEC*;
Appellate Case No. 2014-000847

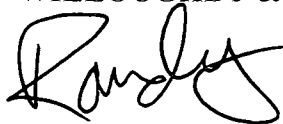
Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Respondent's Motion and Memorandum in Support to Dismiss Appeal along with a Certificate of Service. Please file-stamp the extra copy and return it via my courier.

Thank you. If you have any questions, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.



Randolph R. Lowell

Enclosures

cc: Amy Armstrong, Esquire
Jefferson Leath, Esquire
Bradley D. Churdar, Esquire
J. Blanding Holman, Esquire
Phillip Lawrence, Esquire

RECEIVED

JUL 03 2014

SC Court of Appeals