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

RECEIVED
JUL 28 2014
SC Court of Appeals

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.

REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL

Respondent South Carolina State Ports Authority (Ports Authority) respectfully submits its reply to the Appellant Cruise Opponents' Return to South Carolina State Ports Authority's Motion to Dismiss Appeal. The Court's task is straightforward as the Return gives cursory treatment to the issue of whether the ALC's interlocutory orders on discovery (Discovery Order) and a motion to vacate (MTV Order) are appealable. Of the 19 pages

in the Return, less than 5 pages address the pending Motion to Dismiss Appeal. The remaining verbiage consists of *ad hominem* attacks on the Ports Authority and its counsel and argument of the substantive *merits* of the two orders improperly appealed. Even this verbiage largely consists of cutting and pasting unsuccessful arguments below and misrepresenting the positions of the Ports Authority and the ALC.[1] All of these are attempts to evade the fact that the MTV and Discovery Orders are not appealable based on the posture of this litigation.

Although not properly before the Court at this point, the merits of the arguments on discovery and the vacatur were fully briefed below and properly rejected by the ALC. *See* Exh. 1, Order Denying Pet'rs' Mot. to Vacate, filed Dec. 20, 2013 (MTV Order); Exh. 2, Order Denying Pet'rs' Mot. to Expand Discovery, filed March 3, 2014 (Discovery Order). As discussed more fully below, those orders addressed matters upon which a decision by this Court provides no utility or guidance, because in the highly unlikely event this Court reverses the ALC,[2] these discovery and trial-related issues would be back in front of the ALC for adjudication on remand.

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[1] The Return is replete with the Cruise Opponents' erroneous re-characterization of arguments and positions of the Ports Authority and holdings and findings of the ALC—the representations of which are inevitably wrong and cannot withstand even casual scrutiny.

[2] The ALC order granting summary judgment for lack of standing (Standing Order) closely followed the South Carolina Supreme Court decision in *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014), from which the ALC functionally adopted the Supreme Court's standing analysis of these same parties and same claims.

The Return lacks citation to any supporting record evidence for its claims, especially related to alleged Ports Authority or ALC positions, because there is no such evidence.[3] Instead, the Cruise Opponents re-create this matter from whole cloth to argue a case that does not exist in fact or law.[4] *See Apsley v. Boeing Corp.*, Civil Action No. 05-1368-MLB, 2007 WL 3231526 (D. Kan. Oct. 30, 2007) (unpublished) (cautioning plaintiffs' counsel over making "statements that, upon inspection of the cited exhibits, were half-truths, misleading, incomplete, or blatantly unsupported by the cited exhibit"). With no citation or support, and by briefing matters not properly before the Court at this time, much of the Return can be summarily discarded.

What remains is that the Discovery Order and MTV Order are interlocutory orders that are not appealable. The Cruise Opponents offer scant rebuttal to these propositions. The Motion to Dismiss Appeal of the Discovery Order and the MTV Order therefore should be granted, as these two orders are not appealable and not properly before the Court.

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[3] In a recent opinion of the Supreme Court, Justice Kittredge, writing for the majority, admonished a party for misrepresenting the contents of the record in an effort to portray its position in a more positive light; one that ultimately did not withstand that Court looking behind the party's representations to the actual documents. *See City of Myrtle Beach v. Tourism Expenditure Review Committee*, 407 S.C. 298, 755 S.E.2d 425, 428-29 (2014). The same is true here.

[4] The Ports Authority will not attempt to correct each and every inaccuracy in the Return (of which there are many).

ARGUMENT

I. The Motion to Vacate was a summary judgment motion, the denial of which is not appealable.

The Cruise Opponents state that their Motion to Vacate "was premised on legal arguments about DHEC's governing law" and based on an alleged "facial legal flaw."[5] Return at 13-14. Thus, the argument made and the relief sought was judgment as a matter of law, and hence a summary judgment motion.[6] S.C. R. Civ. P. 56(b); *see Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (2002) ("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 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 Cruise Opponents acknowledge that the "denial of a motion for summary judgment is not generally appealable." Return at 16; *see Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 167-68, 580 S.E.2d 440, 443-44

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[5] The Cruise Opponents further state that the Ports Authority "presented various views of the law in response." Return at 14.

[6] At one point the Cruise Opponents attempt to recast the motion as a judgment on the pleadings, Return at 14, but this makes no sense, as there were no pleadings in this case. In fact, the ALC has repealed the prior rule that allowed for "optional" pleadings. *See* Rule 18, RPALC, 2013 Note. Previously, the ALC could order traditional pleadings. However, it is undisputed that no pleadings were ordered in this case.

(2003) ("The denial of summary judgment is not appealable, ***even after final judgment.***") (emphasis added); *see also Crites v. Horlbeck*, 2012-UP-095, 2012 WL 10830193 (S.C. Ct. App. Feb. 22, 2012) (unpublished) ("[T]he denial of a motion for summary judgment is not appealable regardless of the language used in the order denying summary judgment."). But the Cruise Opponents then claim that the MTV Order is an exception to the rule based on some theory of companion issues or judicial economy. Neither purported exception applies in this case.

The MTV Order is not a companion to the Standing Order that is properly on appeal because the issues addressed in the orders are not closely connected. The MTV Order ruled that a challenge concerning the merits of the Permit at issue would have to be presented during a trial, whereas the Standing Order found that the Cruise Opponents' could not maintain any challenge to the Permit on its merits. The appeal of the MTV Order therefore should be dismissed because an issue regarding the merits is not connected with issues concerning the Cruise Petitioners' lack of standing to maintain any claim on the merits. *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 362 n.5, 622 S.E.2d 533, 538 n.5 (2005) (declining to hear appeal from denial of a preliminary injunction and the denial of a motion to dismiss claims because the issues "lack[ed] a sufficient nexus or companionship to justify [the] exercise of immediate appellate review"). A case cited by Petitioners, *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 338, 574 S.E.2d 502, 511 (Ct. App.

2002), precisely illustrates this point because this Court's decision to review the denial of summary judgment was based in part on the determination that the trial court's grant of summary judgment encompassed the issue involved in the summary judgment motion that was denied. In essence, *Pitts* involved cross-motions for summary judgment on the same issue. *See id.* Although the Motion to Vacate was in substance a motion for summary judgment, it certainly was not a cross motion for summary judgment on the issue of standing.

Therefore, given that the MTV Order is wholly unrelated to the Standing Order, the Cruise Opponents in effect argue for reviewing the denial of summary judgment in any case where there is any issue that may be appealed. That is not the rule, however. *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 365, 559 S.E.2d 327, 341 (Ct. App. 2001) (noting that, *in Silverman v. Campbell*, 326 S.C. 208, 486 S.E.2d 1 (1997), "the presence of an immediately appealable issue in the order did not make the denial of summary judgment reviewable"); *see, e.g., Wright v. Craft*, 372 S.C. 1, 35, 640 S.E.2d 486, 504 (Ct. App. 2006) (addressing other properly appealable issues, but refusing to address the denial of a summary judgment motion). Thus, in *Mowrer v. Charleston Cnty. Park & Recreation Comm'n*, 361 S.C. 476, 605 S.E.2d 563 (Ct. App. 2004), this Court declined to address the denial of the summary judgment motion regarding whether a property taking had occurred even though in that same opinion it reversed a directed verdict in

favor of the defendants on an inverse condemnation claim. *Id.* at 482-83, 605 S.E.2d at 566. If it is not proper to consider the denial of summary judgment regarding a taking along with an appeal from a directed verdict on a related inverse condemnation claim, it certainly is not proper to consider the denial of summary judgment regarding the merits of water quality certification along with an appeal from the grant of summary judgment regarding standing.

The Cruise Opponents also resort to the principle of furthering judicial economy, but that general concept does not support allowing the Cruise Opponents to appeal from the MTV Order at this stage of the litigation. Judicial economy does not alone authorize ignoring general legal principles, such as the prohibition against appealing the denial of a summary judgment motion. This is especially so when there might be further proceedings and the issues raised in the summary judgment motion are "intertwined with those to be determined at trial." *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 164 (Ct. App. 2014) (refusing to review denial of summary judgment motion). That is precisely the case here because, in denying the Motion to Vacate, the ALC found that there was insufficient evidence to ascertain the review procedures followed by DHEC but that the court could, following a trial, "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." MTV Order, p.7; *cf.*

Ballenger v. Bowen, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) (denial of motion for summary judgment allows movant to raise issues again later and "simply decides the case should proceed to trial"). In other words, assuming at that juncture that the Cruise Opponents had standing, the ALC found that a trial was necessary to decide the 401 Certification issues. Put another way, even if the Cruise Opponents are determined to have standing despite the ALC's findings and the Supreme Court's holding in *Carnival Corp. v. Historic Ansonborough Neighborhood Association*, the issues raised in the Motion to Vacate are intertwined with any that would be determined at a trial. *Watson* alone therefore requires dismissing the appeal from the MTV Order. A ruling either way on the question of standing makes it unnecessary for the appellate court to address discovery and pretrial motions.

Moreover, judicial economy does not justify review of the MTV Order because the ALC did not adjudicate any legal issues or make any factual findings in the MTV Order. In challenging the denial of the MTV Order on appeal, the Cruise Opponents are improperly asking this Court to make factual findings without any supporting record. *See Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) ("What [appellant] is asking this court to do [in reviewing the denial of a motion for summary judgment] is serve as a trial court in finding facts based upon the record as submitted. That, we decline to do."). In *Queen's Grant II*, this Court dismissed an appeal from an order

denying summary judgment that was "not conducive to appellate review" because it did not address the substance of any arguments raised in the motion, was not a final ruling on any issues, and simply found "that a trial upon the record would be most efficient. *Id.* Similarly, the MTV Order is "not conducive to appellate review" because it does not address the substance of the issues raised in the Motion to Vacate, but simply finds that those issues should be resolved based on factual findings determined in a trial. Therefore, even assuming that the issues raised in the Motion to Vacate are similar to those in the motion for summary judgment as to standing, the MTV Order simply does not contain sufficient information for this Court to review on appeal at this stage of the litigation. As this Court has recognized, appellate court fact-finding hardly enhances judicial economy.

Yet another reason for dismissing the appeal from the MTV Order is that, if the case were remanded for trial, the issues raised in the Motion to Vacate might never arise depending upon the factual findings ultimately and actually made by the ALC. In the only case cited by the Cruise Opponents in support of their judicial economy argument, Return at 15, the Supreme Court did not discuss judicial economy and, instead, refused to review a denial of summary judgment because it would have involved an "advisory ruling ... on a constitutional issue which may never arise." *Morris v. Anderson County*, 349 S.C. 607, 610-11, 564 S.E.2d 649, 651 (2002). There is no judicial economy in rendering an advisory decision based on facts not yet decided in a

case brought by a party without standing. *S.C. Labor Ltd., LLC v. E. Tree Serv., Inc.*, 362 S.C. 654, 658, 609 S.E.2d 305, 307 (Ct. App. 2005) ("We do not address this issue because we do not give advisory opinions."); *see Navegar, Inc. v. United States*, 103 F.3d 994, 998 (D.C. Cir. 1997) ("By refusing to hear disputes which are not yet ripe, federal courts avoid becoming entangled in abstract disagreements, enhance judicial economy, and ensure that a record adequate to support an informed decision exists when the case is heard.") (internal quotation marks & citations omitted).

In short, the Cruise Opponents have not demonstrated that the Motion to Vacate was anything other than a motion for summary judgment.[7] They also have not persuasively articulated a reason for affording them the benefit of any exceptions to the rule that the denial of summary judgment is never appealable. Instead, like the appellants in *Watson*, the Cruise Opponents are seeking preliminary review of an issue that cannot be decided without pertinent factual findings by the ALC. And like the appellants in *Morris*, the Cruise Opponents are seeking review of the denial of summary judgment regarding an issue that might not arise later in the litigation even if the case were remanded for trial. Deciding issues that, in essence, have not been fully developed, are not ripe, and may never arise does not promote judicial economy and, instead, involves the appellate court in rendering advisory opinions. The appeal from the MTV Order should be dismissed.

II. The Motion to Vacate is moot.

As explained in the MTV Order, as a matter of black letter South Carolina law, the 401 Certification has been issued as part of the Permit. *See* 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."); Exh. 1, MTV Order at 6 ("On December 18, 2012, *DHEC issued the critical area permit and CZC Certification for the Project*.... Consequently ... 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.*") (emphasis added).

Alternatively, the 401 Certification has been legally waived,[8] as, under the Cruise Opponents' alternative theory, no 401 Certification was issued as

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[7] As the Appellants, the Cruise Opponents bear the burden of proving jurisdiction.

[8] Nevertheless, the Cruise Opponents claim that waiver does not apply to the Project-specific permit because of the nationwide permit. Return at 17-18. But this is absurd. And the accompanying footnote (footnote 4 on page 18 of the Return) is nonsensical to any experienced administrative or environmental practitioner. In fact, it is internally inconsistent with the rest of the Cruise Opponents' discussion of 401 Certification. The initial action—to issue, deny, or waive—within the one year is all that is required to satisfy the requirement. Subsequent litigation in the administrative or judicial arenas does not impact compliance with the one-year action requirement.

part of the Permit (despite the plain language of state law), and as a result the time period to act on the application has expired.[9]

Under either scenario the motion to vacate based on an alleged lack of a 401 Certification is moot. At best, as the Permit serves as the 401 Certification, then the ALC may adjudicate those terms in the context of a *de novo* contested case. Exh. 1, MTV Order at 7. But at this point, there is nothing for this Court to rule on since the ALC postponed adjudication of that question until a later point in time that was never reached. Thus, there is no issue for this Court to rule on and the MTV Order is interlocutory and non-appealable.

Moreover, that *de novo* contested case review of the 401 Certification component of the Permit is contingent upon the Cruise Opponents' survival of the Ports Authority's motion for partial summary judgment that the Cruise Opponents failed to challenge and waived any right to adjudicate the 401 Certification for the Project. *See* Exh. 3, Ports Auth. Mot. for Partial Summ. Judg., filed Dec. 27, 2013, and Exh. 4, Reply in Supp. of Mot. for Partial Summ. Judg., filed Feb. 5, 2014. The Cruise Opponents never availed themselves of the available procedures to challenge either a 401 Certification

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[9] "The 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." S.C. Code Regs. 61-101.A.6. The application was submitted on January 27, 2012, and the Permit was issued in December 2012. If the Permit does not serve as the 401 Certification, then one year has elapsed and waiver has occurred.

as part of the Permit or a waiver of a decision to issue a 401 Certification within one year.[10] Thus, the Cruise Opponents cannot challenge the 401 Certification in any event (and that further assumes that they establish standing). The ALC denied the Ports Authority's motion for partial summary judgment as moot when it granted the motion for summary judgment on standing. The Ports Authority has not appealed, as denial of summary judgment is non-appealable and the ALC may take that matter up in the highly unlikely event the ALC is reversed. The MTV Order—equivalent to a denial of summary judgment to the Cruise Opponents on a similar point—is no different. These are not appealable orders for the Court to address at this time to render advisory opinions. Instead, as discussed above, *see* discussion *supra* Part I, the Court should limit review to final orders that actually decide a final issue.

III. The Discovery Order is not appealable.

The Cruise Opponents offer no credible or substantive opposition to dismissal of the appeal of the Discovery Order. The discovery period had run pursuant to Rule 21, RPALC. The Cruise Opponents waited until months had passed and they learned that the Ports Authority was filing a motion for

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[10] Under these circumstances, this is a substantive distinction without a difference. Whether applying the 401 Certification issued for the NWP 3, the 401 Certification issued as part of the Permit, or under a waiver of 401 Certification altogether, no substantive terms and conditions are imposed under the auspices of 401 Certification authority. Instead, a general term applies requiring the Project to comply with water quality standards. This is

summary judgment for lack of standing before suddenly deciding that additional discovery was necessary to file a motion to reopen discovery (on December 23).

The ALC subsequently asked the Cruise Opponents to clarify the purpose and need for the additional discovery request—was it for summary judgment purposes or for trial? Ports Auth. Mot. to Dismiss, Exh. 14, E-mail from ALC (March 24, 2014). Counsel for the Cruise Opponents affirmatively represented 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." Ports Auth. Mot. to Dismiss, Exh. 14, E-mail from Cruise Opponents' counsel to Judge Anderson's inquiry (March 25, 2014); *see* Order Granting Summary Judgment for Lack of Standing p.19, n.23 (April 11, 2014) ("[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"). This makes sense, since the motion for summary judgment for lack of standing was fully briefed and followed full briefing on a motion to dismiss for lack of standing.

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logical, since the permitted activity is the driving of pile clusters underneath an already existing operating marine terminal.

But now the Cruise Opponents and their counsel seek to back up from the affirmative representations made to the ALC.[11] Return at 18.

The Cruise Opponents' excuse for missing the deadline, reiterated in their Return, is that the rules don't matter and the ALC discovery rules are merely "honored in the breach."[12] Return at 13. The reality is that they chose to ignore the discovery rules. And while the Cruise Opponents complain about needing Ports Authority counsel to educate them on the discovery

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[11] This back-pedaling conforms to the pattern set in this case. For example, the Cruise Opponents cite to the affidavit of Christina Dodd in their Return. Return at 16. Interestingly, the Dodd affidavit regurgitated the same allegations found in the Carrie Agnew affidavit. The Agnew affidavit was filed with the Supreme Court and the ALC, but ultimately withdrawn and replaced with the Dodd affidavit. Despite the Cruise Opponents' attempts to withhold the information, the Ports Authority learned that while Ms. Agnew had proffered sworn testimony on the "nuisance" of cruise ships at her then-residence on Hasell Street, when it came time to sell her residence she affirmatively represented to prospective buyers that no nuisances existed. Exh. 5, Ltr. of Lowell to Anderson, dated Nov. 15, 2013 (demonstrating that Ms. Agnew either provided false testimony to the courts or provided a false representation to the prospective buyer on a government-required form); *cf.* S.C. Code Ann. § 16-9-10(A) (defining perjury).

It was the acquisition of this evidence that the Cruise Opponents complain about, Return at 12, despite the fact that this information should have been produced in the discovery responses by the Cruise Opponents.

[12] The Cruise Opponents offered the affidavit of a lawyer currently employed as Special Counsel by McNair Law Firm, P.A., Leslie S. Riley, for the proposition that the Rules do not matter, as she testifies that in her practice, "the parties have not operated under ALC Rule 21...."). *See* Pet'rs' Mot. to Reconsider (March 13, 2014), Exh. D at 2. Nonetheless, other practitioners abide by and follow the rules, either completing discovery within the time period allowed or seeking an order expanding discovery under Rule 21, RPALC. *See* Randolph R. Lowell, *The Contested Case Before the ALC*, in South Carolina Administrative Practice and Procedure 183 (S.C. Bar 3rd ed. 2013) ("**Unless specifically expanded** or further limited by order by the presiding ALJ, upon notice and good cause shown, those **limitations are enforced.**") (emphasis added).

deadlines in ALC proceedings, Return at 12, the truth is Ports Authority counsel merely took the time to read the applicable ALC Rule, which limits what discovery may be had and imposes a 90-day time limit.[13] Rule 21, RPALC.

In addressing the discovery issue and Cruise Opponents' affirmative representations to the ALC, the ALC held that discovery was moot and the prior order vacated.

> 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.

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[13] Indeed, the Cruise Opponents go so far as to claim that in no communications related to a proposed scheduling order "did SPA (or DHEC, for that matter) suggest that a modification or expansion under ALC Rule 21 is being requested or even needed." Return at 13. But this claim is demonstrably wrong. The proposed scheduling order itself stated that "[t]he limitations on discovery set forth in Rule 21, RPALC are hereby modified accordingly." Exh. 6, Ports Auth. Resp. to Mot. to Expand Discovery, Ex. C at 1, ¶1 (emphasis added). Further, Cruise Opponents counsel specifically commented on the proposed scheduling order explicitly acknowledging their understanding of the limitations Rule 21, RPALC puts on discovery. *Id.*, (Armstrong Redline to Proposed Consent Scheduling Order at 1) ("[Cruise Opponents can't agree to completely eliminate *the limitations placed on discovery under the ALC rules....*") (emphasis added).

Mot. to Dismiss Appeal, 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. The Cruise Opponents offer no legitimate argument to the contrary.

First, because the Discovery Order was vacated, there is no order or judgment to appeal. "A judgment or order, to be final for purposes of an appeal or error, must dispose of the cause, or a distinct branch thereof, reserving no further questions or directions for future determination." 37 A.L.R.2d 586 (originally published in 1954). As a vacated order that is null and void and of no effect, and that clearly reserves for the future any determinations about discovery should a contested case trial be necessary, the Discovery Order is not appealable and this Court lacks jurisdiction.

Second, the Cruise Opponents essentially ask for an advisory opinion. Cruise Opponents counsel affirmatively represented that discovery was being requested for the trial, and not for purposes of summary judgment. Should the case be reversed and remanded, then the ALC has clearly left the door open to revisit a request to reopen discovery at that time. At this time there is no order or decision to adjudicate and nothing to review. Without standing, there is no trial, and without a trial, there is no need for discovery, by the

Cruise Opponents' own admission. Thus, there is nothing for this Court to adjudicate.

CONCLUSION

The MTV Order and the Discovery Order are not appealable. The Cruise Opponents have the burden of establishing this Court's jurisdiction. The Return, when stripped of hyperbole and misdirection, stands bare and offers no rebuttal to the simple and established proposition that these orders, which finally determine nothing and leave much to be done by the trial court, are not appealable. The Ports Authority's motion to dismiss the MTV and Discovery Orders should be granted.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,



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July 28, 2014
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

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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 paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of the **Respondent South Carolina Ports Authority's Reply to Cruise Opponents' Return to South Carolina Ports Authority's Motion to Dismiss** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

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Breanna M. Karns

Columbia, South Carolina
This 28th day of July 2014

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**

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For the Petitioners: Amy E. Armstrong, Esquire
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J. Blanding Holman, IV Esquire

For the Respondents: Randolph R. Lowell, Esquire
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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 (NWPs), 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.

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[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 zone[3] 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

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[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
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

For the Respondents:
Randolph R. Lowell, Esquire
Chad N. Johnston, Esquire
Bradley D. Churdar, Esquire

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 (OCRM) 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

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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.

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[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 compete 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
Judicial Law Clerk

March 3, 2014
Columbia, South Carolina

Exhibit 3

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 & Environmental Control and South Carolina State Ports Authority, Respondents.	)	Docket No. 13-ALJ-07-0056-CC

MOTION FOR PARTIAL SUMMARY JUDGMENT

The South Carolina Ports Authority (Ports Authority) respectfully moves this Court for an order granting partial summary judgment. Before issuing any federal permit with respect to a project that may result in a discharge into navigable waters of the United States, the United States Army Corps of Engineers (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 (CWA), 33 U.S.C.A. § 1341 (401 Certification). *See* S.C. Code Ann. Regs. 61-101. However, because Cruise Opponents did not articulate any challenge to the 401 Certification in their requests for final review, contested case request, or prehearing statement, the Ports Authority is entitled to judgment as a matter of law that the 401 Certification issued as a component of the critical area permit, 401 Certification, and coastal zone consistency determination (Permit No. ORCM-12-054-B) (Permit) that was issued by the

South Carolina Department of Health and Environmental Control (DHEC) is valid and binding, and the Cruise Opponents cannot now challenge it in this proceeding.

REGULATORY AND FACTUAL BACKGROUND

This is a *de novo* contested case proceeding brought by Preservation Society of Charleston (Preservation Society), Historic Charleston Foundation (HCF), Historic Ansonborough Neighborhood Association (HANA), South Carolina Coastal Conservation League (League), Charlestowne Neighborhood Association (CNA), Charleston Chapter of the Surfrider Foundation (Surfrider), and Charleston Communities for Cruise Control (Cruise Control) (collectively, Cruise Opponents) challenging a decision by DHEC to authorize and permit a portion of a capital improvement project by the Ports Authority at the Union Pier Terminal (UPT) in Charleston, South Carolina. Cruise Opponents 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). *See* Cruise Opponents' Req. for Contested Case, filed Feb. 11, 2013; Cruise Opponents' Prehr'g Stmt., filed May 21, 2013.

A. Project at Issue.

Union Pier Terminal (UPT) is a fully operational marine terminal located on approximately 63 acres adjacent to the Cooper River on the Charleston peninsula. It is owned and operated by the Ports Authority with, at present, approximately 2,470 linear feet of continuous pile supported wharf and berth space.[1] UPT has been used for different types of commercial shipping for more than 100 years. UPT also has accommodated passenger vessel

[1] Ex. A, OCRM-12-054-B Permit, dated Dec. 18, 2012 (Bldg. Loc. Plan UPT at Sheet 2 of 11).

calls for nearly 100 years.[2] Passenger vessels—including cruise vessels—have called on the Cruise Terminal each and every year since it was dedicated in 1973.[3]

In order to stimulate and accommodate cruise passenger ship calls at UPT, the Ports Authority initiated a capital improvement plan to upgrade the terminal facilities for serving cruise ship passengers (Project). This plan includes upgrading existing facilities to comply with required security and accessibility requirements; relocating existing cargo facilities from the northern end of UPT to other terminals; implementing a traffic management plan; restoring the southern end of UPT through the demolition of older structures; and dedicating much of the existing terminal acreage to public and private redevelopment and public green spaces, embracing a restoration of the natural waterfront. And, pertinent to this case, the capital improvement plan also involved relocating cruise passenger facilities from the present location in several buildings at the southern end of the UPT footprint to Building 322 on the northern end of the terminal.[4]

On January 27, 2012, the Ports Authority submitted a Joint Federal and State Application Form for Activities Affecting Waters of the United States or Critical Areas of South Carolina to the Corps and to OCRM for a permit to engage in activities affecting the waters of the United States and critical areas of South Carolina.[5] This application states as follows in pertinent part:

> *Authorities:* ... 33 USC 1341 .... These laws require permits for activities in, or affecting, navigable waters of the United States.... The Corps of Engineers and the State of South Carolina have

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[2] Ex. B, Aff. of James I. Newsome, III ¶7 (Aug. 22, 2011) (Newsome Affidavit)); Ex. C, Aff. of Peter Lehman ¶6 (Aug. 2, 2013).

[3] Ex. B, Newsome Aff. ¶7.

[4] Ex. A, OCRM-12-054-B Permit (New Bldg. Loc. Plan UPT at Sheet 3 of 11)).

[5] Ex. D, Ports Authority Joint Application, dated Jan. 27, 2012.

> established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form ... to apply for both the Federal and/or State permit(s).[6]

The application sought approval for the installation of five pile clusters driven into the marl to support the construction of three elevators and two escalators in Building 322. These five pile clusters are to be installed within the existing footprint of the already developed marine terminal and directly underneath the existing footprint of Building 322.[7] The pile clusters—a mere five added to the existing 850 pilings already supporting Building 322 alone—will provide further support for Building 322 within its existing footprint as authorized under original UPT permits issued in the 1970s by the S.C. Budget and Control Board.

B. Clean Water Act provisions.

The proposed installation of pilings in a navigable water of the United States is an undertaking subject to Section 10 of the Rivers and Harbors Act (RHA), which 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. §§ 401 *et seq.* 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).

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[6] *Id.* at 1.This application was part of the dual-track permitting process of seeking a 401 Certification for an individual permit or a Nationwide Permit from the Corps for the insignificant activity of adding five pile clusters. The individual 401 Certification without conditions (for water quality) issued for the Project in December 2012 reinforces the decision DHEC made with regards to the general 401 Certification for NWP 3 (without conditions) issued in April 2012.

[7] Ex. E, Map of Pile Clusters.

In turn, any applicant for a federal permit or license involving the construction or operation of facilities that may result in a discharge into navigable waters must obtain a 401 Certification from the state in which the discharge will take place, certifying that the project complies with Section 401 of the Clean Water Act. *See* 33 U.S.C.A. § 1341; S.C. Code Ann. Regs. 61-101. Thus, before issuing a final permit to the Ports Authority authorizing the Cruise Terminal renovations, the Corps must either obtain a 401 Certification or a waiver from the State of South Carolina through DHEC.

For some activities, the Corps may issue Nationwide Permits (NWPs). As a federal permit, DHEC reviews the NWPs and issues, conditions, or denies 401 Certifications (as well as Coastal Zone Consistency Determinations) for each NWP. In accordance with its obligations, DHEC reviewed the 2012 NWPs issued by the Corps and issued 401 Certifications, some with and some without additional conditions, for certain of the NWPs as being consistent with the provisions of the CWA. The practical effect of these review processes by the Corps and DHEC is that, for projects which are deemed to fall under a NWP reviewed and issued by the Corps, the 401 Certification required of DHEC under the CWA has also been issued.

C. The Project Received the Appropriate Permits and Authorizations.

In this case, because the Project involves driving pilings in a navigable water of the United States, an undertaking within the Corps' jurisdiction, a 401 Certification is required from the State of South Carolina (through DHEC) to be issued, denied, or waived within one year after receiving the request for certification. In compliance with these requirements, the Project received all of the necessary permits and certifications from DHEC. An application was submitted in January 2012 for the Project, and the Permit was issued on December 18, 2012. This DHEC action, which occurred within one year of the request, serves as the critical area

permit, coastal zone consistency determination, and 401 Certification for the individual and specific Project. Ex. A, OCRM-12-054-B; *see* Order Denying Pet'rs' Mot. to Vacate, filed Dec. 20, 2013, at 6.

STANDARD OF REVIEW

Motions for summary judgment are properly brought in the Administrative Law Court. Rule 68, RPALC provides that "[t]he South Carolina Rules of Civil Procedure ... may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by [the RPALC]." Pursuant to Rule 56(c), SCRCP, summary judgment shall be granted if "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." *See also Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Cisson Constr., Inc. v. Reynolds & Assoc., Inc.*, 311 S.C. 499, 429 S.E.2d 847 (Ct. App. 1993). In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *Byers v. Westinghouse Elec. Corp.*, 310 S.C. 5, 425 S.E.2d 23 (1992).

Although the evidence and inferences drawn therefrom must be construed against the moving party, "the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but a response by affidavit or otherwise ... must set forth specific facts creating a genuine issue for trial." Rule 56(e), SCRCP; *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988); *see also Jacobs v. S.C. Budget & Control Bd.*, No. 08-ALJ-30-0311-CC (Jan. 23, 2009) (Anderson, J.); *Environmentalists, Inc. v. S.C. Dep't of Health & Envtl. Control*, No. 96-ALJ-07-0030 (June 18, 1996) (Stevens, J.) (motion for summary judgment granted because affidavit, even when construed with all permissible inferences favorable to non-moving party, was unhelpful in establishing standing). Further, "summary judgment should be

granted 'when plain, palpable and undisputed facts exist on which reasonable minds cannot differ.'" *Lazicki-Thomas v. S.C. Budget & Control Bd.*, No. 05-ALJ-30-0510-CC (Nov. 13, 2006) (Anderson, J.).

THE CRUISE OPPONENTS HAVE WAIVED AND FOREGONE THEIR RIGHT TO CHALLENGE THE 401 CERTIFICATION ANALYSIS

As this Court correctly ruled on December 20, 2013,

> water quality issues were a part of DHEC's analysis in its critical area permit evaluation ... 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.

Order Denying Pet'rs' Mot. to Vacate, filed Dec. 20, 2013, at 6. Thus, the Permit also serves as the 401 Certification for the Project. As this Court has recognized, and as the Cruise Opponents have admitted, the critical area permit, coastal zone consistency determination, and 401 Certification are three independent regulatory licenses found within a single document. However, in the context of this case, the Cruise Opponents have only challenged the critical area permit and coastal zone consistency determinations and have failed to challenge the 401 Certification. As a result, the Cruise Opponents have waived, abandoned, and are precluded from raising any issue regarding the 401 Certification.

A. The Cruise Opponents have waived any challenge related to the 401 Certification for the Project.

Waiver is the voluntary and intentional relinquishment or abandonment of a known right. *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007); *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344 415 S.E.2d 387, 387-88 (1992). A party

waives or abandons a right when they: (1) had actual or constructive knowledge of its rights, or knew all the material facts upon which the right depended; and (2) expressly or implicitly failed to assert such right. *Janasik*, 307 S.C. at 344, 415 S.E.2d at 387-88. Waiver may therefore be express or implied from circumstances indicating a party's intent to waive a known right. *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994).

The Cruise Opponents did not raise any challenge to the 401 Certification for the Project in their requests for final review, contested case request, or their prehearing statement. They have therefore failed to make any challenge to the 401 Certification and, thus, have waived and cannot challenge issuance of the Permit on that basis.

1. The Cruise Opponents failed to challenge the 401 Certification for the NWP.

The Cruise Opponents acknowledge that DHEC issued a water quality certification for the NWP 3 on April 23, 2012—after the Cruise Opponents filed a lawsuit in the court of common pleas and were actively litigating and campaigning to stop cruise in Charleston.[8] Cruise Opponents' Reply in Supp. of Mot. to Vacate, filed Dec. 16, 2013, at 13. They also acknowledge that, by regulation, DHEC can issue "general certifications for categories of activities or for activities specified in Federal nationwide or general dredge and fill permits pursuant to Federal law or regulations." S.C. Code Ann. Regs. 61-101(A)(3); *see* Cruise Opponents' Reply in Supp. of Mot. to Vacate, filed Dec. 16, 2013, at 3 n.1 ("DHEC's regulations specifically provide for general certifications for NWP 3."). They now state that "DHEC purported to follow [the water quality] procedures in issuing the WQC for NWPs in April of 2012," suggesting that the decision to grant 401 Certification for NWP 3 projects was not properly done in substance. *Id.* at 11.

[8] The 401 Certification for NWP 3 did not impose any terms and conditions on utilization or coverage under NWP 3. Ex. F, 401 Certification for NWP 3, dated April 23, 2012.

Despite all this, and despite knowing that such 401 Certification (issued without conditions) at that time was being applied to the Project through the applicability of NWP 3, the Cruise Opponents did not challenge the 401 Certification for NWP 3 either when that certification was made or when instituting this challenge to the Permit. *Cf. Town of Arcadia Lakes v. S.C. Dep't of Health & Envtl. Control*, No. 09-ALC-07-0069-CC (Jan. 21, 2010) (McLeod, J.) (case initiated to challenge issuance of water quality certification granted pursuant to nationwide permit). In short, the Cruise Opponents failed to take action with respect to the 401 Certification at any time, thereby waiving their challenge to the water quality certification for the Project.

With full knowledge and understanding that the 401 Certification for NWP 3, which was issued by DHEC without conditions, would be applied to the Project, the Cruise Opponents did not challenge or otherwise contest the issuance of the 401 Certification for NWP 3. The Cruise Opponents thus have waived any challenge to the 401 Certification and cannot now challenge it as part of this proceeding.

2. *The Cruise Opponents failed to make any claim or challenge to any 401 Certification component of the Permit, and thus have waived and abandoned any challenge to the Project's 401 Certification.*

In challenging the Permit before DHEC and this Court, the Cruise Opponents never articulated any challenge to DHEC's issuance of the 401 Certification. They did not articulate any challenge to the 401 Certification before DHEC staff, before the DHEC Board, or before the ALC prior to filing their Motion to Vacate. Specifically, the Cruise Opponents did not articulate any challenge to the 401 Certification in their Requests for Final Review filed with the DHEC Board. *See* Ex. G, HCF Req. for Final Review, filed Jan. 2, 2013 (omitting any reference to section 401 or water quality as basis for requesting a final review by the DHEC Board); Ex. H, Preservation Society, HANA, League, CAN, Surfrider, & Cruise Control Req. for Final Review,

filed Jan. 2, 2013 (omitting any reference to section 401 or water quality as basis for requesting a final review by the DHEC Board).[9]

The Cruise Opponents also have not challenged the 401 Certification subsequent to the proceedings conducted by DHEC. In the Request for Contested Case Hearing, the Cruise Opponents requested only that this Court "conduct a Contested Case Hearing in connection with the DHEC staff decision to issue a Critical Area Permit and Coastal Zone Consistency Certification #OCRM-12-054-B." Cruise Opponents' Req. for Contested Case Hrg., filed Feb. 11, 2013, at 1. And in the issues identified in their Prehearing Statement, the Cruise Opponents list a series of challenges under the general question of "[w]hether DHEC properly applied the Critical Area Regulations, the Coastal Zone Management Act and Coastal Management Program in issuing a permit to construct a new cruise ship terminal by installing pilings in the critical area; building two covered staging areas and making structural changes to a building located over the critical area." Cruise Opponents' Prehr'g Stmt., filed May 21, 2013, at 2. The Cruise Opponents' Request for Contested Case and Prehearing Statement are devoid of any mention of

[9] In contrast, in instituting a challenge before this Court to the state permit issued by DHEC with respect to the marine container terminal at the former Charleston Navy Base, the League expressly requested "that the Court vacate the Final Agency Decision of the SC Board of Health and Environmental Control, affirming the issuance of a critical area permit, coastal zone consistency certification, **and a Sec. 401 water quality certification**." Ex. I, League Req. for Contested Case Hrg., *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control,* No. 07-ALJ-07-107-CC (Mar. 9, 2007) (Geathers, J.) (emphasis added). Similarly, in its prehearing statement for that case, the League stated that "DHEC approved a project that will cause violations of both air and water quality standards," cited to regulation 61-101, noted that DHEC had issued "water quality certifications" for the terminal, and stated as an issue presented for determination "whether the proposed project will cause water quality standards to be violated"). Ex. J, League Prehr'g Stmt., *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control,* 07-ALJ-07-0107-CC (Apr. 9, 2007) (Geathers, J.). None of that was done in this case.

or citation to the 401 Certification component of the Permit or South Carolina Regulation 61-101.

In short, the Cruise Opponents have not articulated the 401 Certification as a basis for their challenge to the Permit at any time prior to filing the motion to vacate in this case. By law, the Permit constituted a 401 Certification. *See* Order Denying Pet'rs' Mot. to Vacate, filed Dec. 20, 2013, at 6; S.C. Code Ann. Regs. 61-101.A.8 (DHEC "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."); S.C. Code Ann. Regs. 30-2.H. ("The direct permit will serve as the 401 water quality certification for an associated Federal permit."). The Cruise Opponents' failure to challenge that aspect of the Permit constitutes an abandonment and waiver of that issue.

Notably, the Cruise Opponents failed to challenge that 401 Certification at any level or in any pleading or filing before the motion to vacate—filed after the close of discovery.[10] The only reference to a water quality in the contested case request or the prehearing statement is a representation that the Cruise Opponents "represent diverse and broad interests, which include ... protection of air and water quality." Cruise Opponents' Prehr'g Stmt. at 3. This is hardly sufficient to articulate a challenge to the 401 Certification, especially in view of the fact that the Cruise Opponents never cite to or address any of the specific regulations referenced above providing that a critical area permit also serves as a 401 Certification.

By expressly failing to challenge the 401 Certification before DHEC and as part of this contested case even though they knew of the need to present a challenge to that certification, the Cruise Opponents have waived their right to challenge the 401 Certification in this Court. The

[10] This case was assigned on February 19, 2013; therefore, under the Rules of Procedure of the ALC, discovery closed on May 20, 2013. No party moved or requested that this Court expand discovery.

failure to challenge the 401 Certification is consistent throughout the proceedings initiated by the Cruise Opponents. As such, it was a conscious, intentional, and knowing decision by the Cruise Opponents to attack the Project on grounds other than and aside from the 401 Certification.

B. The Cruise Opponents failed to exhaust their administrative remedies to challenge the 401 Certification, as they failed to raise this issue or challenge that component of the Permit to the DHEC Board.

As noted, the Cruise Opponents never raised an issue of or challenge to the 401 Certification component of the Permit at the DHEC Board or to this Court prior to its motion to vacate. Because no issue regarding either the 401 Certification component of the Permit or compliance with regulation 61-101 was previously raised to DHEC, the Cruise Opponents are barred from raising that issue in this proceeding as a matter of law.

1. Exhaustion of administrative remedies.

The doctrine of exhaustion of administrative remedies generally requires a party seeking relief from the action of an administrative agency to pursue all available remedies before seeking such relief from the courts. *See Stanton v. Town of Pawleys Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992) (holding plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts, and dismissal for failure to do so is in the sound discretion of the trial judge); *see also Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (stating party is "clearly [] required to exhaust its administrative remedies prior to bringing suit" challenging DHEC's denial of permit). Exhaustion is required so that the administrative agency "may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644

(2000). For these purposes, where there is a specific statutory procedure to challenge an administrative agency decision, compliance with such procedure is a condition precedent for further review. *Meredith v. Elliott*, 247 S.C. 335, 346-47, 147 S.E.2d 244, 249 (1966) ("Having failed to follow the administrative remedy created by the statute for the correction of errors in the valuation of their property, [taxpayers] are precluded from resorting to the courts for relief."); *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964) ("It was incumbent upon [the challenging party] ... to appeal to the Zoning Board of Adjustment from the decision of the Building Inspector if [she] ... considered his decision erroneous.... Not having done so, she cannot now attack the validity of his decision.").

In the context of a challenge to a DHEC decision, the statutory prerequisite for seeking a contested case review before the ALC is to first seek review by the DHEC Board. *See* S.C. Code Ann. § 44-1-60; *Wise v. S.C. Dep't of Health & Envtl. Control,* No. 10-ALJ-07-0851 (Feb. 23, 2011) (McLeod, J.) ("A failure to timely file and participate in the DHEC Board review process forecloses a contested case action at the ALC."); *MRI at Belfair, Inc. v. S.C. Dep't of Health & Envtl. Control*, No. 07-ALJ-07-0298-CC (July 25, 2007) (Anderson, J.) ("I find a clear legislative intent that a party may seek contested case review before the ALC **only after a party first seeks review by the Board.**") (emphasis added). As this Court has previously stated in applying the doctrine, "where a party has sought relief from ... another agency *after entirely forgoing* its remedies before the initiating agency, a dismissal by the reviewing ... agency for failure to exhaust administrative remedies may completely preclude review by the ... agency because the party's opportunity to cure its failure to exhaust its remedies before the initiating agency has expired." *Williams v. Orangeburg County Assessor*, No. 04-ALJ-17-0275-CC (March 9, 2005) (McLeod, J.).

2. *The Cruise Opponents did not exhaust their remedies with respect to the 401 Certification.*

Notably, the Cruise Opponents have taken the position that this Court cannot and should not rule on any issue for which the DHEC Board has not had an opportunity to review and rule upon. *See* Cruise Opponents' Mot. for Remand, filed Feb. 27, 2013, at 2 ("The failure to conduct a review conference deprives the Agency of its right and duty to apply its specialized expertise, to correct flaws in the staff decision prior to this Court's review and to ensure that the staff decision consistently applies the applicable regulations."); Cruise Opponents' Reply in Supp. of Mot. to Vacate, filed Dec. 16, 2013, at 17 (arguing that this Court has no authority to rule on 401 Certification issues until DHEC has ruled first and that to do so would "bypass DHEC entirely, rendering the agency's statutorily recognized 'specialized knowledge'—if not its entire water quality budget—a complete nullity"). Here, the 401 Certification was a component of the Permit by law, and the Cruise Opponents failed to raise any issue of the 401 Certification to the DHEC Board. Thus, by their own admission, the Cruise Opponents are precluded from raising any issue to the 401 Certification in this contested case.

As this Court has repeatedly found, a failure to avail oneself of the DHEC board review process prevents this Court from exercising jurisdiction over the matter. *MRI at Belfair,* No. 07-ALJ-07-0298-CC ("I find a clear legislative intent that a party may seek contested case review before the ALC only after a party first seeks review by the Board."); *see also League of Women Voters of Georgetown v. S.C. Dep't of Health & Envtl. Control*, No. 07-ALJ-07-0529-CC (Dec. 15, 2008) (Anderson, J.) (failure to properly and timely request DHEC Board review deprives ALC of jurisdiction to hear case); *S.C. Conservation League v. S.C. Dep't of Health & Envtl. Control*, No. 07-ALJ-07-0107-CC (Sept. 4, 2007) (Geathers, J.) (same); *Wilson v. S.C. Dep't of Health & Envtl. Control*, No. 06-ALJ-07-0799-CC (Mar. 21, 2007) (McLeod, J) (lack of review

by DHEC Board eliminates ALC jurisdiction). Here, the Cruise Opponents failure to raise the issue to the DHEC Board and challenge the Permit on 401 Certification grounds before the DHEC Board precludes this Court from reviewing or analyzing any issue or rendering any determination on the 401 Certification.

CONCLUSION

The Ports Authority is entitled to judgment as a matter of law with respect to the 401 Certification for the Project and the Cruise Opponents failure to challenge the 401 Certification for the Project at any stage or time. As a result, the Cruise Opponents cannot challenge and have waived and abandoned the right to challenge the individual 401 Certification for the Project as part of the Permit.

Respectfully submitted,

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Attorneys for the Respondent
South Carolina State Ports Authority

December 27, 2013
Columbia, South Carolina

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 State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	)	Docket No. 13-ALJ-07-0056-CC **CERTIFICATE OF SERVICE**

This is to certify that I, a paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of **South Carolina Ports Authority's Motion For Partial Summary Judgment** 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

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
Charleston, SC 29405

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

Breanna M. Karns

Columbia, South Carolina
This 27th day of December 2013.

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit A	OCRM-12-054-B Permit (Dec. 18, 2012)
Exhibit B	Affidavit of James I. Newsome, III (Aug. 22, 2011)
Exhibit C	Affidavit of Peter Lehman (Aug. 2, 2013)
Exhibit D	Ports Authority Joint Application (Jan. 27, 2012)
Exhibit E	Map of Pile Clusters
Exhibit F	401 Certification for NWP 3 (Apr. 23, 2012)
Exhibit G	HCF Req. for Final Review (Jan. 2, 2013)
Exhibit H	Preservation Society, HANA, League, CAN, Surfrider, & Cruise Control Req. for Final Review (Jan. 2, 2013)
Exhibit I	League Req. for Contested Case Hrg. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control,* No. 07-ALJ-07-107-CC (Mar. 9, 2007)
Exhibit J	League Prehr'g Stmt. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control,* 07-ALJ-07-0107-CC (Apr. 9, 2007)

EXHIBIT A

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

RECEIVED

DEC 19 2012

DHEC - OCRM
CHARLESTON OFFICE

MEMORANDUM

TO: **All interested parties**

TRIDENT CONSTRUCTION CO., LLC

FROM: **STEVEN BROOKS**

RE: **SC State Ports Authority**
P/N# **OCRM-12-054-B**

DATE: **DECEMBER 18, 2012**

This is to inform you that the above referenced permit was issued and validated on December 18, 2012.

This letter is in reference to the following activities:

To make improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322

Any person adversely affected by this decision has the right to appeal as outlined in the enclosed "Notice of Appeal Procedure."

I Scanned & e-mailed to everyone. No one claimed this. Call 572-7600 to discuss.
Thanks
Bobbie

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office · 1362 McMillan Avenue, Suite 400 · Charleston, SC 29405
Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed or otherwise sent to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed or otherwise sent to persons entitled to receive notice. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

4. The request for final review should include the following:

a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision

b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference

c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

January 7, 2011

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

JAN 03 2013

DHEC - OCRM
CHARLESTON OFFICE

December 18, 2012

Derrick Bellamy
SC State Ports Authority
P.O. Box 22287
Charleston, SC 29413-2287

SEE SPECIAL CONDITIONS(S)

Re: **P/N# OCRM-12-054-B**
SC State Ports Authority

Dear Mr. Bellamy:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to make improvements to an existing waterfront building and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina, and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, *OR* appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

Steven Brooks

Steven Brooks
Senior Regulatory Project Manager
Regulatory Programs Division

Cc: Blair Williams, Wetland Section Manager
Patrick Moore, SCSPA
Nathaniel Ball, USACOE

Enclosure

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

SEE SPECIAL CONDITIONS(S)

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

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   a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
   b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
   c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

July 1, 2010

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s):	**SC State Ports Authority**
Permit Number(s):	**OCRM-12-054-B**
Date of Issuance:	**December 18, 2012**
Expiration Date:	**December 18, 2017**
Location:	**On and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina. TMS#: 459-00-00-009.**

SEE SPECIAL CONDITIONS(S)

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of $5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. **All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.**

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The work as shown on the attached plans will consist of making improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322.

SPECIAL CONDITIONS

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal are conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA require its contractors, for the activities addressed under this permit, to:

   a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

   b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all non road equipment between 100 and 750 horsepower.

   c. turn off construction equipment and vehicles not in active use.

   d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

   e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

7. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

SEE SPECIAL CONDITIONS

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

SEE SPECIAL CONDITIONS(S)

Permit Number: **OCRM-12-054-B**

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Barbara L Melvin
(PERMITTEE(S))
SC State Ports Authority

1/2/13
(DATE)

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

Steven Brooks
(PROJECT MANAGER, WETLAND SECTION)
Steven Brooks
or her Designee
Other Authorized State Official

12/18/12
(DATE)

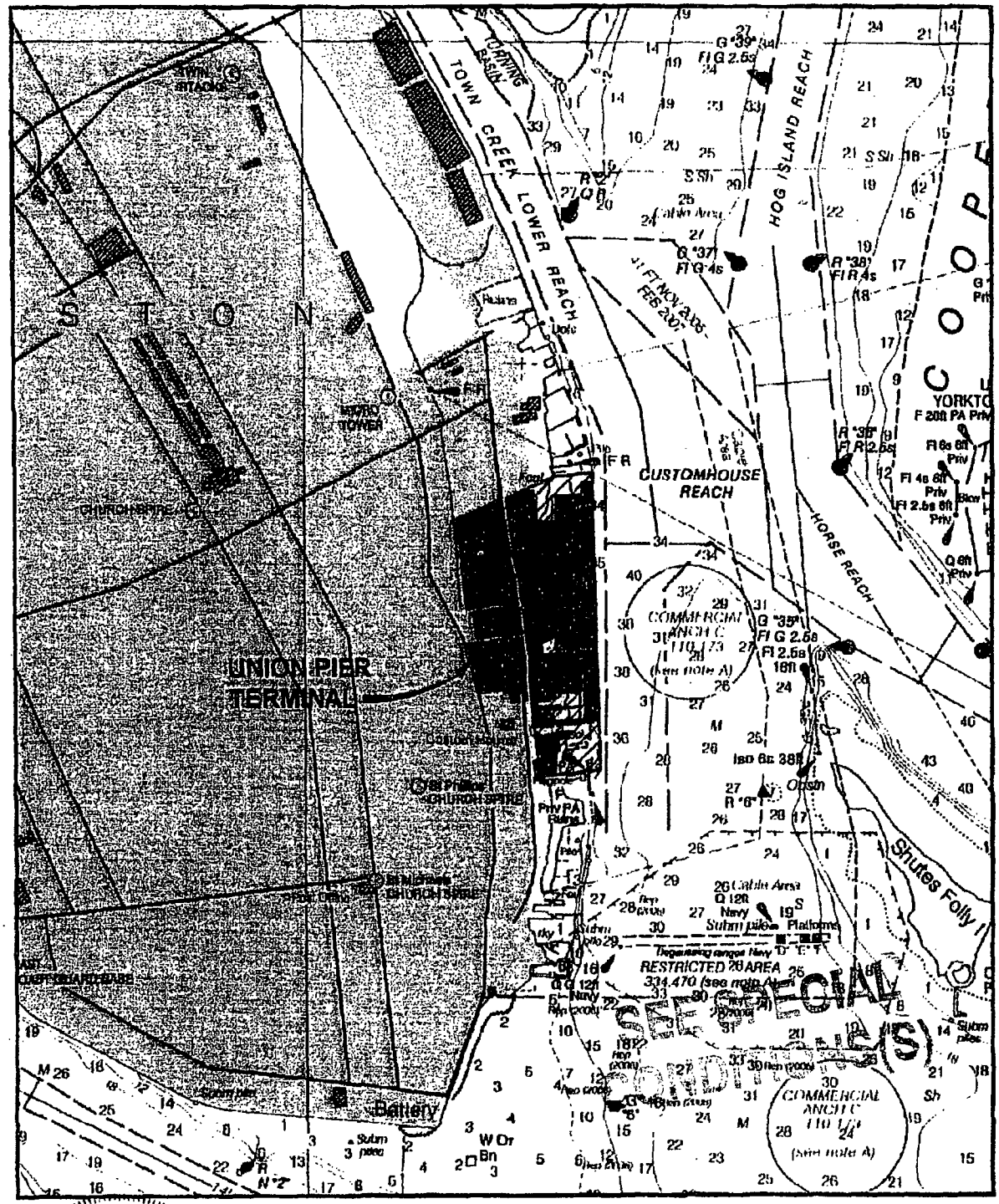
RECEIVED
JAN 03 2013
DHEC-OCRM
CHARLESTON OFFICE

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material for any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

SPECIMEN
NOT VALID



SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

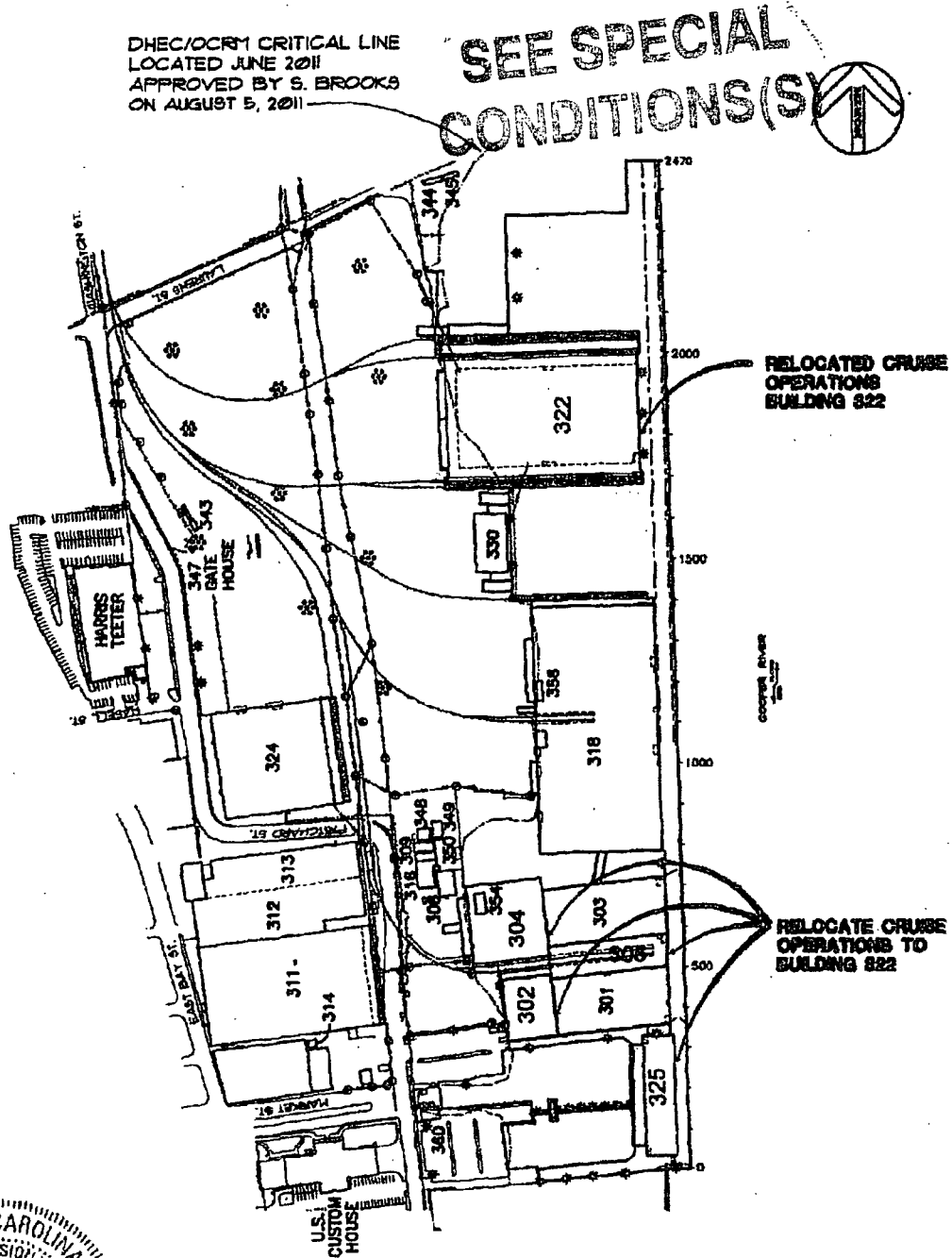
LOCATION

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

OCRM-12-054-B

PROJECT NO.: CIF11E005B
FILE NAME: Upcptp1
DATE: JULY 2012
SHEET: 1 OF 11

DHEC-SCPA 000099



SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

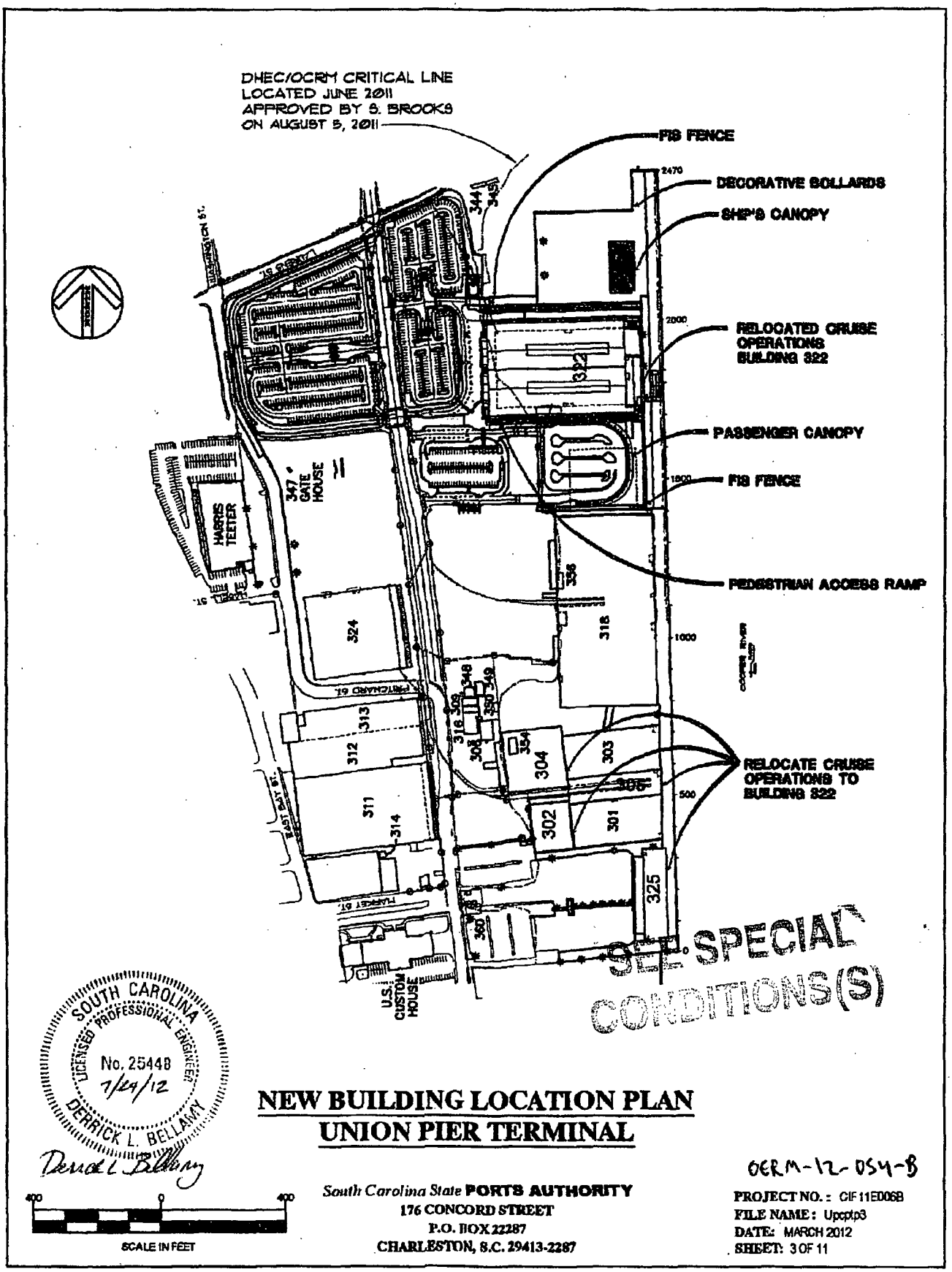
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SCALE IN FEET

BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

OCRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upoplp2
DATE: MARCH 2012
SHEET: 2 OF 11



SEE SPECIAL CONDITIONS(S)

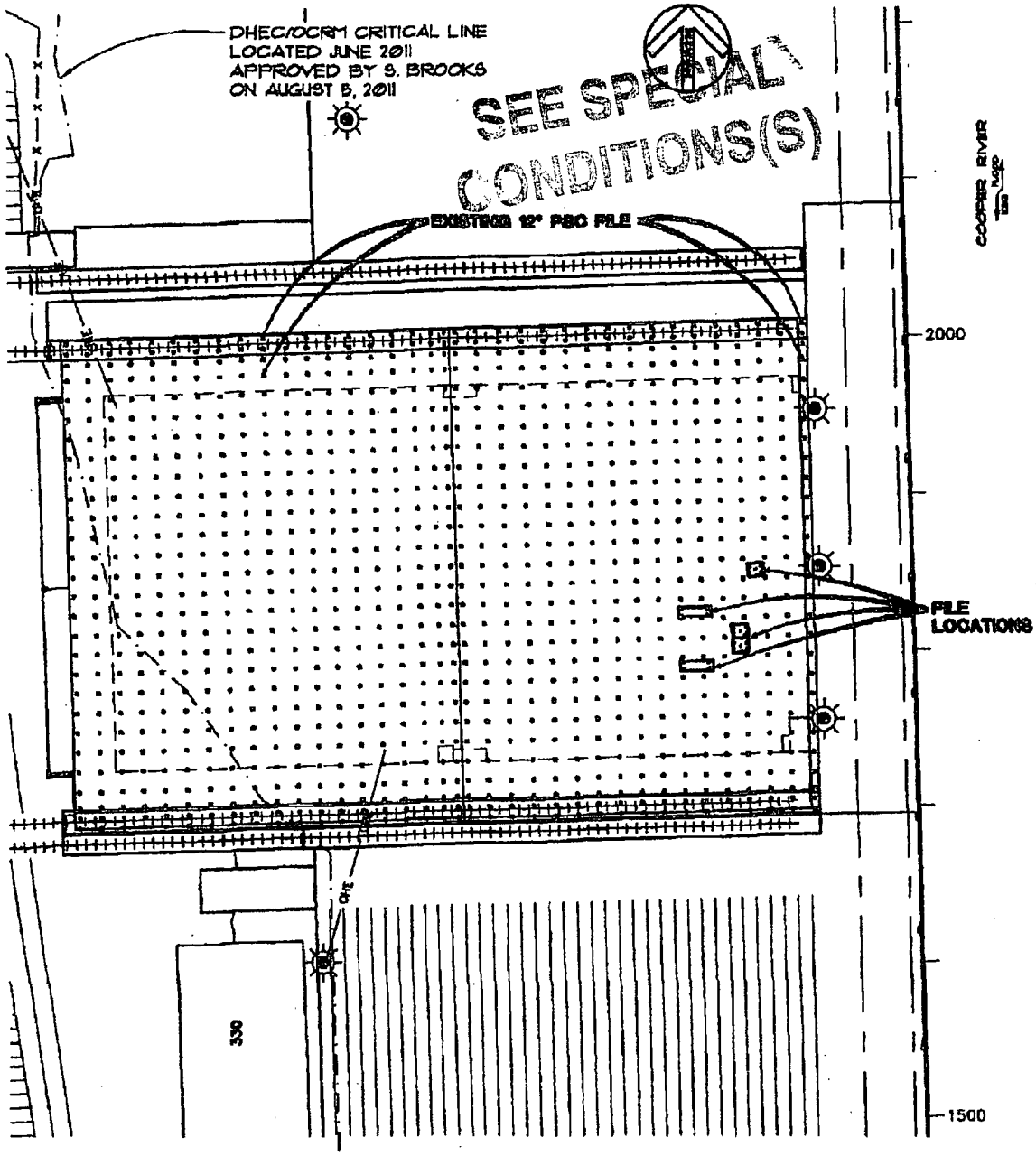
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

OCRM-12-054-B

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp3
DATE: MARCH 2012
SHEET: 3 OF 11



LEGEND

ELEVATORS

ESCALATOR

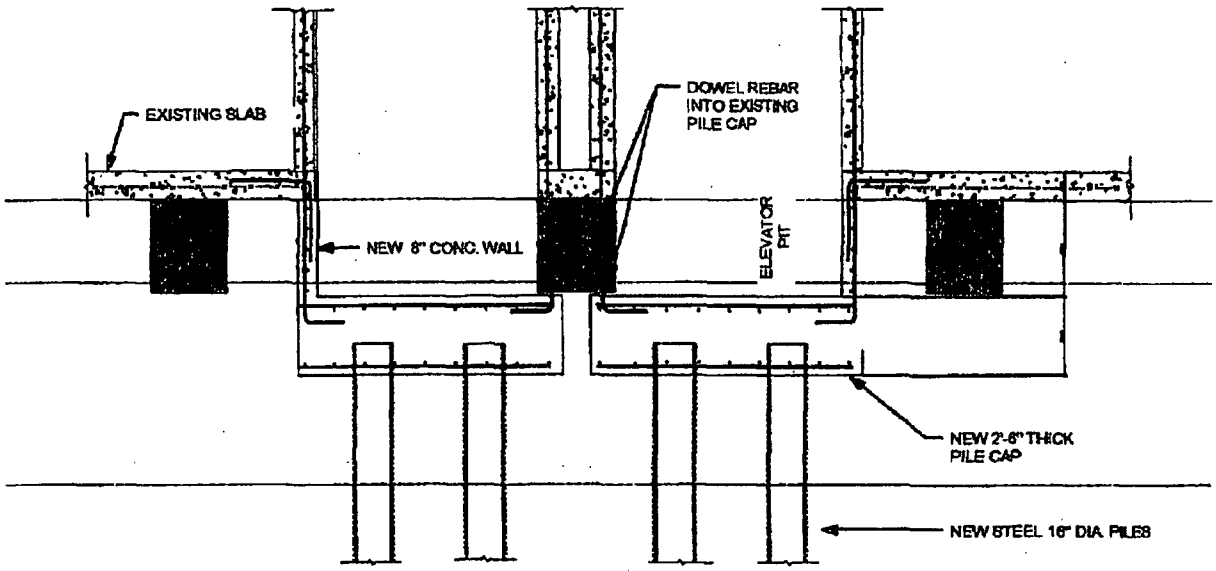
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

MODIFICATIONS (BUILDING 322)

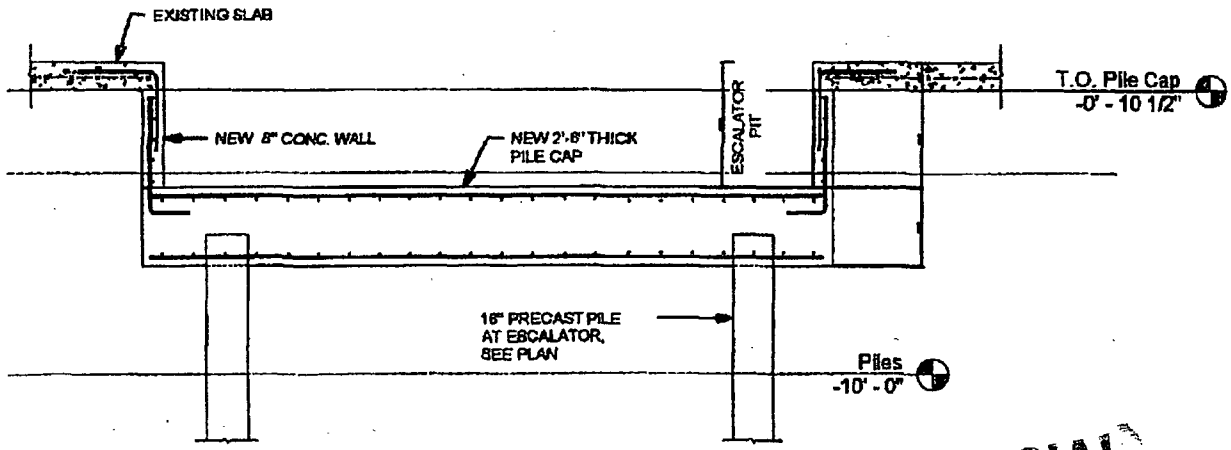
OCRM-12-054-B

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

PROJECT NO.: CIF11E006B
FILE NAME: Upgtp4
DATE: JULY 2012
SHEET: 4 OF 11



A SECTION ELEVATOR



B SECTION ESCALATOR

SEE SPECIAL CONDITIONS(S)

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25449
7/24/12
DERRICK L. BELLAMY

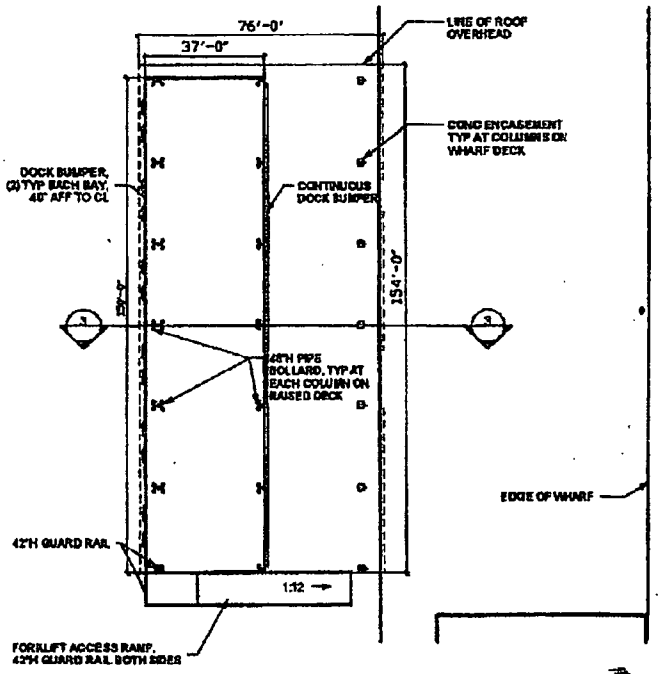
Derrick L. Bellamy

MODIFICATIONS (CROSS SECTION)

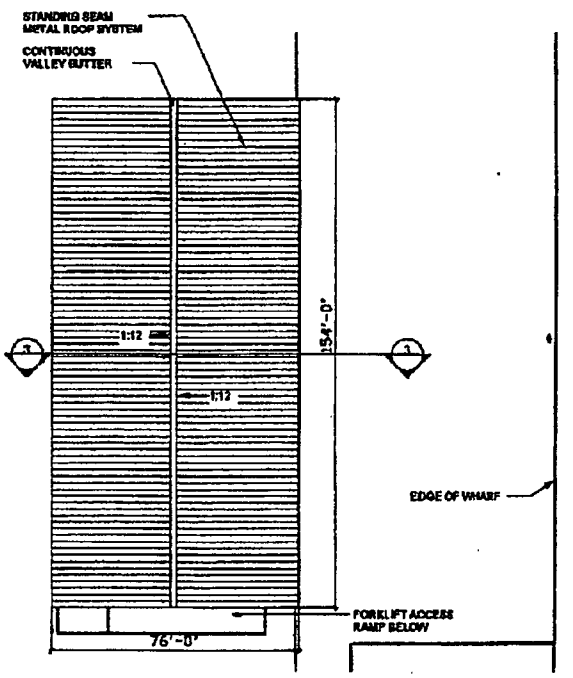
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22787
CHARLESTON, S.C. 29413-2787

OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp5
DATE: JULY 2012
SHEET: 5 OF 11

DHEC-SCPA 000103

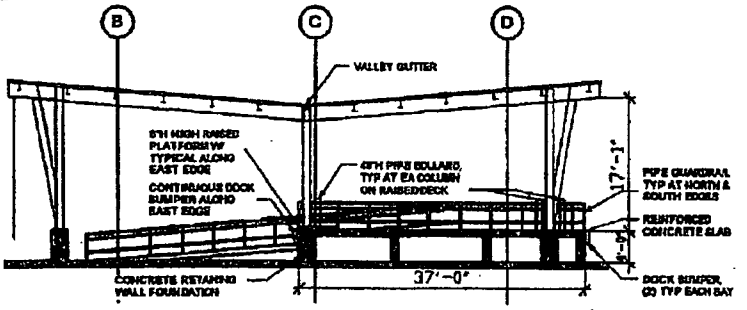


1 STORES CANOPY FLOOR PLAN



2 STORES CANOPY ROOF PLAN

SEE SPECIAL CONDITIONS(S)



3 STORES CANOPY E-W SECTION

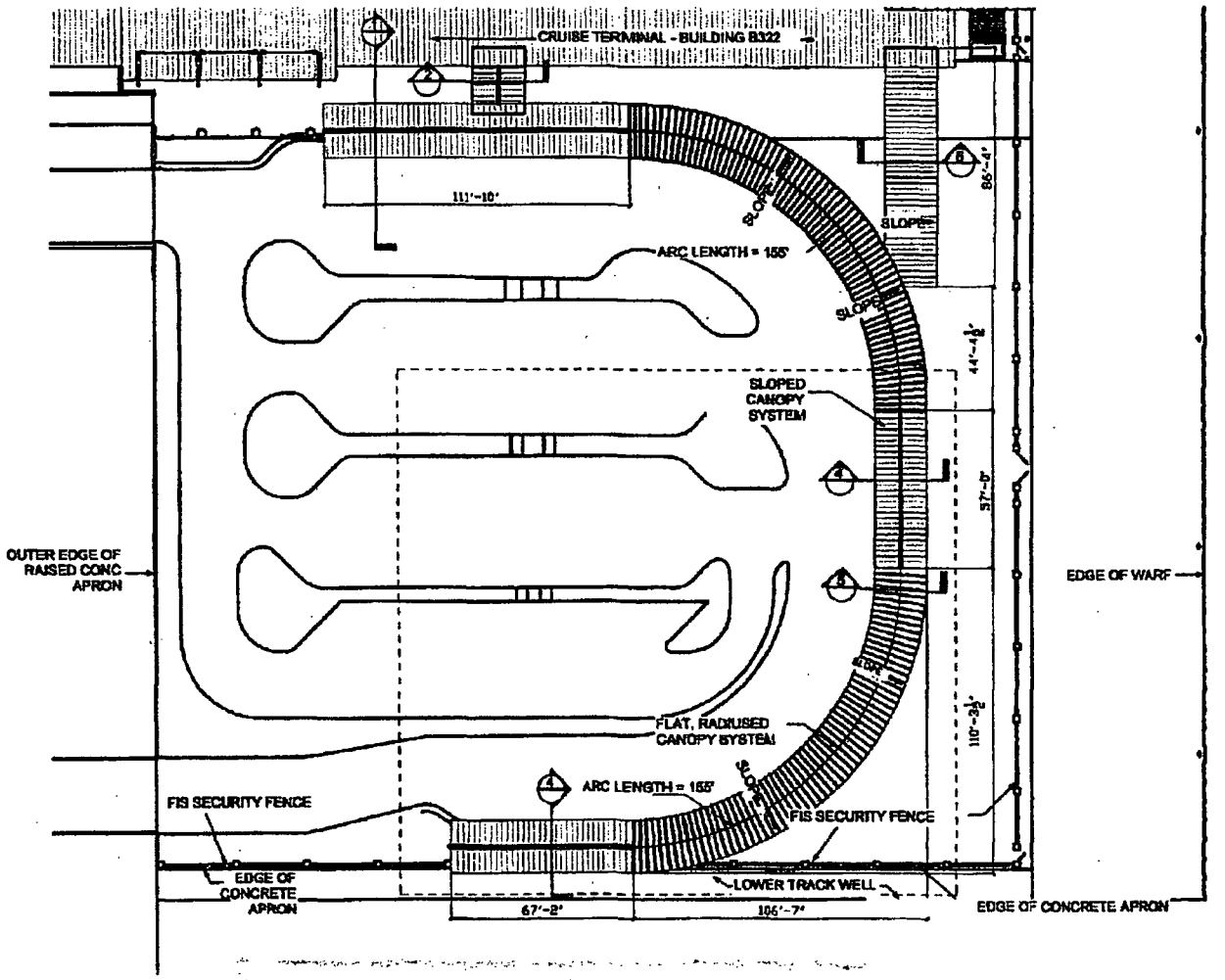
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

MODIFICATIONS
NORTH APRON

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

OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcplp6
DATE: JULY 2012
SHEET: 6 OF 11

SEE SPECIAL CONDITIONS(S)



3 PAX CANOPY PLAN

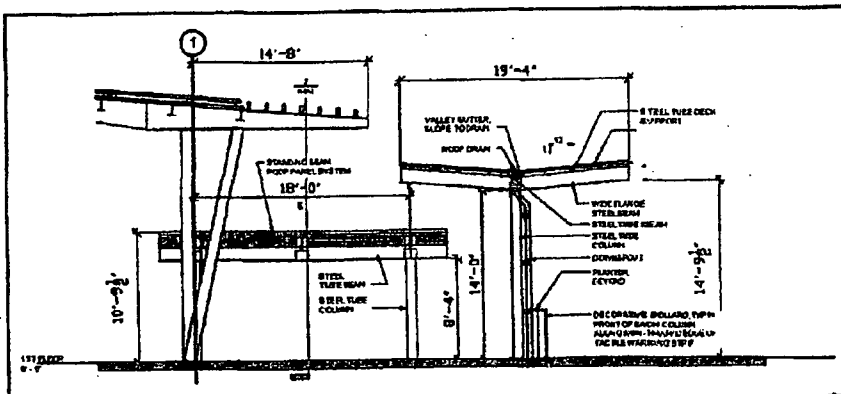
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

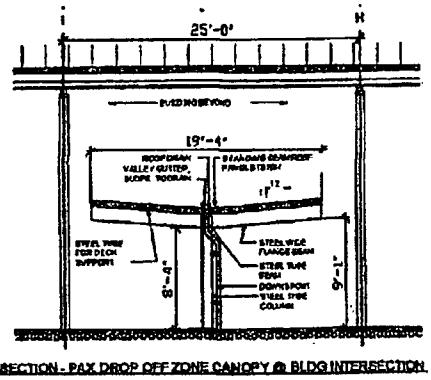
MODIFICATIONS
SOUTH APRON

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

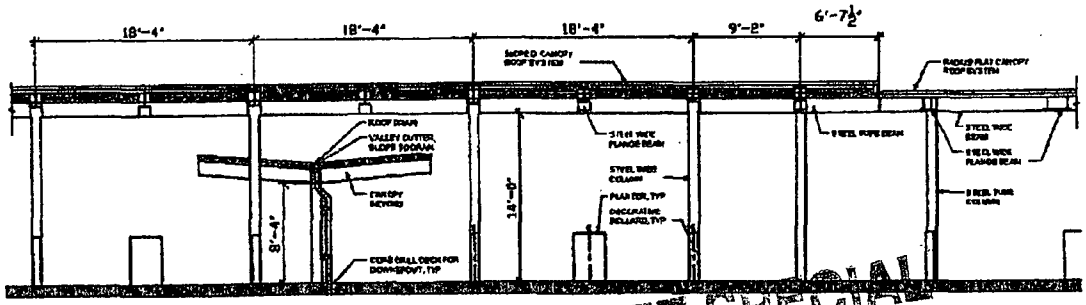
OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcplp7
DATE: JULY 2012
SHEET: 7 OF 11



SECTION - PAX DROP OFF ZONE CANOPY

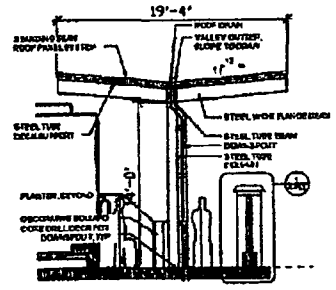


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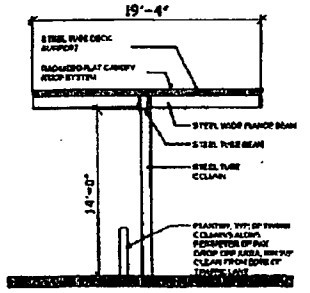


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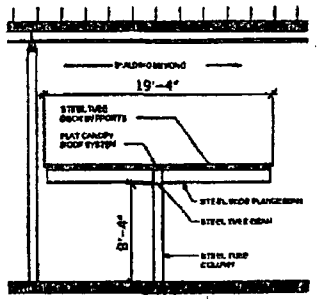
SEE SPECIAL CONDITIONS(S)



SECTION - SOUTH PAX ACCESS CANOPY



SECTION - FLAT PAX ACCESS CANOPY



SECTION - FLAT POV BAG CANOPY

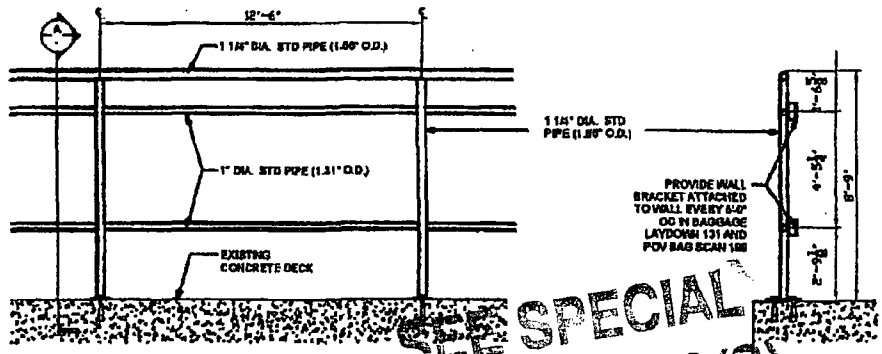
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25449
7/24/12
DEREK L. BELLAMY

Derek L. Bellamy

MODIFICATION
SOUTH APRON - DETAILS

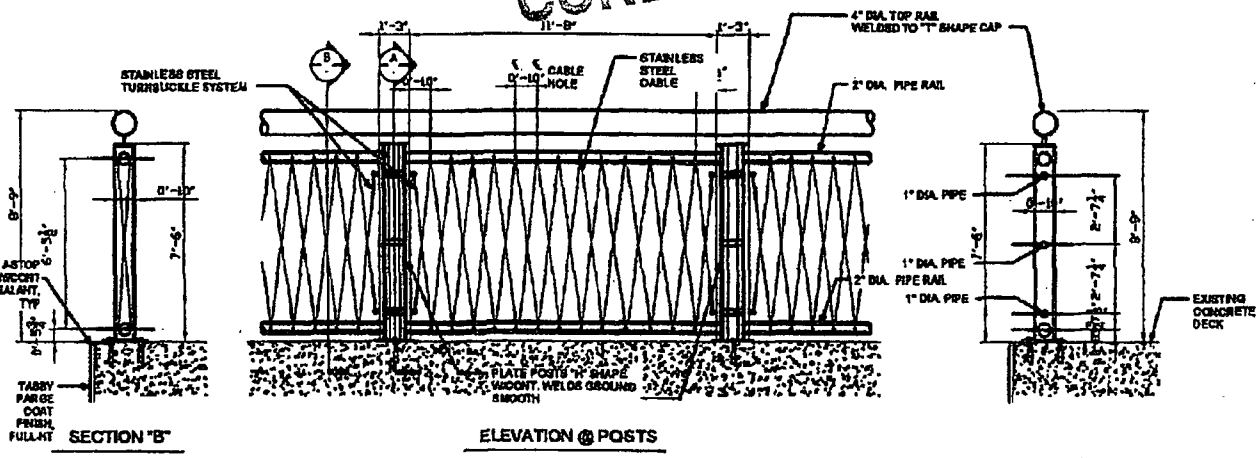
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM- 12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcplp8
DATE: JULY 2012
SHEET: 8 OF 11



SEE SPECIAL CONDITIONS(S)

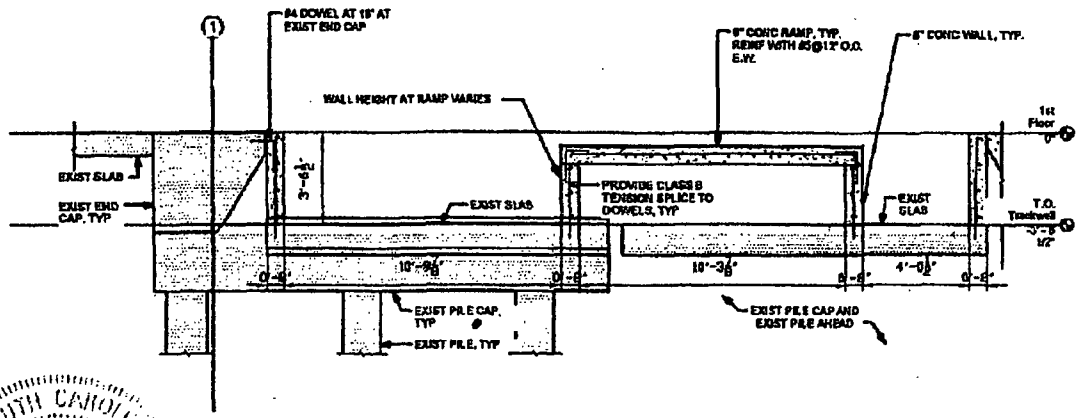
SECTION "A"



SECTION "B"

ELEVATION @ POSTS

SECTION "A"



SOUTH CAROLINA PROFESSIONAL ENGINEER No. 25448 7/24/12 DANIEL L. BELLAMY

Daniel L. Bellamy

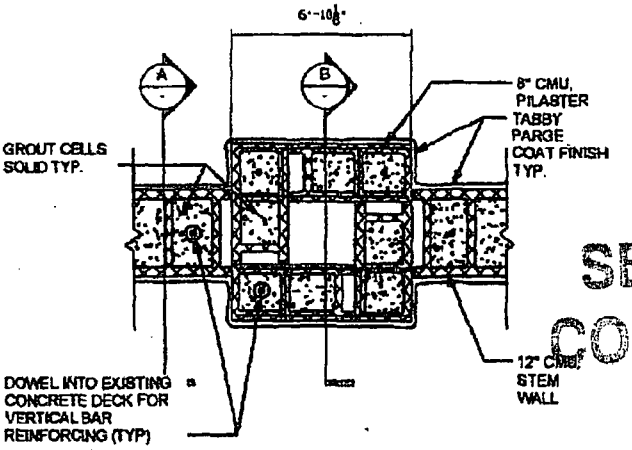
MODIFICATIONS
PEDESTRIAN ACCESS RAMP DETAIL

OCRM 12-054-B

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

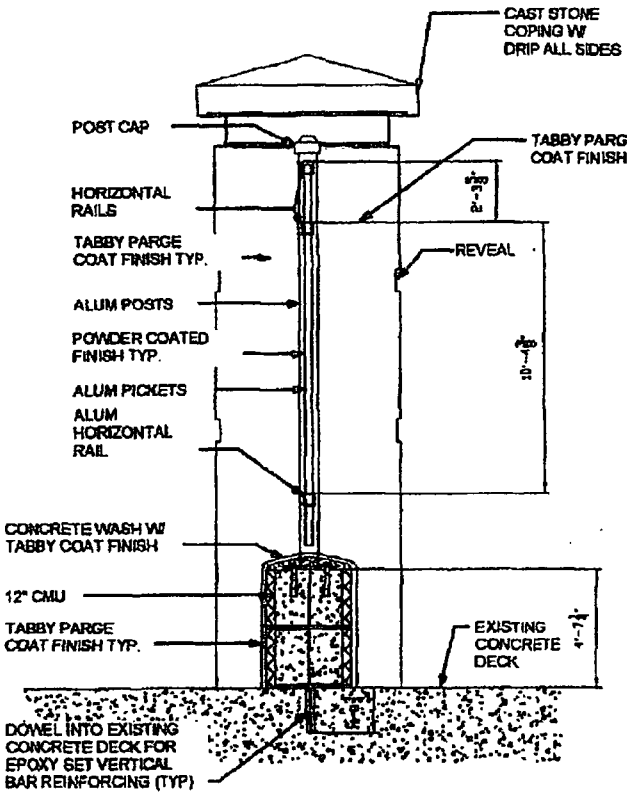
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FILE NAME: Upcptp9
DATE: JULY 2012
SHEET: 9 OF 11

DHEC-SCPA 000107

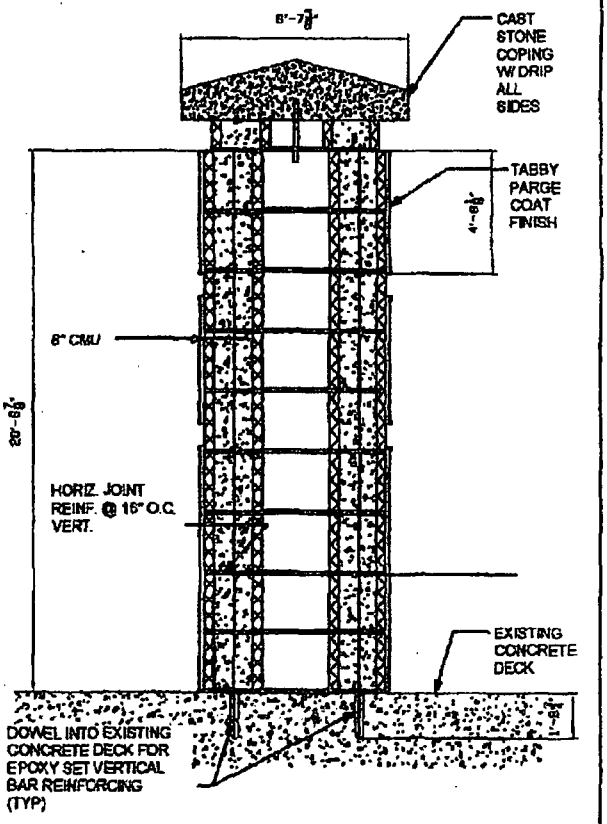


SEE SPECIAL CONDITIONS(S)

PLAN DETAIL @ MASONRY PILASTER



WALL SECTION "A" @ MASONRY STEM WALL



WALL SECTION "B" @ MASONRY PILASTER

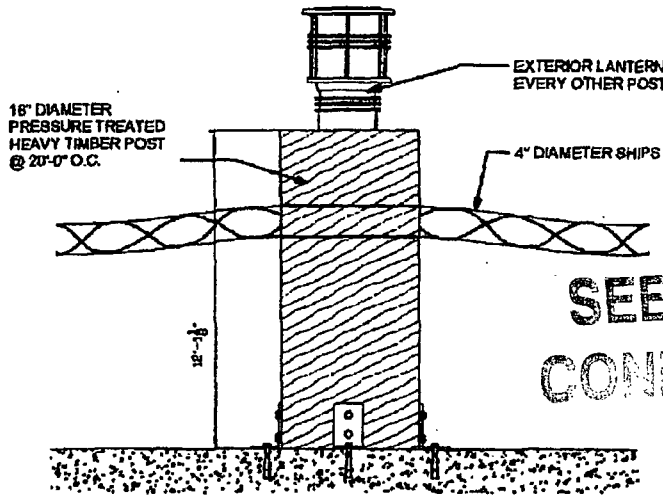
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

Derrick L. Bellamy

MODIFICATIONS
SECURITY FENCE DETAILS

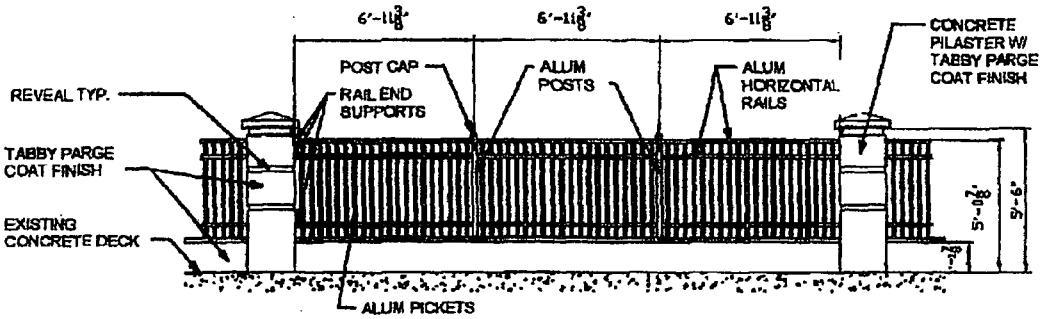
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upgptp10
DATE: JULY 2012
SHEET: 10 OF 11

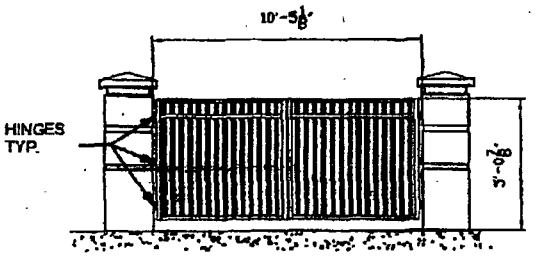


SEE SPECIAL CONDITIONS(S)

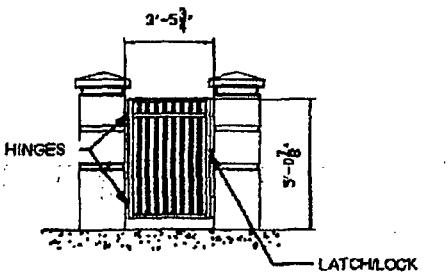
NORTH APRON DECORATIVE BOLLARDS



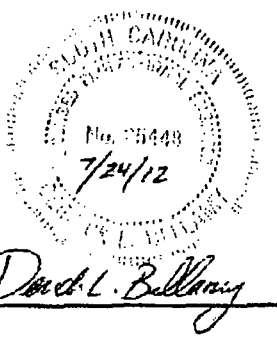
ELEVATION @ FIS SECURITY FENCE



ELEVATION @ ACCESS GATE



ELEVATION @ PED GATE



Daniel L. Bellamy

MODIFICATIONS
SECURITY FENCE DETAILS

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

6CRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptpt11
DATE: JULY 2012
SHEET: 11 OF 11

ATTACHMENT A

CLARIFICATION OF PROCESS OF CITY CONSULTATION REGARDING CRUISE MANAGEMENT PLAN ALTERATION

Should the SCSPA, at any future date, deem that any material change should be made to the Voluntary Cruise Management Plan, at least one year prior to effecting any such change the following will be done:

(1) Written notification to the Mayor and City Council.

(2) Written notification to the Cruise Neighborhood Advisory Council.

(3) Written notification to Charleston Metro Chamber of Commerce and the Maritime Association of South Carolina.

(4) Written notification to the Historic Charleston Foundation and the Preservation Society.

(5) The convening of a community forum to discuss any material change to the plan.

(6) The solicitation of public input through one or more public hearings, including a public hearing at a City Council meeting.

(7) Careful and thoughtful consideration of the public input.

(8) Report to the Mayor and City Council of the SCSPA board and staff findings and decision.

SEE ORIGINAL CONDITIONS

ATTACHMENT A

VOLUNTARY CRUISE MANAGEMENT PLAN
SOUTH CAROLINA STATE PORTS AUTHORITY
AND
CITY OF CHARLESTON

(1) The number of cruise ships will be no more than 104 calls per calendar year.

(2) The port will host no more than one ship at a time at the cruise terminal.

(3) The terminal will be designed at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called Charleston in the past (1,900 to 3,500 passenger design capacity)

(4) A Traffic Management Plan which removes maritime cruise traffic from City streets as soon as possible as well as continued coordination and communication with the Charleston City Police Department and the City Special Events Committee.

(5) A continued commitment by the SCSPA to contribute an allocation to the DASH Downtown Shuttle program, as described in the City Agreement with the SCSPA, providing free shuttle rides to those traveling in the downtown areas of the City.

SEE SPECIAL CONDITIONS(3)

EXHIBIT B

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 SCSPA 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.

Marsha A. Read

Notary Public for South Carolina
My Commission Expires: Nov. 13, 2016

MARSHA A. READ
Notary Public, South Carolina
My Commission Expires
November 13, 2016

EXHIBIT C

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.

Joseph H Jarrell IV

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

EXHIBIT A

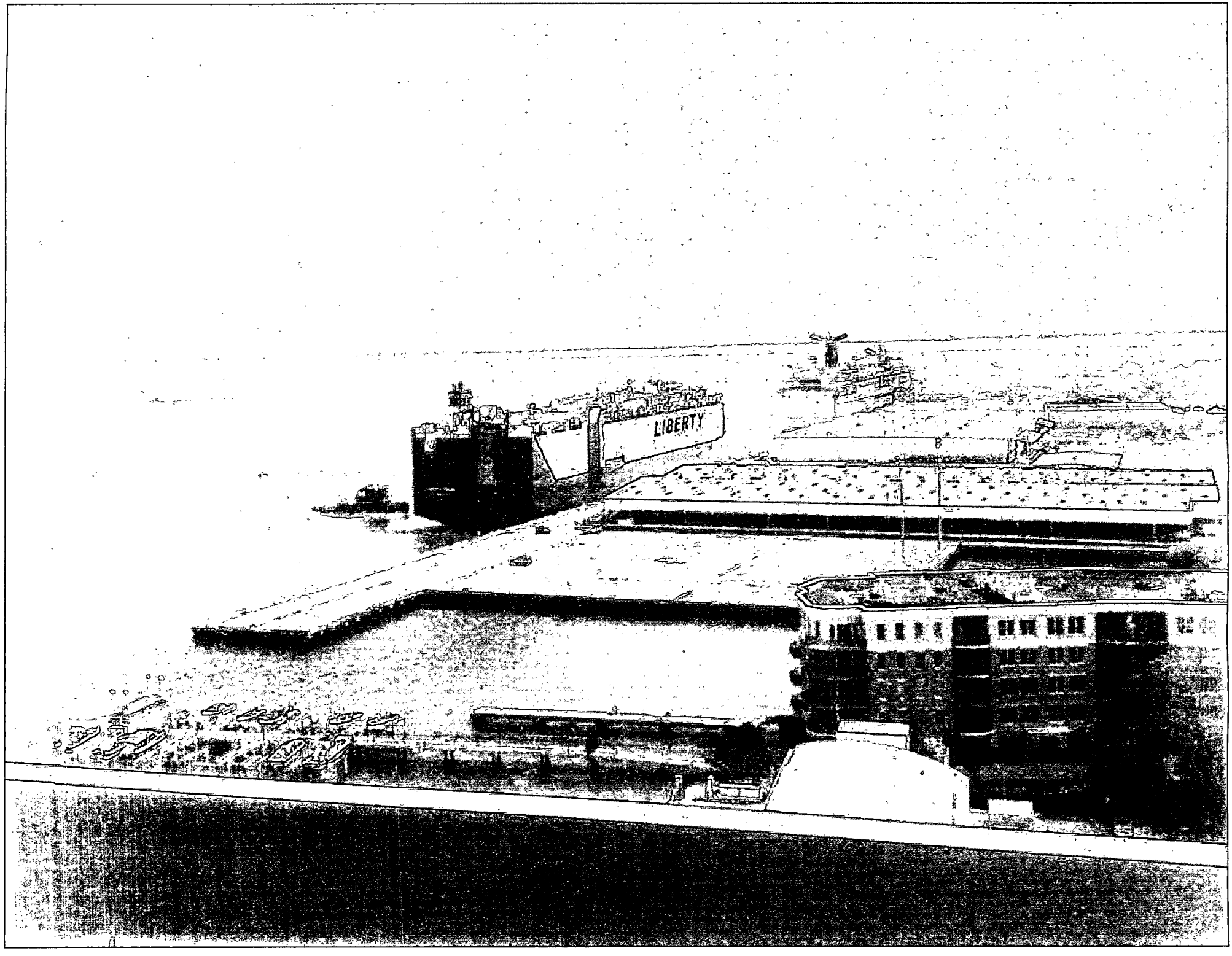
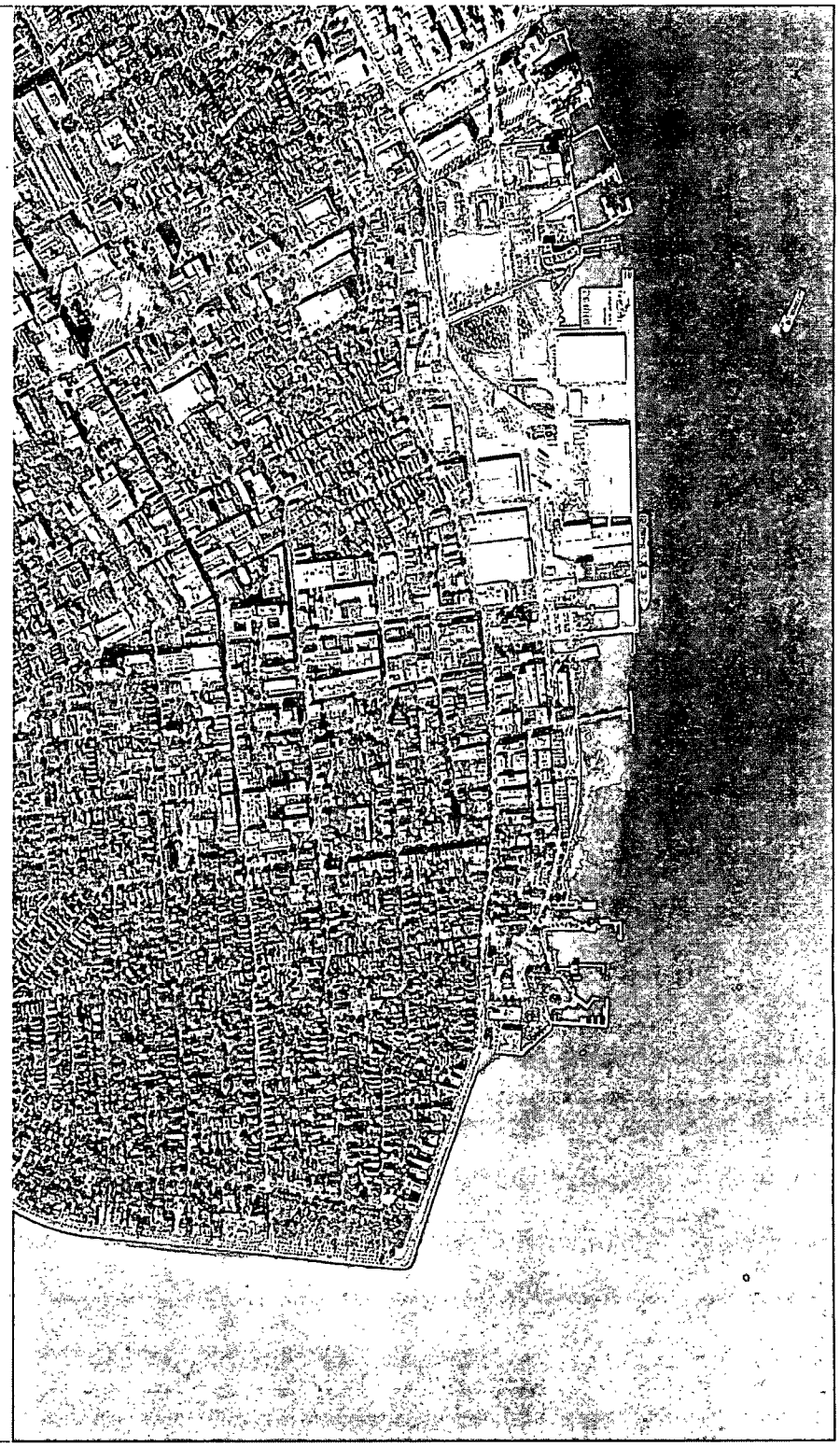

LIBERTY

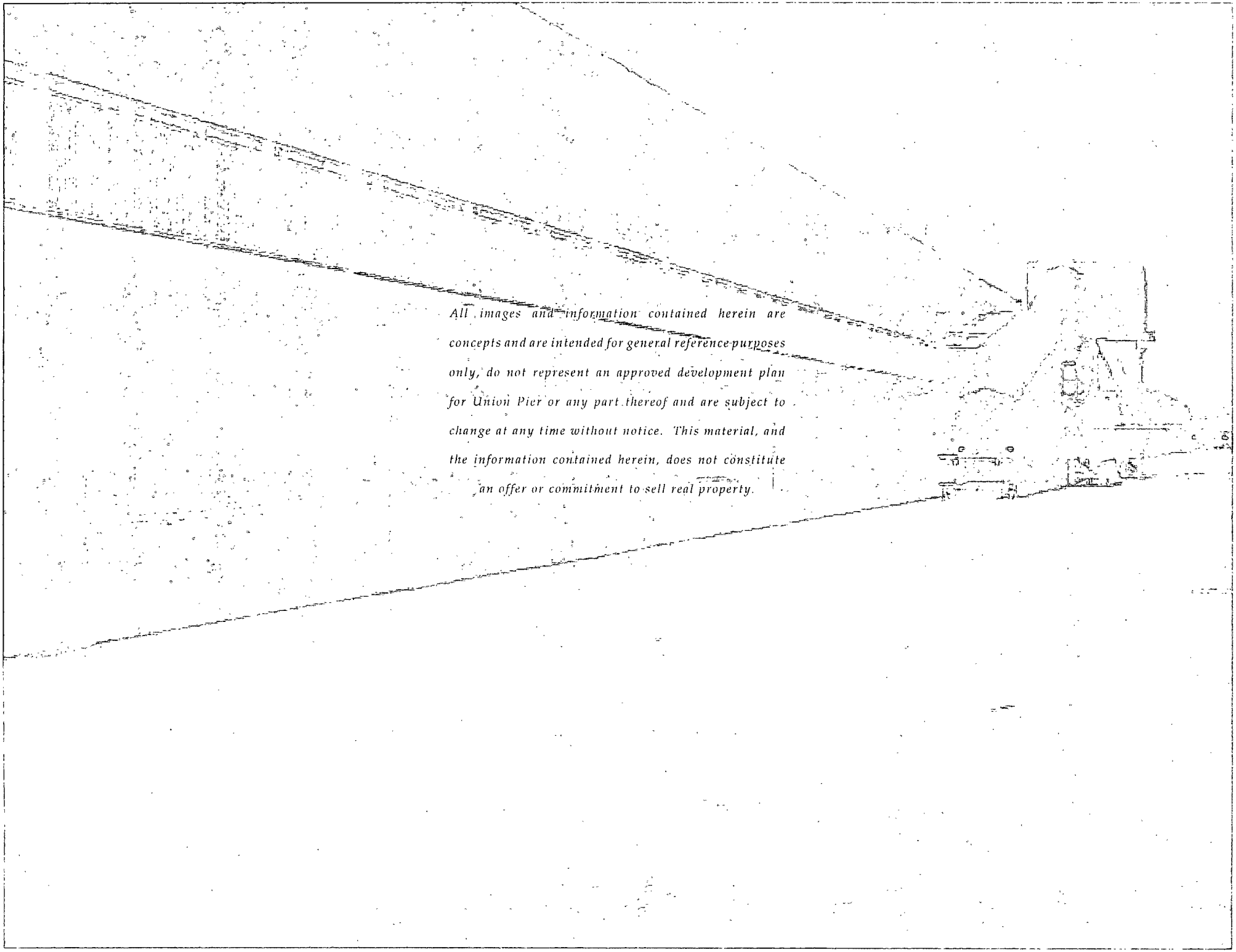
EXHIBIT B

SOUTH CAROLINA STATE PORTS AUTHORITY

CONCEPT PLAN FOR UNION PIER WATERFRONT • SEPTEMBER 2010

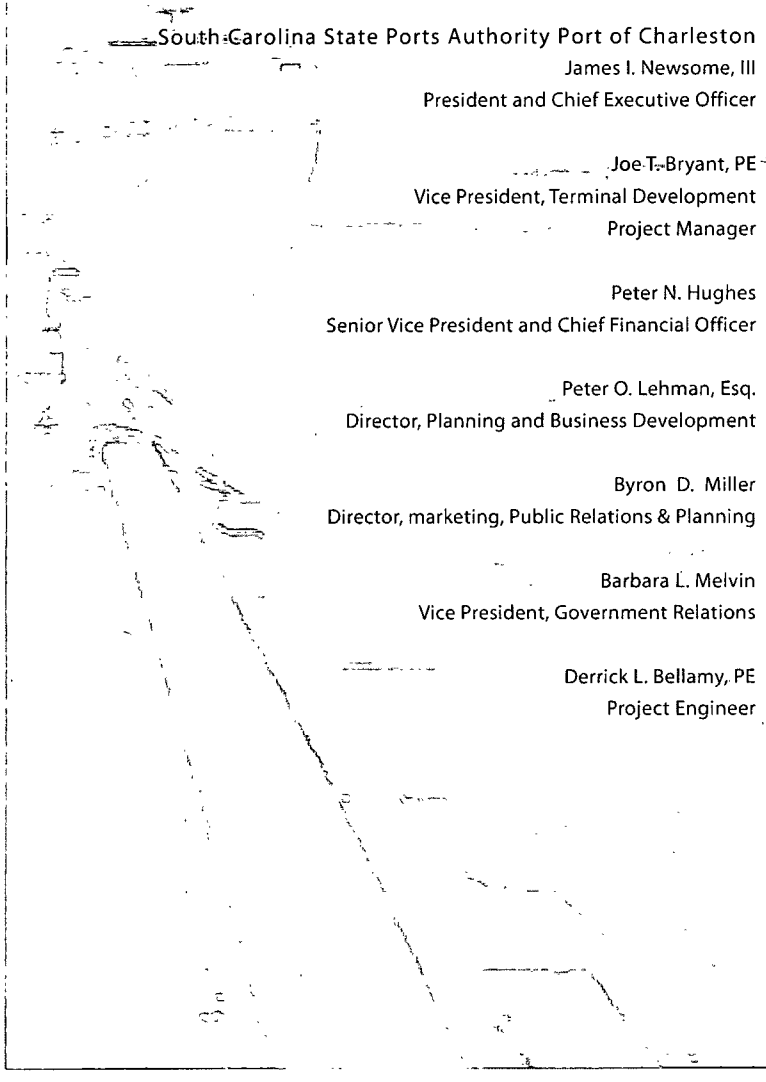
Cooper, Robertson & Partners *Architecture, Urban Design*





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.

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

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

Peter N. Hughes
Senior Vice President and Chief Financial Officer

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

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

Barbara L. Melvin
Vice President, Government Relations

Derrick L. Bellamy, PE
Project Engineer

City of Charleston
Mayor Joseph P. Riley, Jr.

Tim Keane
Director of Planning, Preservation & Sustainability

Yvonne Fortenberry
Director, Design, Development & Preservation

Michael Maher
Director, Civic Design Center

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

Master Planners and Architects
Cooper, Robertson & Partners

Cruise Industry Consultants
Bermello Ajamil & Partners

Transportation Consultants
Kimley-Horn and Associates, Inc.

Engineering Consultant
Thomas & Hutton Engineering Co.

Marine Engineers
Moffatt and Nichol

Environmental Consultants
Great Ecology and Environments

Environmental Consultants
Newkirk Environmental

Financial Consultants
HR & A Advisors

Financial Consultants
Permar Inc.

Development Advisor
Mr. Peter Rummell

Community Outreach
Rawle Murdy

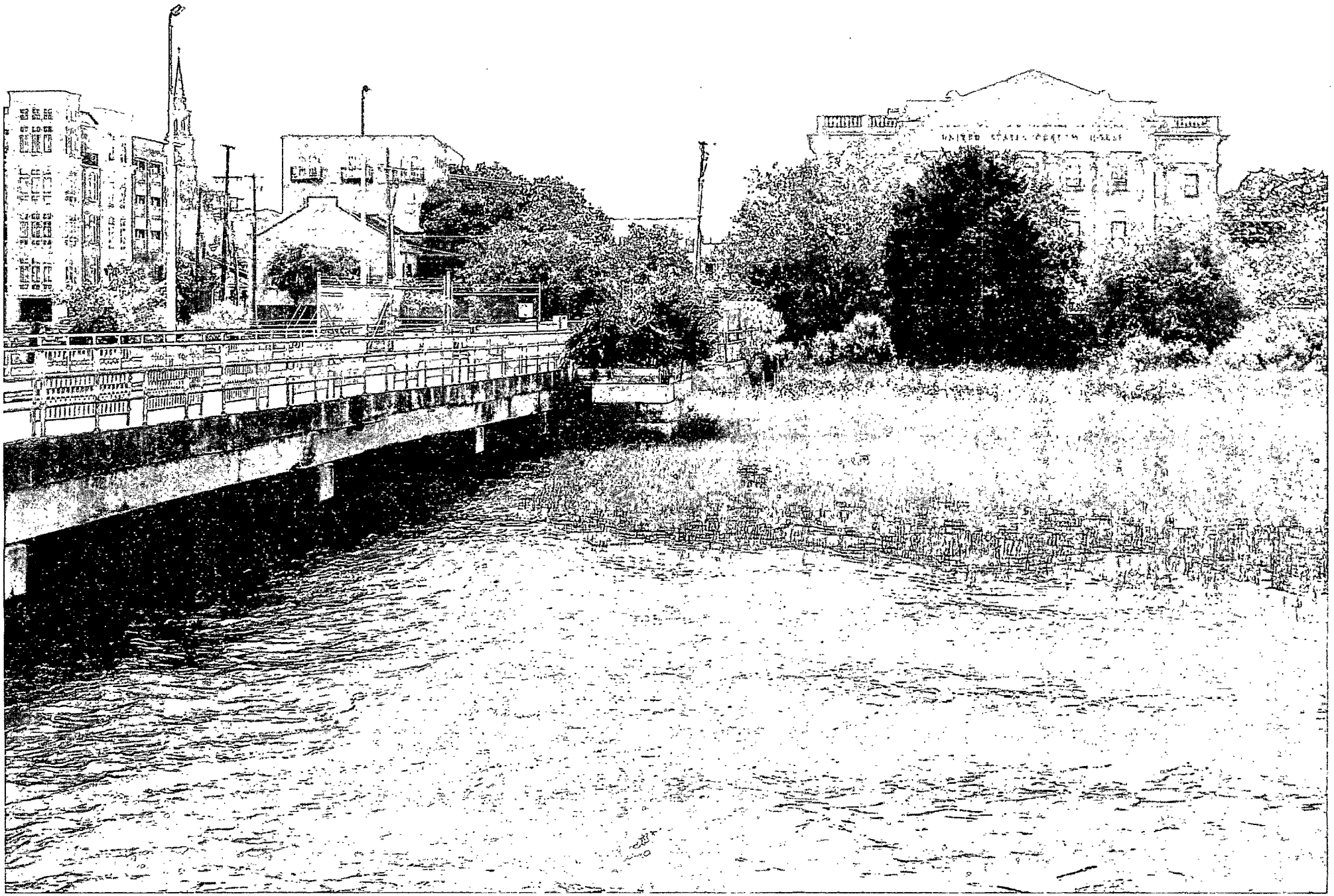


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CREDITS

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

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

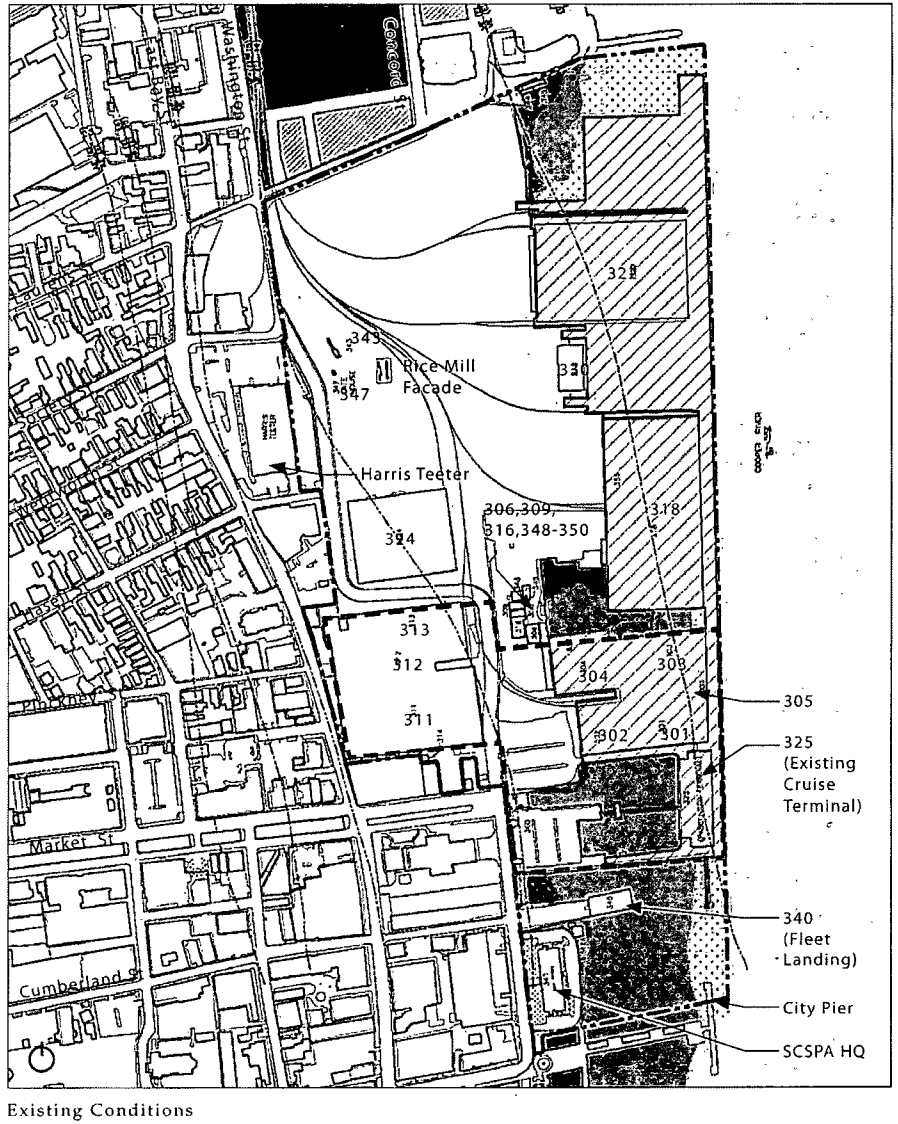
CRUISE TERMINAL

- 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

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.

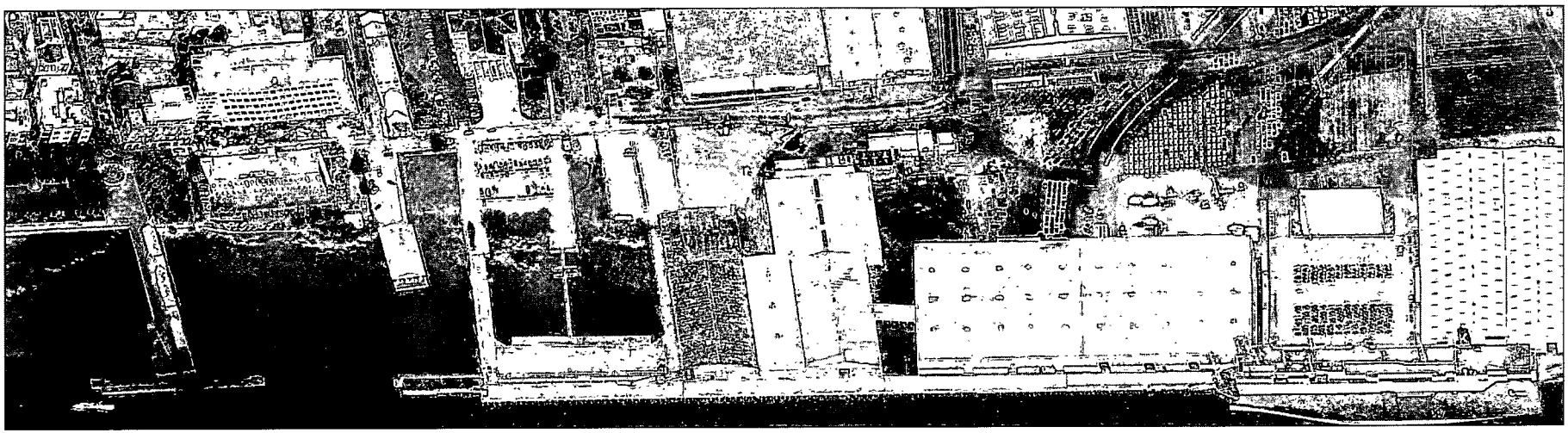
- **Coordination of City infrastructure improvements**
  The construction of new streets and open spaces as well as the improvements at Concord Street should be coordinated with the City's planned infrastructure improvements, including the Market Street Drainage Project and the Washington and East Bay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

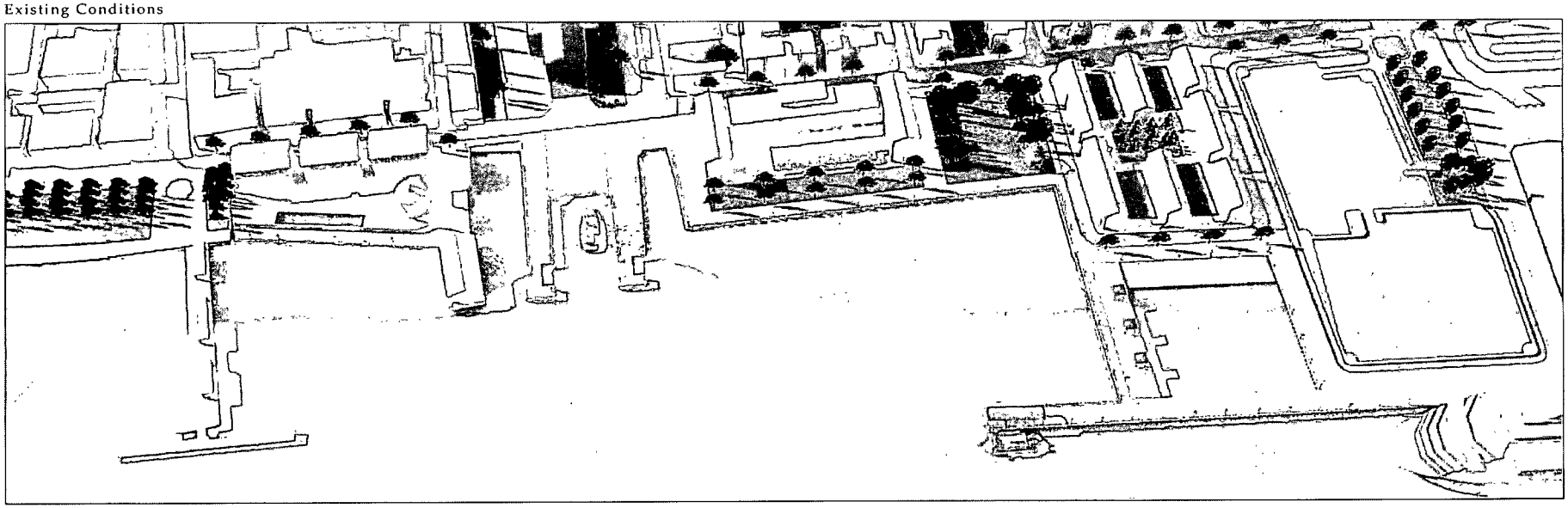
- **Creation of a vibrant, mixed-use waterfront neighborhood**

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

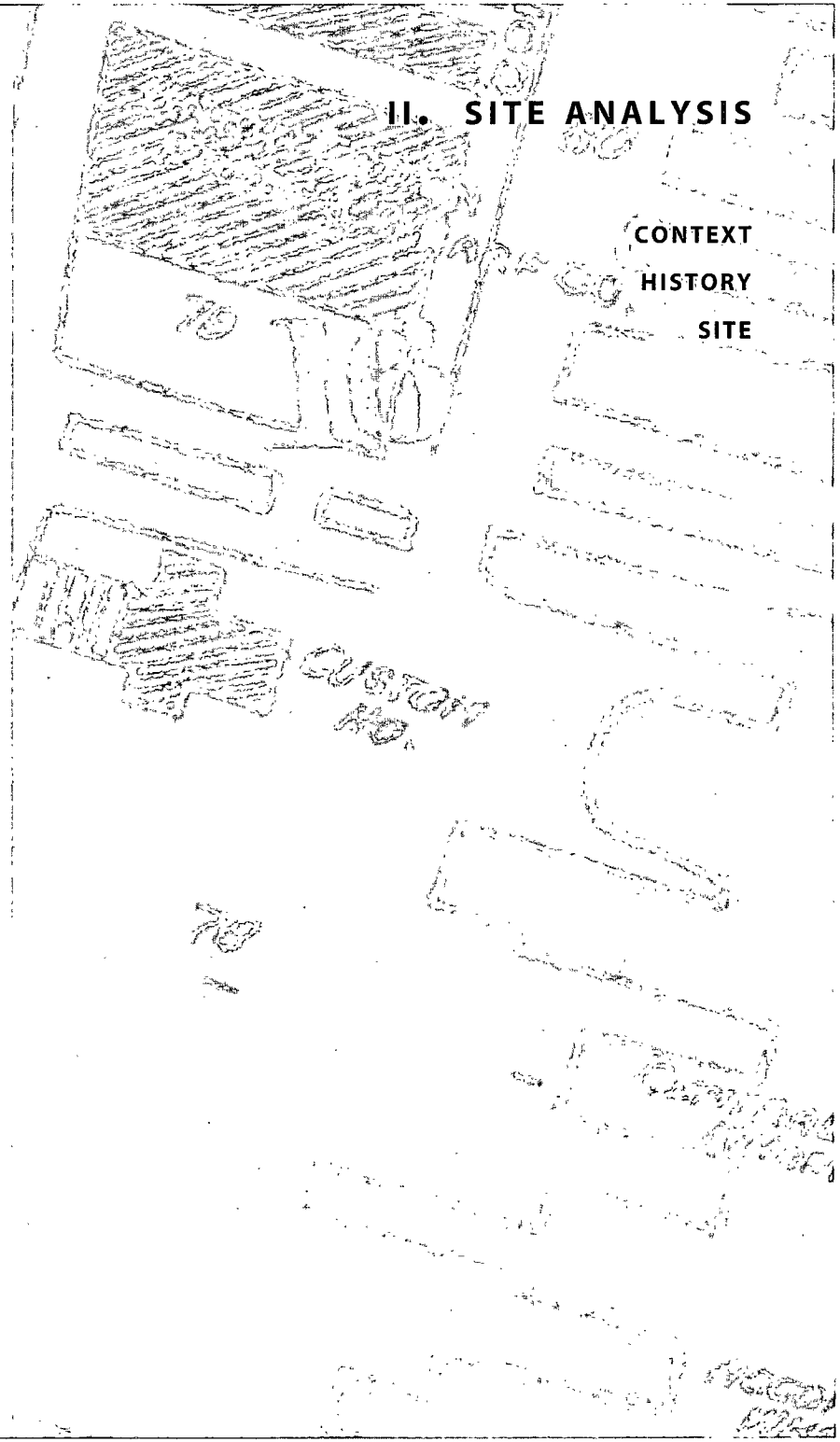
- **Extend existing city streets to the water's edge to facilitate views and connections from historic neighborhoods to the waterfront**



Existing Conditions



Concept Plan for Union Pier Waterfront - an illustrative concept



II. SITE ANALYSIS

CONTEXT

HISTORY

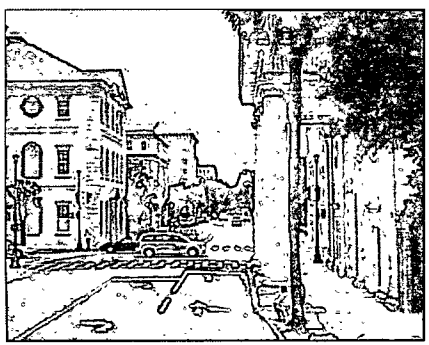
SITE

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.



Downtown Charleston



Downtown Charleston



Charleston region

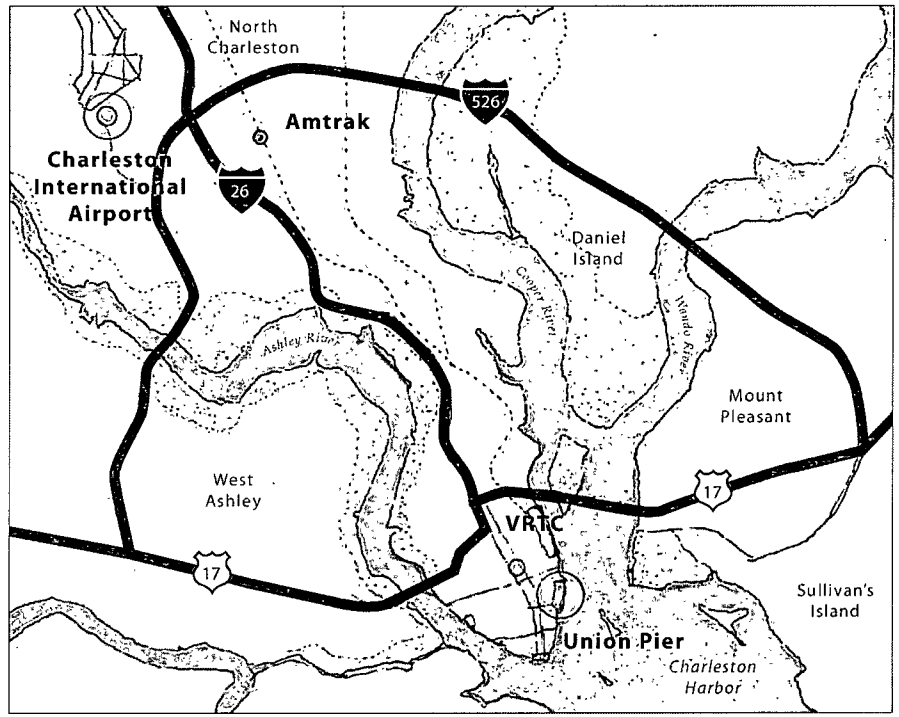
ENTRY POINTS TO THE PENINSULA

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.

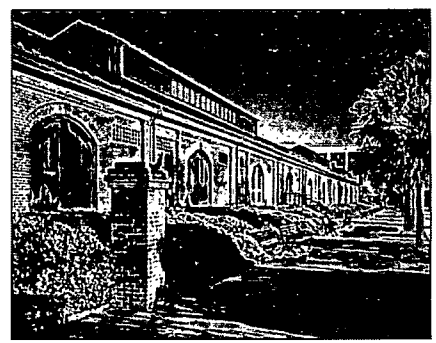
The building of a new cruise terminal in Charleston will provide an opportunity, as at the VRTC, to create a setting that reflects the character of Charleston and the history of the Port. Also, as with the VRTC, many of Charleston's residents have expressed an interest in a new terminal that could serve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



Access to the Peninsula



VRTC

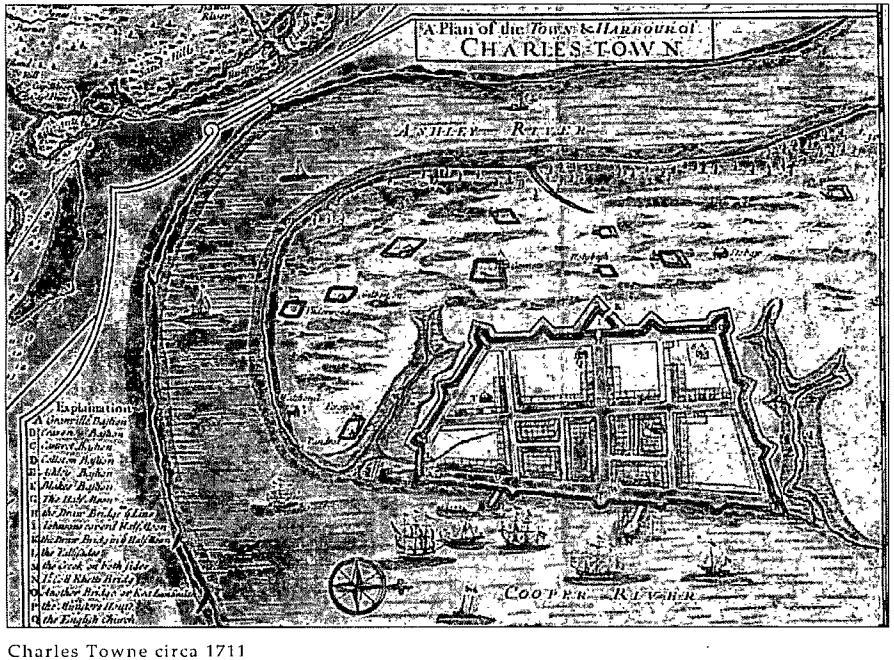


VRTC

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.



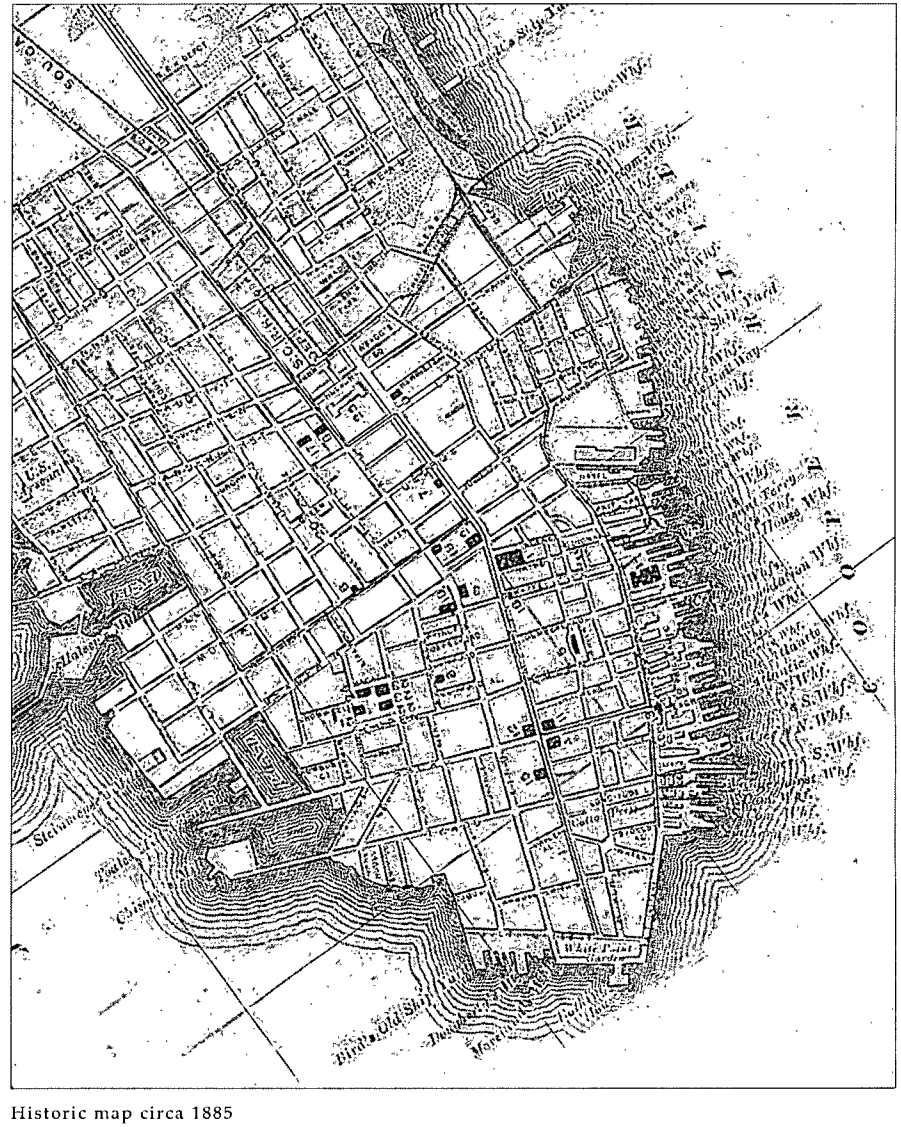
Charles Towne circa 1711



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

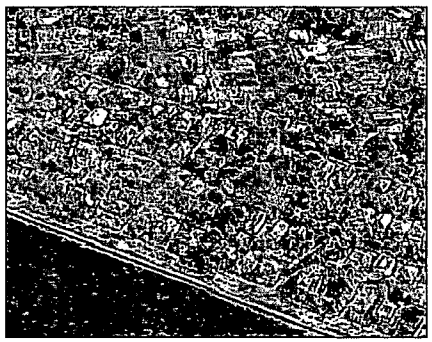
PENINSULA EDGES AND WATER VIEWS

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.

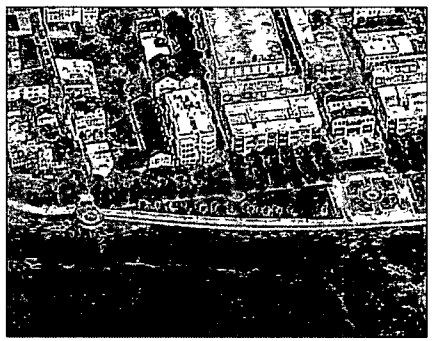
As a consequence of these edge conditions, waterfront views are either facilitated by street corridors and opens spaces, as along the Battery and in areas north of the historic district along marsh edges, or restricted or precluded by larger users, such as the Port terminals and the MUSC campus. A concept 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.



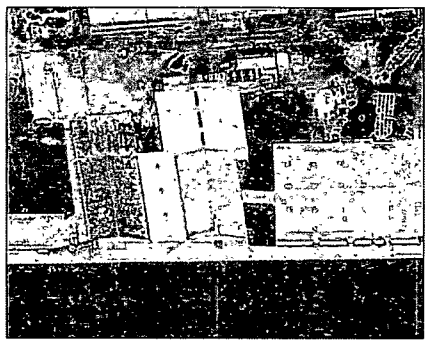
Charleston's natural edge



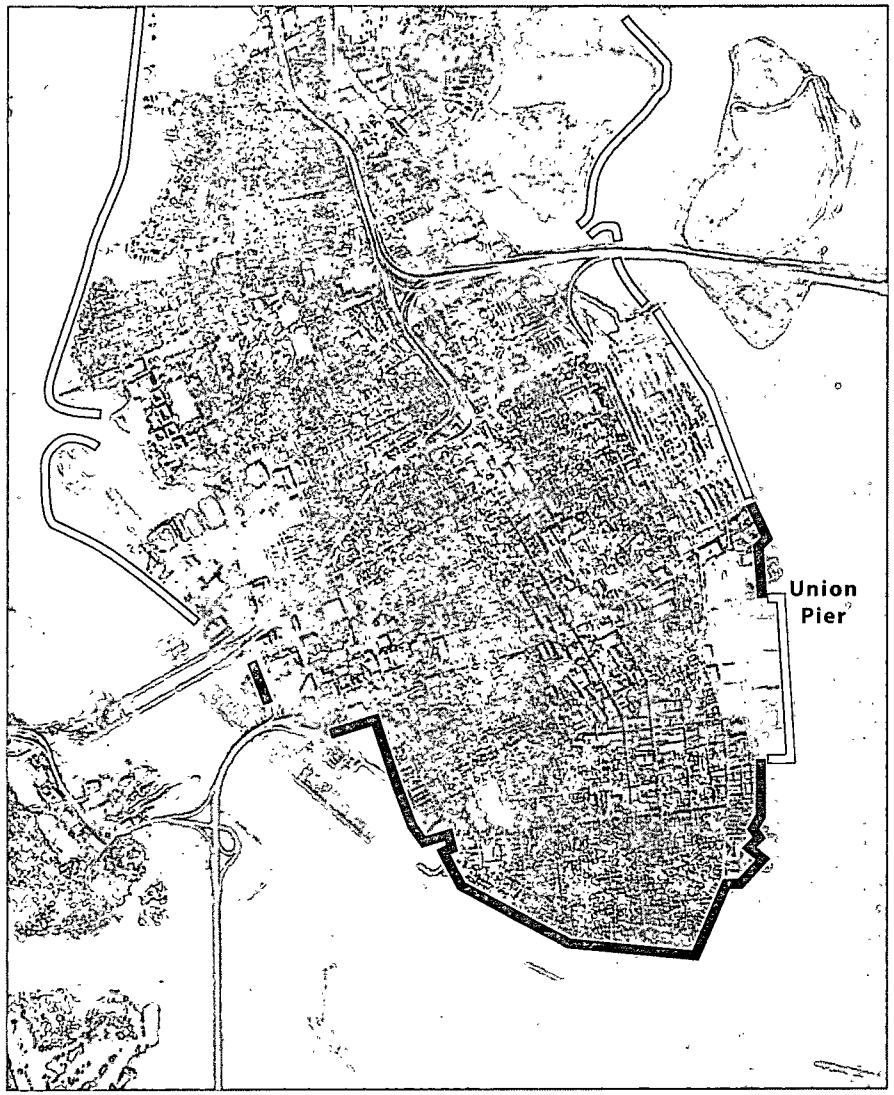
Charleston's urban edge



Charleston's urban edge at Waterfront Park

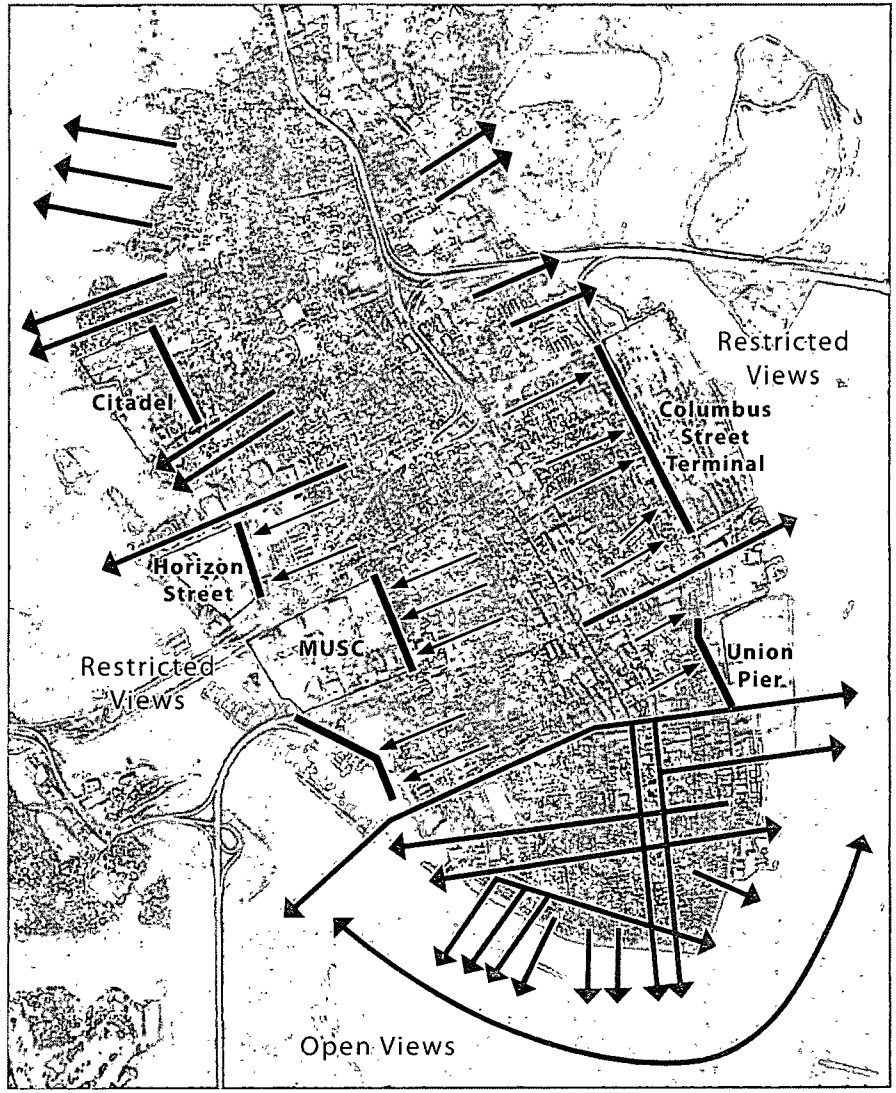


Charleston's industrial edge at Union Pier



Peninsula edges

Natural edge Industrial edge Urban edge



Water views

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.

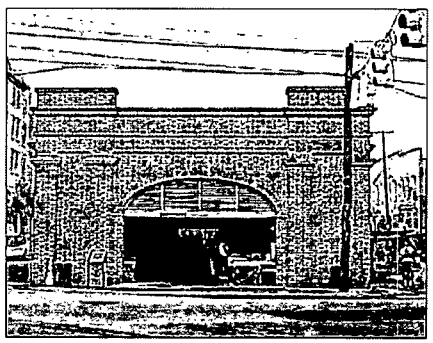
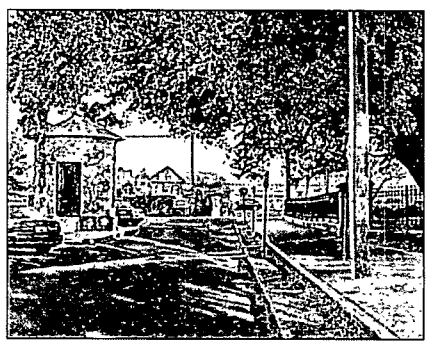
Situated to the north of the original walled city, Union Pier is today in the center of Charleston's historic waterfront, where it was once its edge. Market Street, originally a drainage way and later filled, connects Union Pier's waterfront to the city's core, a reflection of when goods arrived on boats 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.

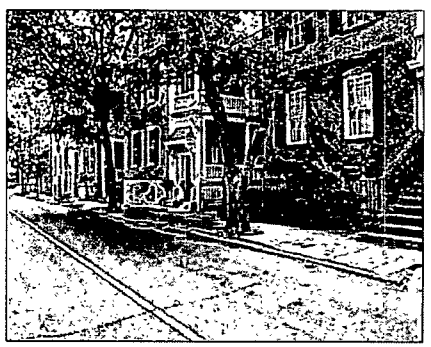
The French Quarter to the south, a remnant of the walled city, is typified by street upon street of historically significant architecture and dominated by the spire of St. Phillip's Church, which commands Church Street to deflect around its portico. Over the last twenty years, the French Quarter's waterfront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

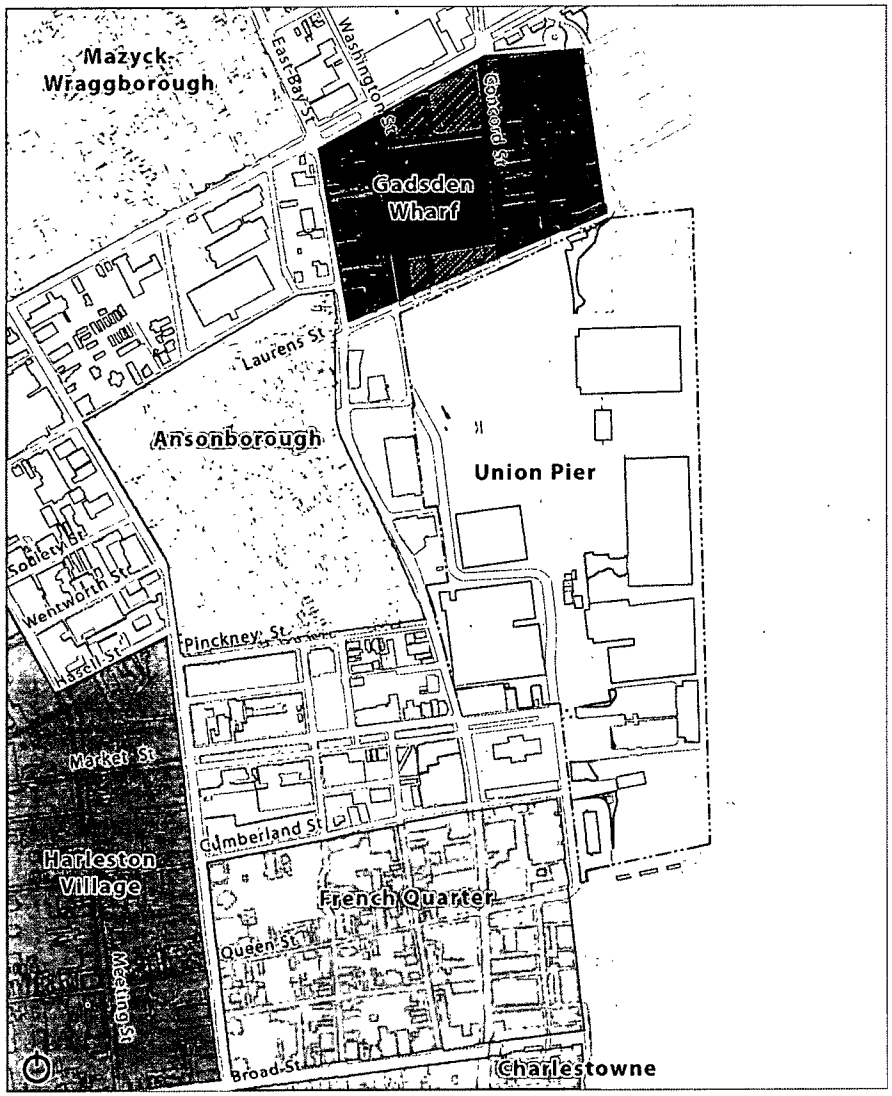
Similar in charm to the French Quarter, the tree-canopied neighborhood of Ansonborough is Union Pier's western neighbor. To the north, the neighborhood of Gadsden Wharf contains the emerging Concord Park development, formerly known as Ansonborough Fields, and is the site for the South Carolina Aquarium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

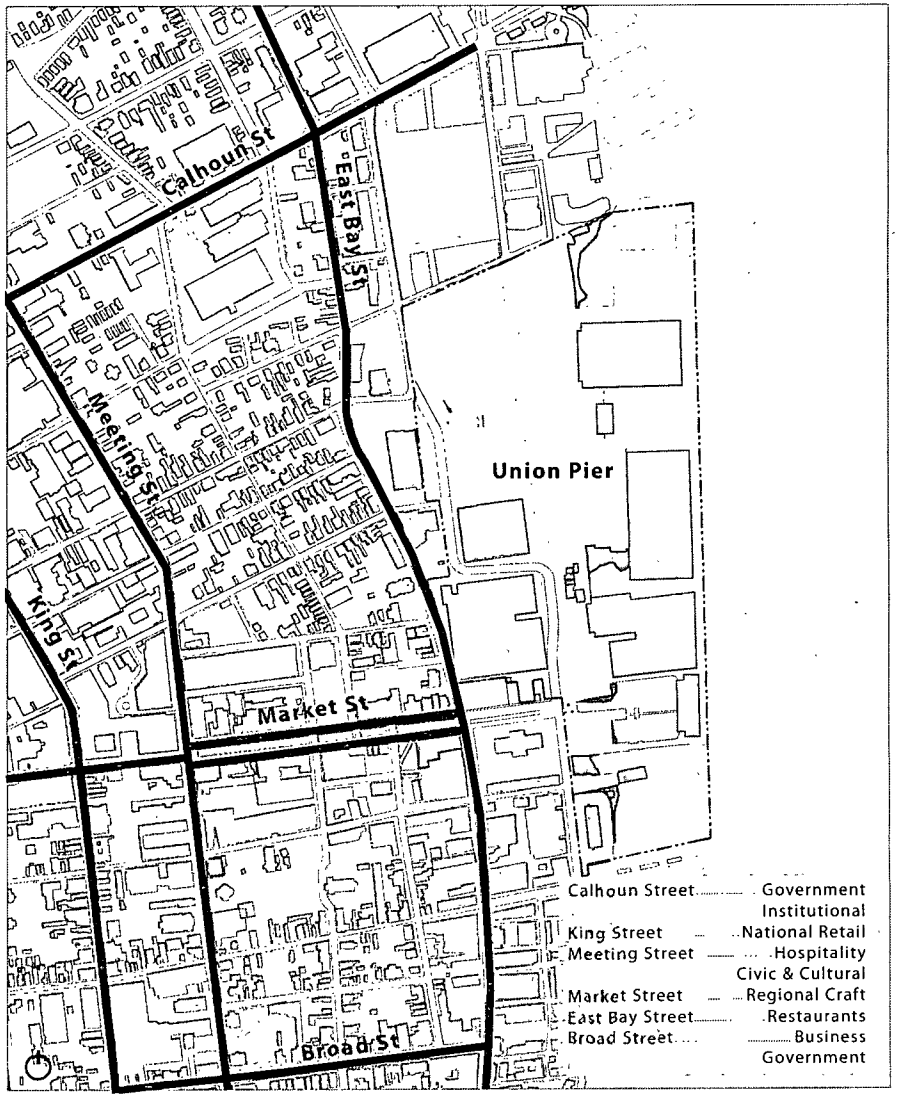






Adjacent neighborhoods



Street character

HISTORY

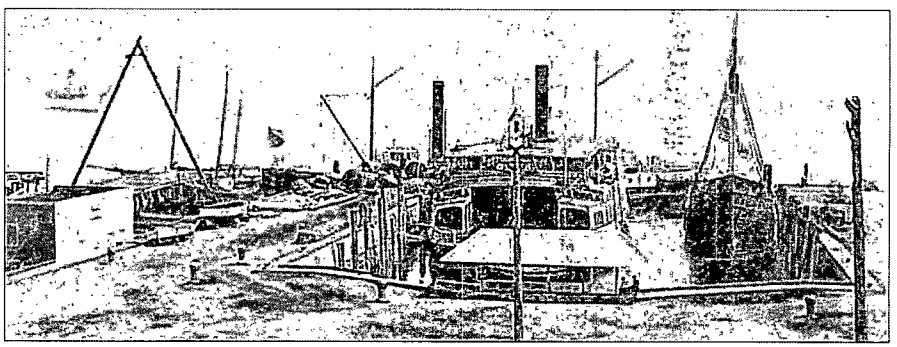
HISTORIC WATERFRONT

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.

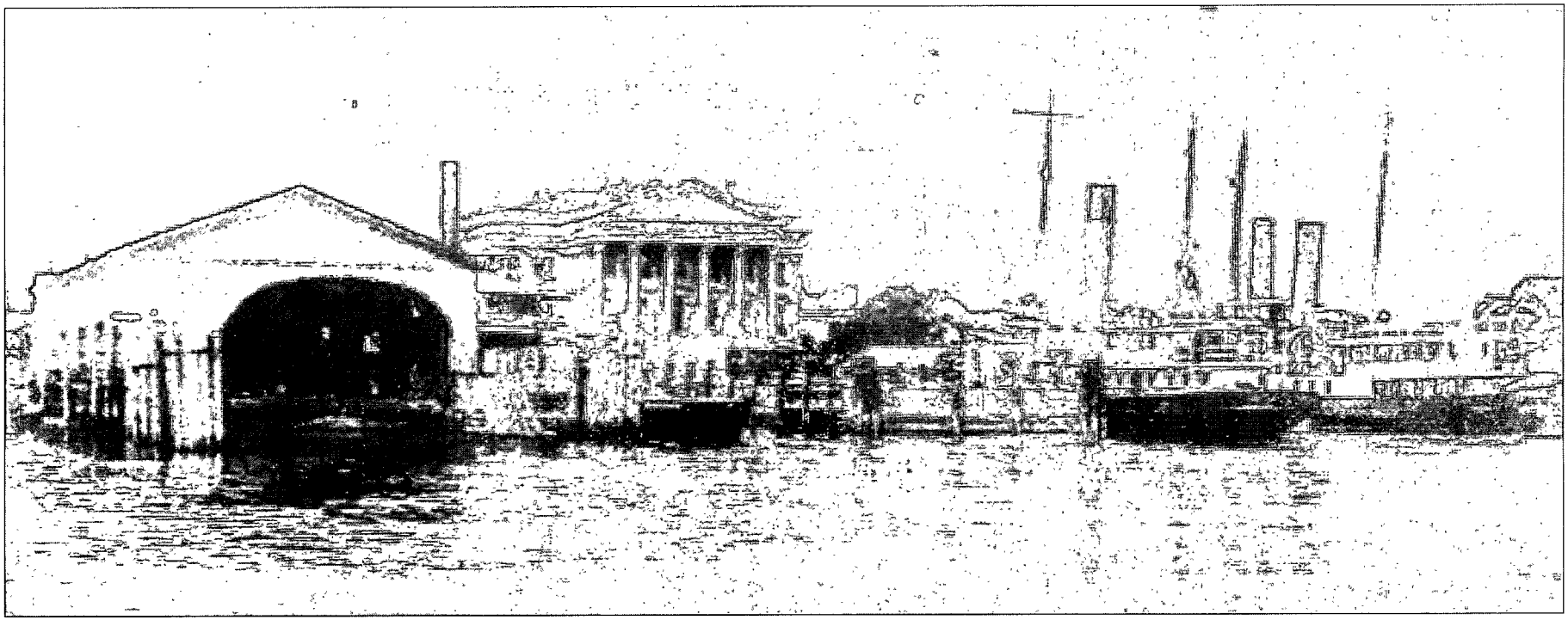
Today the Union Pier is due to have yet another change in its character, one which combines a new cruise ship terminal with real estate development and public access to the waterfront giving the city a new and valuable relationship to its history-making harbor. At the eastern end of Market Street, the 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.



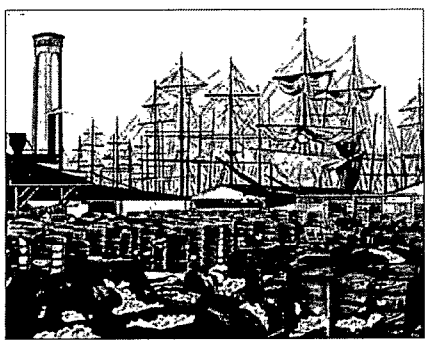
Mosquito Fleet daily landing



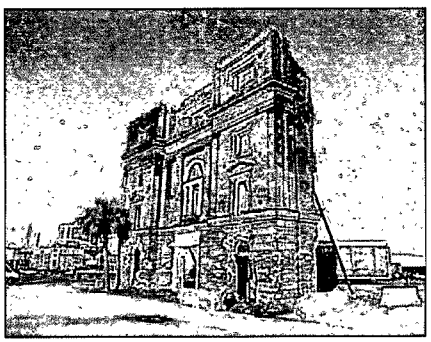
Public Landing - early 20th century



Custom House and Public Landing at the turn of the century



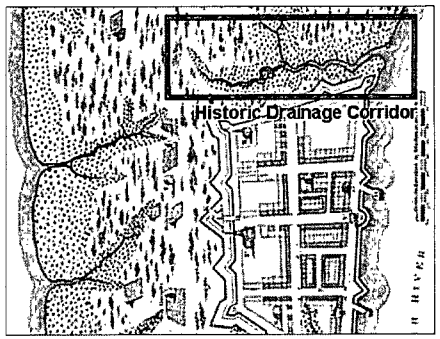
Union Cotton Press & Wharf Company, one of many private wharves at Union Pier in the 19th century



Bennett's Rice Mill facade today, constructed 1844



Site of Bennett's Rice Mill and Mill Pond



Historic Market Street drainage corridor

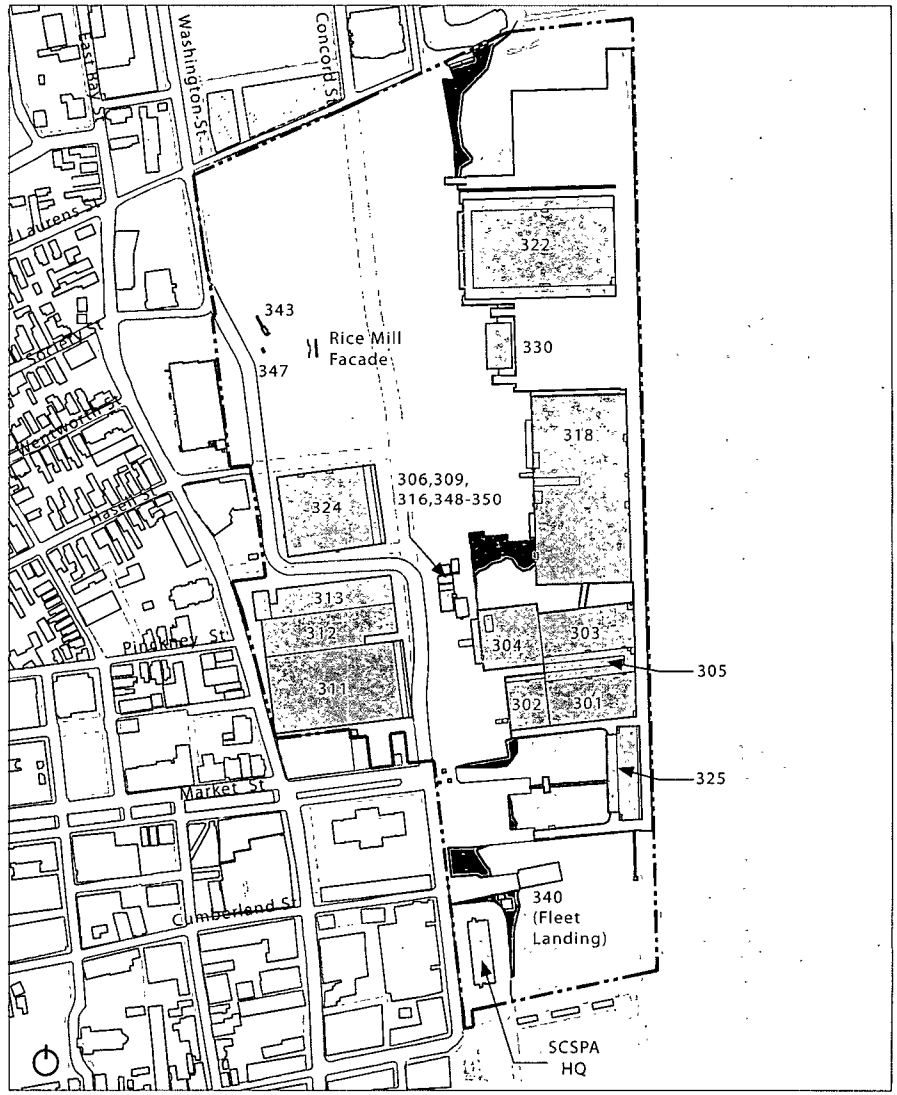
SITE

EXISTING CONDITIONS

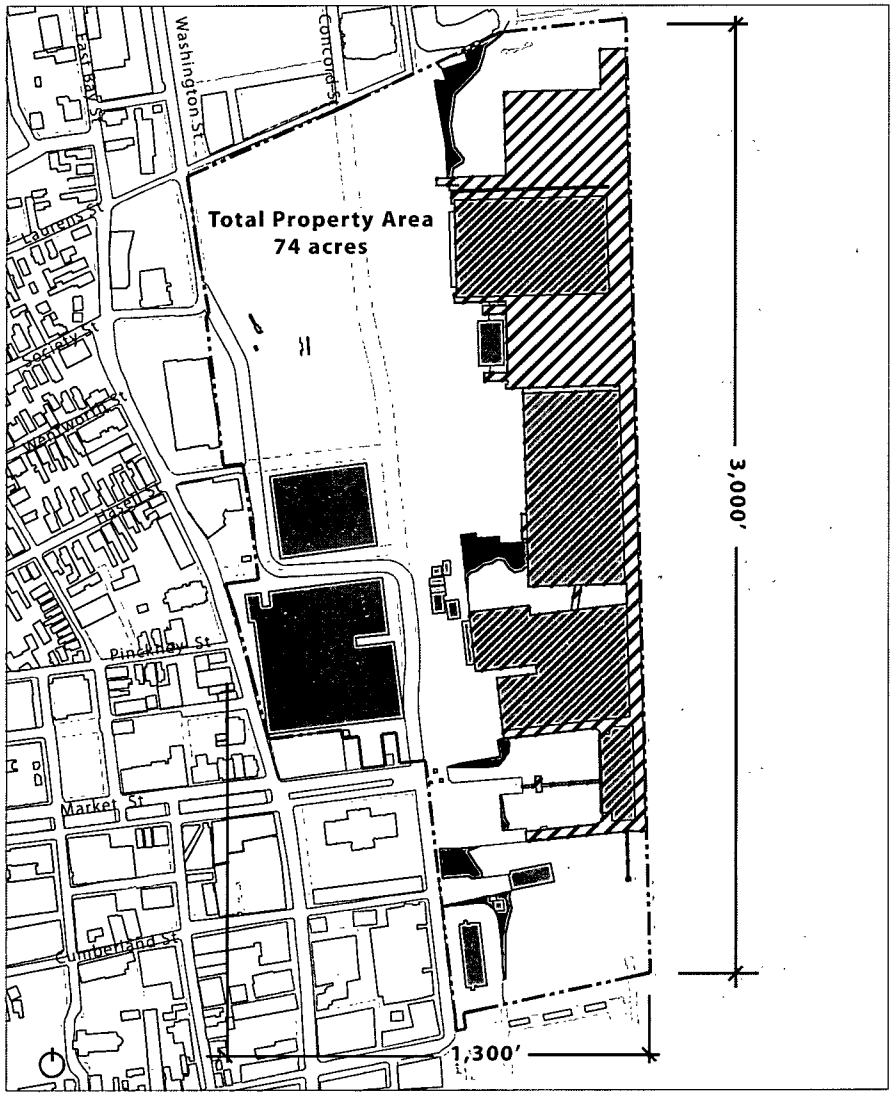
The Union Pier Terminal site is roughly 74 acres in area, of which 43 acres are land, 20 acres are constructed deck over water, and 11 acres are portions of the Cooper River contained in the tax lot. The site is roughly 3,000′ long north-south and 1,300′ at its widest point. The constructed wharf is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

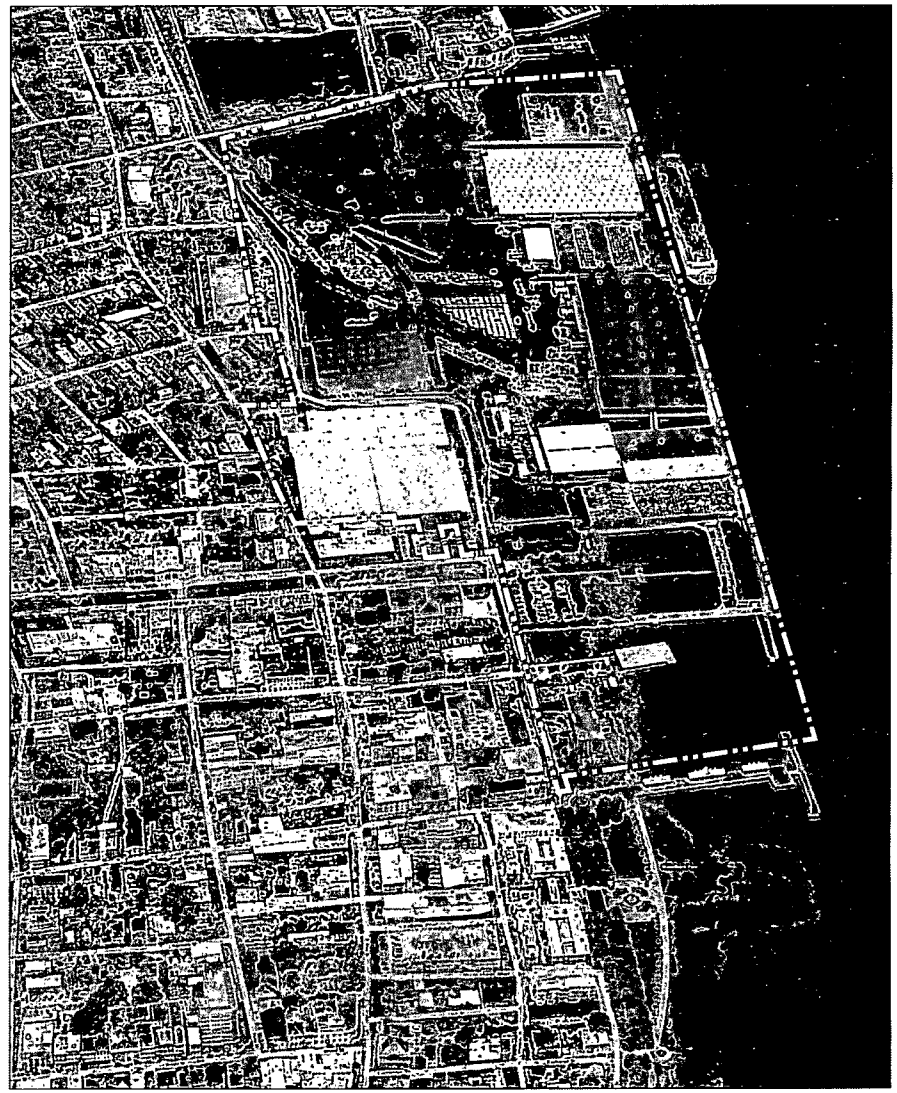


Existing structures



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.



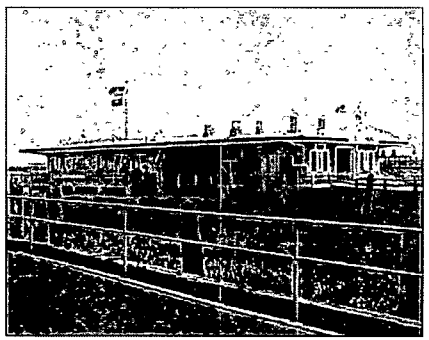
Existing Cruise Terminal



SCSPA Headquarters



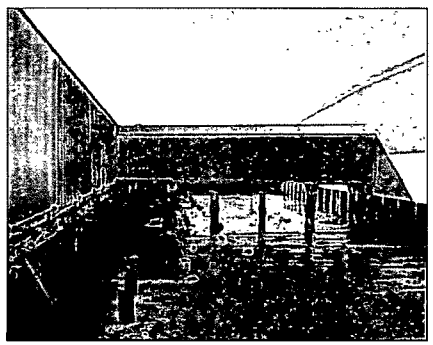
Cargo storage



Fleet Landing restaurant



Existing restricted access at site



Existing warehouse and deck structures



Existing warehouses and wharf

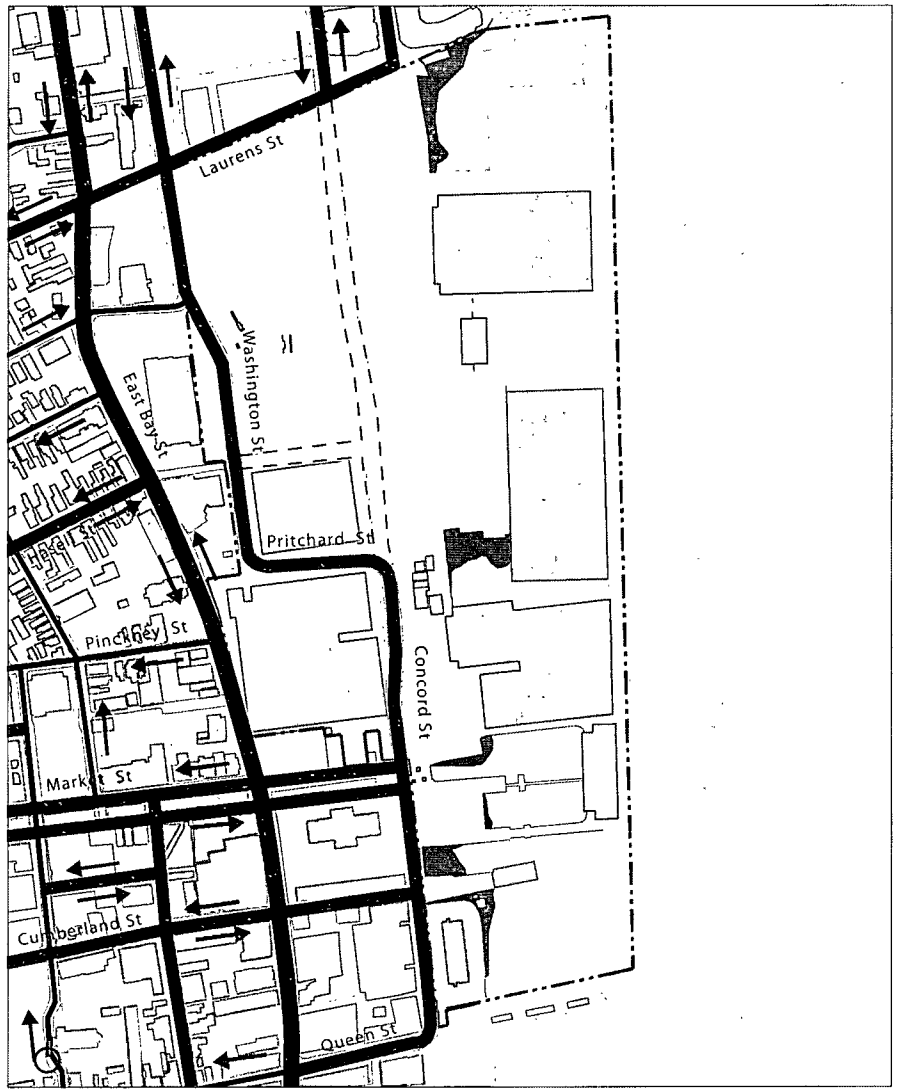


Existing warehouses along Concord Street

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.

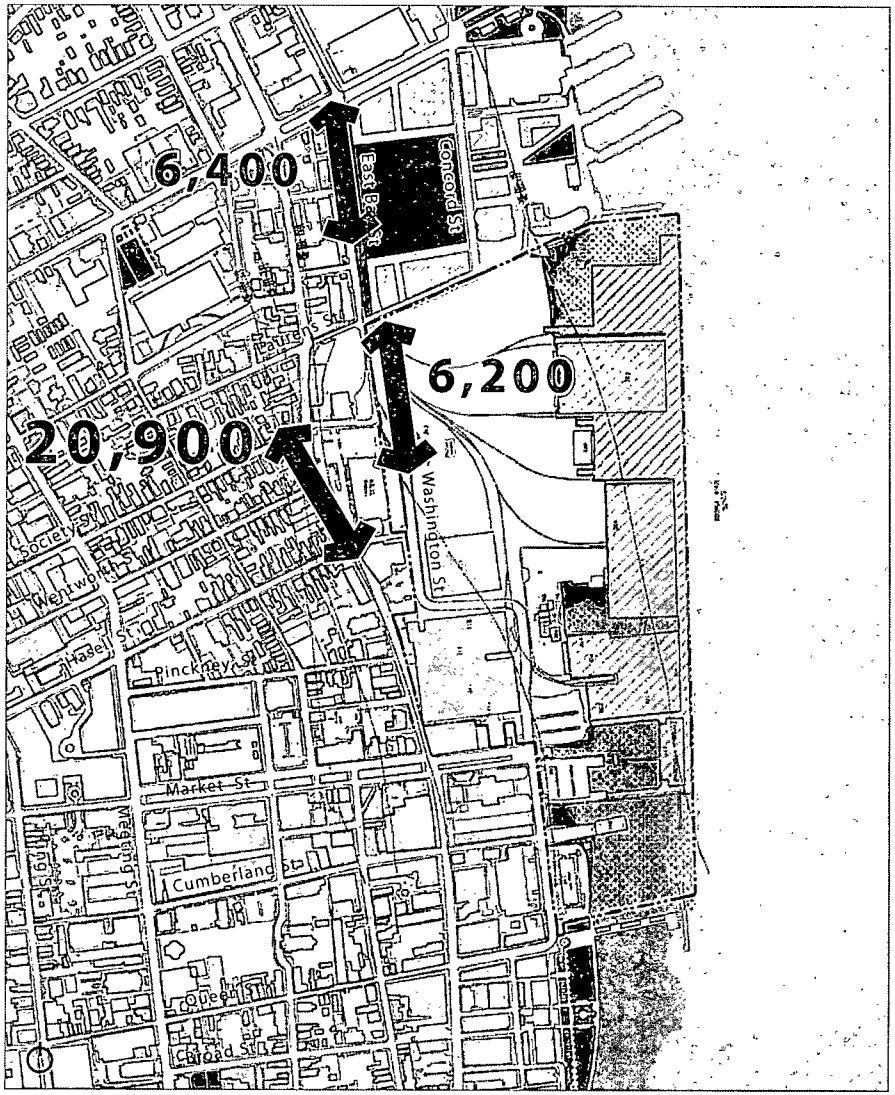
The primary regional access to the Concept Plan area is via I-26 and US 17. Traffic from these highways make their way to the Concept Plan area on East Bay and Calhoun Streets. Local access to the Concept Plan area is provided by a number of east-west streets including Laurens Street, Society Street, Hasell Street, and Market Street. North-south travel within the Concept Plan area is accommodated by Washington Street and Concord Street.



Existing road network

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

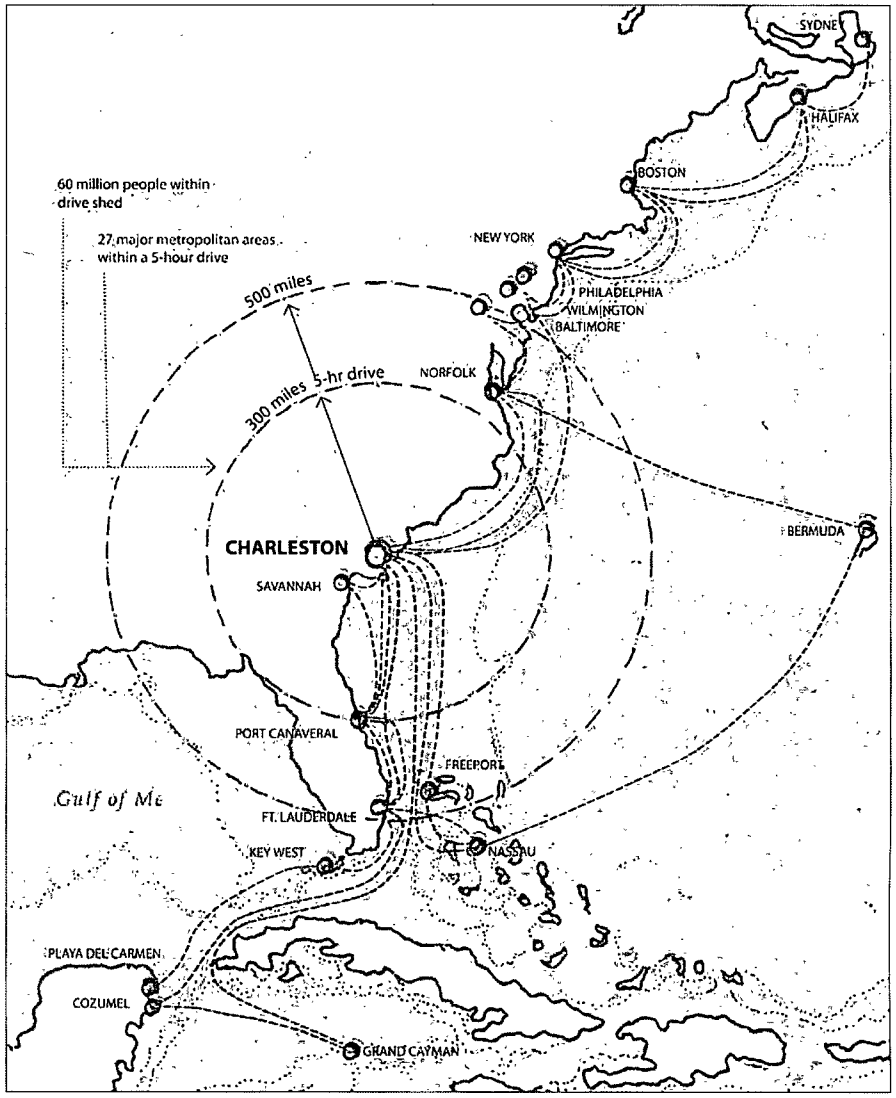
CRUISE TERMINAL PROGRAM

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.



Cruise routes along eastern seaboard

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)

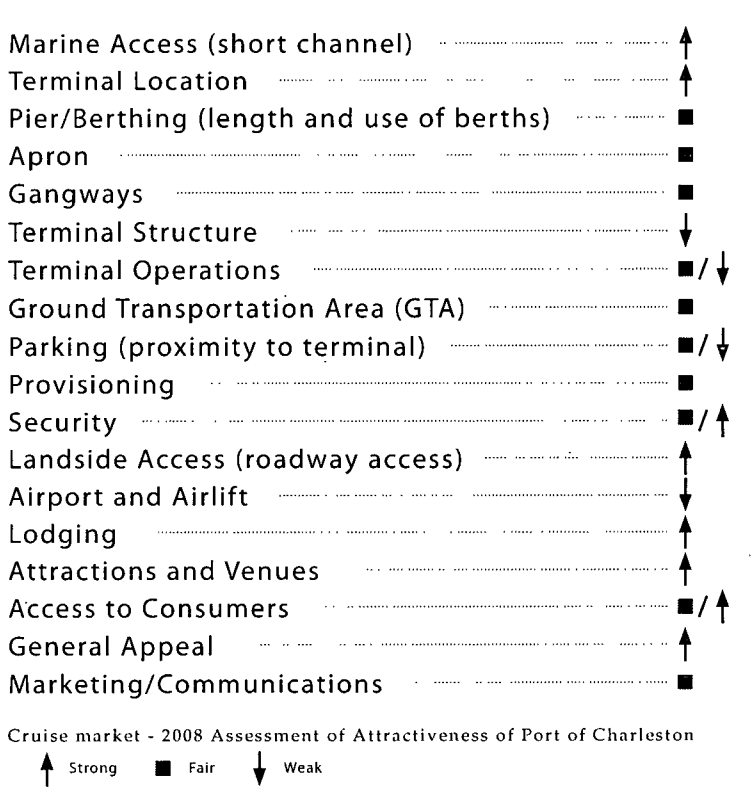
Passenger Capacity	3,000 to 3,500
Crew	Up to 1,200
Gross Tonnage	100,000 - 150,000
LOA (ft)	950' - 1,100'
Beam (ft)	120' - 160'
Draft (ft)	28' - 32'
Air Draft (ft)	Up to 200'

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.

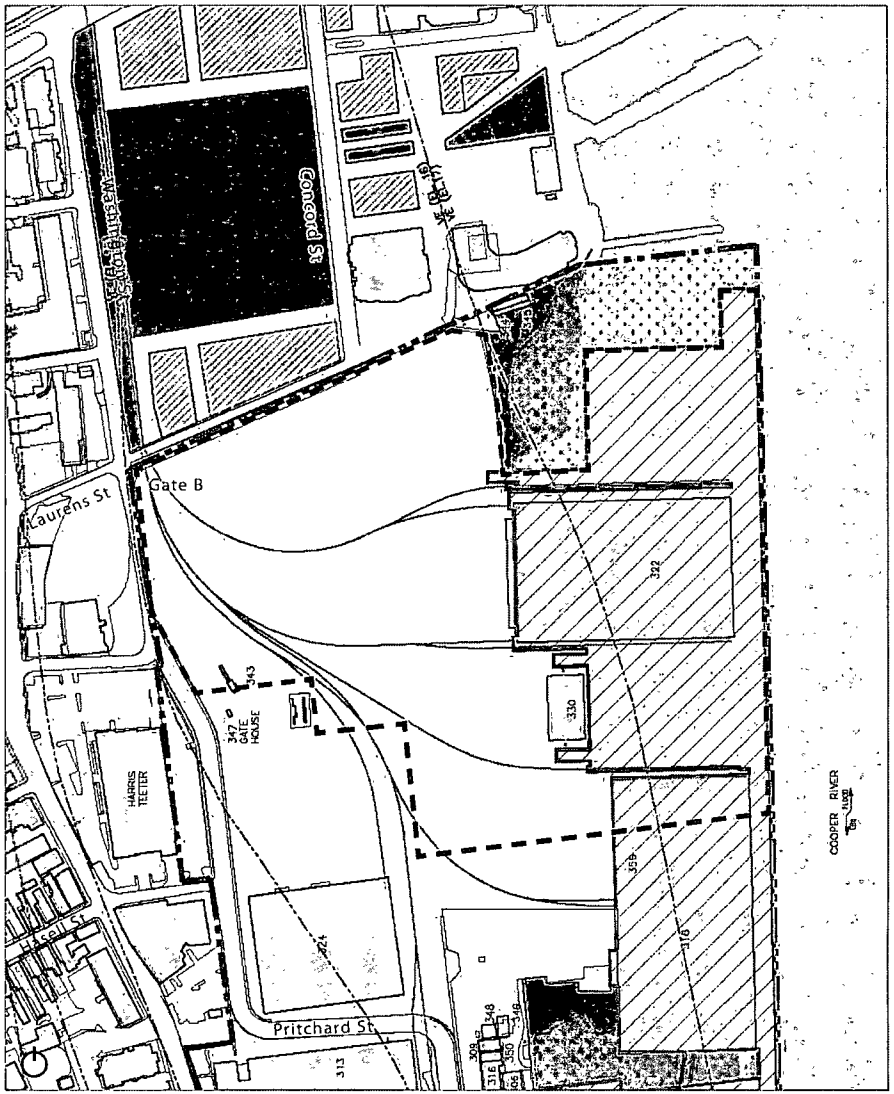


SITE SELECTION

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.

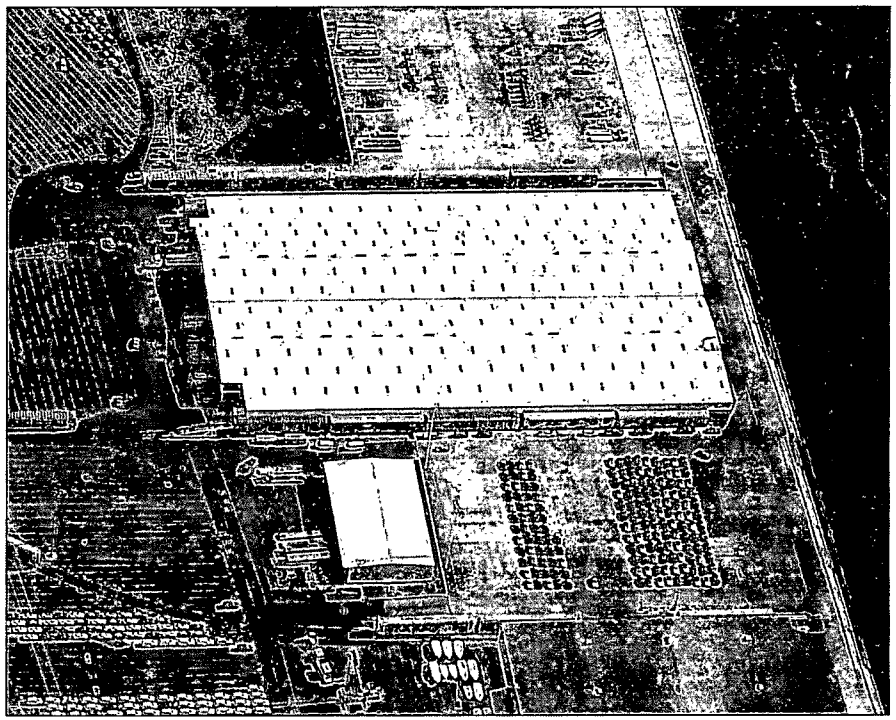


Cruise terminal district

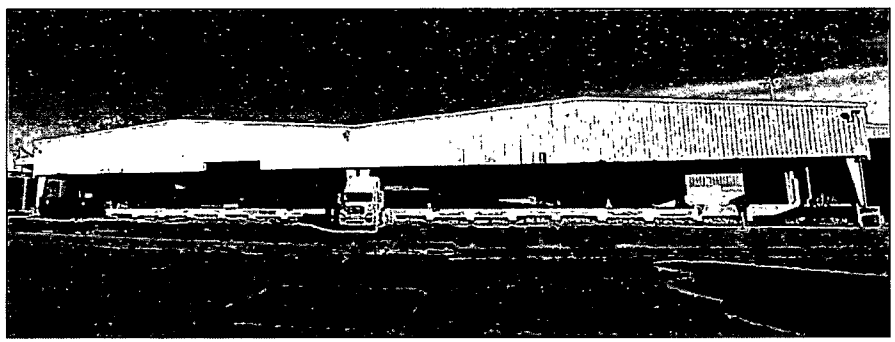
From the operational standpoint the site offers the following:

- 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

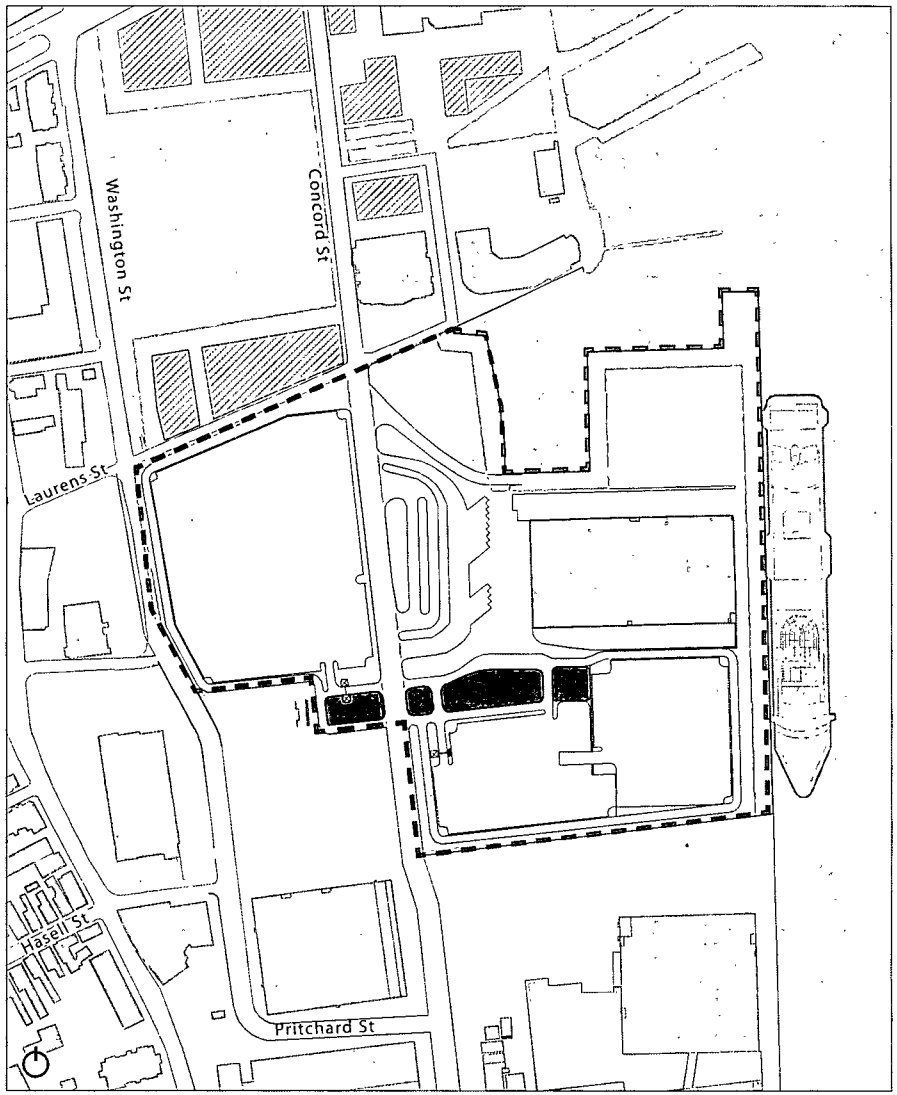
UNION PIER - CONCEPTUAL SITE PLAN

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

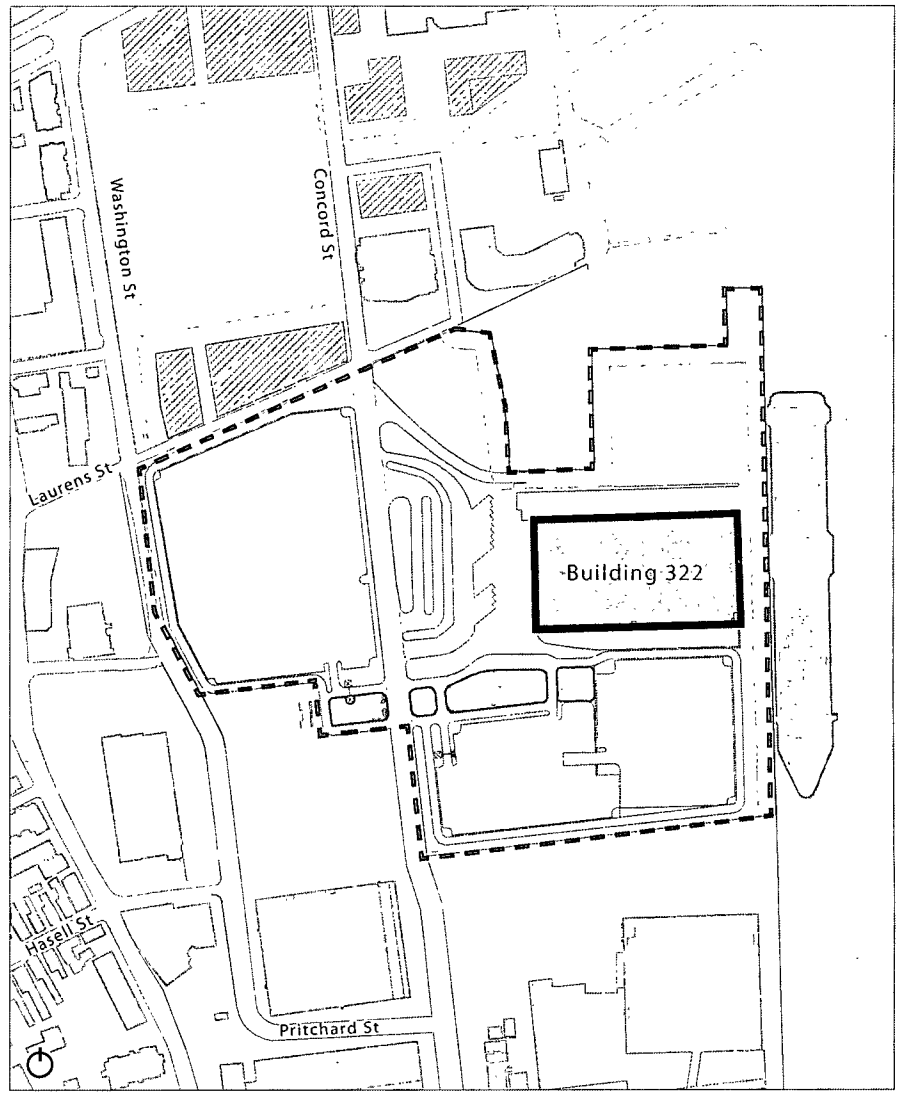
Building 322 is presently a warehouse used to store household goods in transit located within the South Carolina State Ports Authority's Union Pier, at its north end. The footprint of Building 322 is a 240' x 450', or approximately 108,000 SF, in a single story building with a small suite of offices 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.



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

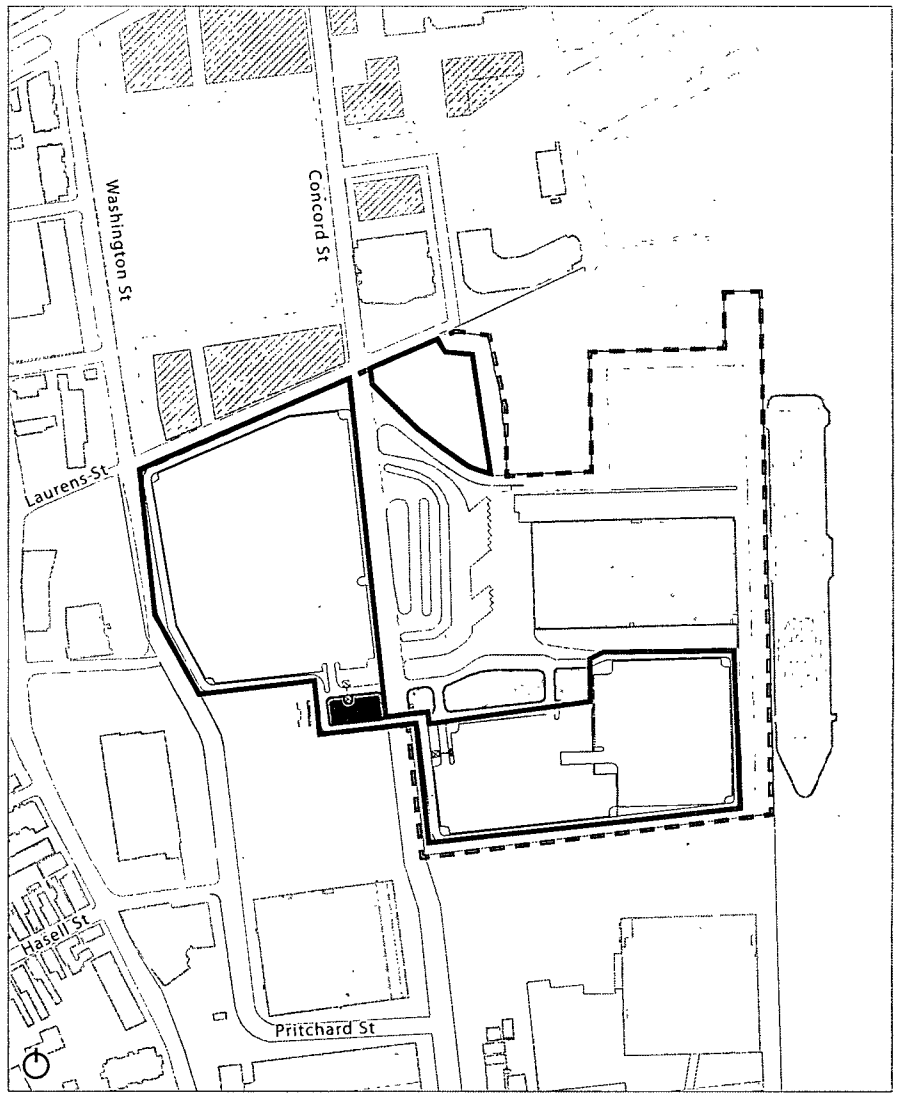
CONCEPTUAL SITE PLAN

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



Parking Lots

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

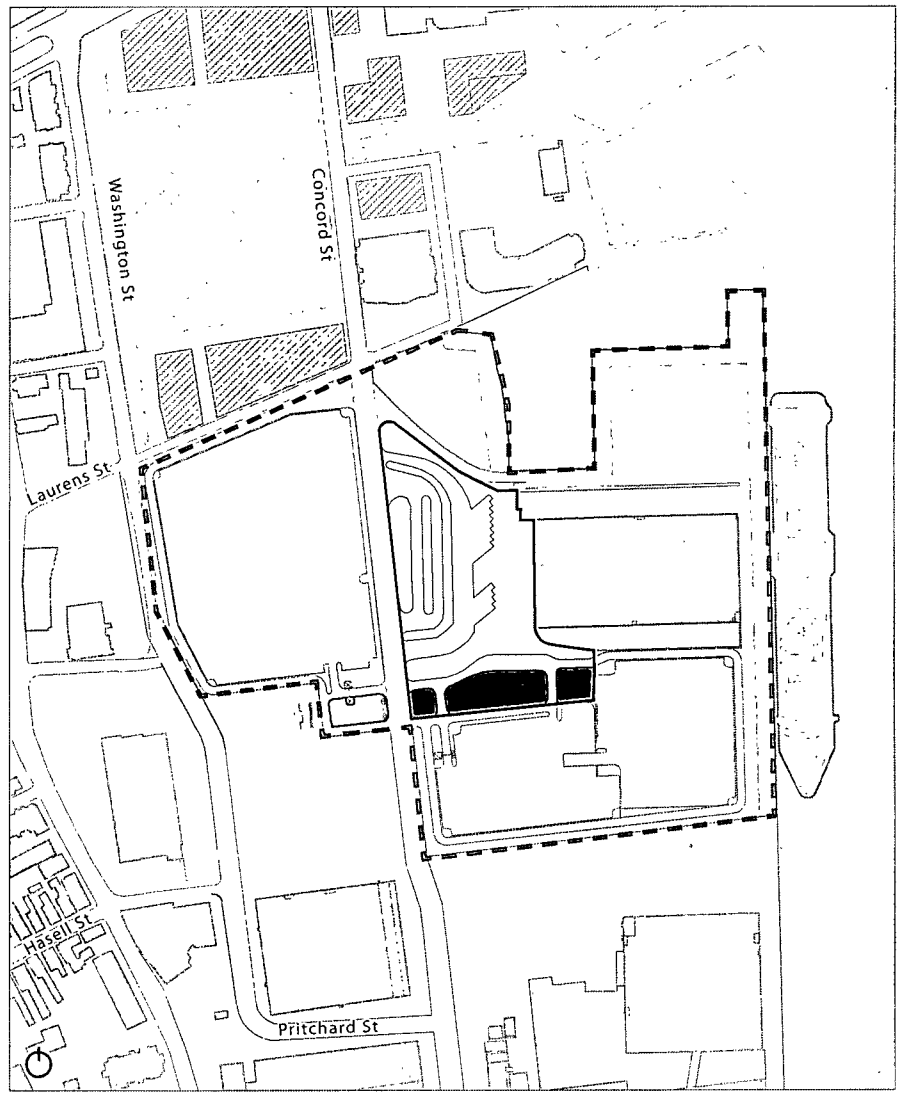
SCSPA constructed a gatehouse north and west of the Rice Mill façade to control access to the north end of Union Pier. The gatehouses are identified as buildings 343 and 347 and appear to be pre-engineered structures surrounded by concrete barriers and gate arms that control access and direct traffic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



Ground Transportation Area

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

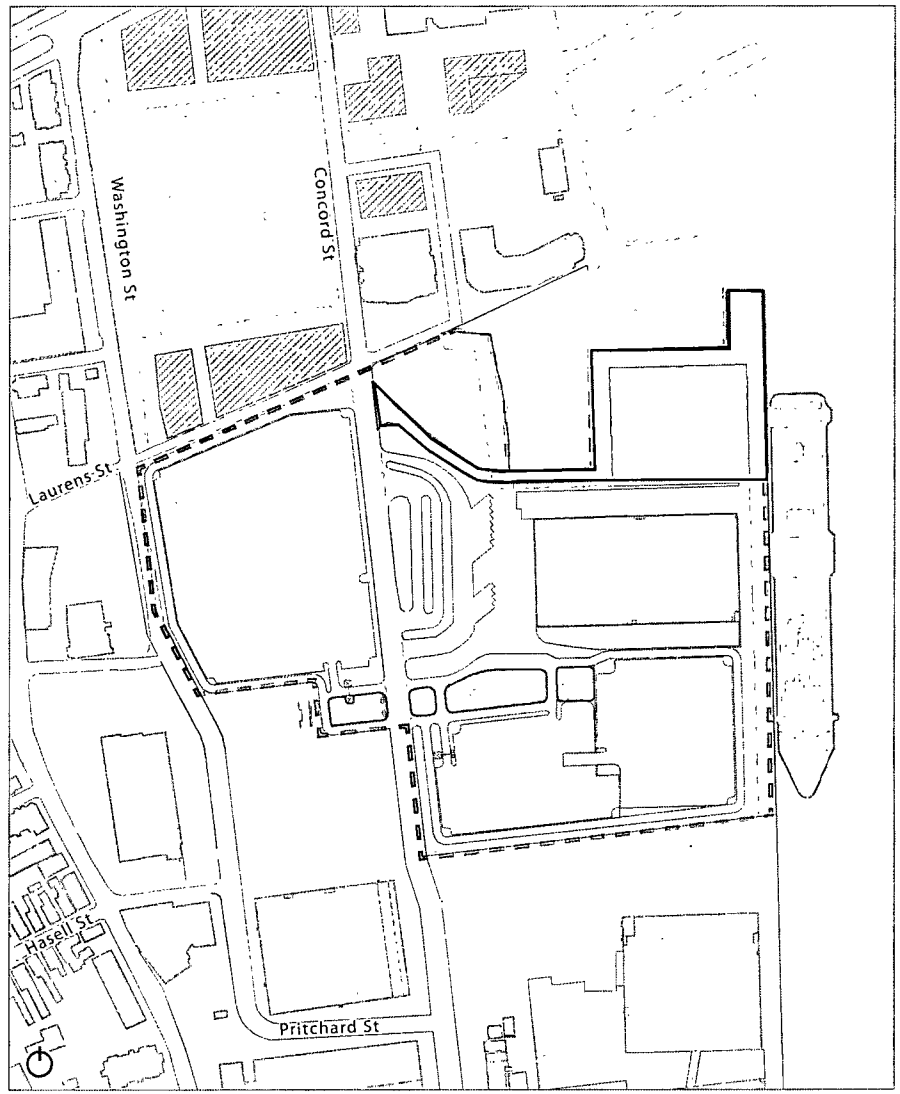
An area where passengers arriving by taxi are loaded and unloaded is provided just west of the bus parking area. The most efficient way to move taxis is by providing linear sections where taxis pull in, passengers step out, bags are handled by stevedores, and passengers proceed to the Terminal. Two drop-off 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.

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.



Service areas

CRUISE TERMINAL PROGRAM

Based on the original SCSPA 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

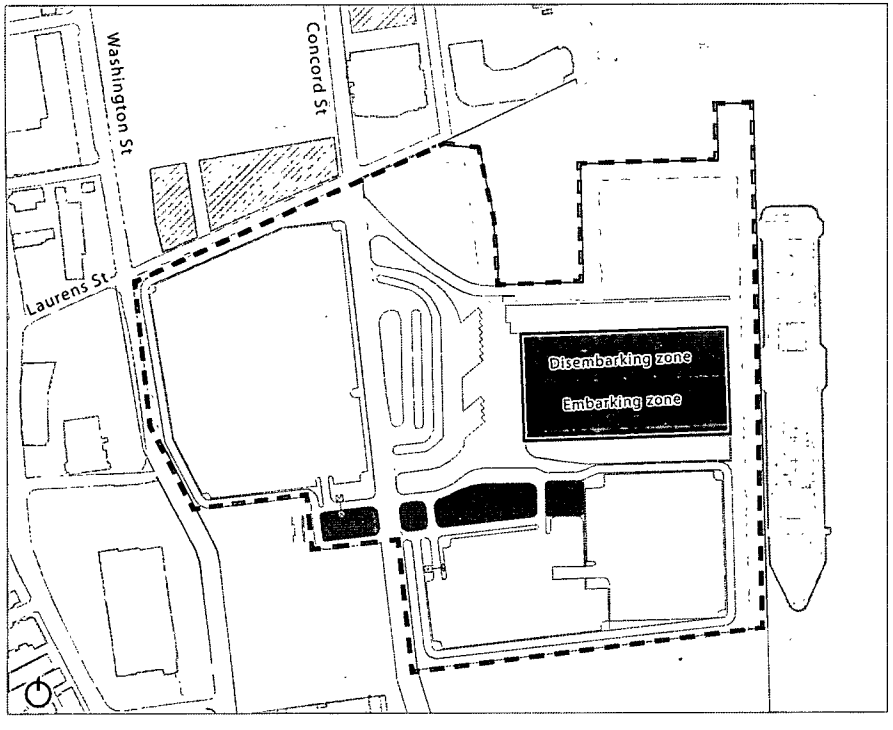
Passenger screening, cruise line check-in, waiting, restrooms, cruise line offices, and vertical circulation are needed for embarkation at the ground floor and would require approximately 54,000 SF to move passengers through a 2 ½ hour embarkation process parameter.

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.

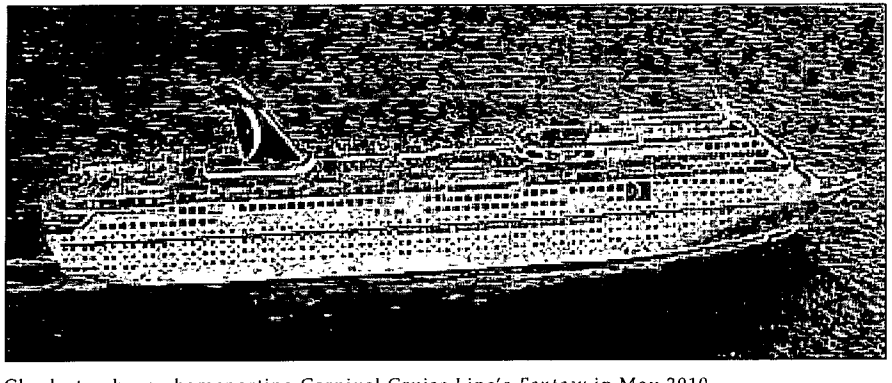
Baggage handling and screening requires arriving passengers to transfer their luggage to the cruise line. Operator and stevedores will take passenger luggage to the Baggage Handling area where x-ray equipment will scan all bags. Luggage will then be moved to the dock and into the cruise ship. An area 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

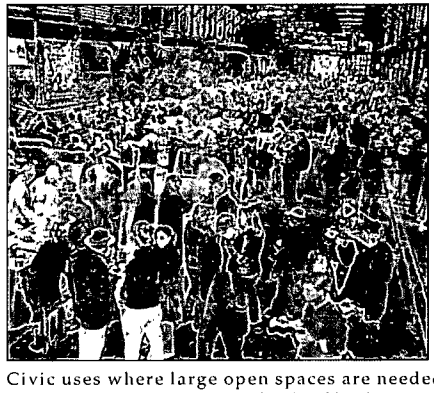
Baggage Claim is where disembarking passengers collect their baggage. Restrooms and vertical circulation are included in this space. Operator and stevedores will place passenger's bags on the floor. Passengers will reach the ground floor of the building, collect their bags, and proceed to CBP. In approximately 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.

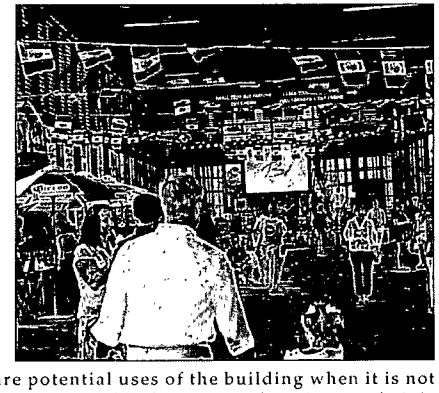


Key Plan



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, SCSPA, 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 SCSPA'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 SCSPA pursues renovations to Building 322.

REQUIRED CBP/FIS PROGRAM

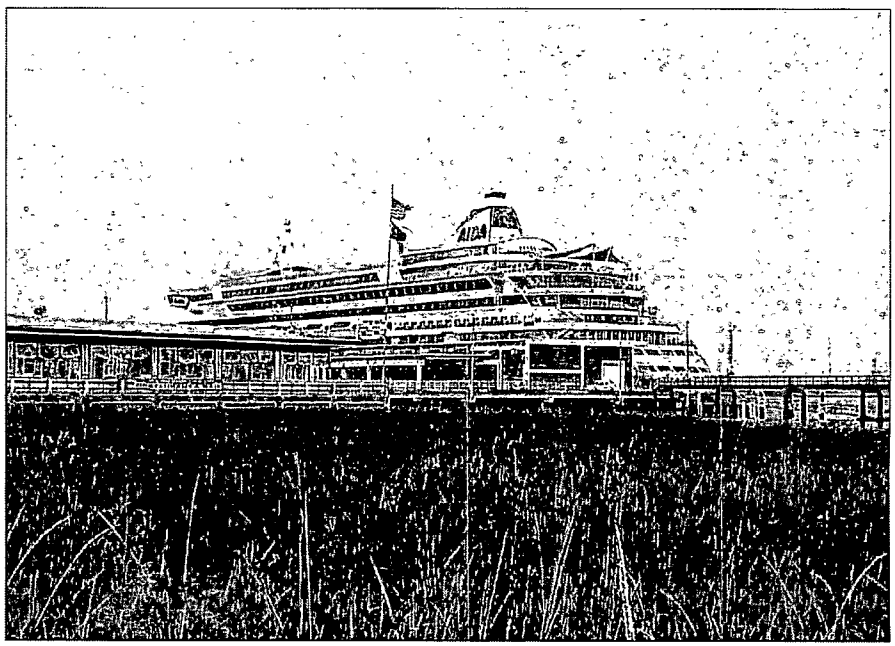
Primary Processing	19,228 NSF
Secondary Processing	4,502 NSF
Secondary Operations and Support	535 NSF
CBP Administration and Support	4,309 NSF
Exit Podium	315 NSF
Total CBP/FIS	**28,889 NSF**

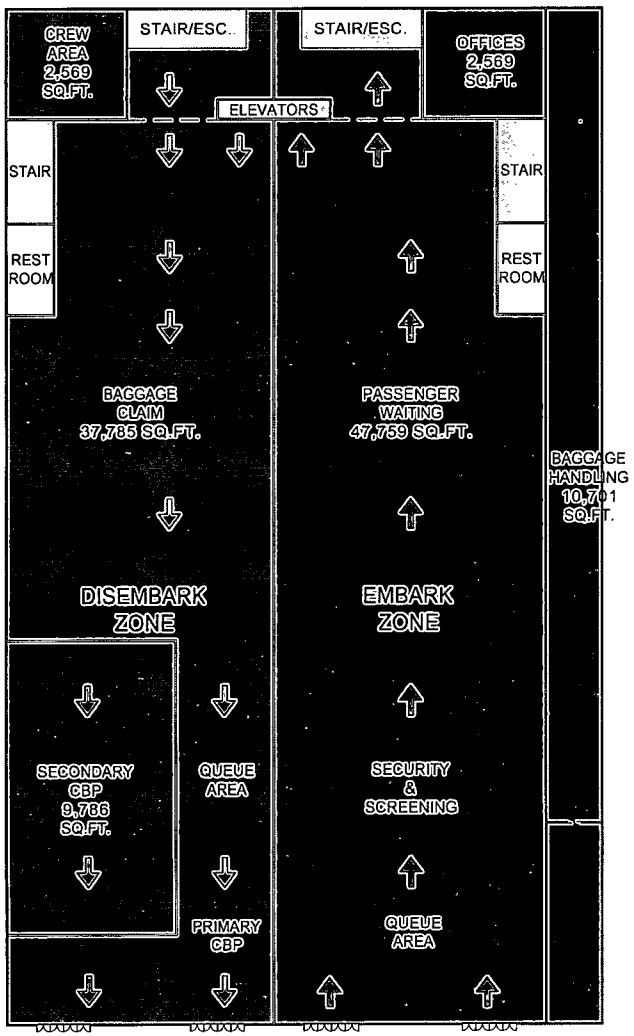
CREW AREA

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.

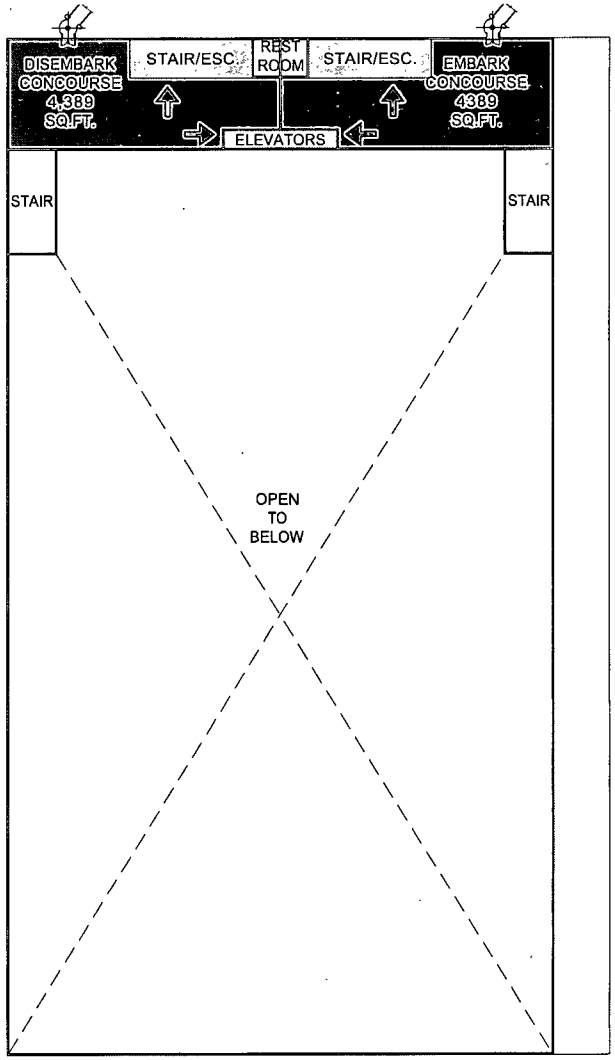
CONCLUSION

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

TRANSPORTATION AND TRAFFIC

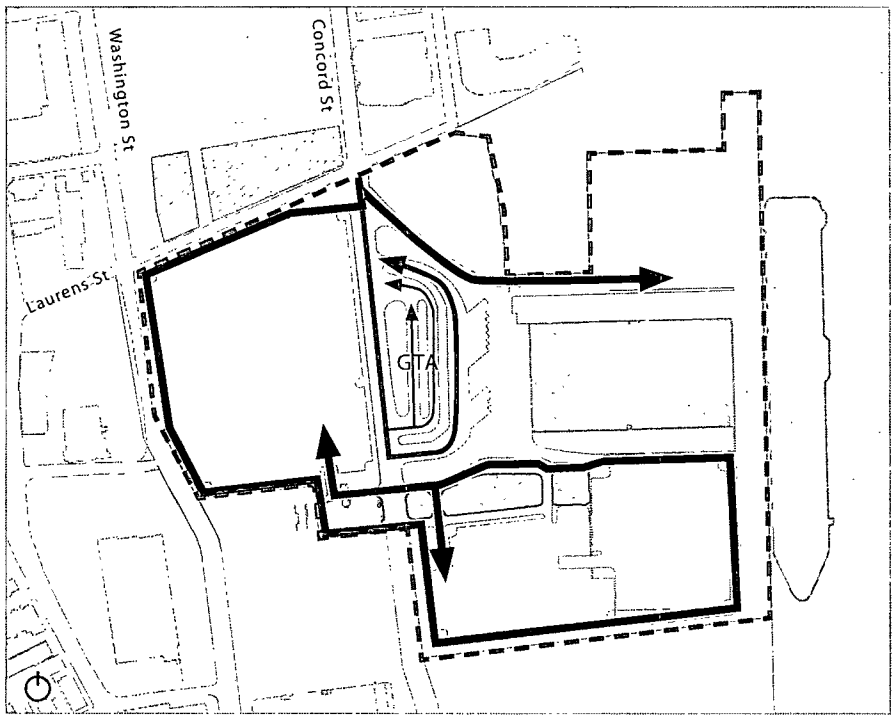
TRANSPORTATION GUIDING PRINCIPLE

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.



Ground transportation area

Passenger vehicles Service vehicles Buses and taxis

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	Debark 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 taxis 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 GTA curbfront will be utilized from 10 AM – 3 PM. The curbfront for passengers to drop off their baggage is 260 feet long. During the peak times of 11 AM - 2 PM, a secondary 260-foot curbfront may be opened to facilitate additional speed in passenger bag drop-offs during this busier time. The access roadway to the curbfront is 3,670 feet long and was designed to accommodate queuing within the cruise terminal site.

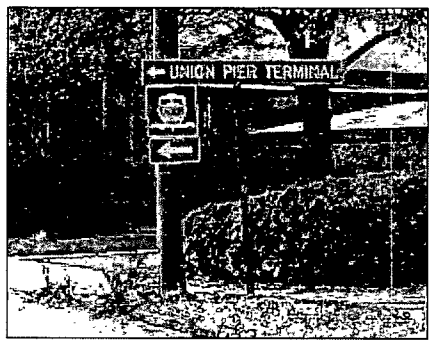
TRANSPORTATION AND TRAFFIC

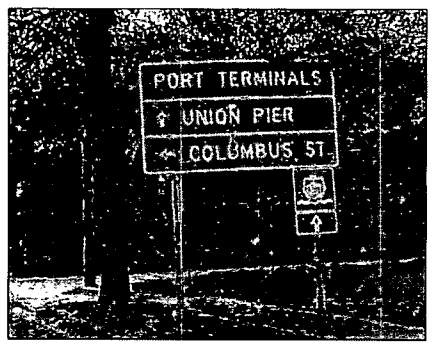
REGIONAL AND LOCAL ACCESS

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





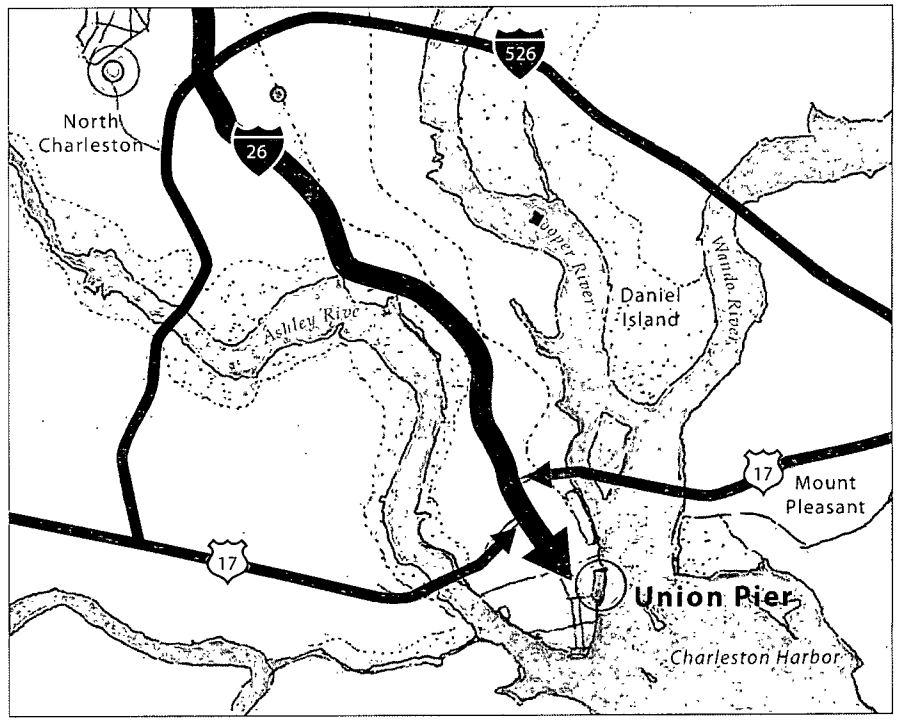
Wayfinding signs for cruise ship passengers

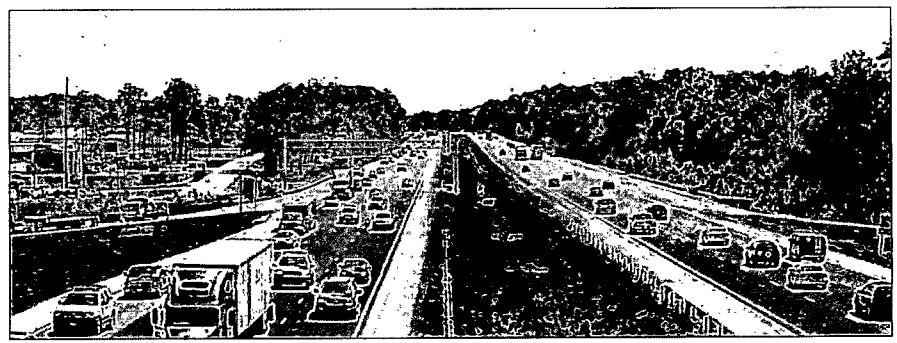
TRANSPORTATION ANALYSIS

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

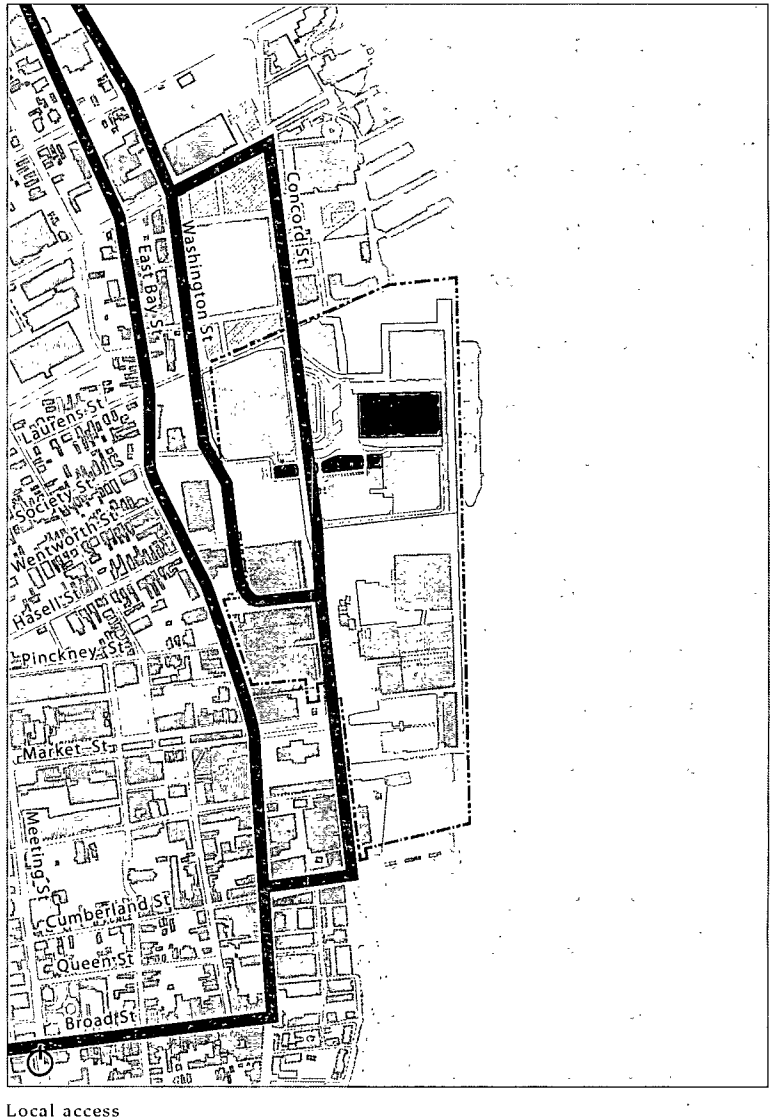
TRANSPORTATION AND TRAFFIC

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.

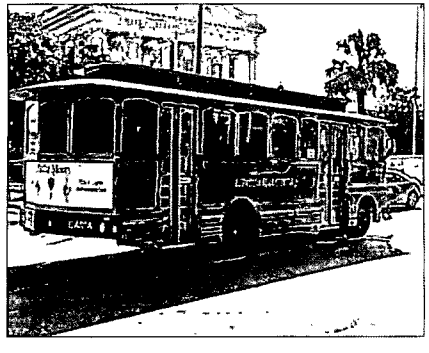
Key findings of the transportation analysis for the Cruise Ship Terminal include:

- 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.

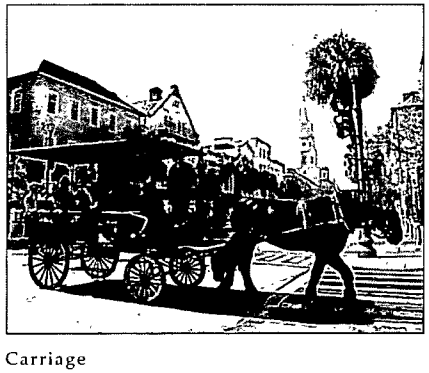
It is expected that there will be limited neighborhood impacts as a result of the Cruise Ship Terminal. The cruise ship passengers are instructed to travel using three distinct paths depending on how they access the site. In addition, the facility is designed so that cruise ship traffic will not queue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



Local access



DASH Shuttle



Carriage

DASH routes

Proposed DASH route extension

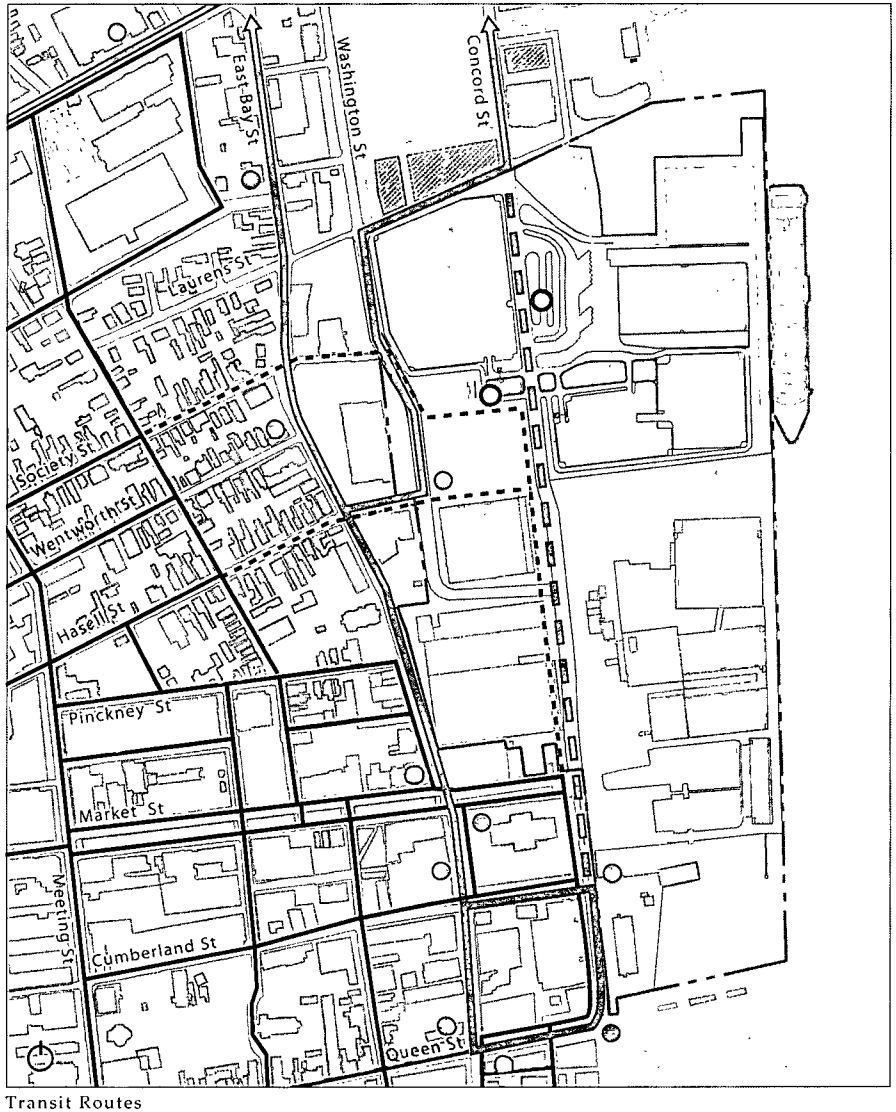
Existing DASH stop

Proposed DASH stop

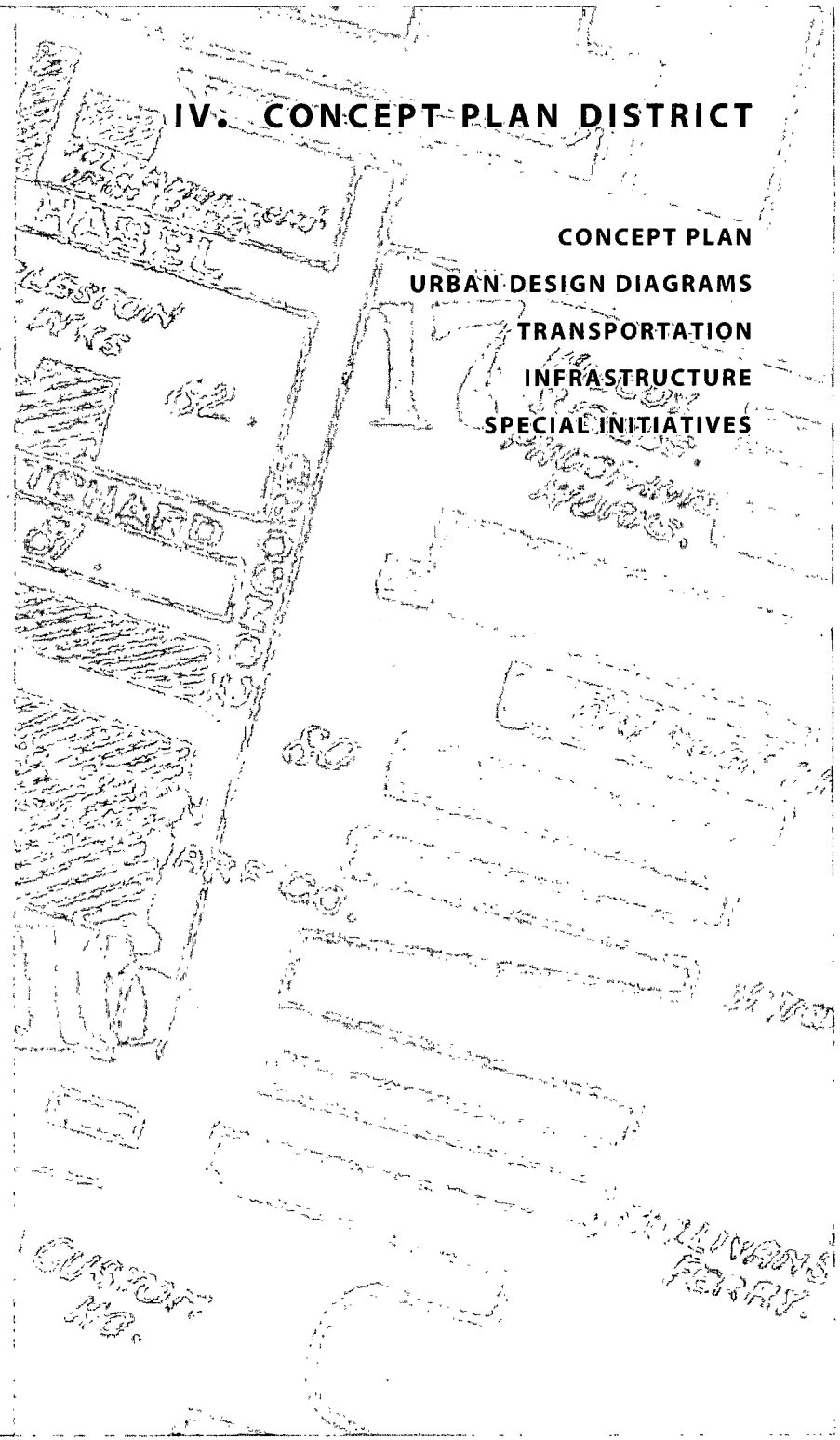
Carriage routes

Proposed carriage routes extension

Proposed carriage pick-up



Transit Routes



IV. CONCEPT PLAN DISTRICT

CONCEPT PLAN

URBAN DESIGN DIAGRAMS

TRANSPORTATION

INFRASTRUCTURE

SPECIAL INITIATIVES

CONCEPT PLAN

CONCEPT PLAN DISTRICT

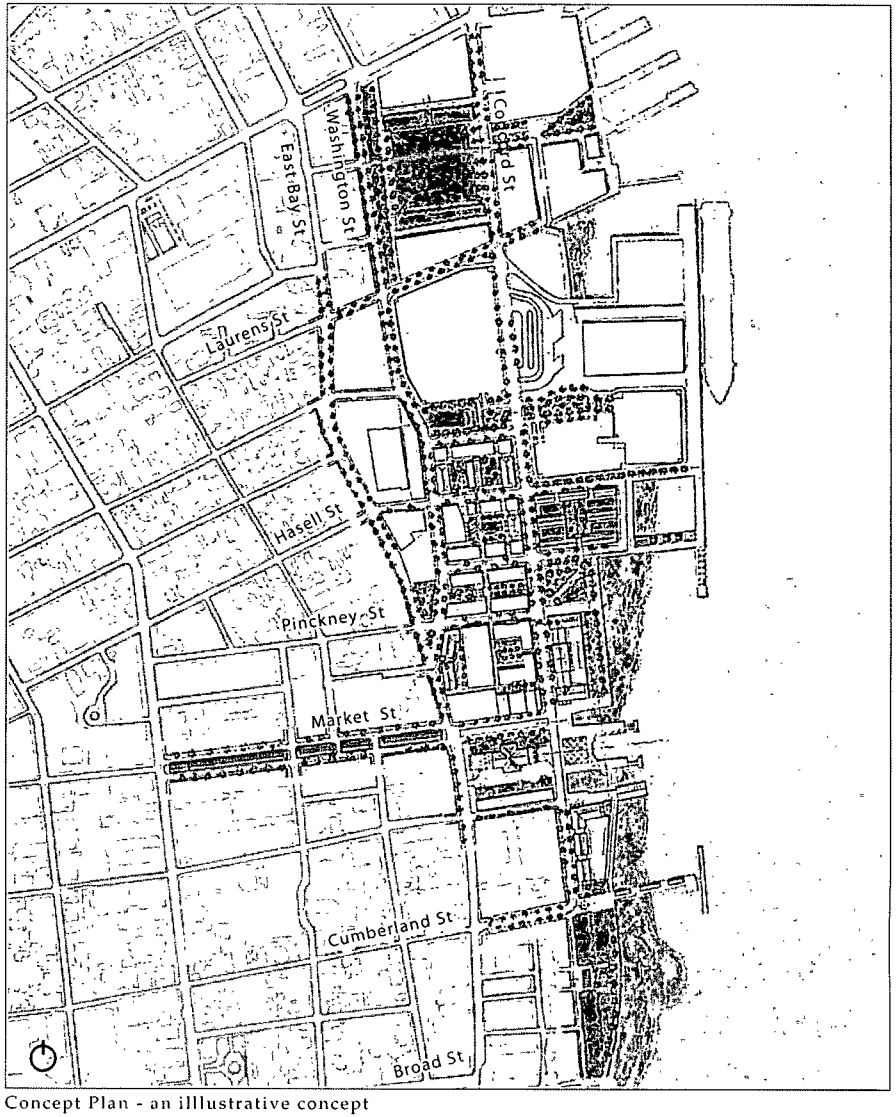
Once the Concept Plan team identified the preferred location of the Cruise Ship Terminal facilities, the remainder of the Union Pier site became available for consideration of other uses and activities. The Concept Plan District encompasses that portion of the Union Pier site not required for the terminal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

CONCEPT PLAN

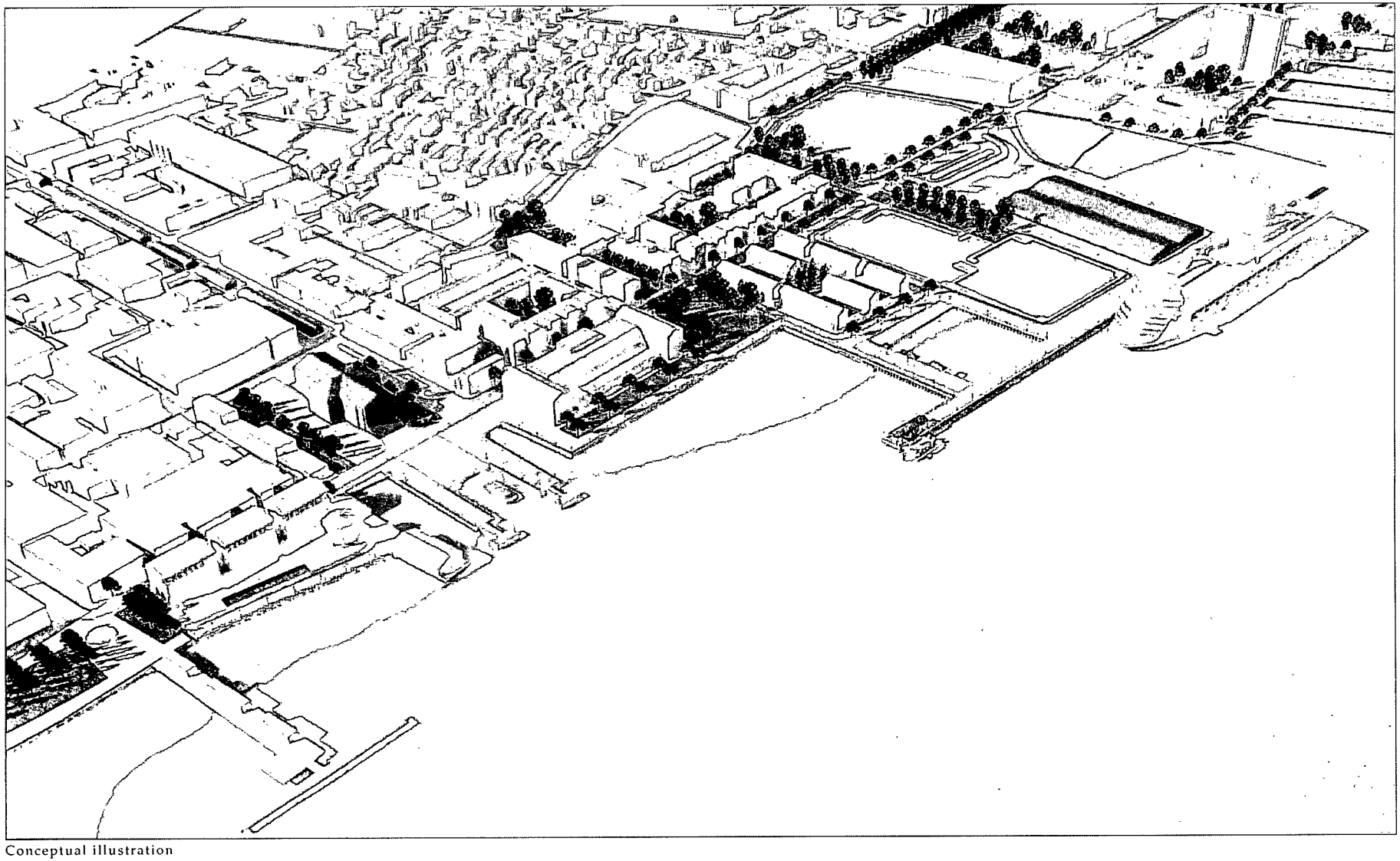
While the deck constructed over the Cooper River is essential for water-dependent uses, such as port cargo operations and cruise terminal operations, its role with respect to future uses at Union Pier was studied and considered carefully by the Concept Plan team. Even though the 1996 Concept Master Plan 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 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.

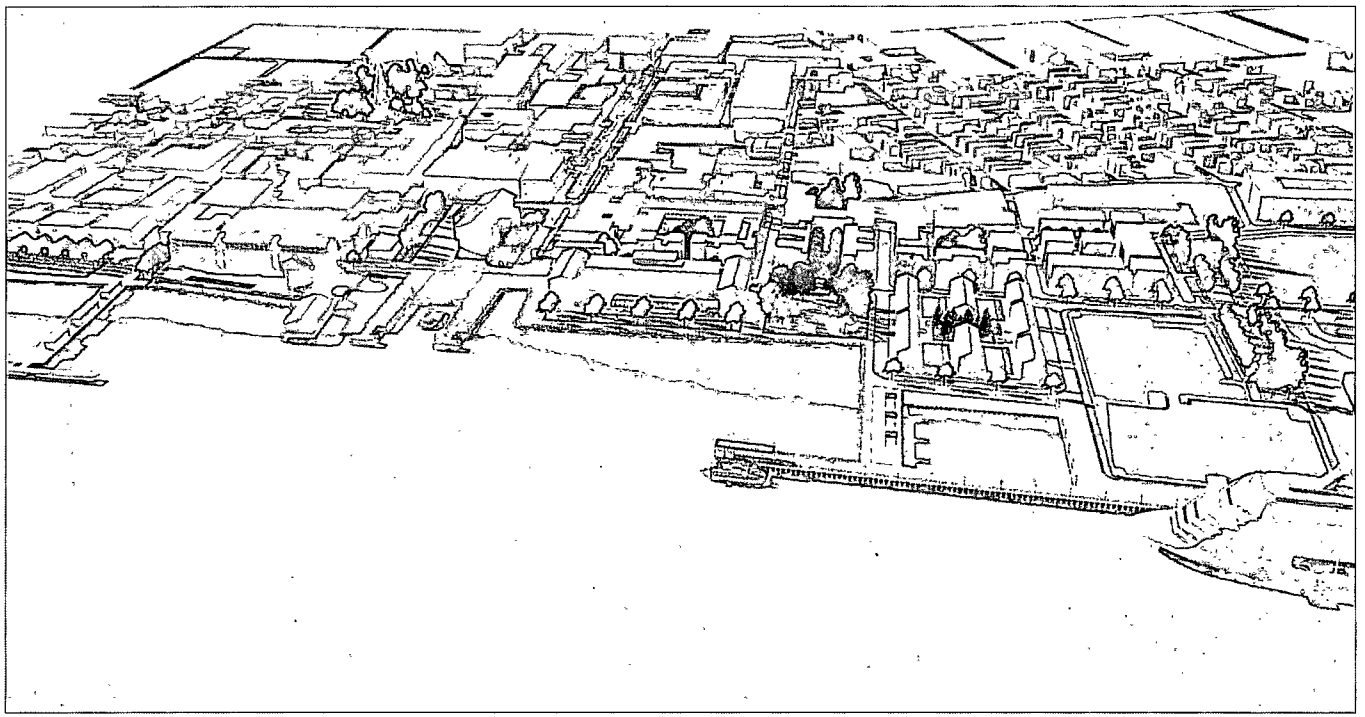


Concept Plan - an illlustrative concept

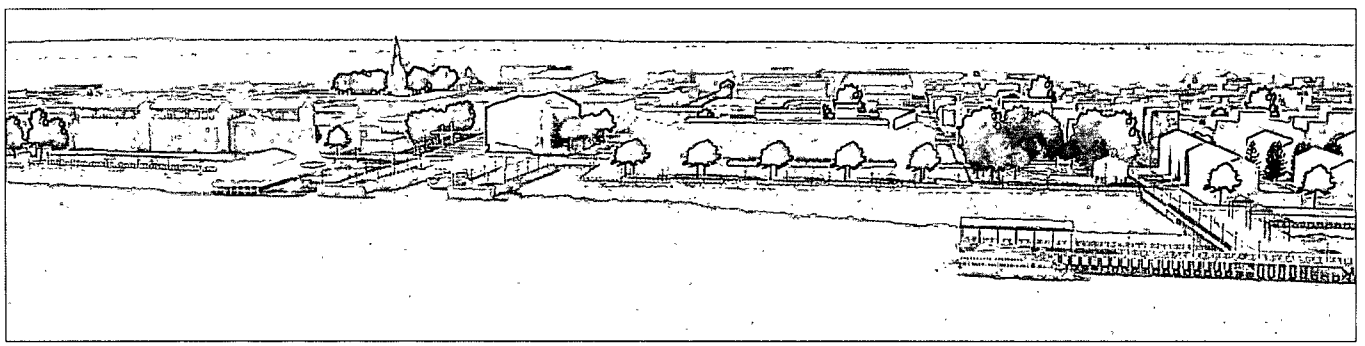


Conceptual illustration

CONCEPT PLAN



Conceptual illustration



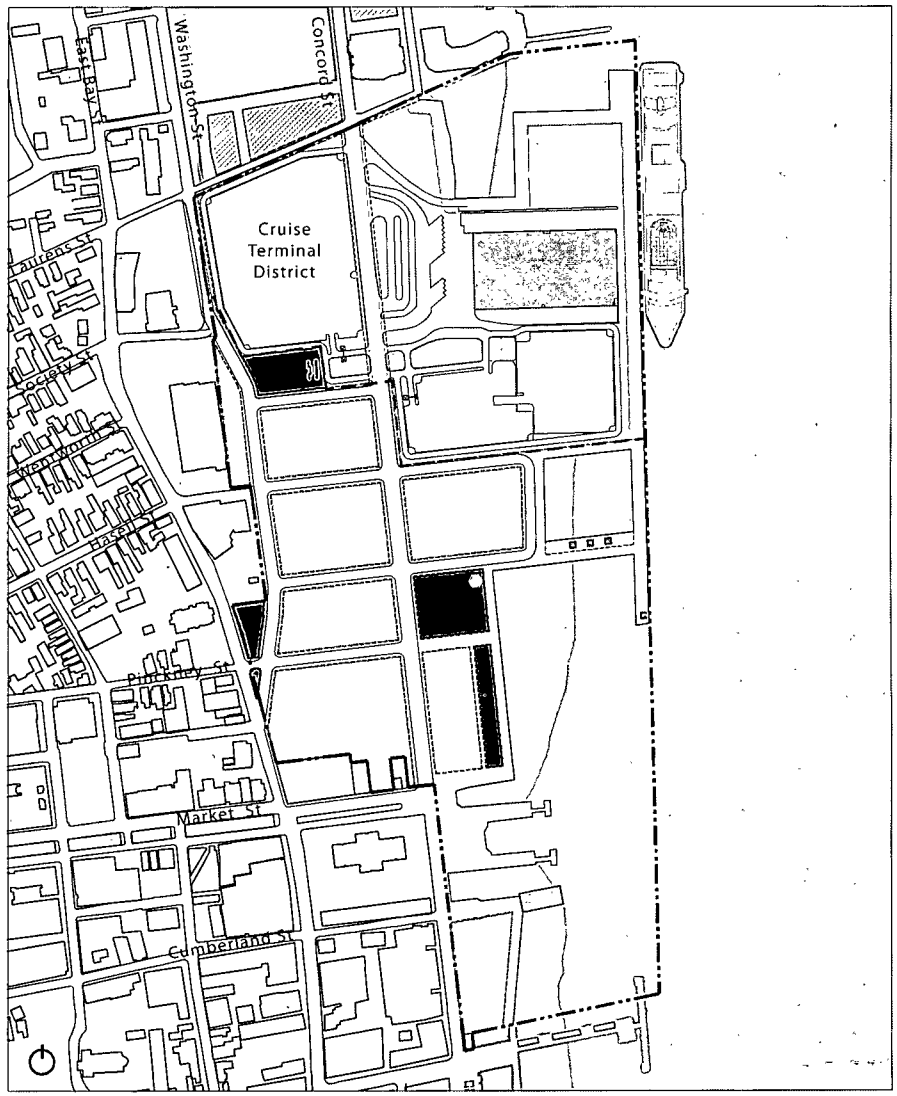
Conceptual illustration

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.



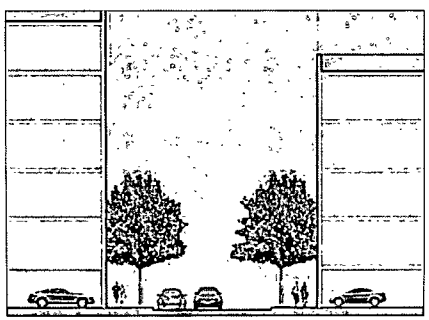
Concept Plan

URBAN DESIGN DIAGRAMS

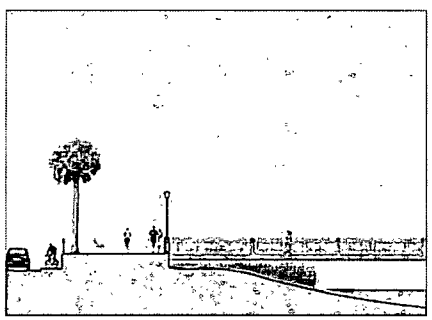
SITE ORGANIZATION

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."

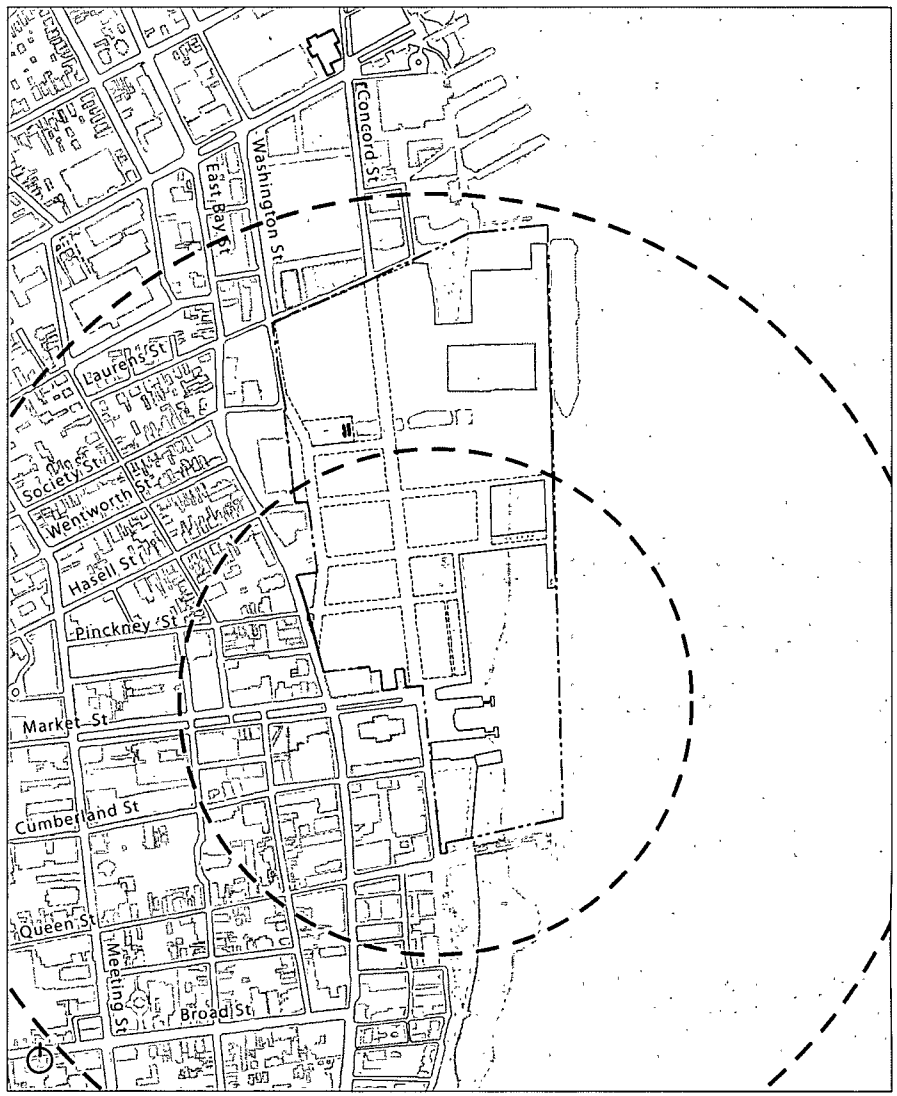
By employing good urban design principles, compact development within the site will promote regional sustainability. Relieving development pressure on the Peninsula by concentrating growth at this infill location focuses development where existing infrastructure capacity is in place. The plan reduces 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



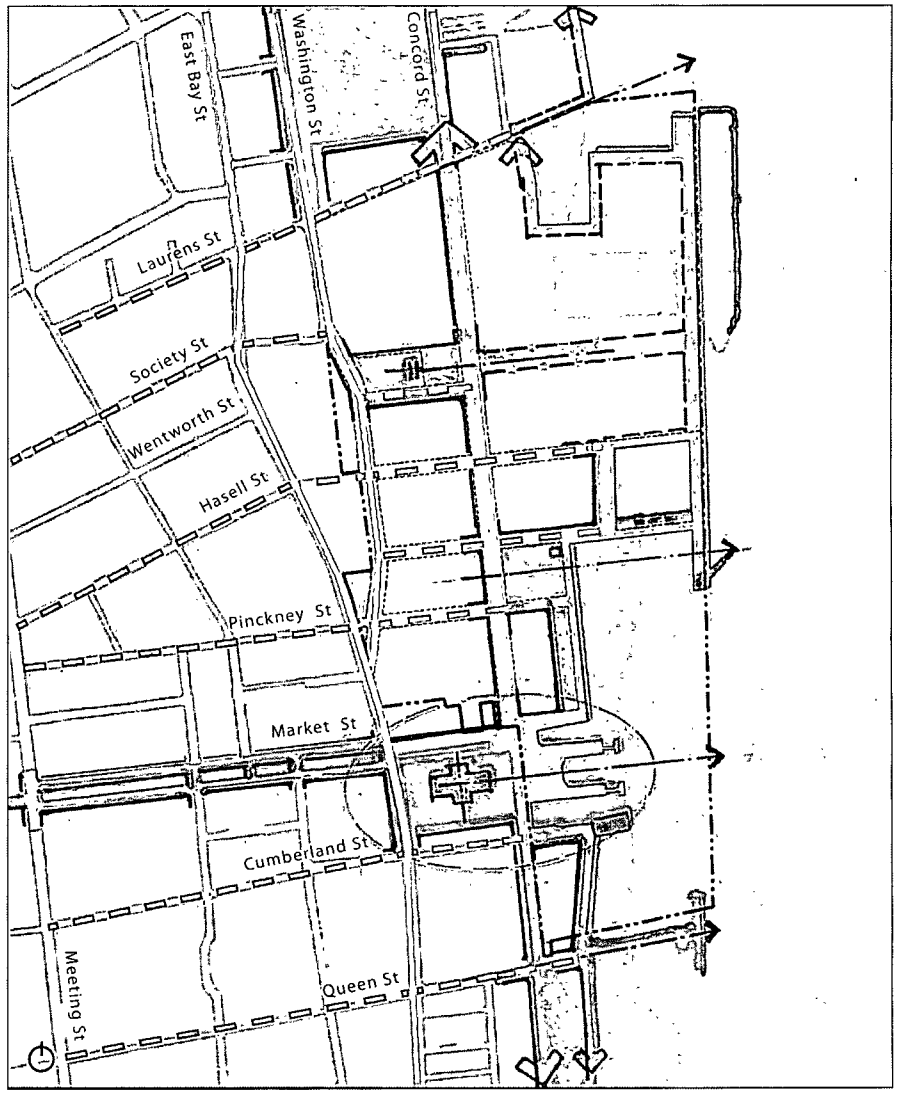
Public Esplanade



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

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.

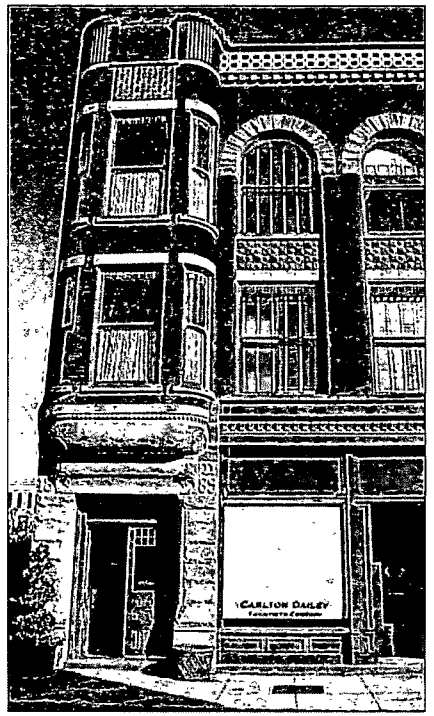
As described in the map on the following page, the Union Pier Concept Plan is organized by a street and block plan formed by extending the existing street fabric to the Cooper River. Hasell, Pinckney, and Market Streets extend beyond East Bay Street and terminate with views of the water. In addition, 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

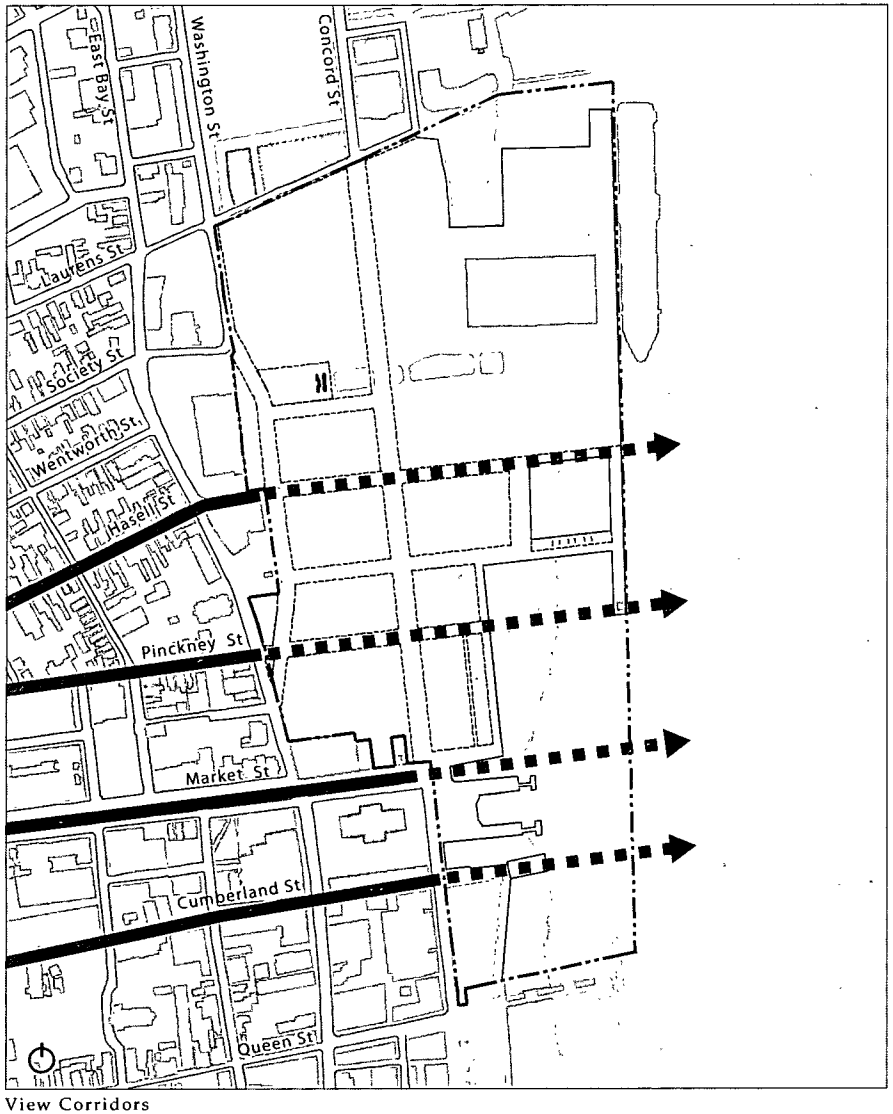
Architectural features may be treatment of massing, windows or other details on a building that is distinctive in order to signify and enhance a prominent location. These elements focus attention through special articulation at certain corners or vista terminations. Architectural features may have additional 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.



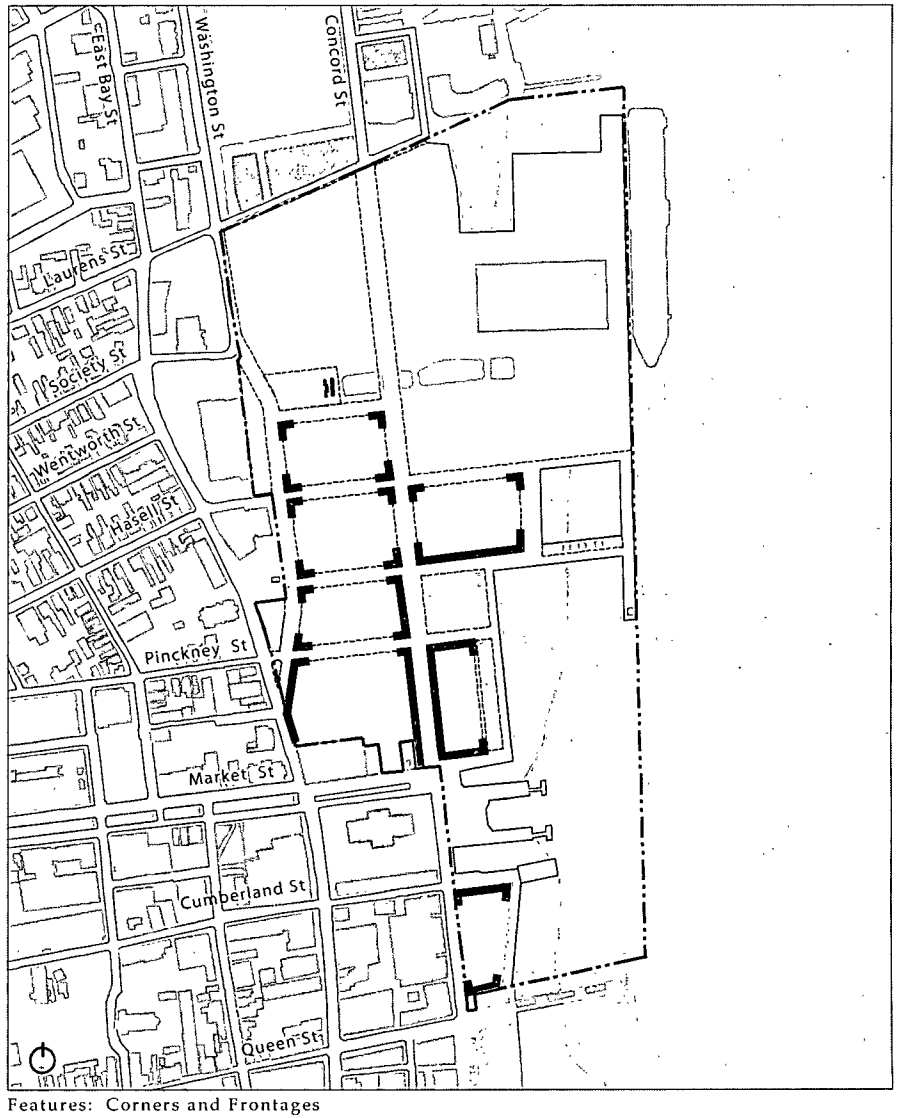
Architectural feature: frontage



Architectural feature: corner



View Corridors



Features: Corners and Frontages

URBAN DESIGN DIAGRAMS

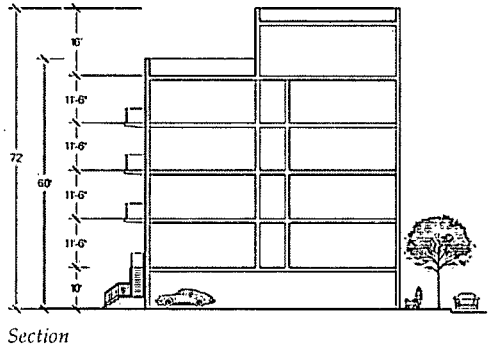
BUILDING HEIGHT

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).

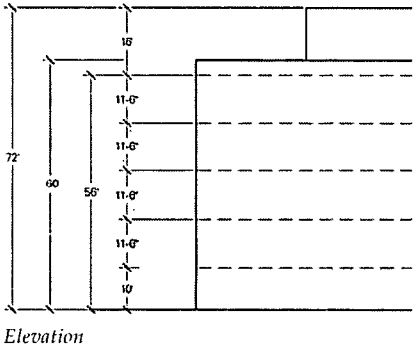
BENEFITS OF 60' HEIGHT:

- Greater variety in heights and roof profile
- More appropriate floor to floor heights
- Piano nobile (second floor of building/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

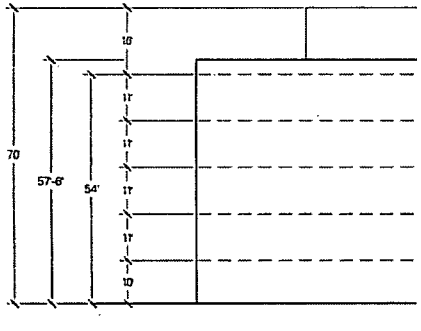


Section

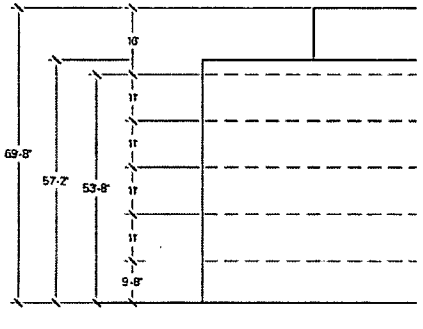


Elevation

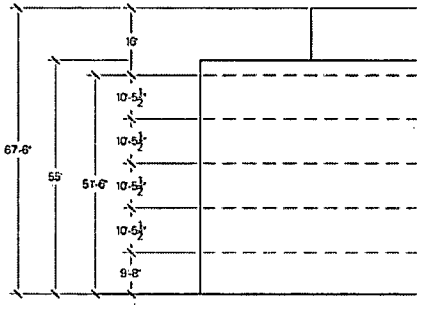
Height Case Studies



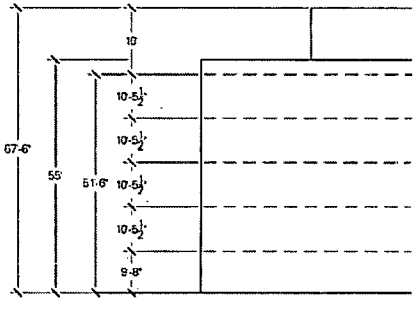
Typical Floor to Floor: 11' - 0"



Typical Floor to Floor: 11' - 0"



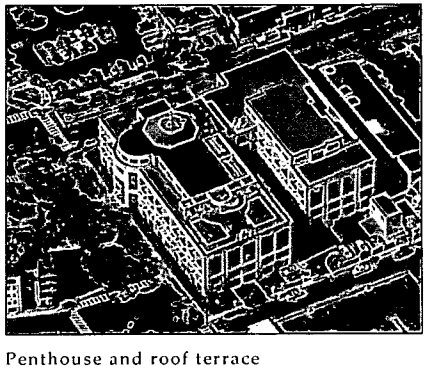
Typical Floor to Floor: 10' - 6"



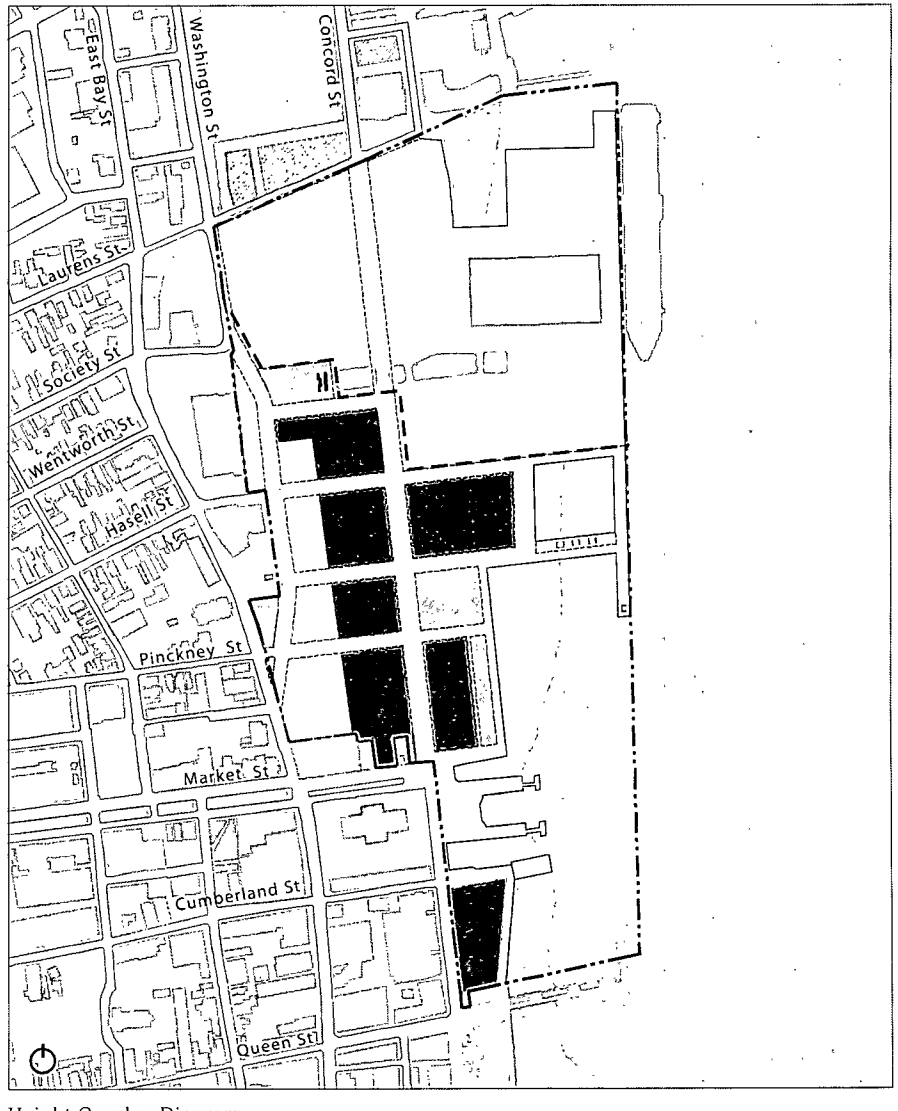
Typical Floor to Floor: 10' - 5 1/2"

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

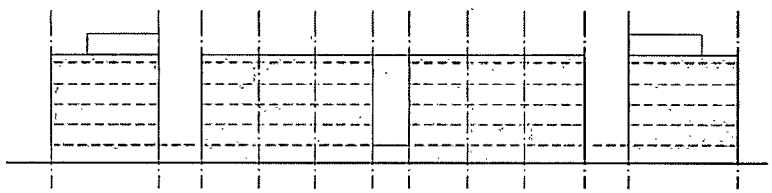
BUILDING MASSING

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.

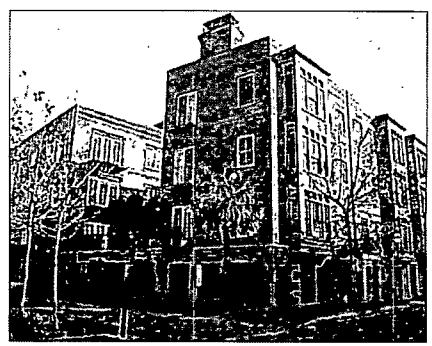
Building orientation should be predominantly east-west in keeping with the historic fine-grain east-west fabric of Charleston and to maximize the opportunities for passive cooling with natural ventilation.

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

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

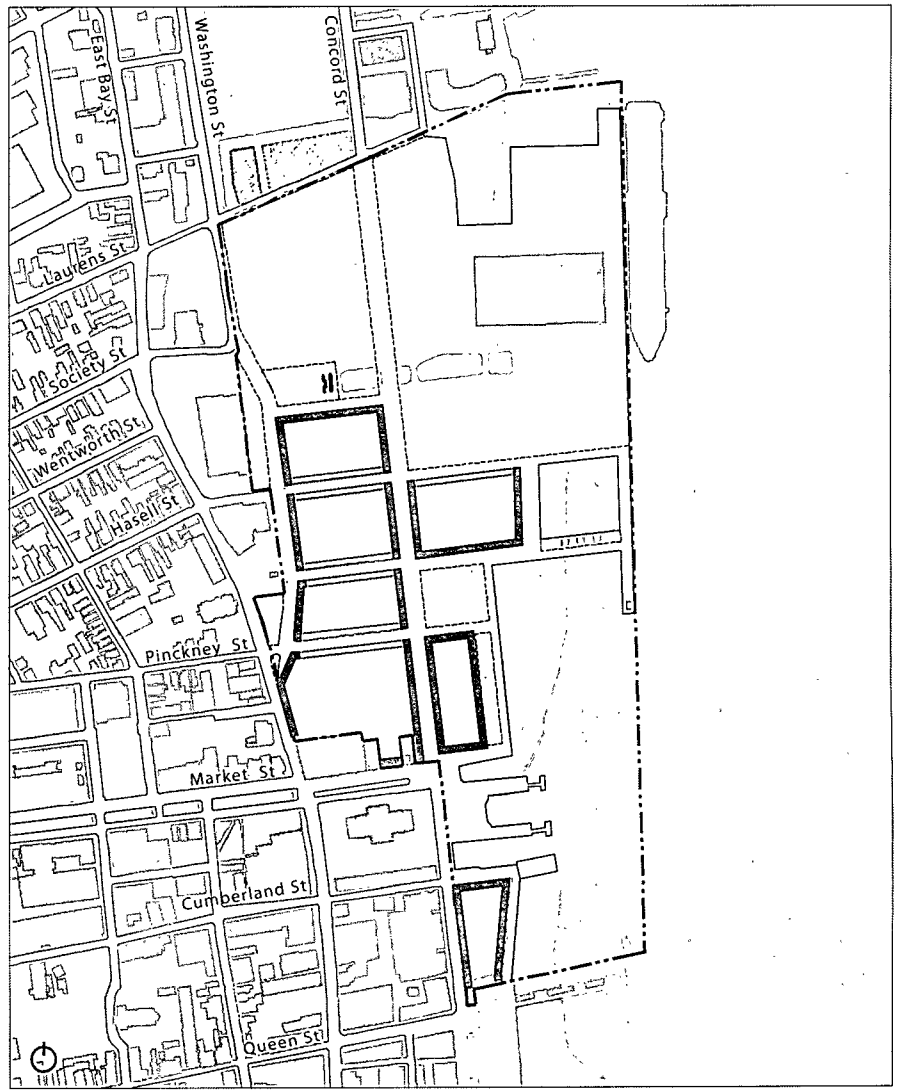
Lobbies can be located within the ground floor of a building situated in a VE-Zone. Lobbies should open directly onto the street and should also whenever possible utilize a double height volume to signify the presence of the lobby on the building façade. The vertical circulation between the ground floor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

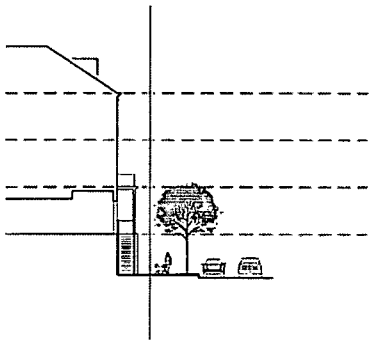
Primary frontage

Secondary frontage

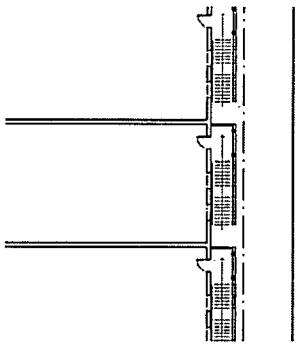
URBAN DESIGN DIAGRAMS



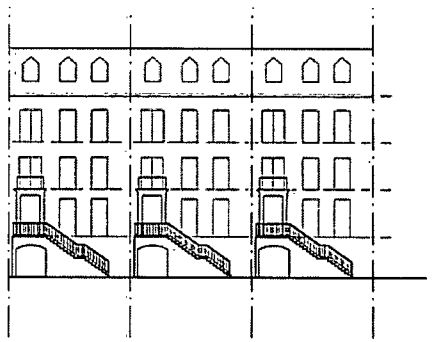
Stoops



Section



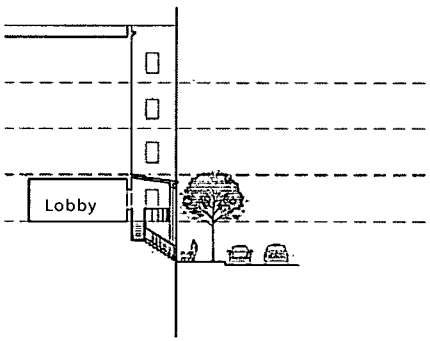
Plan



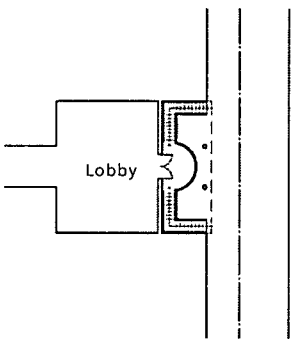
Elevation



Forecourt



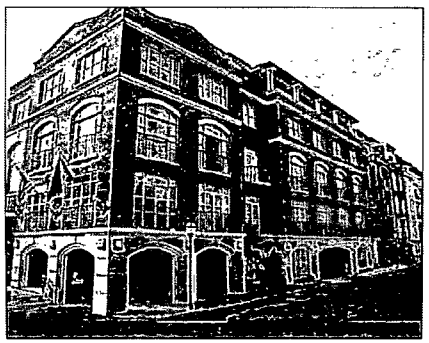
Section



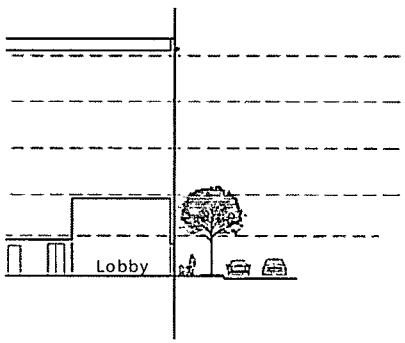
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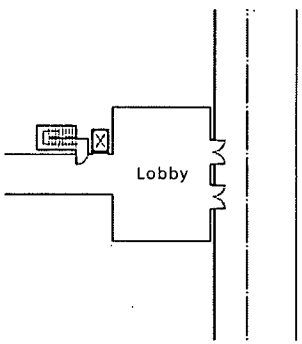
Elevation



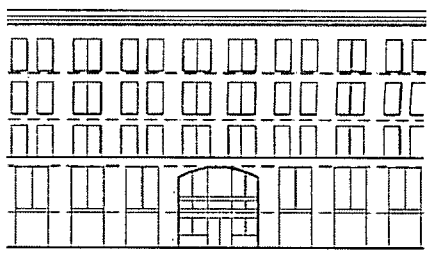
Lobby



Section



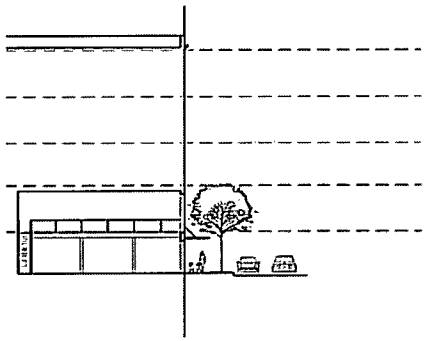
Plan



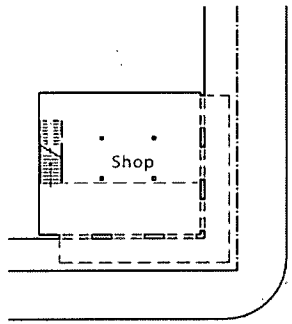
Elevation



Shopfront



Section



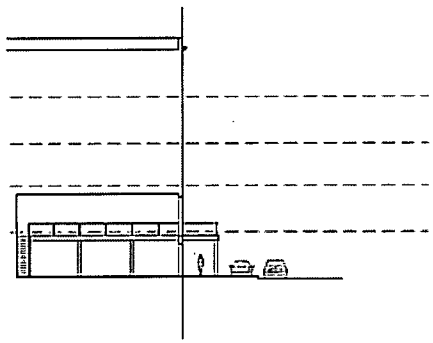
Plan



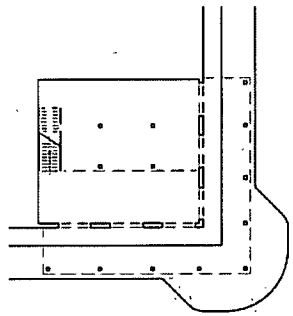
Elevation



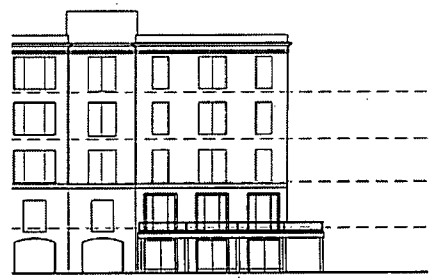
Gallery



Section

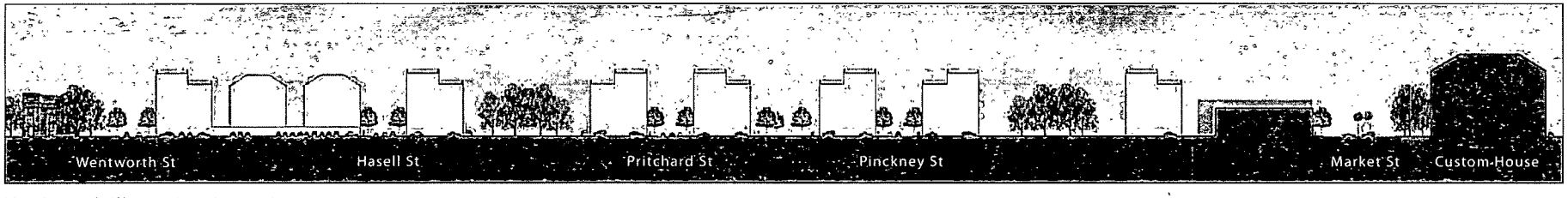


Plan

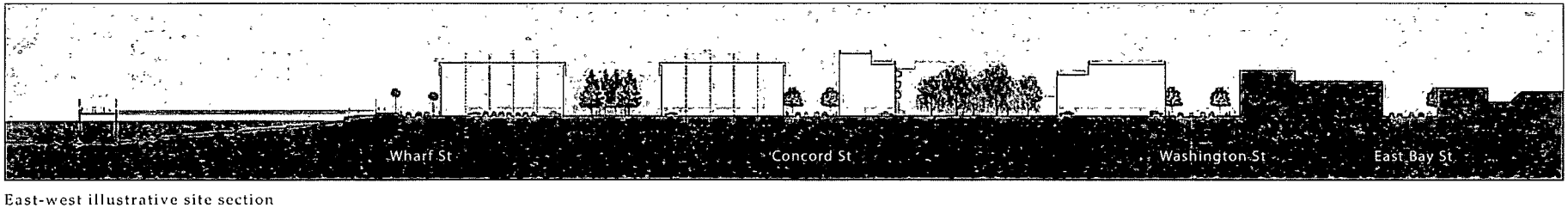


Elevation

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.

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.

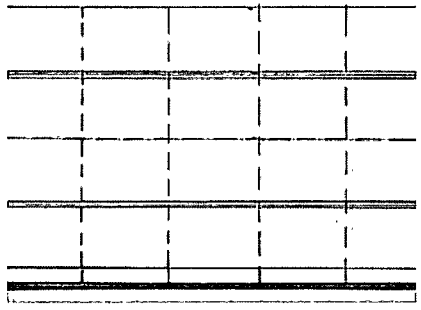
Building materials should reflect the same high quality palette consistent with the character of the Charleston Peninsula.

OPENINGS

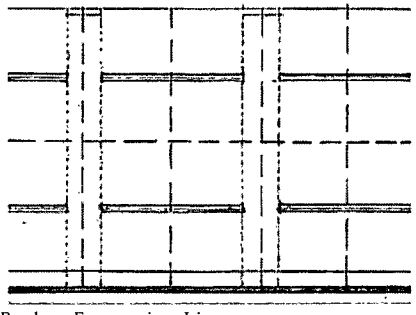
Regularized placement, proportions, and organization of windows, doors, and balconies are encouraged as they are applied to individual buildings. The use of architectural elements such as bays, porches, loggias, and shading devices can add interest to building facades, aid in relating the scale of any 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

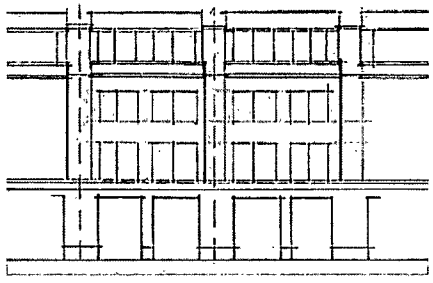
A variety of roof styles should be employed to ensure the varied skyline of the city. A variety of roof elements including tight eave overhangs, deep overhangs, cornices, exposed rafter tales, parapet walls, corbelling and other eave treatments or chimneys, dormers, lanterns, monitors, or other roof-top 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



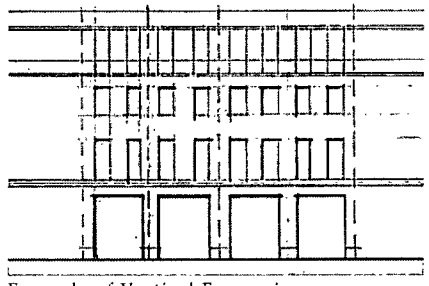
Continuous Expression Lines:
Base, Middle, Top



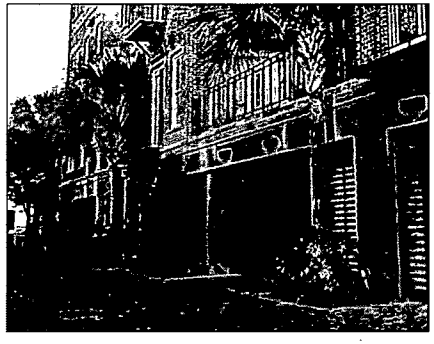
Broken Expression Lines:
Base, Middle, Top



Example of Vertical Expression:
Facade Articulation



Example of Vertical Expression:
Fenestration



Garage Entries



Garage Entries

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.

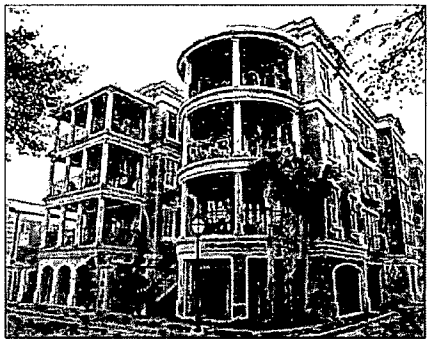
ALLOWABLE ENCROACHMENTS

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

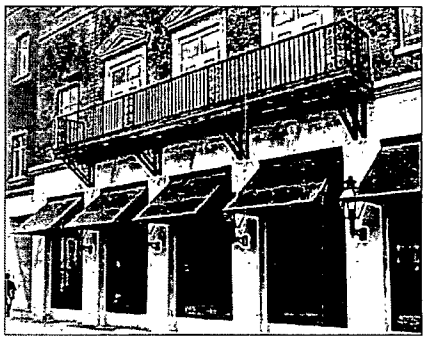
Fences and walls could play an integral role in developing the neighborhood character of Union Pier in the context of Downtown Charleston. Fences and walls in keeping with the material quality of the historic precedents in the neighboring communities would contribute to the quality of the neighborhoods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



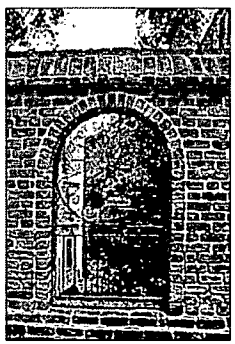


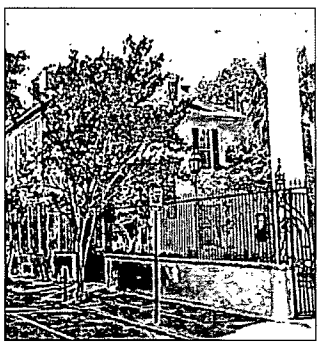
Allowable Encroachments

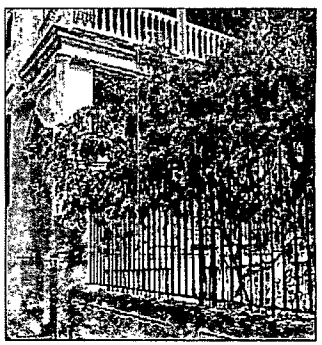




Allowable Encroachments







Fences and Walls

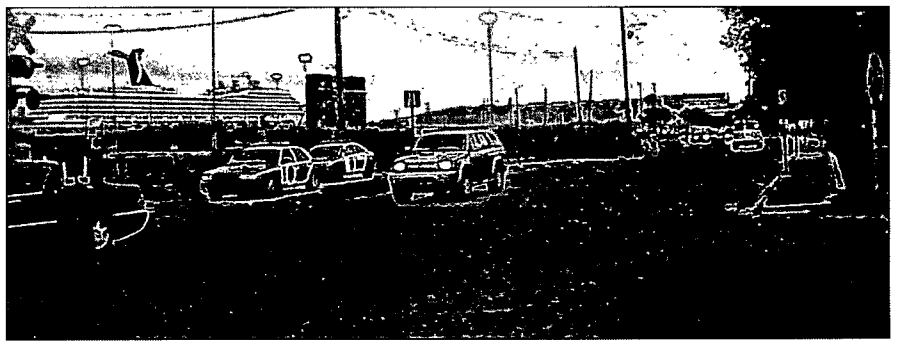
TRANSPORTATION GUIDING PRINCIPLES

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:

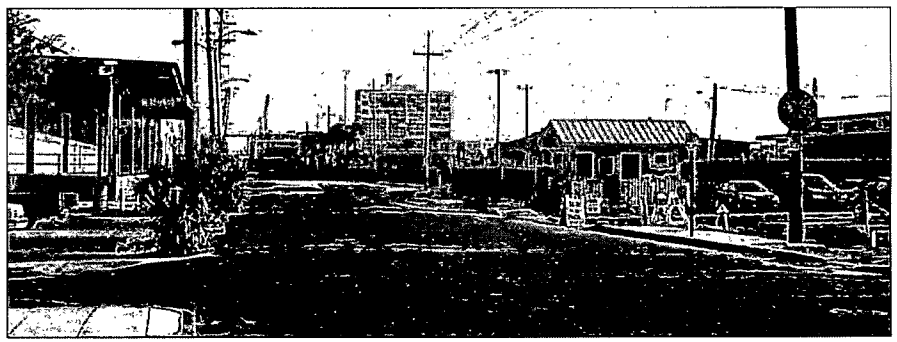
- Re-establish the historic grid of streets and pedestrian-scaled blocks in Charleston
- Provide pedestrian, bicycle, and vehicle access to the waterfront
- Provide multiple route choices for destinations within the Concept Plan area
- Provide a "park-once" environment allowing people to visit multiple 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

PROPOSED TRANSPORTATION IMPROVEMENTS

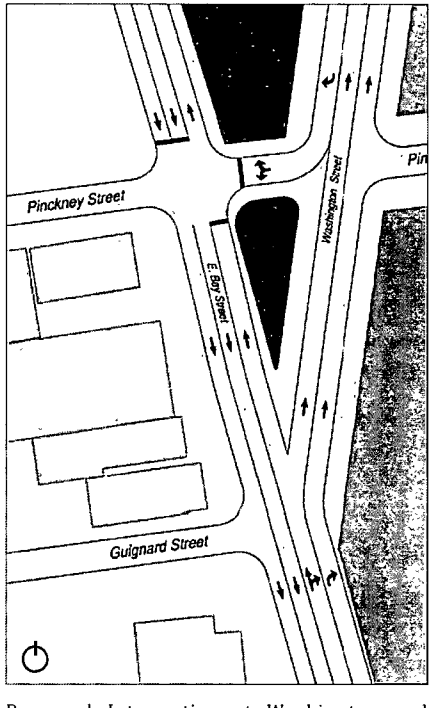
This section describes the transportation system improvements proposed as part of the Concept Plan.

CREATING MORE OPPORTUNITIES FOR NORTH/SOUTH TRAVEL

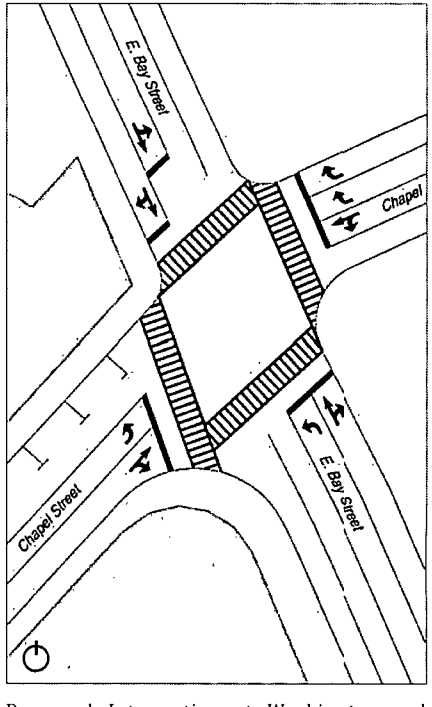
The Concept Plan creates two major improvements to north-south travel. Building from the concept presented in the "Special Area Plan – Calhoun Street-East/Cooper River Waterfront," this Concept Plan connects Washington Street to East Bay Street just south of Pinckney Street and creates a quasi one-way 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.

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

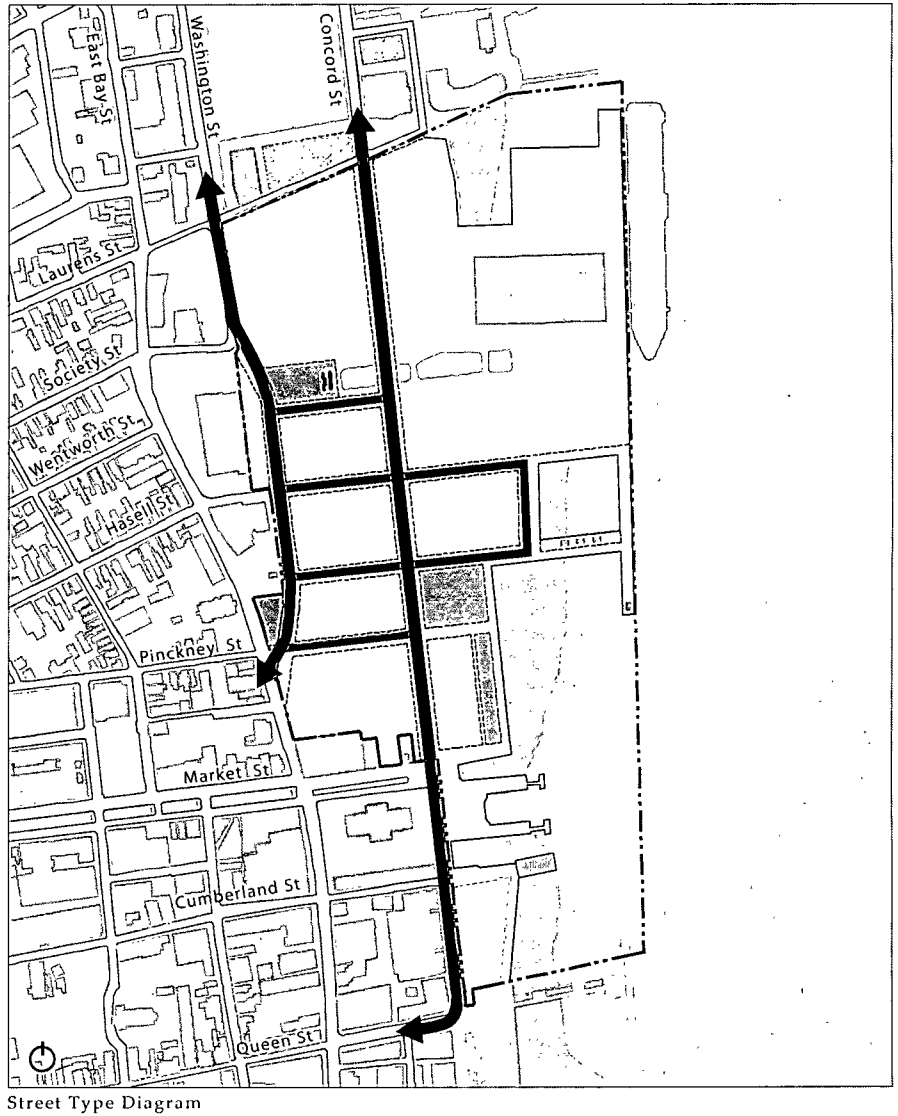


Proposed Intersection at Washington and Chapel Streets

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.



Street Type Diagram

Primary Street

Secondary Street

TRANSPORTATION

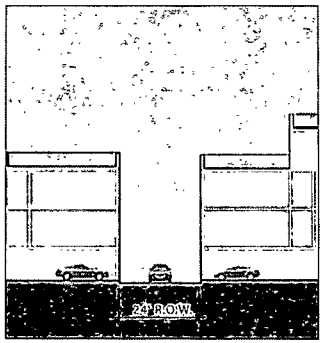
STREET SECTIONS

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.

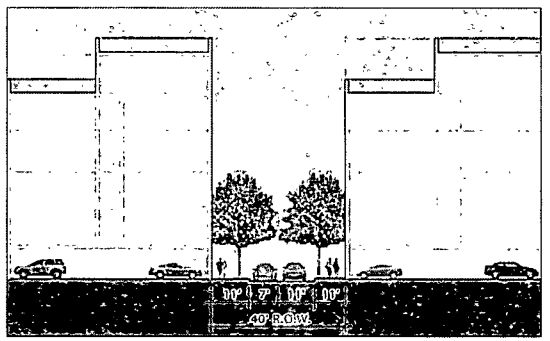
The Concept Plan recommends the proposed street sections shown in the diagrams on the following pages.

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.

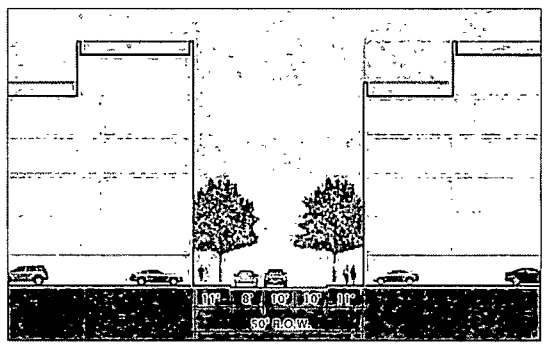
(City of Charleston Draft Ordinance to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance): Article 1, Part 3, Section 54-120; Article 8, Part 3, Section 54-831; Article 8, Part 4, Section 54-831 (streetdesignstandards_03032010draft_adh.pdf available at www.charlestoncity.info/shared/docs/0/))



Alley



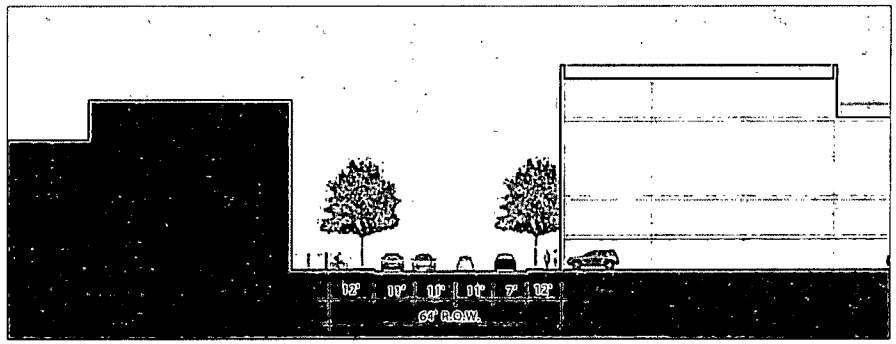
One-Way Residential Street



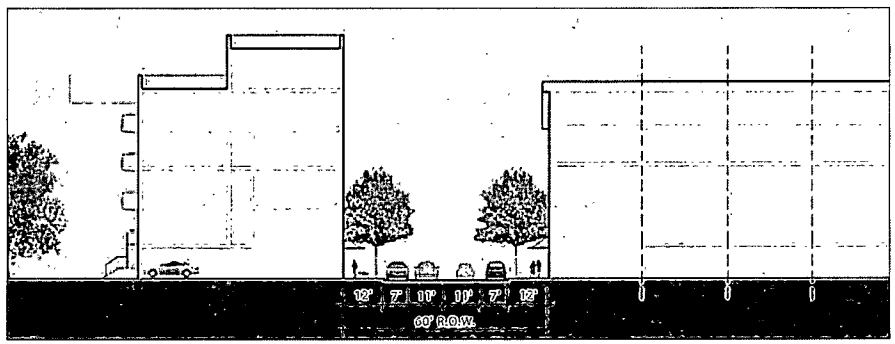
Two-Way Residential Street

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.

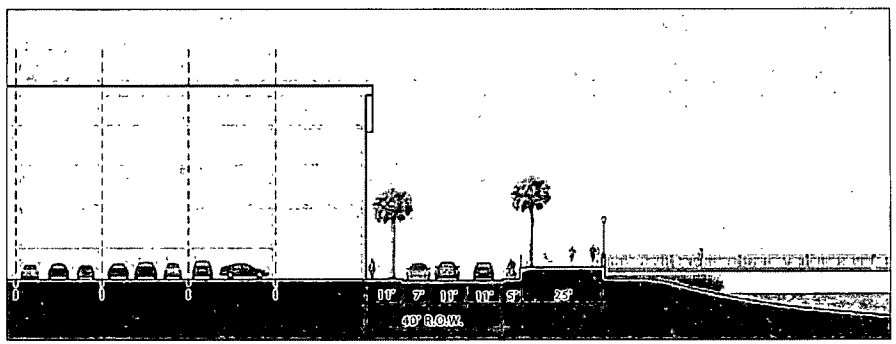
One of the illustrative street sections runs parallel to the waterfront walk esplanade. Similar to the Charleston Battery, the street section allows a five foot sidewalk or planted area immediately adjacent to the esplanade structure.



Washington Street



Concord Street



Park Street

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

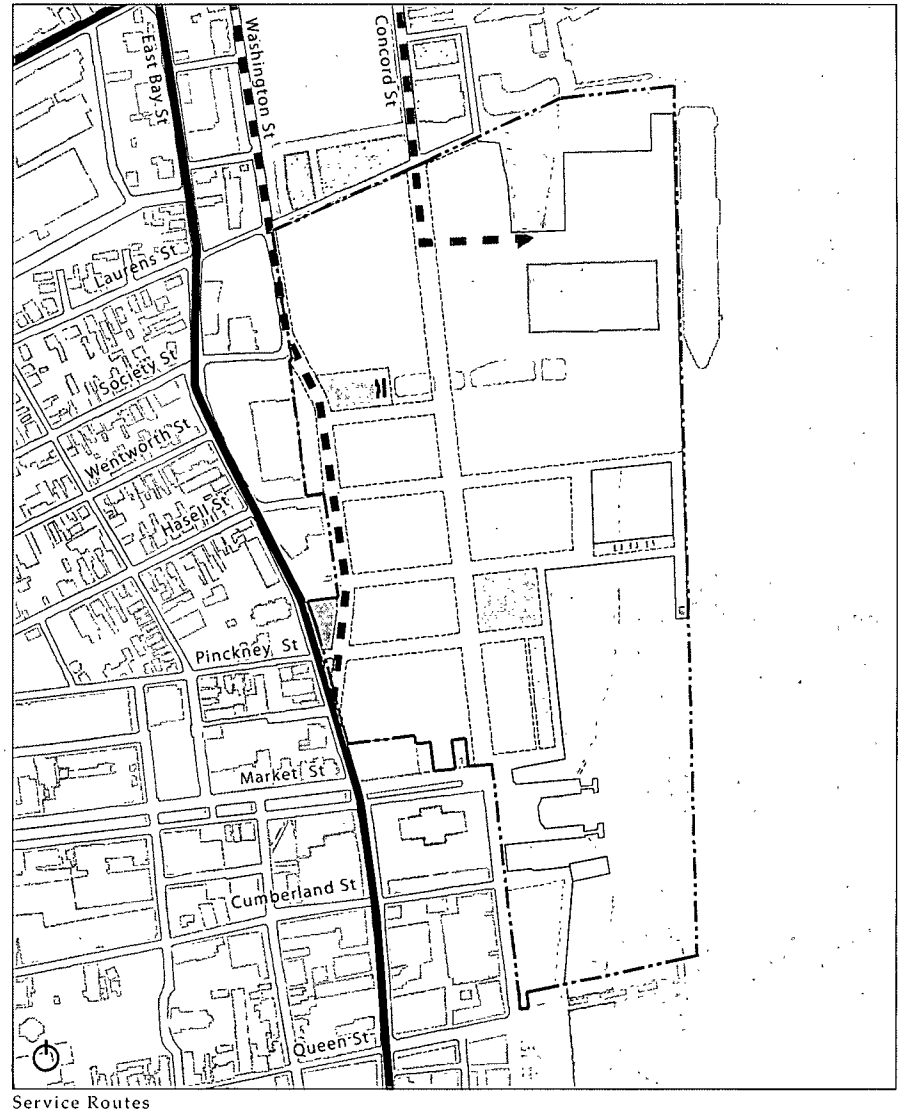
Parking for the residential units will be provided on the first floor of the buildings. Parking for the restaurants and office will be provided within the first floor of the buildings and/or within the public parking system which may include a City of Charleston parking deck. Hotel guests will park in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

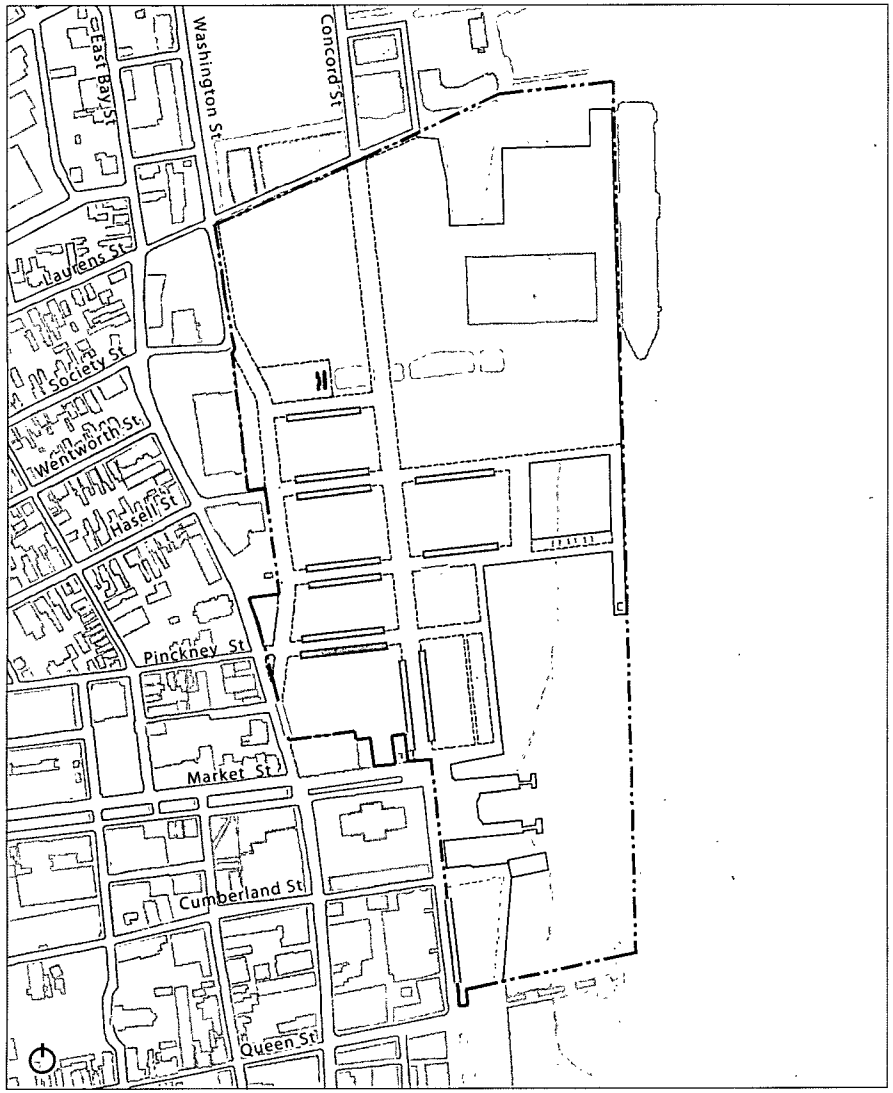
The Concept Plan has been designed to facilitate service vehicles accessing the properties. These service vehicles include garbage trucks, delivery trucks for the hotels and restaurants among others.



Service Routes

Existing truck routes

Proposed additional truck routes

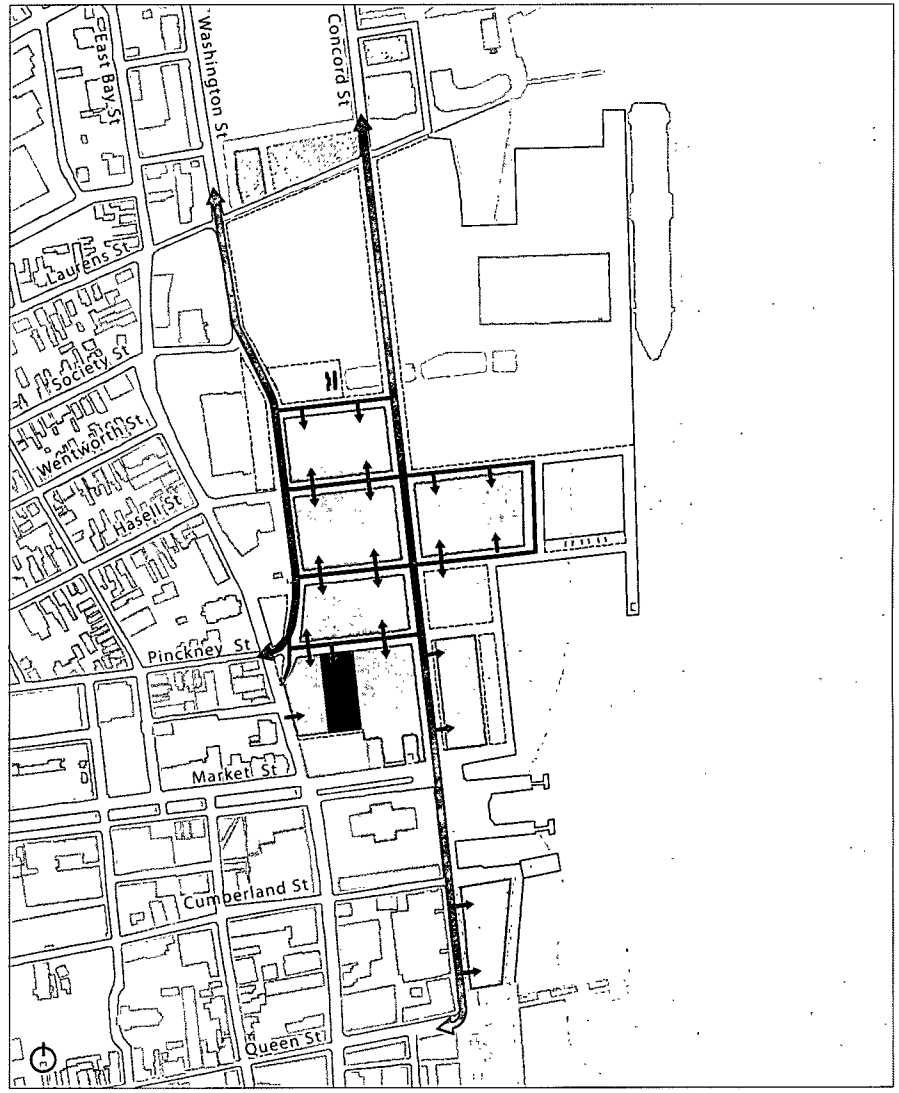


Access

Maximum Allowable: 3 curb cuts @ 20' wide each

Maximum Allowable: 1 curb cut @ 20' wide

Maximum Allowable: 2 curb cuts @ 20' wide each



Parking and Service

Service route

Parking

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

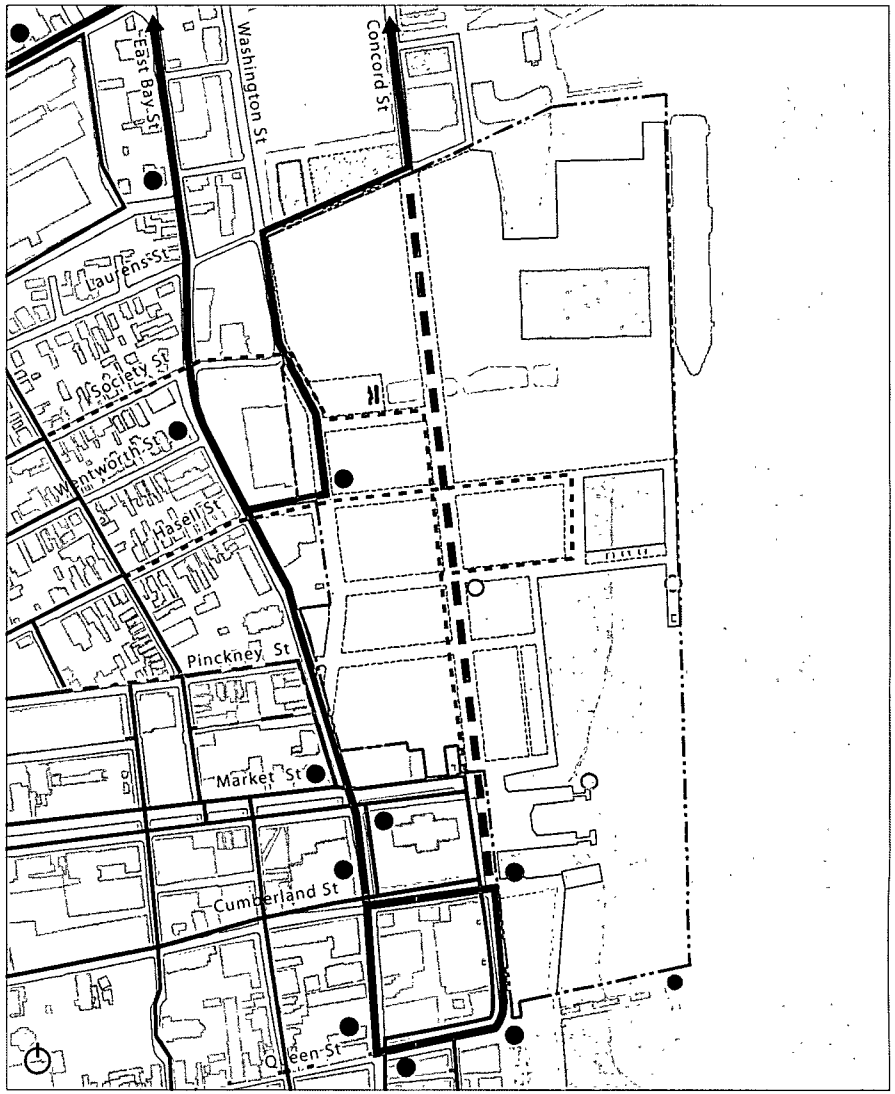
The Charleston Area Regional Transportation Authority (CARTA) runs the four Downtown Area Shuttle (DASH) routes. The existing DASH routes as well as proposed extensions and stops within the Concept Plan area are also shown.

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



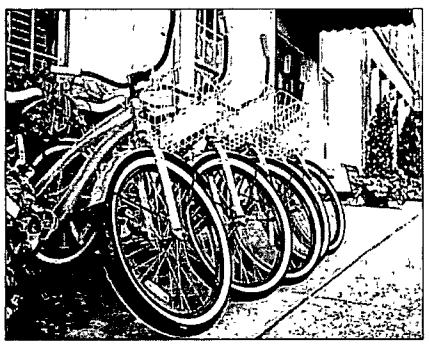
Transit Routes

BIKEWAYS

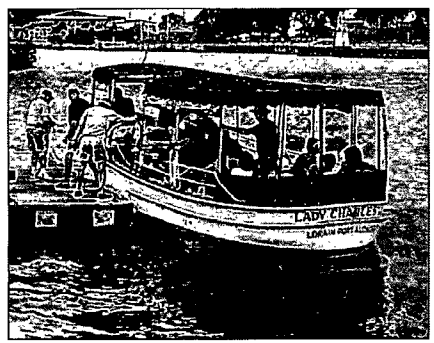
A bicycle network is an important contributor to a city's mobility plan. The network proposed connects to and augments the existing and planned bicycle routes within the City of Charleston. The shared bike lanes should be properly marked with "sharrows" and signage for motorists. Bike racks should be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

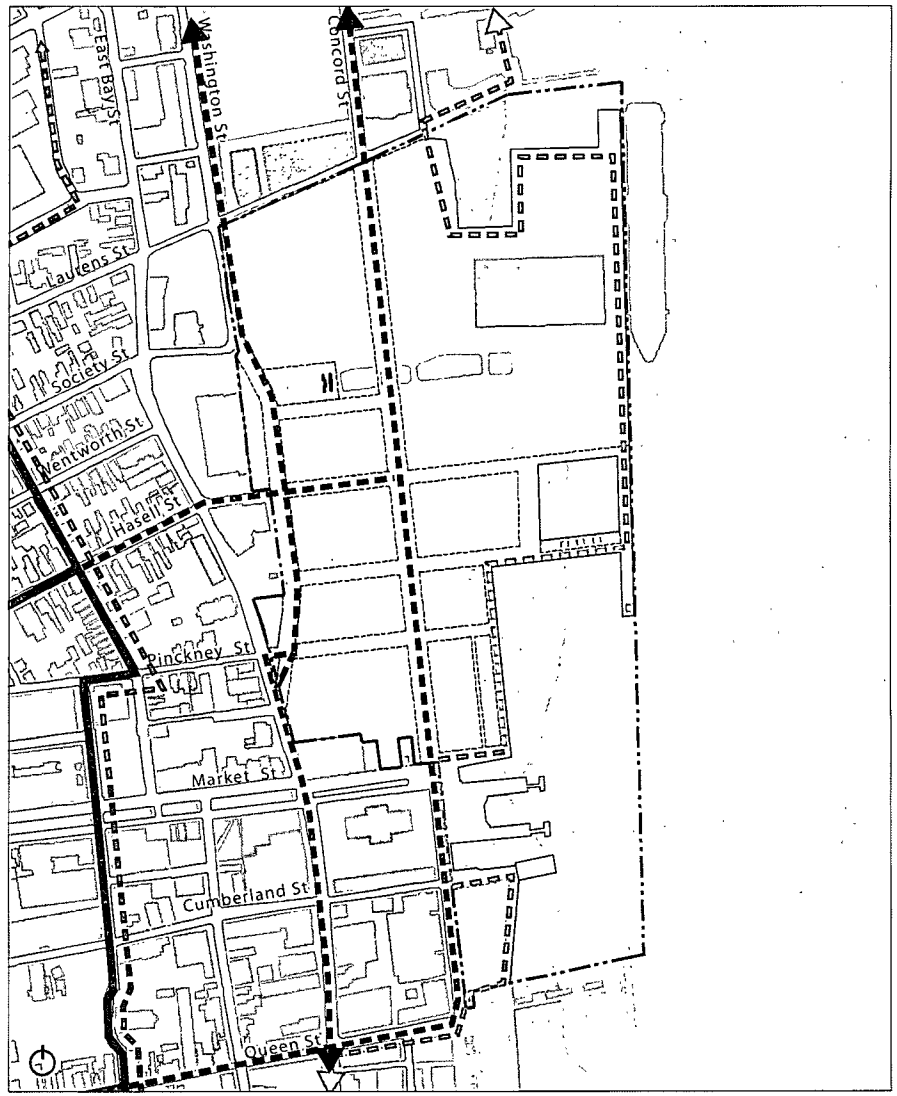
The Charleston Bicycle Friendly Community Task Force has authored a set of recommendations (May 2009) which include creating policy and standards for connections to future developments. Such standards should be coordinated with the potential for additional bikeways at Union Pier.



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

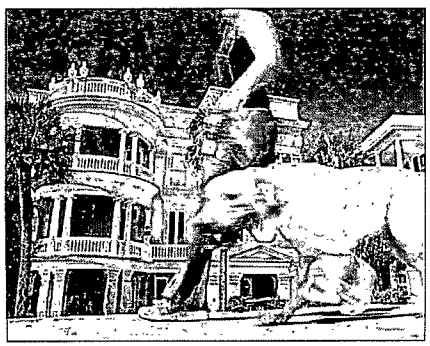
PEDESTRIAN ACCESS

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.

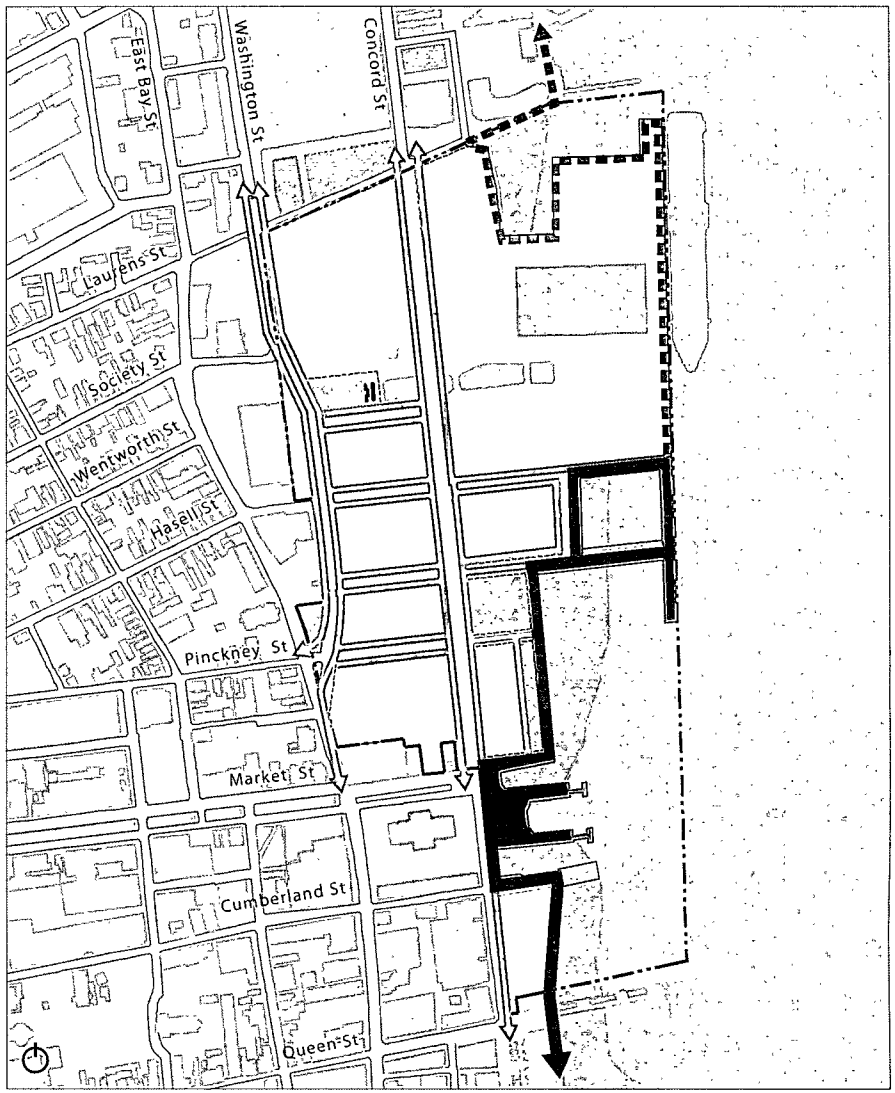
There are key intersections within the Concept Plan where vehicular, bicycle, and pedestrian will interact, creating the potential for conflict points. It is imperative that these intersections be designed to insure safe mobility of transit vehicles, cars, bikes, and pedestrians. Design elements that 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



Pedestrian Network

Esplanade

Sidewalk

CONCEPT PLAN DISTRICT

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

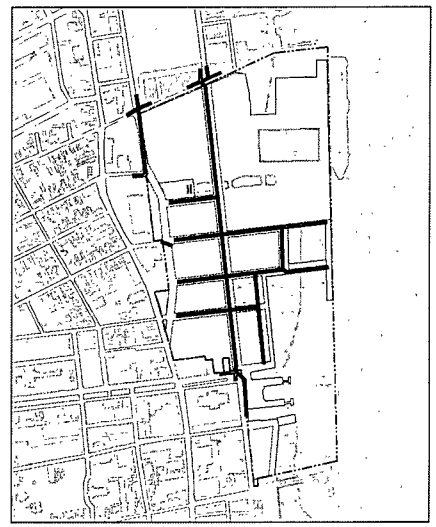
The use of sustainable methods could reduce long term cost and help reduce the carbon footprint for this site.

POWER

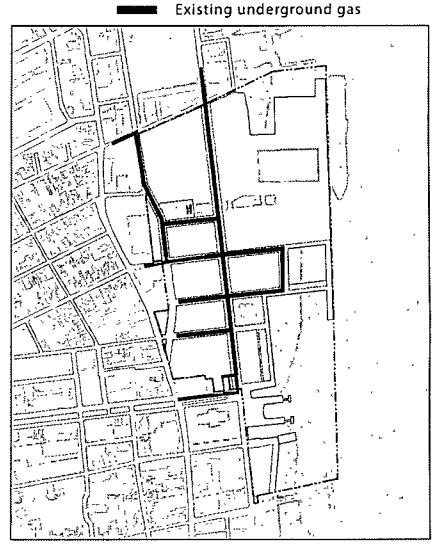
Electricity for Union Pier is provided by South Carolina Electric and Gas Company. Currently electric power serves the existing buildings by means of overhead power. It is recommended that future design relocate all overhead power within the Union Pier site underground and within the future road right 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.



Electric
Proposed underground gas
Existing underground gas



Gas
Proposed underground power
Existing overhead power

CONCEPT PLAN DISTRICT

INFRASTRUCTURE

WATER SUPPLY

Potable System

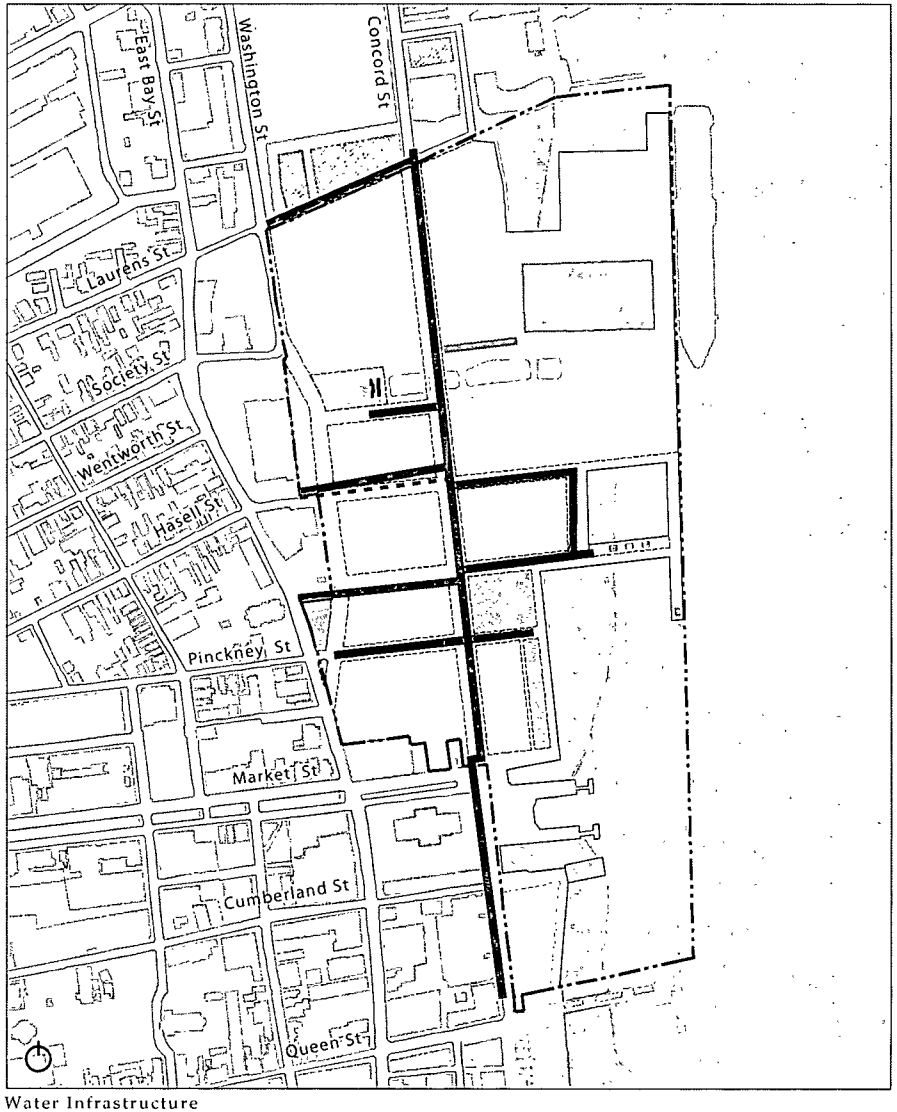
Union Pier lies within the service area of Charleston Water System (CWS). A hydrostatic flow test (conducted December 7, 2009) indicated the pressures in the area were low and the transmission system is currently limited and may need larger mains. These improvements will be completed concurrent with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



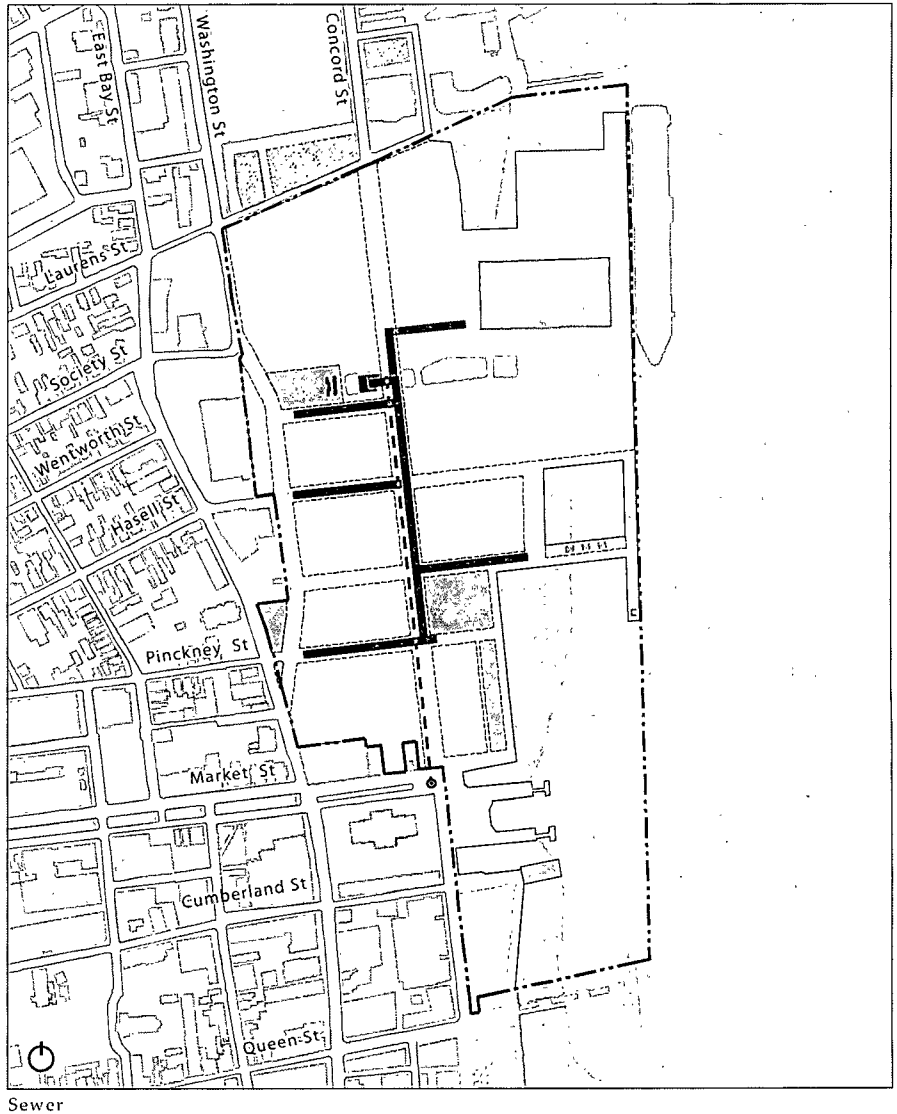
Water Infrastructure

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

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 areas 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.

However, a permit could be required even if the project is ≤ ½ acres and within ½ mile of a receiving water if it meets defined criteria that are outlined in the regulations.

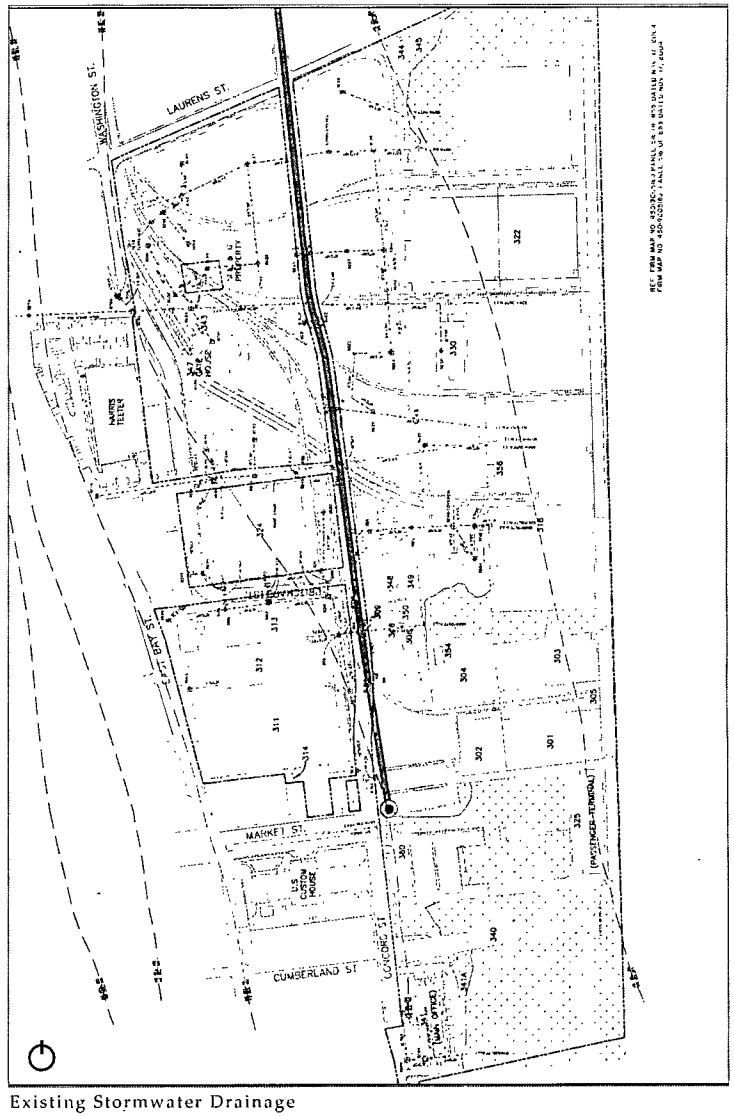
For nearly all acreages of disturbance the regulations require that peak post-development discharge rates from the basin shall be at or below pre-development rates for the 2- and 10-year 24-hour storm events (4.5 and 6 inches, respectively).

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 ½ mile of a receiving water body are required to capture and detain on site the first ½ inch of runoff and release that quantity over a 24 hour period. Projects within ½ mile of a receiving water body are required to capture and detain on site:

- the first ½ 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.



Existing Stormwater Drainage

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.

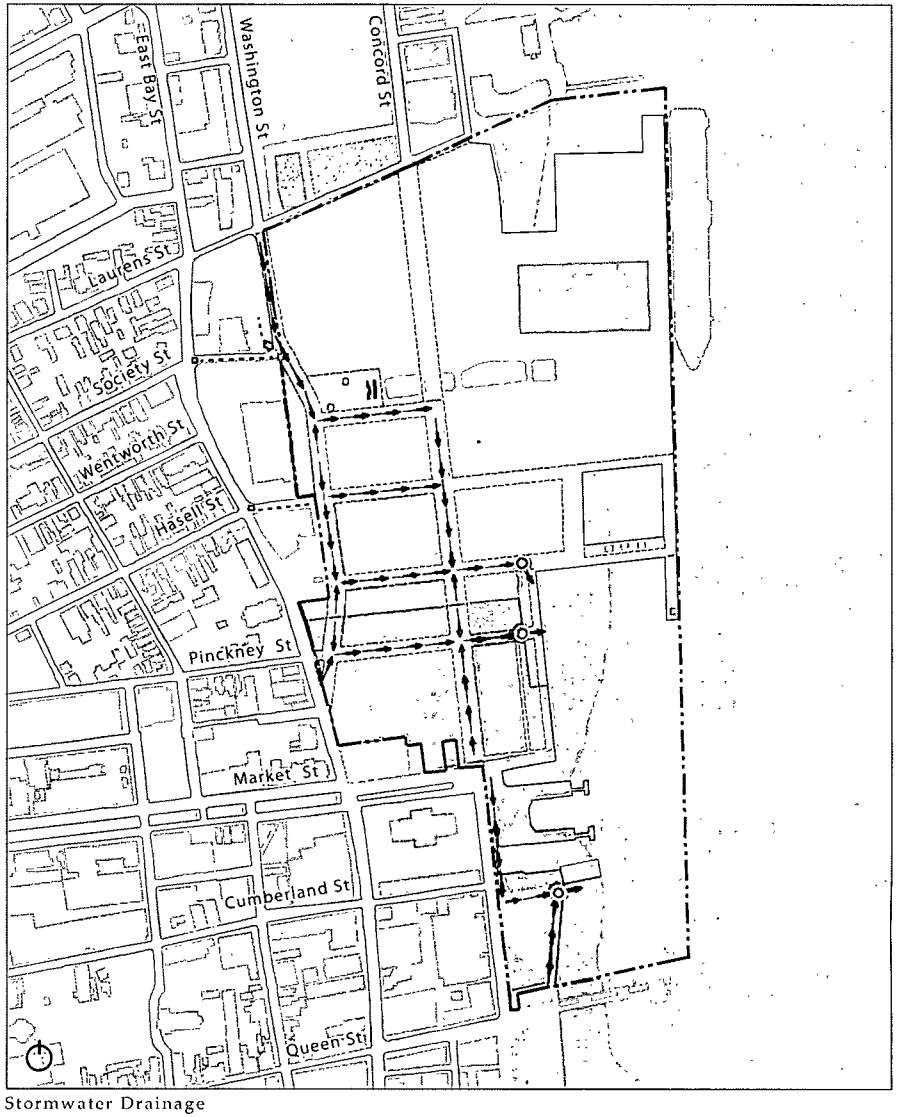
STORMWATER DRAINAGE

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 regularity 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.



Stormwater Drainage

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

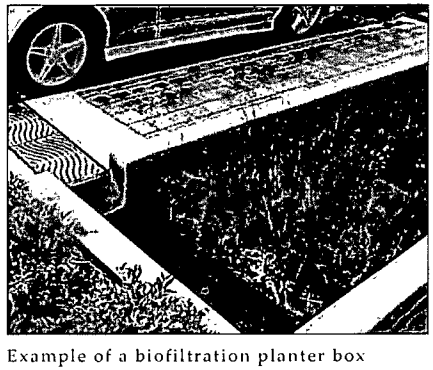
Due to the site constraints created by the urban context, traditional treatment methods such as wet and dry detention will most likely not be used. Stormwater quality best management practices that will be considered are listed below.

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

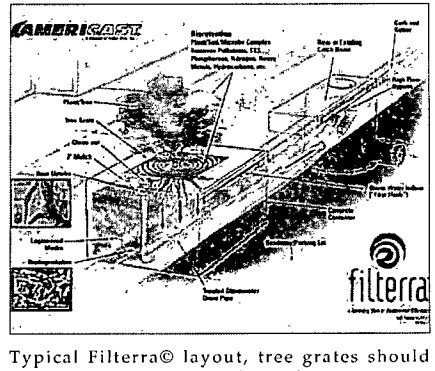
- Vegetated conveyance systems,
- Green roofs,
- Critical line buffers
- Disconnected roof top and other impervious area drainage to pervious areas, and
- Natural infiltration (where practical).

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 biofiltration planter box



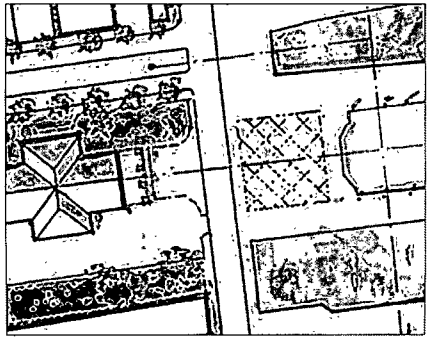
Typical Filterra© layout, tree grates should be consistent with the adjacent street landscape

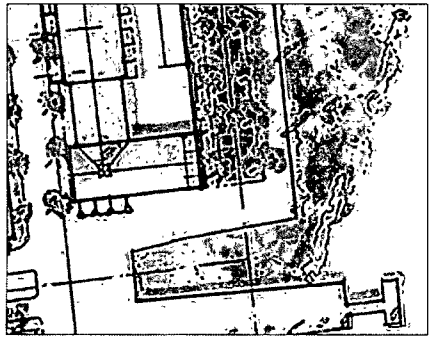
SPECIAL INITIATIVES

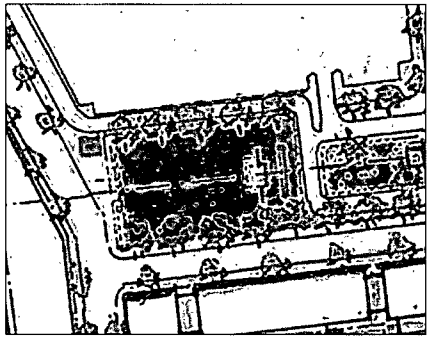
There are four special initiatives, or special areas, within the Concept Plan. Each initiative is tied to the past, present, and the future of the working waterfront and therefore inextricably linked to industry and the residents of Charleston.

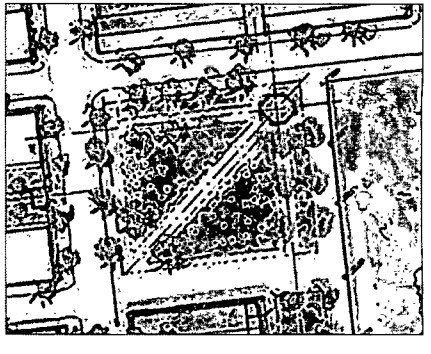
The four special initiatives of the Concept Plan are:

- 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







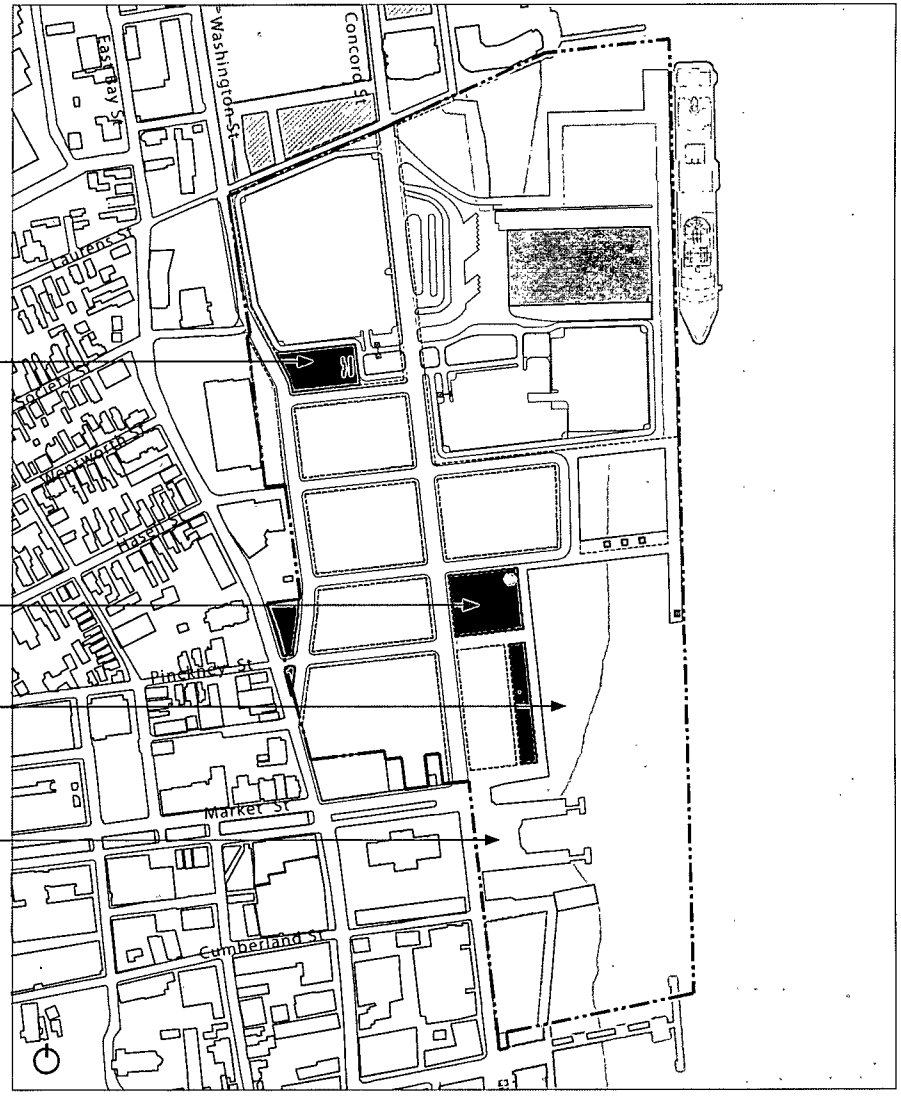


Restoration of Bennett's Rice Mill and Creation of Rice Mill Park

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

Restoration of the natural shoreline

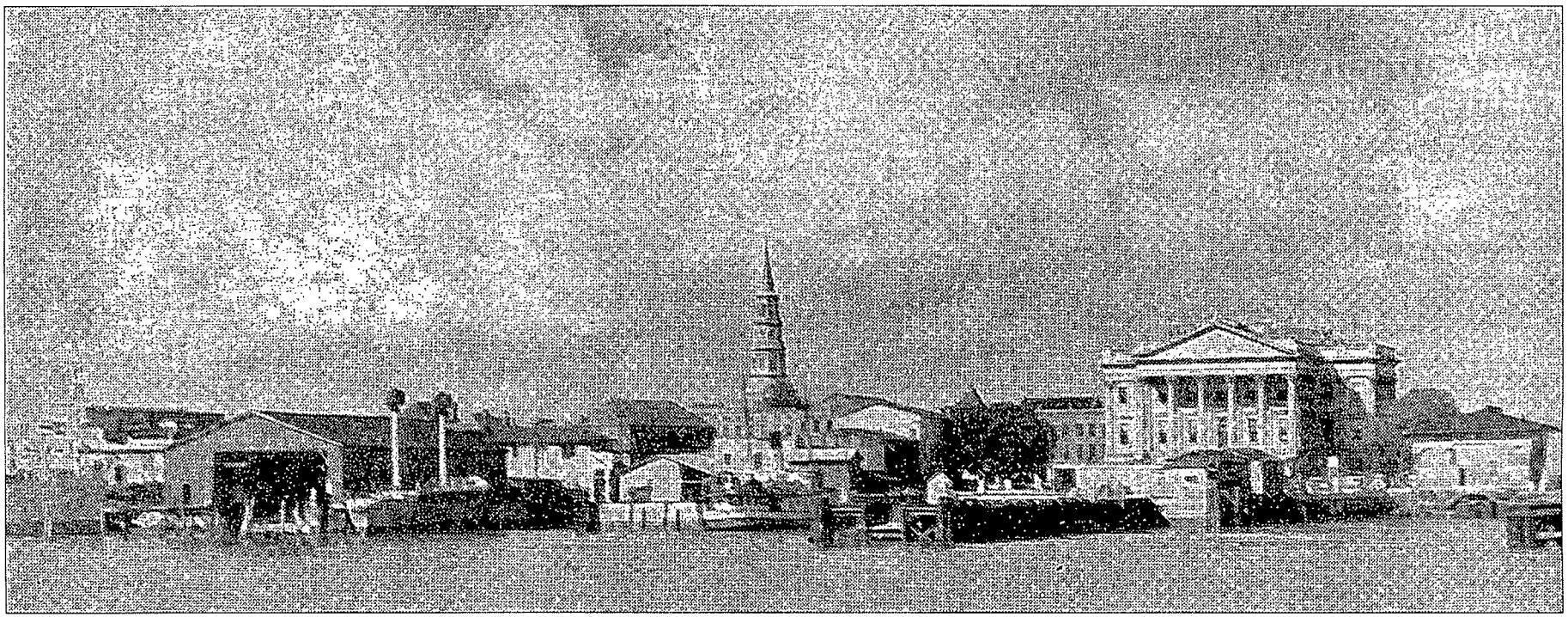
Restoration of historic public landing



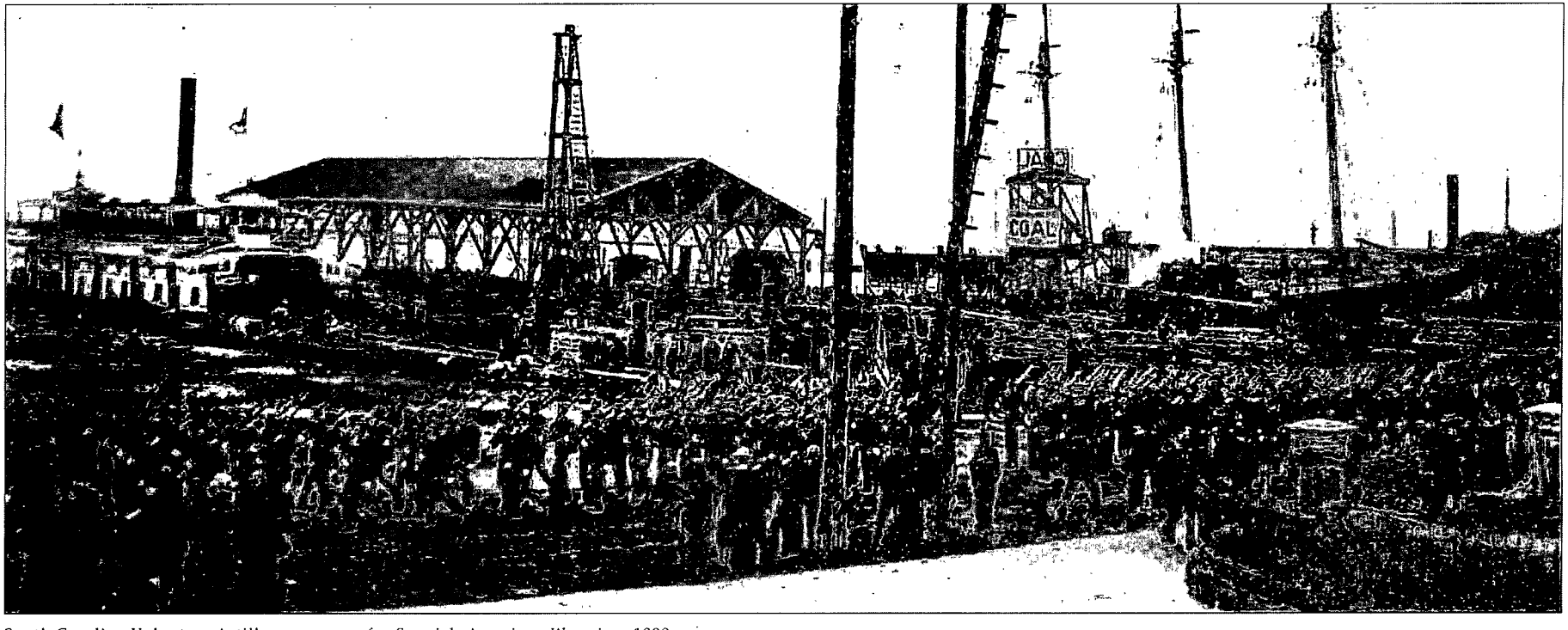
RESTORATION OF HISTORIC PUBLIC LANDING

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.

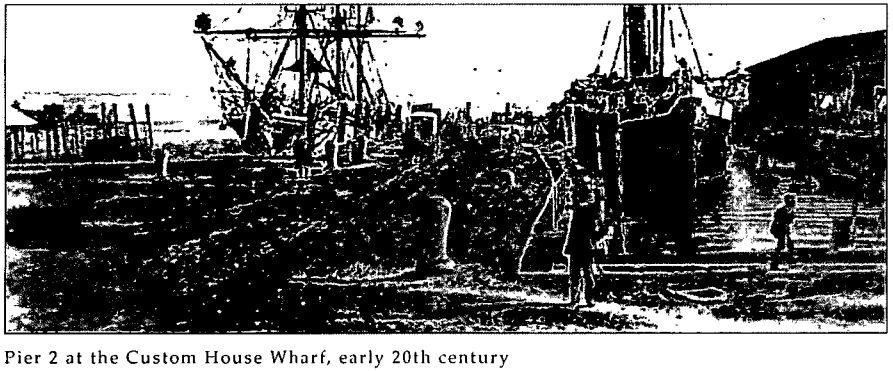
Soldiers paraded by the wharf, President Franklin Roosevelt addressed a crowd from Union Pier, torpedo boats and rum runners tied up at the docks, goods were shipped, and African-American water men brought a fleet of ships (the Mosquito Fleet) in daily with the day's catch.



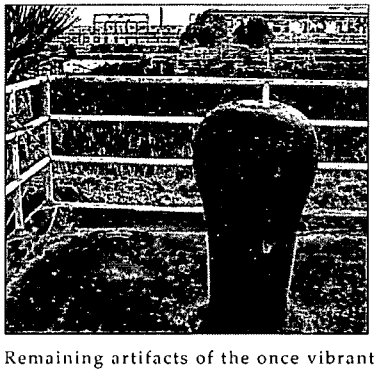
Waterfront view of Charleston and the Custom House

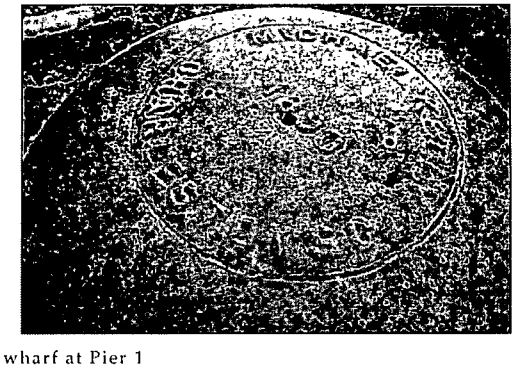


South Carolina Volunteer Artillery prepares for Spanish-American War circa 1898



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





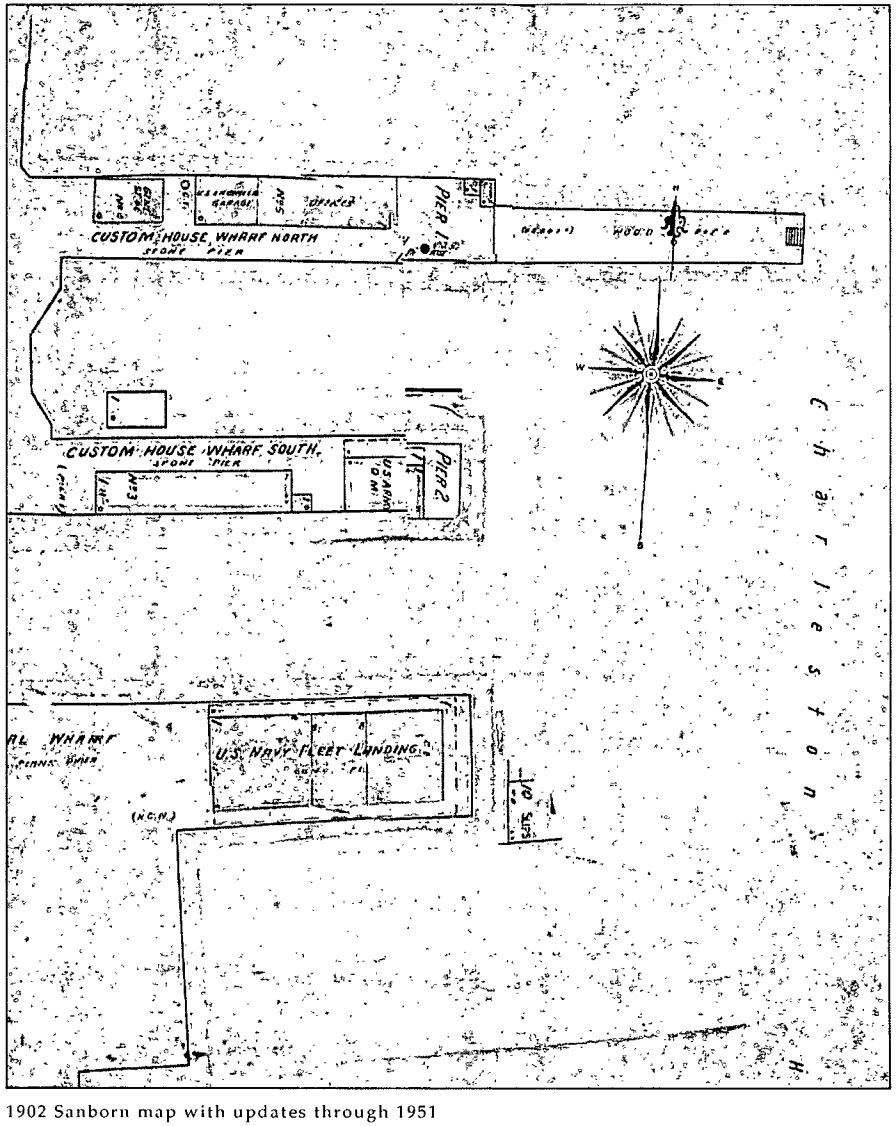
Remaining artifacts of the once vibrant wharf at Pier 1

SPECIAL INITIATIVES

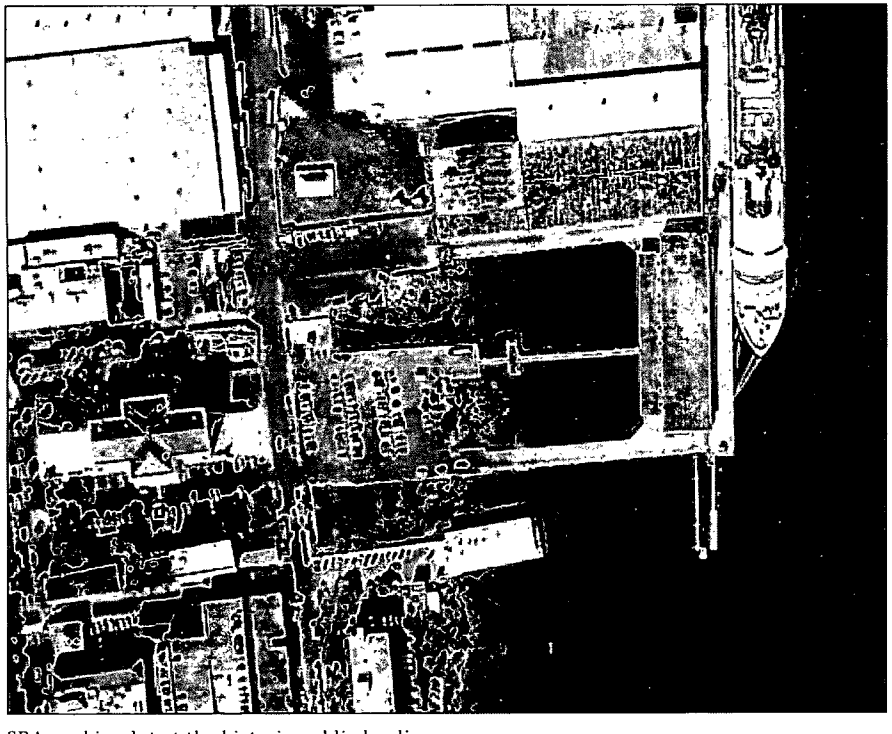
With the removal of the SPA Cruise Terminal from the south end of the State Ports Authority's Union Pier property, an opportunity to redevelop that portion of the site is illustrated in this Concept Plan Report. A key component of the Concept Plan is the restoration of the historic public landing, including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

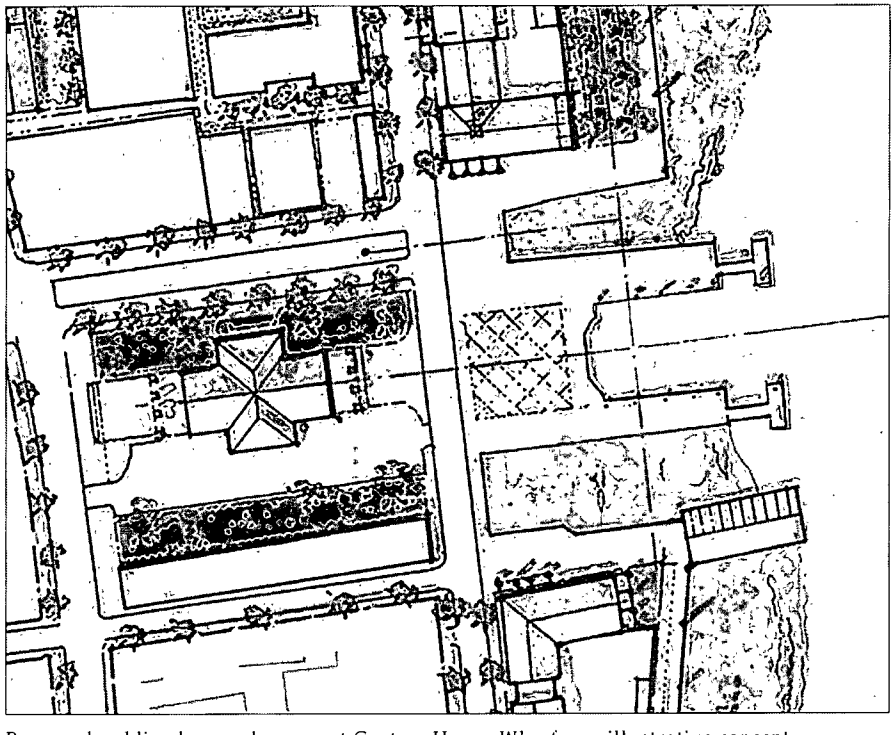
Seen from the steps of the Custom House or from the water, a restored public landing with a vibrant marsh will provide the postcard view of the city once more.



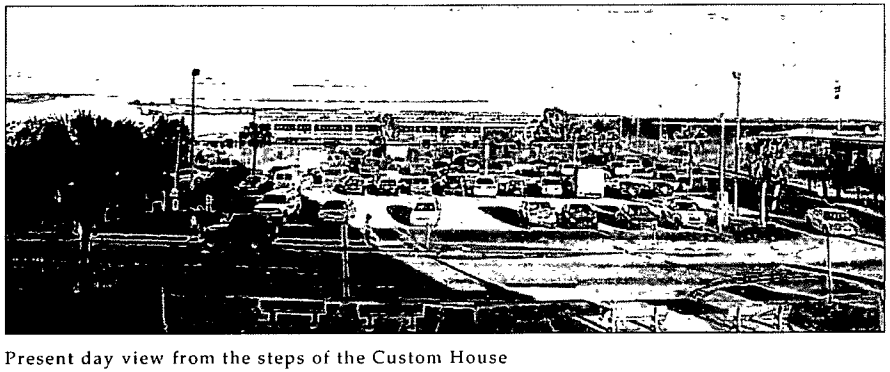
1902 Sanborn map with updates through 1951



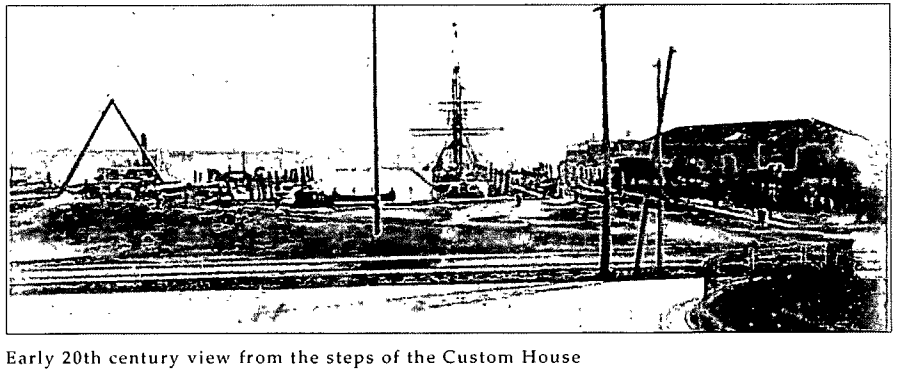
SPA parking lot at the historic public landing



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

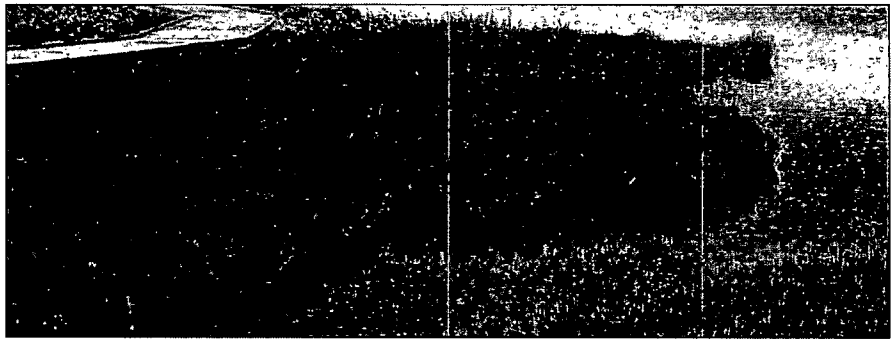
RESTORATION OF NATURAL SHORELINE

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.

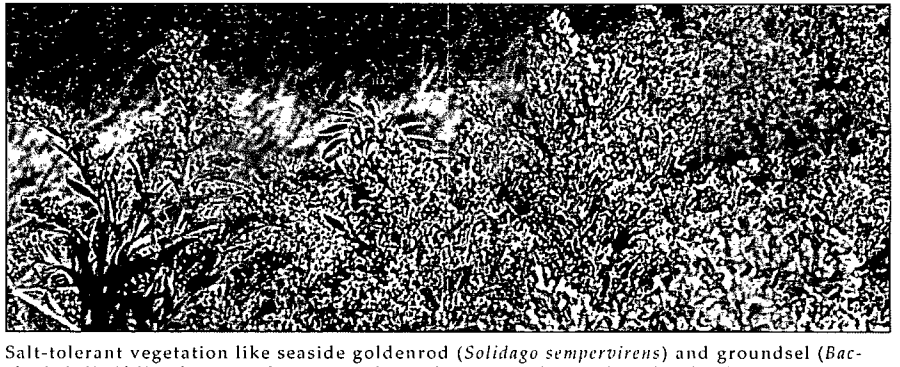
History of Charleston Marshes

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 rediverted the majority of the flow back into the Santee River, significantly reducing discharge into Charleston Harbor.

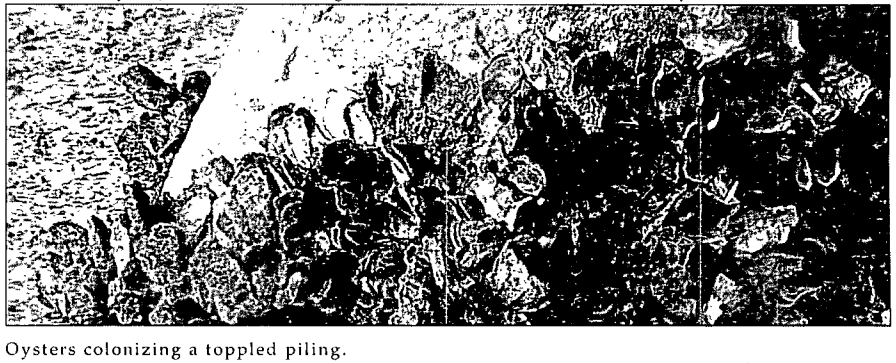
Today, a patchwork of small isolated marshes and extensive mudflats exists behind, between, and within the bulkheads, pilings, and deck structures of the site. These small habitats are degraded due to stormwater runoff and poor tidal flushing, which causes inconsistent growth and mudflats where tidal 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:

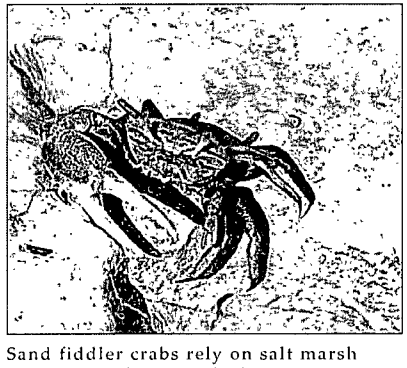
- Providing wildlife, fish, and shellfish breeding and foraging habitat;
- Intercepting and processing sediment and debris from the land and water;
- Acting to limit and reduce coastal erosion;
- Acting as nitrogen and carbon sinks, thereby reducing pollution and slowing the effects of global warming;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



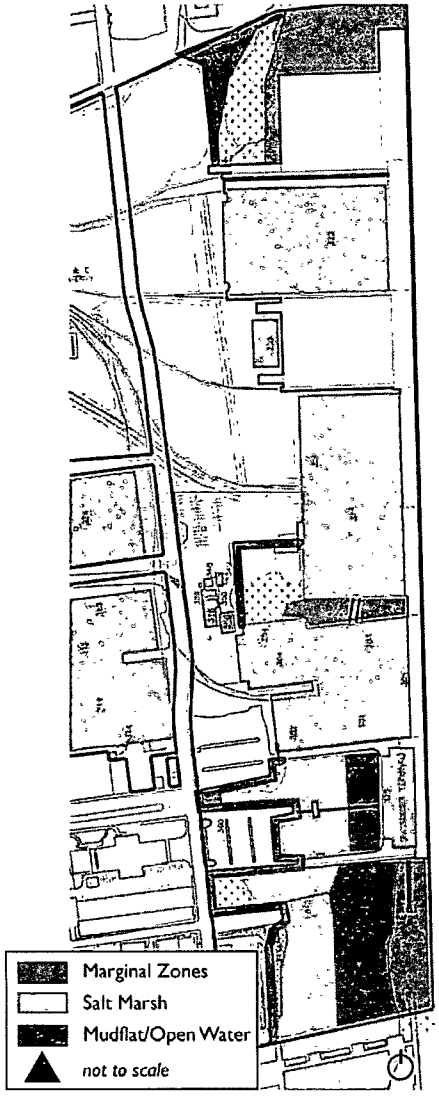
Ribbed mussels among the roots of salt marsh cordgrass



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



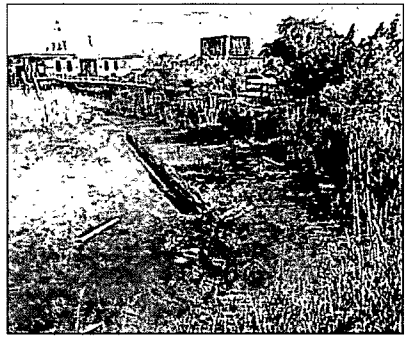
Seaside sparrows, found only in salt marsh grasses in the coastal plain (Credit: Brian Small)



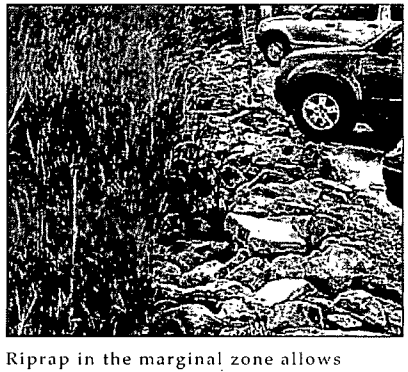
Existing conditions map showing ecological zones of opportunity. A patchwork of salt marsh habitats exists between the piers, but it is degraded by stormwater runoff and poor tidal flushing.

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

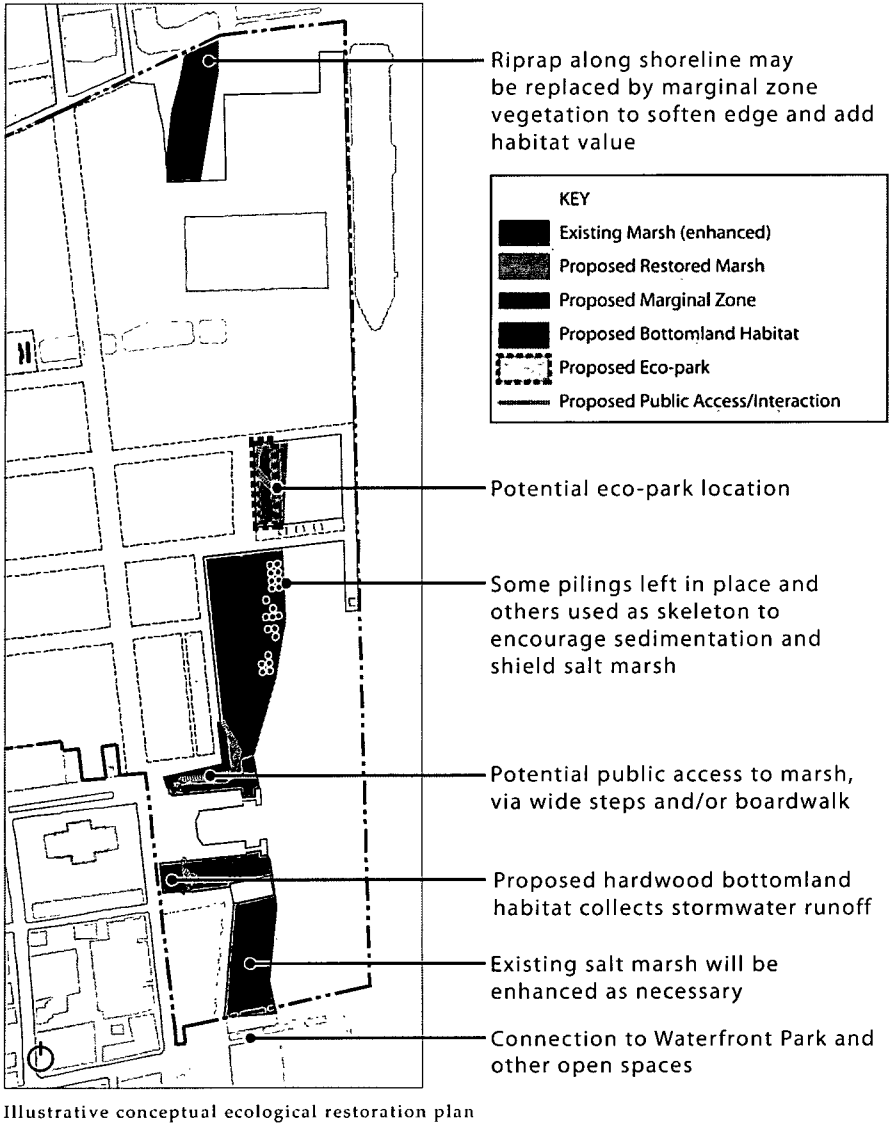
This project is an opportunity to reconnect Charleston's public to the natural waterfront by enhancing, protecting, and restoring the natural shoreline where appropriate and viable. To do this, several ecological strategies may be pursued, each consistent with the goal to create a self-sustaining restoration.

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.

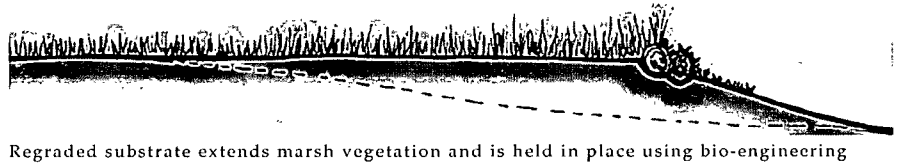


Illustrative conceptual ecological restoration plan

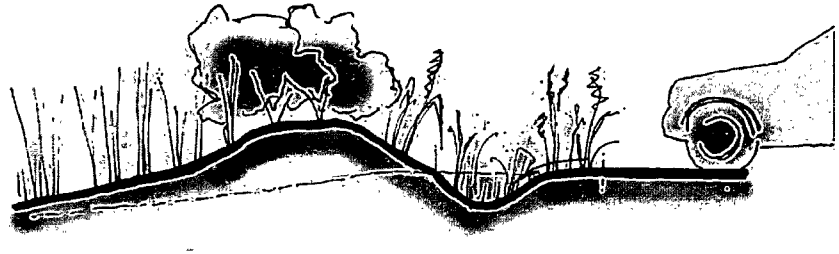
Vegetated bioswales planted with hardy native species, for example, can collect runoff and potentially improve water quality before water is released (see bottom sketch, below). Freshwater runoff may also be diverted into an upland area so as to create a pocket of bottomland hardwood forest reminiscent 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)



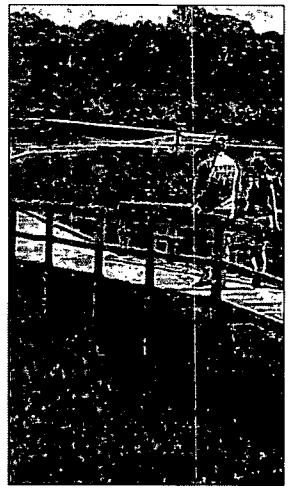
Vegetated bioswales capture and treat stormwater runoff from parking lots

SPECIAL INITIATIVES

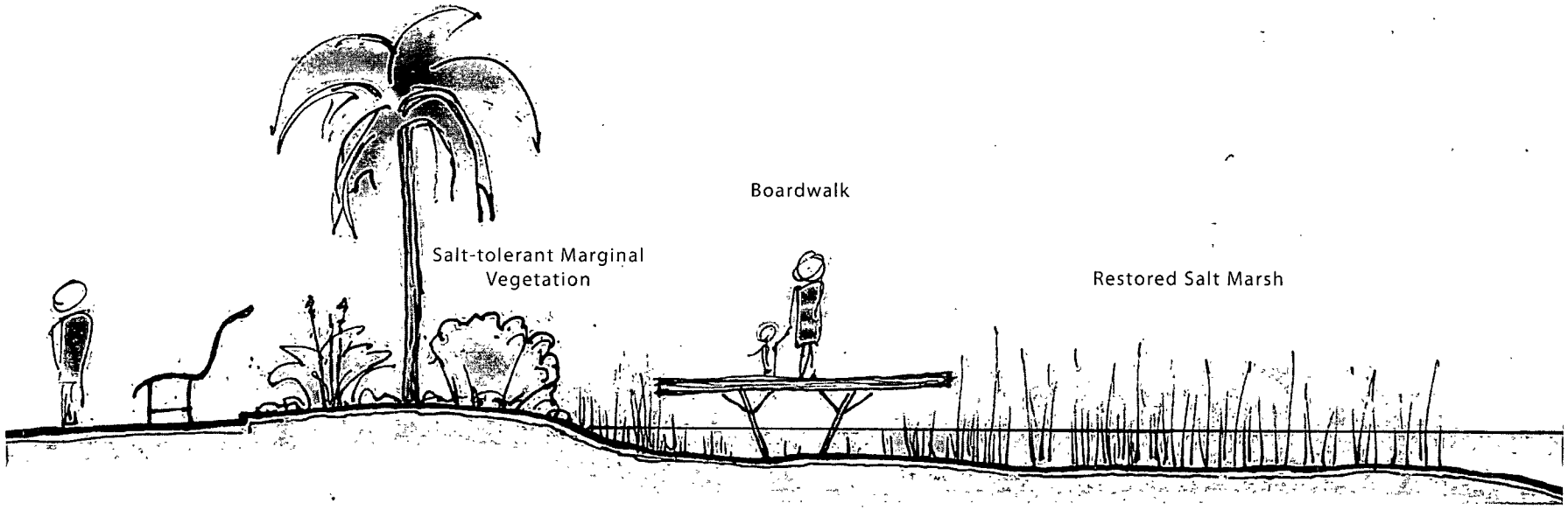
Bringing the Shoreline to Visitors

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

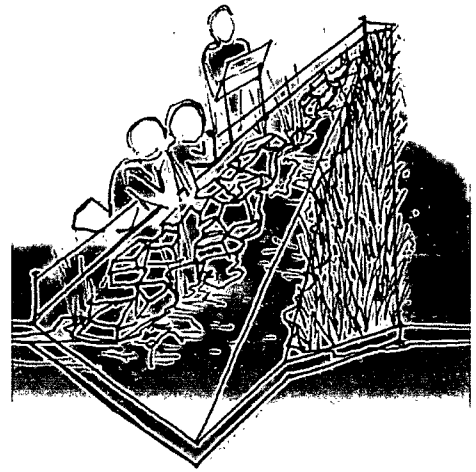
document allow us to explore restoring large sections of marsh, upland and marginal habitat, tide pools, and other important estuary features. There are several concepts that should be incorporated into the ecological components of the Concept Plan including:

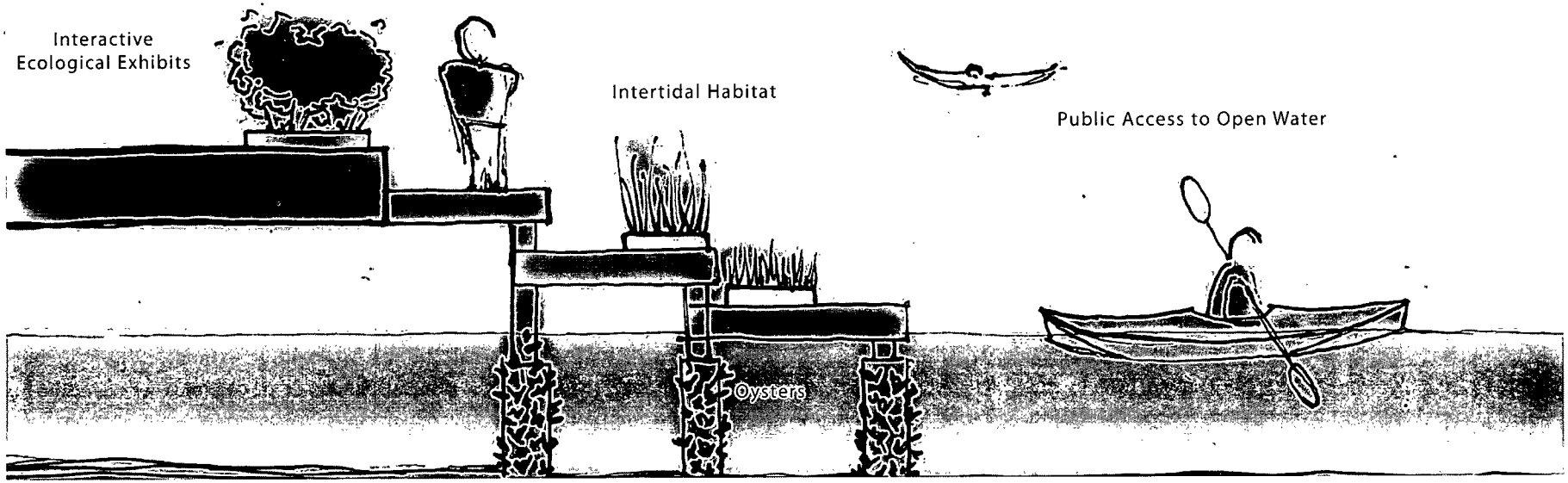
- Restoration of a variety of viable habitats and connections to other open space;
- Policy of self-sustainability of ecosystems;
- No further net loss of aquatic or wetland habitat as a result of new development without compensation through mitigation;
- Public access to the restored habitats;
- Educational 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.





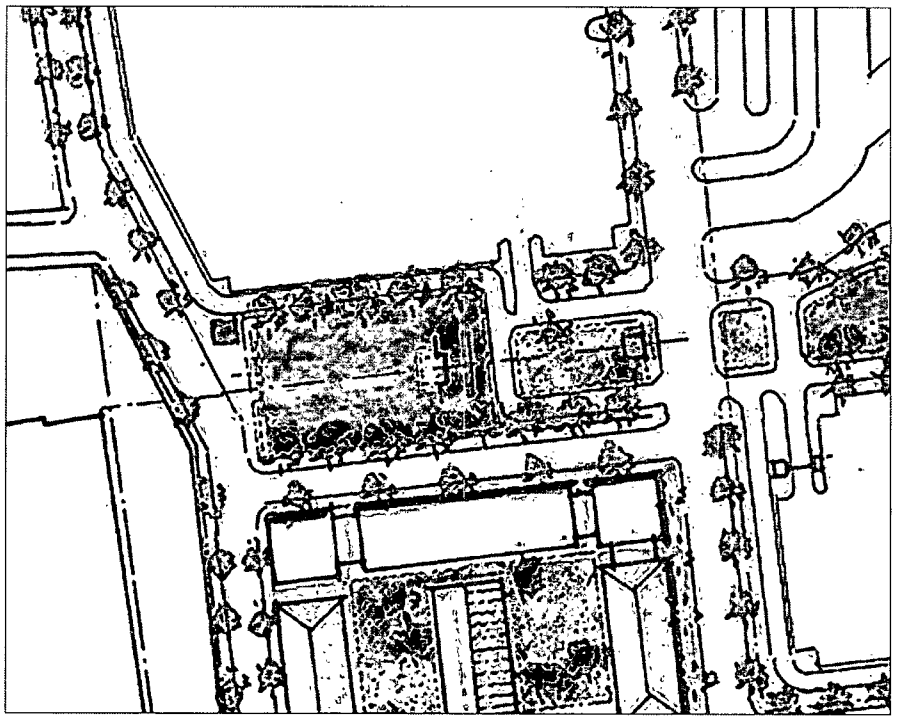
Illustrative section showing conceptual "eco-park" at pier's edge

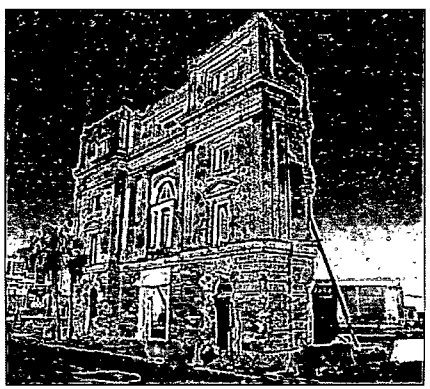
SPECIAL INITIATIVES

RESTORATION OF BENNETT'S RICE MILL & CREATION OF RICE MILL PARK

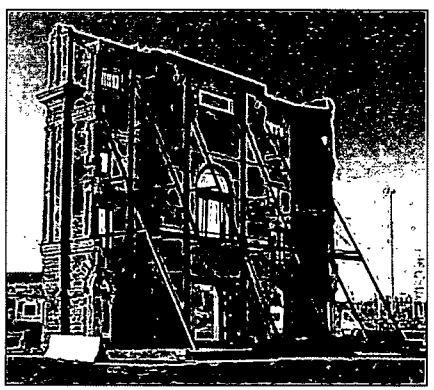
The area now commonly referred to as Union Pier was once a collection and assortment of many private piers of varying lengths and widths. Private ownership of the shipyards, wharves, and piers began at Union Pier in the 18th century and continued until the city created a municipal port authority in 1934. 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.

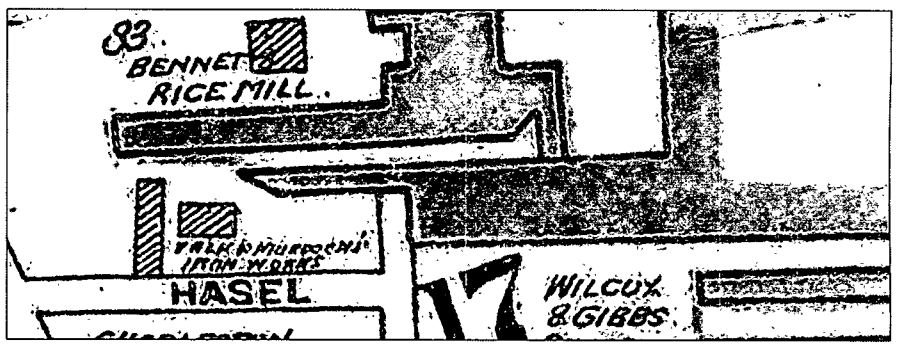




Present day photograph of the Rice Mill Facade



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

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 South Carolina Ports

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.

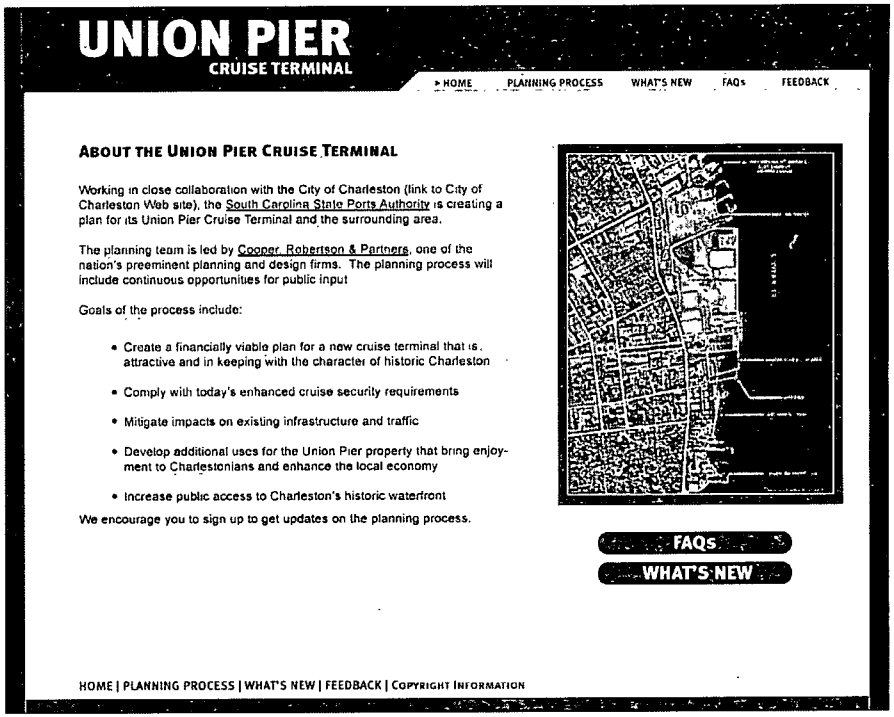




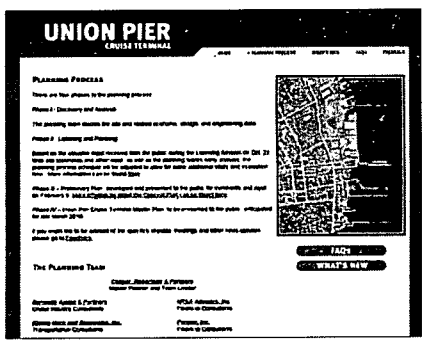

Union Pier Kick-off Meeting - October 8, 2009

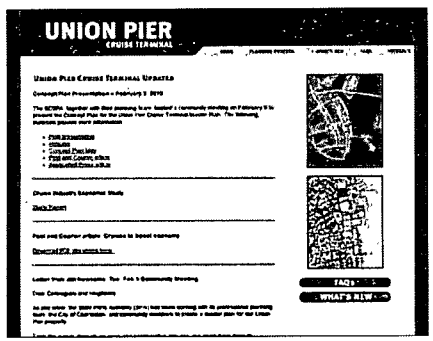
WEBSITE

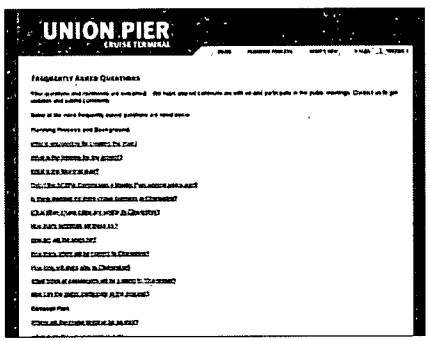
A special Website – www.UnionPierPlan.com – was created and launched the day of the Kick-Off Community Meeting. The Website provided information on the project and process, and it encouraged site visitors to submit comments and questions. The site was regularly updated throughout the process.

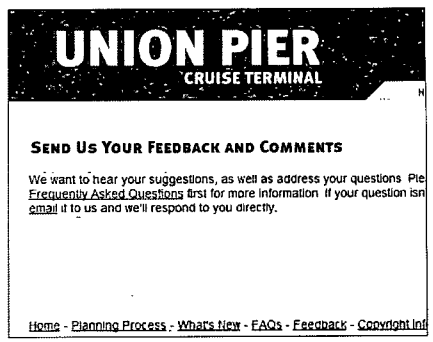


Home page for www.UnionPierPlan.com









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.

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.

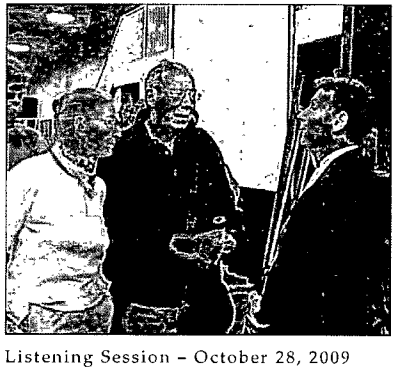
At each public meeting, comment cards were distributed so that community members could send in additional comments or questions. Also, notes and summaries of all meetings were posted on the Website.

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



Kick-Off Meeting – October 8, 2009





Listening Session – October 28, 2009



Listening Session – October 28, 2009



Concept Plan Meeting – February 9, 2010

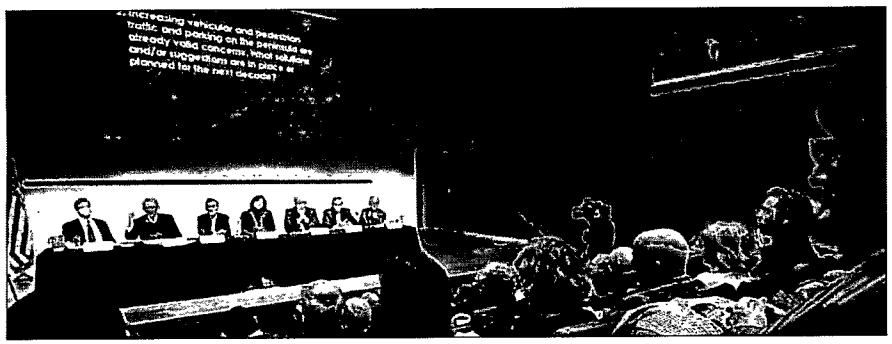
MATERIALS

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, Radcliffborough 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 22287
Charleston, S.C. 29413-2287 USA
(843) 723-8651
Fax: (843) 577-8191

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: Tom Last Name: Beasford

Comments: (1) AS THIS PLAN GOES FORWARD PLEASE TAKE GREAT PAINS TO ENSURE TRANSPORTATION ALTERNATIVES THROUGHOUT THE SYSTEM SO THAT PEDESTRIANS AND BICYCLISTS HAVE ACCESS AT LEAST EQUAL TO THAT OF AUTOS.

(2) STRESS USE OF RECLAIMED WATERFRONT FOR NAVAL COMMERCE AND BOTH PASSIVE AND ACTIVE RECREATION (THINK WALKING, BICYCLING, VOLLEYBALL)

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: Heidi Last Name: Schlegs

Comments: (1) Please incorporate bike access parallel to walking access - eg Stanley Park / Canada Place cruise terminal in Vancouver, BC Canada

& with biking access both to + within the site!

(2) Use design as partial means of controlling cruise activity allowed & wanted here (eg scale)

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: John Last Name: Cameron

Comments: Outstanding plan! Location of Removal, public access to water, parking, view all covered exceptionally well.

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: TOM Last Name: Mather

Comments:

Appreciate the part looking "outside the box" and consider public greater good. The open view from market is key as is the public access to water edge

Take a bold inspired beginning and one that Charleston deserves

T. Mather

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: Kevin @ Last Name: O'Neill

Comments: Great opportunity for civic building/development & showplace.
Consider requiring all bldgs to be green: LEED or
other certification.

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: Dalton K. Last Name: Brosnan Jon

Comments:

The primary use just north of the proposed Cruise
Terminal is RESIDENTIAL. Lawrence Place, Anson House & Parkside
also proposed condos on Academy Field. Please keep in this
in mind when planning uses of Terminal

Union Pier Cruise Terminal

Comment Card

(Please Print)

First Name: Conn Last Name: Barnes

Comments:

Walk along water, opening views (esp at custom house) and
moving north great ideas

Hopefully we can move rail in/out so this can happen

Union Pier Cruise Terminal

Comment Card

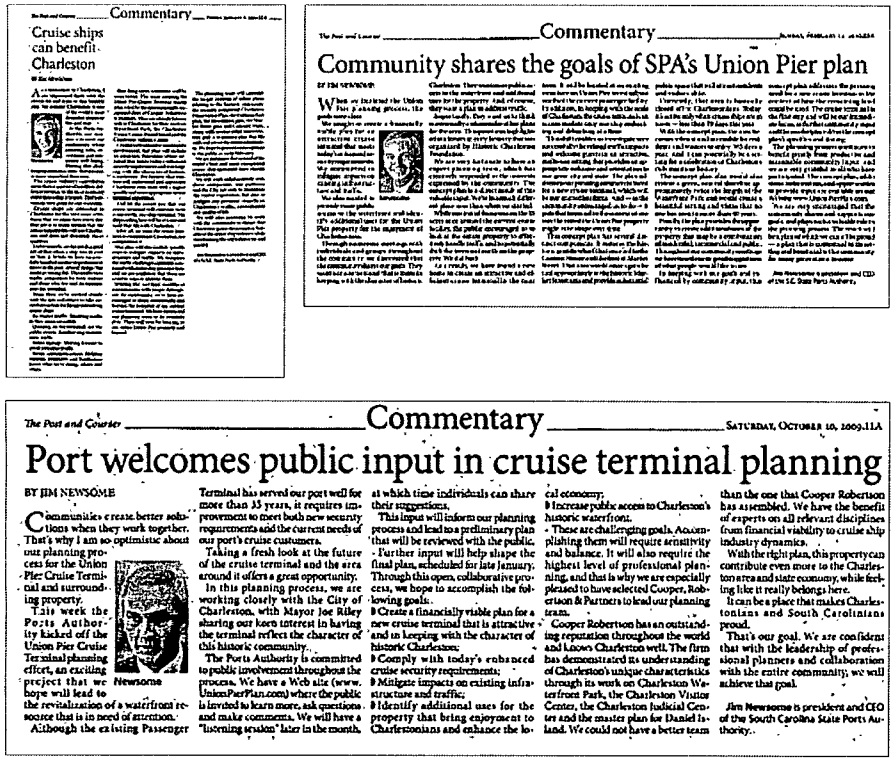
(Please Print)

First Name: FRANK Last Name: LEISTER

Comments: EXCELLENT PLAN! DO IT!
F

OP-EDS

Three op-eds by Jim Newsome were published by the Post and Courier during the process.



Commentary

Cruise ships can benefit Charleston

Commentary

Community shares the goals of SPA's Union Pier plan

Commentary

The Post and Courier — Saturday, October 10, 2009 11A

Port welcomes public input in cruise terminal planning

BY JIM NEWSOME

Op-Eds published in The Post & Courier

NEWS RELEASES & MEDIA VISITS

Four news releases were distributed throughout the five-month process. And there were two rounds of media visits.

News coverage was extensive, and two favorable editorials ran in the Post and Courier.



The Post and Courier

CITY PAPER

Port, city begin Union Pier redevelopment

A new 'front door'

The Post and Courier

Charleston cruise terminal plan unveiled

The Post and Courier

EDITORIALS

Waterfront plan is off to an encouraging start

The Post and Courier

Community shares the goals of plan

Ports Consider Larger Area for Terminal Plan

posted 01/19/10 5:29 pm

Charleston, SC - The South Carolina State Ports Authority will study redeveloping a larger area in conjunction with building a new passenger cruise terminal.

The Post and Courier of Charleston reports the authority board decided Tuesday to study the entire 55-acre Union Pier area in Charleston. Originally, the study included only about 18 acres around the existing passenger cruise terminal.

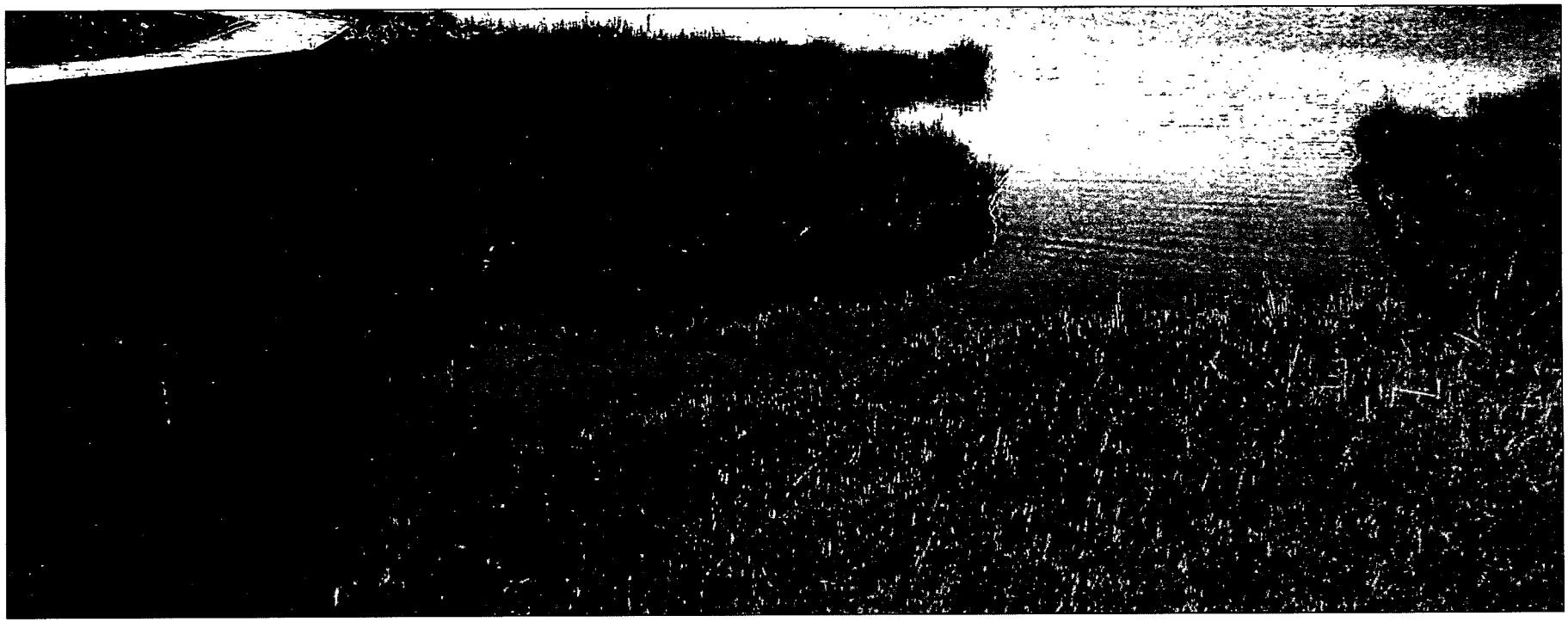
The authority said the larger study resulted from suggestions the public made about the terminal project in recent months.

Officials say a new, modern cruise terminal is needed to handle the growing cruise business in Charleston. Beginning this spring, Carnival Cruise Lines bases its

Articles from various news media outlets

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: Smudge9000
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 courtesty 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

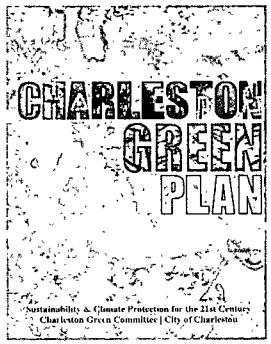
SOURCES



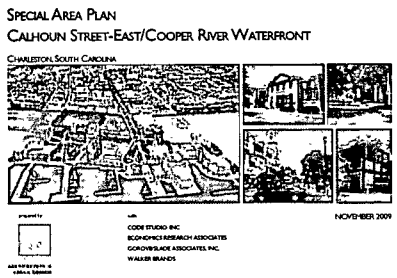
Concept Master Plan - 1996
Union Pier Terminal
Ehrenkrantz & Eckstut Architects, PC



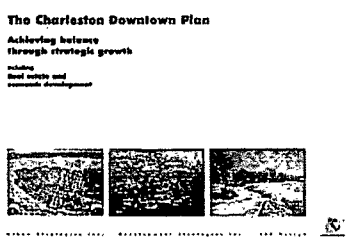
Century V Plan - working document
City of Charleston



Charleston Green Plan - 2010
Charleston Green Committee
City of Charleston



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



The Charleston Downtown Plan - 1999
Urban Strategies Inc.



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

EXHIBIT D

JAN 27 2012

South Carolina State **PORTS AUTHORITY**

P.O. Box 22287
Charleston, S.C. 29413-2287 USA
(843) 856-7048
Fax: (843) 856-7067

January 23, 2012

Mr. Nathaniel Ball
Permit Evaluation Branch, USACOE
69A Hagood Avenue
Charleston, SC 29403-5107

Dear Mr. Ball:

Subject: Joint Federal and State Application Form for Activities Affecting Waters of The Unites States or Critical Areas of the State of South Carolina
Union Pier Cruise Facility – Renovation of Building 322
Union Pier Terminal – State Pier 2
Project Number CIF11E006B

The South Carolina State Ports Authority would like to submit the above referenced application for your review and approval. If you have any questions or require any additional information, please feel free to contact me.

Respectfully submitted,

Derrick L. Bellamy

Derrick L. Bellamy, P.E.
Staff Engineer

cc: Mr. Joe T. Bryant, SCSPA
Mr. David N. Smith, SCSPA

Joint Federal and State Application Form For Activities Affecting Waters of the United States Or Critical Areas of the State of South Carolina	This Space for Official Use Only Application No. Date Received JAN 27 2012 Project Manager Watershed #

Authorities: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. Seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s).

Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.

1. Applicant Last Name: Bellamy		11. Agent Last Name (agent is not required):	
2. Applicant First Name: Derrick		12. Agent First Name:	
3. Applicant Company Name: South Carolina State Ports Authority		13. Agent Company Name:	
4. Applicant Mailing Address: Post Office Box 22287		14. Agent Mailing Address:	
5. Applicant City: Charleston		15. Agent City:	
6. Applicant State: South Carolina	7. Applicant Zip: 29413-2287	16. Agent State:	17. Agent Zip:
8. Applicant Area Code and Phone No.: 843-856-7057		18. Agent Area Code and Phone No.:	
9. Applicant Fax No.: 843-856-7067		19. Agent Fax No.:	
10. Applicant E-mail: dbellamy@scspa.com		20. Agent E-mail:	

21. Project Name: Building No. 322 Renovation		22. Project Street Address: 32 Washington Street (Future 180 Concord St.)	
23. Project City: Charleston	24. Project County: Charlesotn	25. Project Zip Code: 29403	26. Nearest Waterbody: Cooper River
27. Tax Parcel ID: 459-00-00-009		28. Property Size (acres): 49.4	
29. Latitude: 32 47' 9"		30. Longitude: 79 55' 29"	

31. Directions to Project Site (Include Street Numbers, Street Names, and Landmarks and attach additional sheet if necessary):

Exit I-26 at Exit 219 - B (Morrison Drive & East Bay Street). From East Bay Street. turn left onto Calhoun Street. From Calhoun Street. turn right onto Concord Street. The Cruise Terminal will be at 180 Concord Street.

32. Description of the Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed)

See Attached Sheet

33. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U.S. Waters (attach additional sheets if needed):

See Attached Sheet.

34. Type and quantity of Materials to Be Discharged

Dirt or Topsoil:	_____	☐cubic yards
Clean Sand:	_____	☐cubic yards
Mud:	_____	☐cubic yards
Clay:	_____	☐cubic yards
Gravel, Rock, or Stone:	_____	☐cubic yards
Concrete:	_____	☐cubic yards
Other (describe):	_____	☐cubic yards
TOTAL:	_____	cubic yards

35. Type and Quantity of Impacts to U.S. Waters (including wetlands).

Filling:	_____	☐acres	☐ sq.ft.	_____	☐cubic yards
Backfill & Bedding:	_____	☐acres	☐ sq.ft	_____	☐cubic yards
Landclearing:	_____	☐acres	☐ sq.ft	_____	☐cubic yards
Dredging:	_____	☐ acres	☐ sq.ft.	_____	☐cubic yards
Flooding:	_____	☐acres	☐ sq.ft.	_____	☐cubic yards
Draining/Excavation:	_____	☐acres	☐ sq.ft.	_____	☐cubic yards
Shading:	_____	☐acres	☐ sq.ft.	_____	☐cubic yards

TOTALS: _____ acres _____ sq.ft. _____ cubic yards

36. Individually list wetland impacts including mechanized clearing, fill, excavation, flooding, draining, shading, etc. and attach a site map with location of each impact (attach additional sheets if needed).

Impact No.	Wetland Type	Distance to Receiving Water body (LF)	Purpose of Impact (road crossing, impoundment, flooding, etc)	Impact Size (acres)
			Total Wetland Impacts (acres)	

37. Individually list all seasonal and perennial stream impacts and attach a site map with location of each impact (attach additional sheets)

Impact No.	Seasonal or Perennial Flow	Average Stream Width (LF)	Impact Type (road crossing, impoundment, flooding, etc)	Impact Length (LF)
			Total Stream Impacts (Linear Feet)	

38. Have you commenced work on the project site? ■ YES ☐ NO If yes, describe all work that has occurred and provide dates.

New work has not commenced. Repairs to the building substructure has been started.

39. Describe measures taken to avoid and minimize impacts to Waters of the United States:

See Attached Sheet

40. Provide a brief description of the proposed mitigation plan to compensate for impacts to aquatic resources or provide justification as to why mitigation should not be required (Attach a copy of the proposed mitigation plan for review).

It is reasonably anticipated that the work planned will cause no adverse impacts to jurisdictional areas.

41. See the attached sheet to list the names and addresses of adjacent property owners.
A search is being performed to identify the names and addresses of the adjacent property owners.

42. List all Corps Permit Authorizations and other Federal , State, or Local Certifications, Approvals, Denials received for work described in this application.

#71-05-37 / #72-10-087 / 78-3R-337

43. Authorization of Agent. I hereby authorize the agent whose name is given on page one of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application. [1]

Applicant's Signature Date

44. Certification. Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant. [1]

Derrick L. Bellamy 23 Jan. 12

Applicant's Signature Date Agent's Signature Date

[1]**The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 11 and 43 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.**

32. Description of Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas

The South Carolina State Ports Authority's (SCSPA) first cruise sailing from Charleston seems to have been the Moore-McCormack Lines vessel, Brasil, which sailed from Charleston to Bermuda on April 30, 1967. Cruise activity in Charleston steadily grew resulting in a dedicated passenger facility and berth being constructed at Union Pier Terminal. The current passenger terminal was dedicated in October 1973. With continued growth of the cruise business and especially with the current terminal security requirements, the need for a new facility has become critical. To address the requirements of new Federal regulations, in 2007 the SCSPA entered into a Memorandum of Understanding with US Customs and Border Protection (CBP) for the conditional approval of ongoing cruise operations on a trial basis. That conditional approval has been renewed on an annual basis with the understanding that an improved facility would be needed for continued operations.

The current cruise operation involves the Passenger Terminal (Building #325), Buildings #302, #303 & #304 for stores and luggage. These buildings are denoted on Sheet 2 of 4.

The SCSPA evaluated several options for providing an improved facility satisfactory to CBP requirements. These options were explored in a study by Berimello Ajamil & Partners, Inc. completed September 2007 and in the Concept Plan for Union Pier Terminal completed in March 2010, by Cooper Robertson & Partners. Relocating the passenger facility to Building #322 is the preferred option. Building #322 is denoted on Sheet 2 of 4.

The only activity in the preferred option that will affect U.S. Waters or State Critical Areas will be the installation of five pile clusters driven to the marl to support three elevators and two escalators. All clusters will be within the footprint of the existing pile supported Building #322. Those locations are shown on the attached Sheet 3 of 4 with cross section shown on Sheet 4 of 4.

Other activities not affecting waters of the US, but relative to this project, will be general renovation of Building #322. The renovation will include a mezzanine accessed by ADA compliant elevators and escalators for boarding passengers to the cruise ships similar to the stairs and elevators serving the mezzanine of Building #325. Other landside improvements include renovation of the building's exterior and interior, canopies over pedestrian areas, and a loading dock for transferring ship stores from delivery trucks to the cruise ship. Ship store activity is now carried out in Buildings #302, #303, & #304. Building #330 (Sheet 2 of 4) will be demolished.

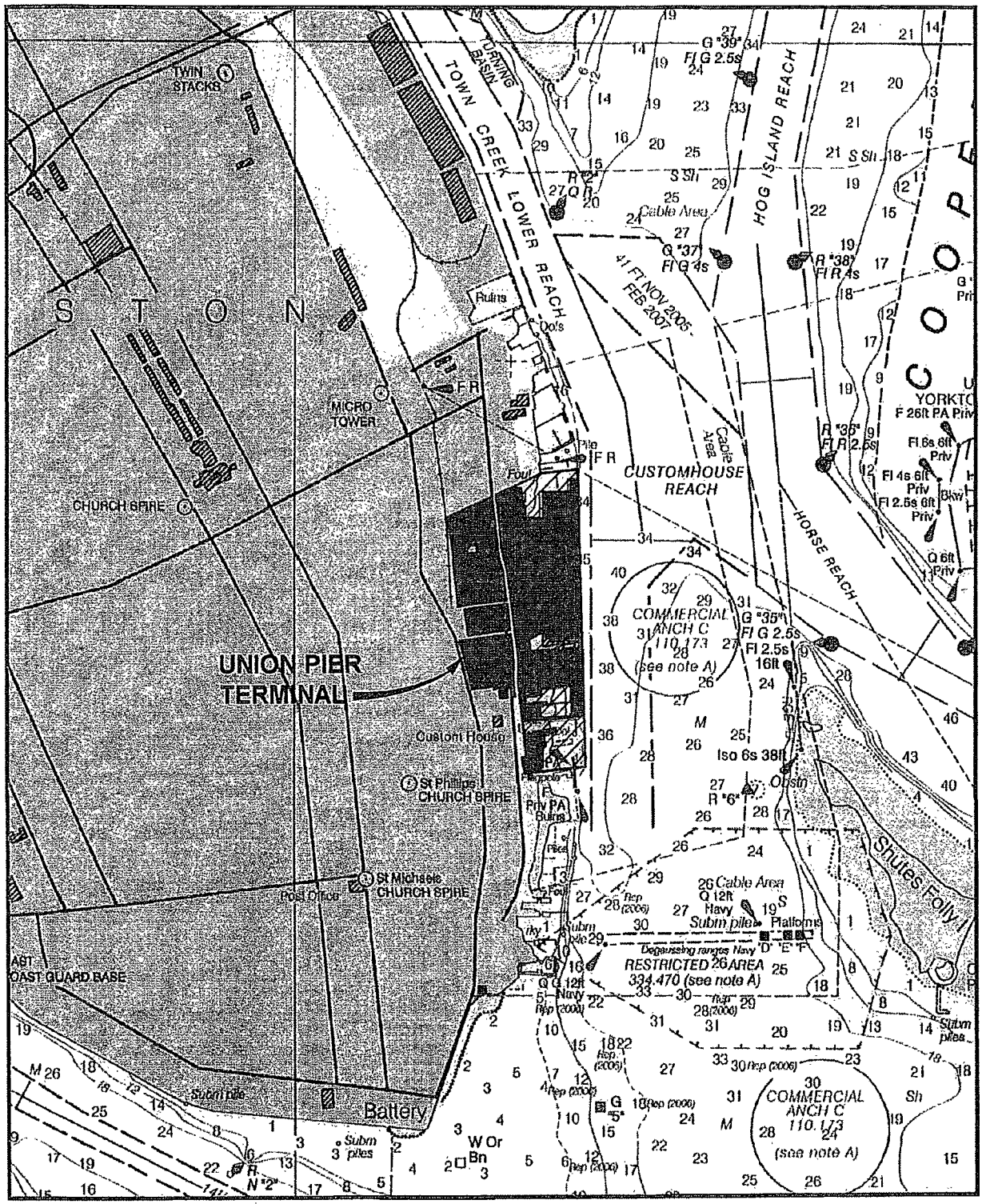
33. Overall Project Purpose...

The overall project purpose is to provide a passenger facility satisfactory for the continued handling of cruise vessels at Union Pier Terminal. The purpose of the installation of elevators and escalators (activity affecting US waters) is to provide ADA compliant access to the mezzanine level for boarding passengers.

39. Describe measures taken to avoid...

The use of Building #322 for cruise passenger operations reduces the impacts to US waters. Modifying the current Passenger Terminal (Building #325) by enlarging and improving its access to better accommodate current CBP requirements would impact wetlands immediately to the shore side of the building. Constructing a new facility on the footprint of Buildings #301 - #305 would involve, at a minimum, demolition of Buildings #301, #302, & #305 and reconstructing over water at the same site.

The use of Building #322 will also reduce the cargo capacity of Union Pier Terminal, since Building #325 (current passenger terminal) is not suitable for cargo. Its reuse would likely center around waterfront events, such as tall ships and other such water dependent activities. The use of Building #322 will also require the removal of existing rail service to Union Pier. This also affects Union Pier's cargo capability. The reduced cargo capacity and single passenger berth will result in a reduction in the number of large vessels calling Union Pier Terminal.



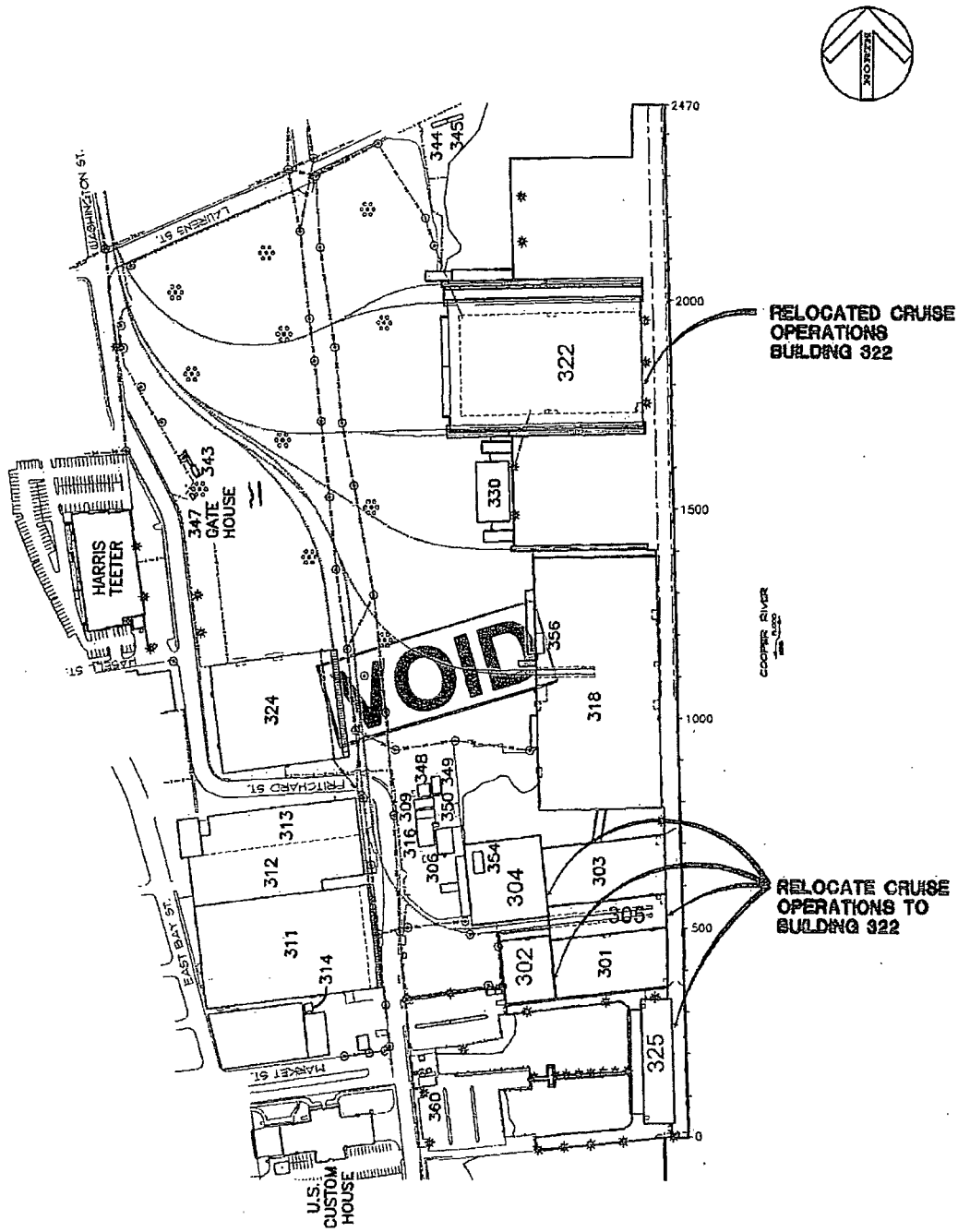
LOCATION

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp1
DATE: DECEMBER 2011
SHEET: 1 OF 4

COE00042

SCPA 002647



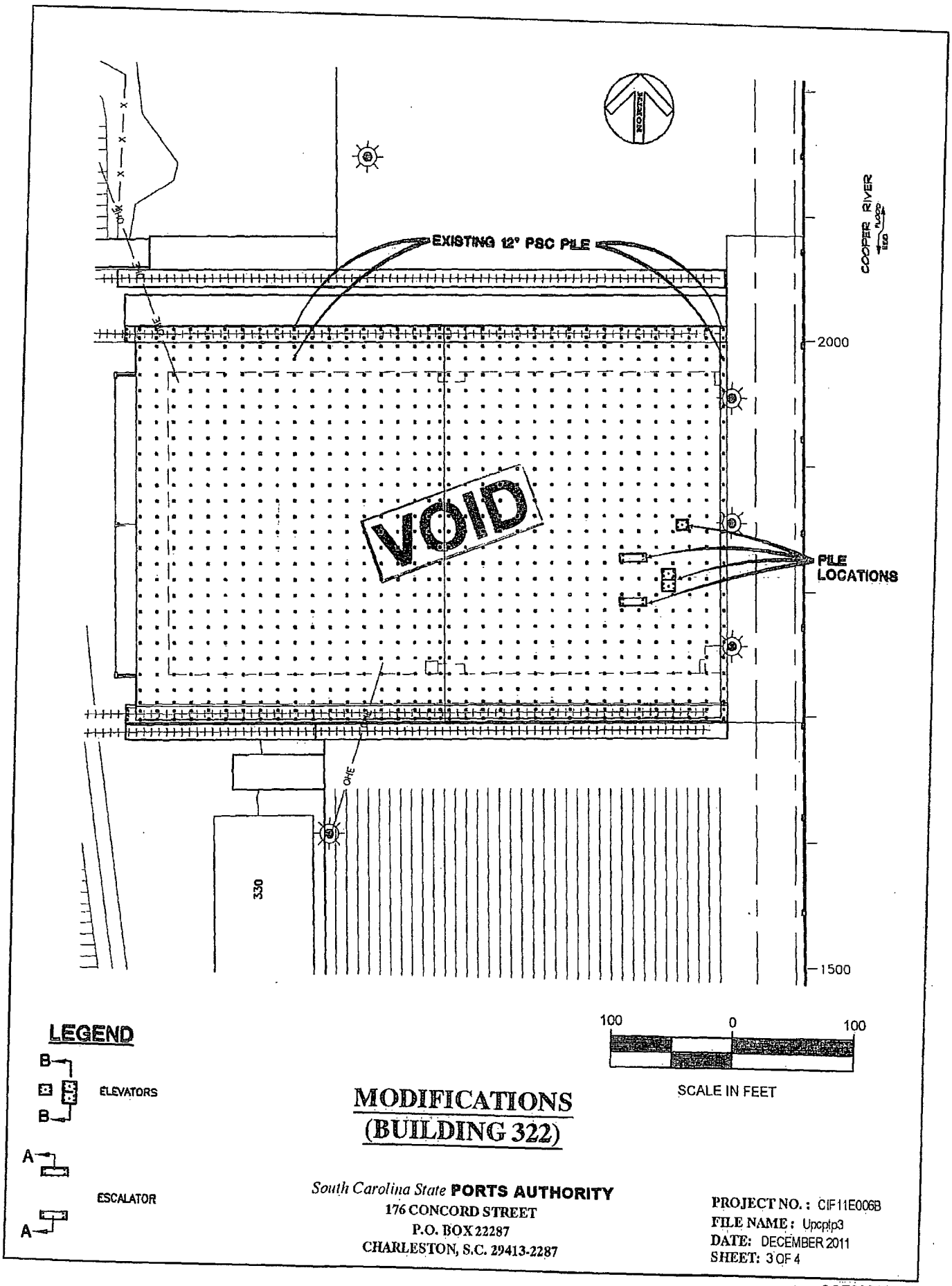
BUILDING LOCATION PLAN
UNION PIER TERMINAL

400 0 400

SCALE IN FEET

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

PROJECT NO. : CIF11E006B
FILE NAME : Upcplp2
DATE: DECEMBER 2011
SHEET: 2 OF 4



LEGEND

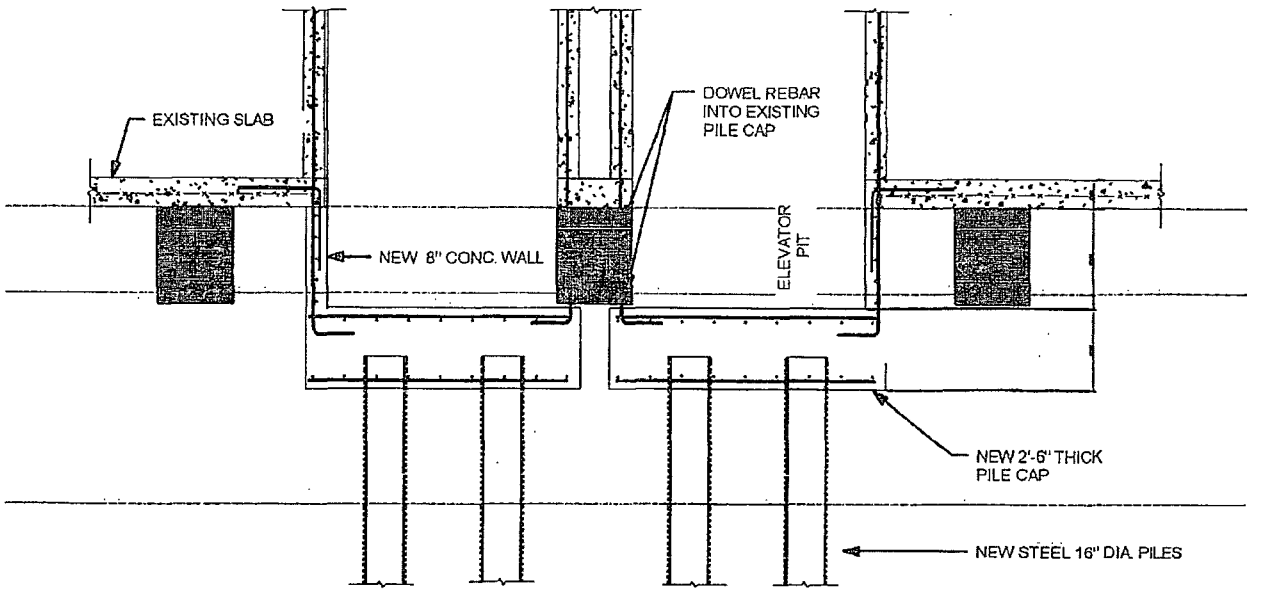
B — B — ELEVATORS

A — A — ESCALATOR

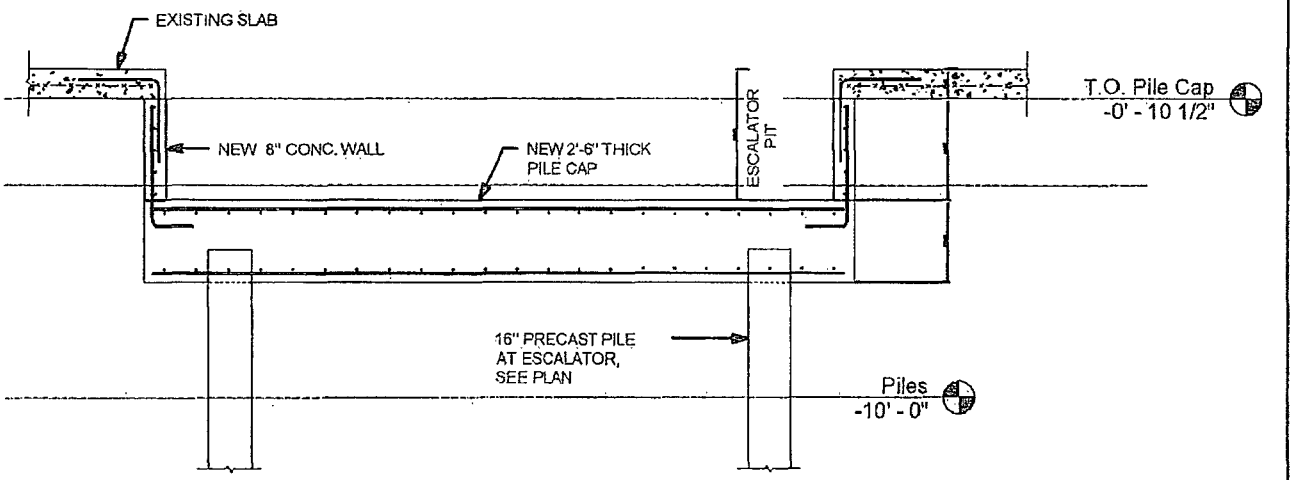
MODIFICATIONS (BUILDING 322)

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

PROJECT NO. : CIF11E006B
FILE NAME : Upcplp3
DATE: DECEMBER 2011
SHEET: 3 OF 4



A SECTION ELEVATOR



B SECTION ESCALATOR

MODIFICATIONS (CROSS SECTION)

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

PROJECT NO. : CIF11E006B
FILE NAME : Upcptp4
DATE: DECEMBER 2011
SHEET: 4 OF 4

South Carolina State **PORTS AUTHORITY**

P.O. Box 22287
Charleston, S.C. 29413-2287 USA
(843) 856-7048
Fax: (843) 856-7067

January 27, 2012

Mrs. Rheta DiNovo, Director
Regulatory Programs Division
South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management
1362 McMillian Ave., Suite 400
Charleston, SC 29405

Dear Mrs. DiNovo:

Subject: Joint Federal & State Application Form for Activities Affecting Waters of The Unites States or Critical Areas of the State of South Carolina
Union Pier Cruise Facility – Renovation of Building 322
Union Pier Terminal – State Pier 2
Project Number CIF11E006B

The South Carolina State Ports Authority would like to submit the above referenced application for your review and approval. If you have any questions or require any additional information, please feel free to contact me.

Respectfully submitted,

Derrick L. Bellamy

Derrick L. Bellamy, P.E.
Staff Engineer

Enclosures

cc: Mr. Joe T. Bryant, SCSPA
Mr. David N. Smith, SCSPA

Joint Federal and State Application Form For Activities Affecting Waters of the United States Or Critical Areas of the State of South Carolina	This Space for Official Use Only Application No._____ Date Received_____ Project Manager_____ Watershed # _____

Authorities: 33 USC 401; 33 USC 403; 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. Seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s).

Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.

1. Applicant Last Name: Bellamy		11. Agent Last Name (agent is not required):	
2. Applicant First Name: Derrick		12. Agent First Name:	
3. Applicant Company Name: South Carolina State Ports Authority		13. Agent Company Name:	
4. Applicant Mailing Address: Post Office Box 22287		14. Agent Mailing Address:	
5. Applicant City: Charleston		15. Agent City:	
6. Applicant State: South Carolina	7. Applicant Zip: 29413-2287	16. Agent State:	17. Agent Zip:
8. Applicant Area Code and Phone No.: 843-856-7057		18. Agent Area Code and Phone No.:	
9. Applicant Fax No.: 843-856-7067		19. Agent Fax No.:	
10. Applicant E-mail: dbellamy@scspa.com		20. Agent E-mail:	
21. Project Name: Building No. 322 Renovation		22. Project Street Address: 32 Washington Street (Future 180 Concord St.)	
23. Project City: Charleston	24. Project County: Charlesotn	25. Project Zip Code: 29403	26. Nearest Waterbody: Cooper River
27. Tax Parcel ID: 459-00-00-009		28. Property Size (acres): 49.4	
29. Latitude: 32 47' 9"		30. Longitude: 79 55' 29"	

31. Directions to Project Site (Include Street Numbers, Street Names, and Landmarks and attach additional sheet if necessary):

Exit I-26 at Exit 219 - B (Morrison Drive & East Bay Street). From East Bay Street. turn left onto Calhoun Street. From Calhoun Street. turn right onto Concord Street. The Cruise Terminal will be at 180 Concord Street.

32. Description of the Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed)

See Attached Sheet

33. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U.S. Waters (attach additional sheets if needed):

See Attached Sheet.

34. Type and quantity of Materials to Be Discharged

Dirt or Topsoil:	_____	☐cubic yards
Clean Sand:	_____	☐cubic yards
Mud:	_____	☐cubic yards
Clay:	_____	☐cubic yards
Gravel, Rock, or Stone:	_____	☐cubic yards
Concrete:	_____	☐cubic yards
Other (describe):	_____	☐cubic yards
TOTAL:	_____	cubic yards

35. Type and Quantity of Impacts to U.S. Waters (including wetlands).

Filling:	_____	☐acres ☐ sq.ft.	_____	☐cubic yards
Backfill & Bedding:	_____	☐acres ☐ sq.ft	_____	☐cubic yards
Landclearing:	_____	☐acres ☐ sq.ft.	_____	☐cubic yards
Dredging:	_____	☐ acres ☐ sq.ft.	_____	☐cubic yards
Flooding:	_____	☐acres ☐ sq.ft.	_____	☐cubic yards
Draining/Excavation:	_____	☐acres ☐ sq.ft.	_____	☐cubic yards
Shading:	_____	☐acres ☐ sq.ft.	_____	☐cubic yards
TOTALS:	_____ acres	_____ sq.ft.	_____	cubic yards

36. Individually list wetland impacts including mechanized clearing, fill, excavation, flooding, draining, shading, etc. and attach a site map with location of each impact (attach additional sheets if needed).

Impact No.	Wetland Type	Distance to Receiving Water body (LF)	Purpose of Impact (road crossing, impoundment, flooding, etc)	Impact Size (acres)
			Total Wetland Impacts (acres)	

37. Individually list all seasonal and perennial stream impacts and attach a site map with location of each impact (attach additional sheets)

Impact No.	Seasonal or Perennial Flow	Average Stream Width (LF)	Impact Type (road crossing, impoundment, flooding, etc)	Impact Length (LF)
			Total Stream Impacts (Linear Feet)	

38. Have you commenced work on the project site? ☒ YES ☐ NO If yes, describe all work that has occurred and provide dates.

New work has not commenced. Repairs to the building substructure has been started.

39. Describe measures taken to avoid and minimize impacts to Waters of the United States:

See Attached Sheet

40. Provide a brief description of the proposed mitigation plan to compensate for impacts to aquatic resources or provide justification as to why mitigation should not be required (Attach a copy of the proposed mitigation plan for review).

It is reasonably anticipated that the work planned will cause no adverse impacts to jurisdictional areas.

41. See the attached sheet to list the names and addresses of adjacent property owners.
A search is being performed to identify the names and addresses of the adjacent property owners.

42. List all Corps Permit Authorizations and other Federal , State, or Local Certifications, Approvals, Denials received for work described in this application.

#71-05-37 / #72-10-087 / 78-3R-337

43. Authorization of Agent. I hereby authorize the agent whose name is given on page one of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application. [1]

Applicant's Signature Date

44. Certification. Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant. [1]

Derek L. Bellamy 1-27-12

Applicant's Signature Date Agent's Signature Date

[1] **The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 11 and 43 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.**

32. Description of Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas

The South Carolina State Ports Authority's (SCSPA) first cruise sailing from Charleston seems to have been the Moore-McCormack Lines vessel, Brasil, which sailed from Charleston to Bermuda on April 30, 1967. Cruise activity in Charleston steadily grew resulting in a dedicated passenger facility and berth being constructed at Union Pier Terminal. The current passenger terminal was dedicated in October 1973. With continued growth of the cruise business and especially with the current terminal security requirements, the need for a new facility has become critical. To address the requirements of new Federal regulations, in 2007 the SCSPA entered into a Memorandum of Understanding with US Customs and Border Protection (CBP) for the conditional approval of ongoing cruise operations on a trial basis. That conditional approval has been renewed on an annual basis with the understanding that an improved facility would be needed for continued operations.

The current cruise operation involves the Passenger Terminal (Building #325), Buildings #302, #303 & #304 for stores and luggage. These buildings are denoted on Sheet 2 of 4.

The SCSPA evaluated several options for providing an improved facility satisfactory to CBP requirements. These options were explored in a study by Berlmello Ajamil & Partners, Inc. completed September 2007 and in the Concept Plan for Union Pier Terminal completed in March 2010, by Cooper Robertson & Partners. Relocating the passenger facility to Building #322 is the preferred option. Building #322 is denoted on Sheet 2 of 4.

The only activity in the preferred option that will affect U.S. Waters or State Critical Areas will be the installation of five pile clusters driven to the marl to support three elevators and two escalators. All clusters will be within the footprint of the existing pile supported Building #322. Those locations are shown on the attached Sheet 3 of 4 with cross section shown on Sheet 4 of 4.

Other activities not affecting waters of the US, but relative to this project, will be general renovation of Building #322. The renovation will include a mezzanine accessed by ADA compliant elevators and escalators for boarding passengers to the cruise ships similar to the stairs and elevators serving the mezzanine of Building #325. Other landside improvements include renovation of the building's exterior and interior, canopies over pedestrian areas, and a loading dock for transferring ship stores from delivery trucks to the cruise ship. Ship store activity is now carried out in Buildings #302, #303, & #304. Building #330 (Sheet 2 of 4) will be demolished.

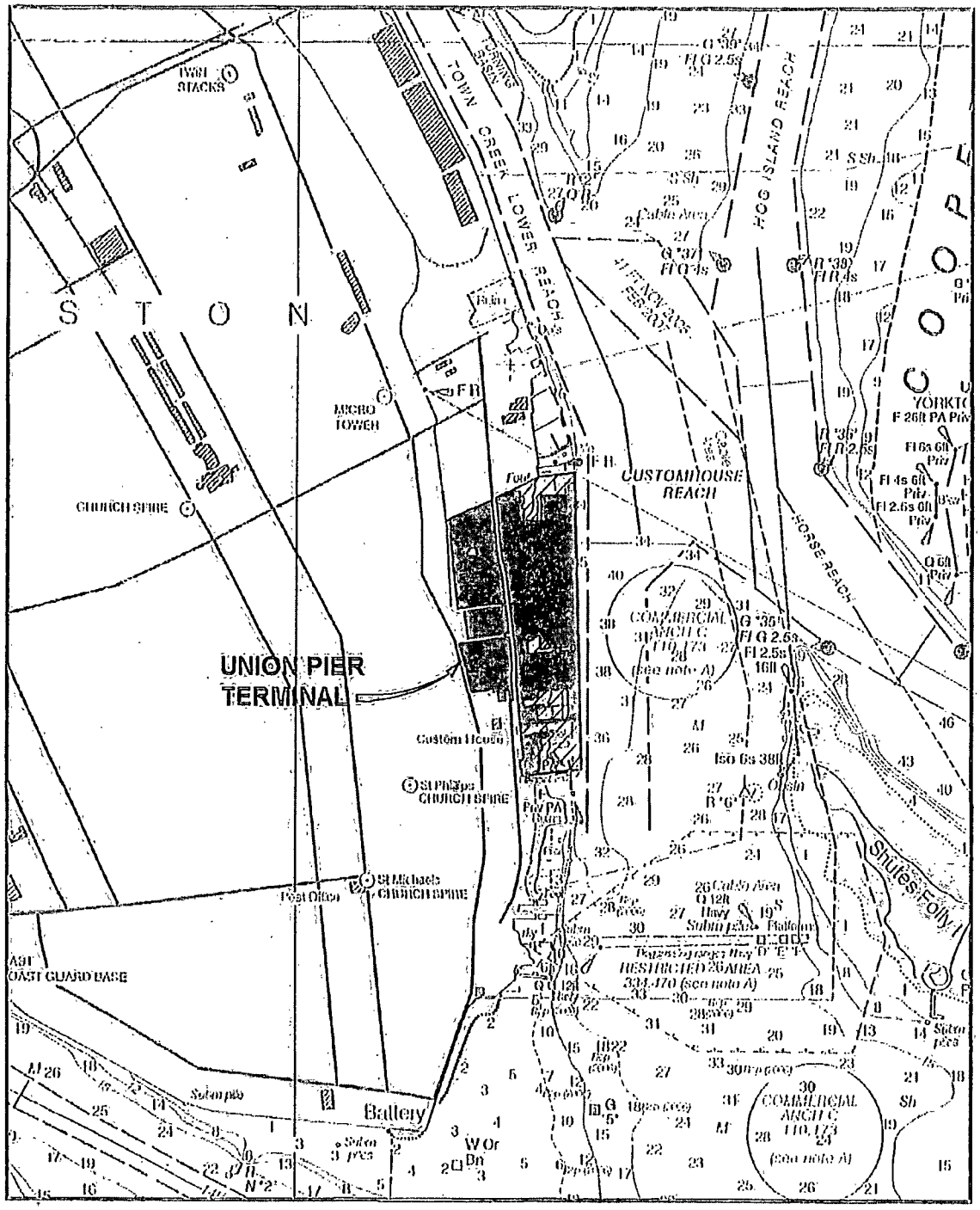
33. Overall Project Purpose...

The overall project purpose is to provide a passenger facility satisfactory for the continued handling of cruise vessels at Union Pier Terminal. The purpose of the installation of elevators and escalators (activity affecting US waters) is to provide ADA compliant access to the mezzanine level for boarding passengers.

39. Describe measures taken to avoid...

The use of Building #322 for cruise passenger operations reduces the impacts to US waters. Modifying the current Passenger Terminal (Building #325) by enlarging and improving its access to better accommodate current CBP requirements would impact wetlands immediately to the shore side of the building. Constructing a new facility on the footprint of Buildings #301 - #305 would involve, at a minimum, demolition of Buildings #301, #302, & #305 and reconstructing over water at the same site.

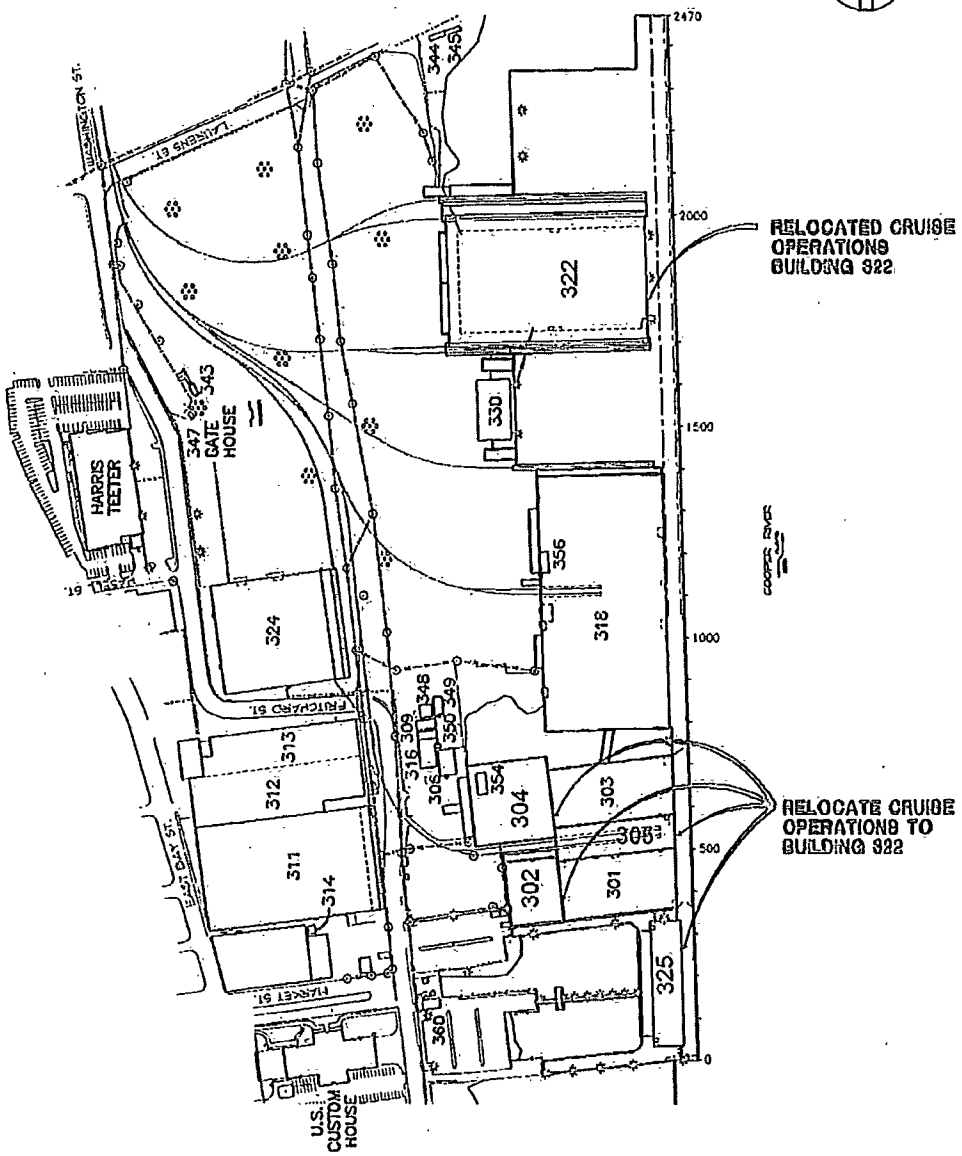
The use of Building #322 will also reduce the cargo capacity of Union Pier Terminal, since Building #325 (current passenger terminal) is not suitable for cargo. Its reuse would likely center around waterfront events, such as tall ships and other such water dependent activities. The use of Building #322 will also require the removal of existing rail service to Union Pier. This also affects Union Pier's cargo capability. The reduced cargo capacity and single passenger berth will result in a reduction in the number of large vessels calling Union Pier Terminal.



LOCATION

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

PROJECT NO.: CIF11E0068
FILE NAME: Upcplp1
DATE: DECEMBER 2011
SHEET: 1 OF 4



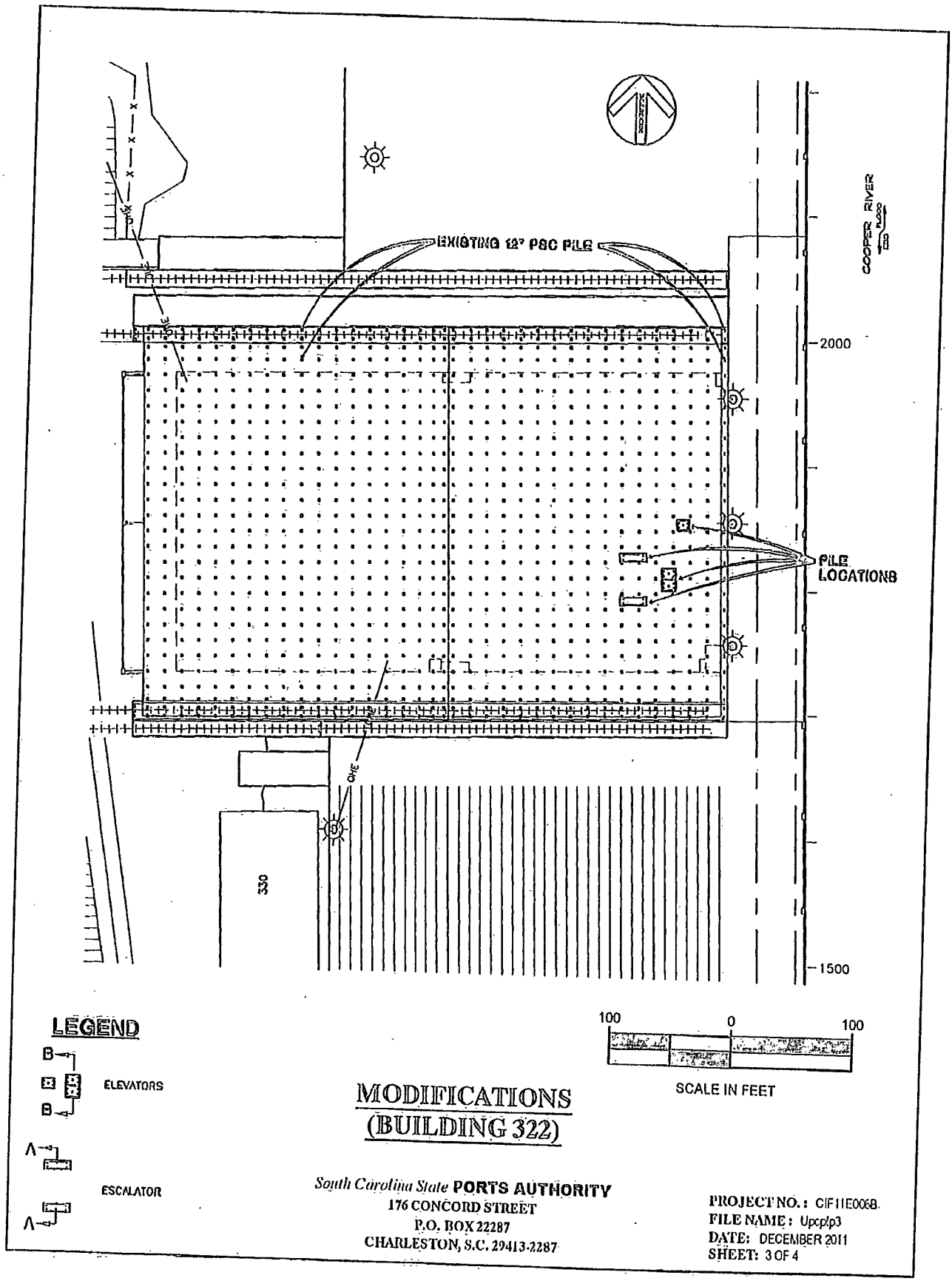
BUILDING LOCATION PLAN
UNION PIER TERMINAL

400 0 400

SCALE IN FEET

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

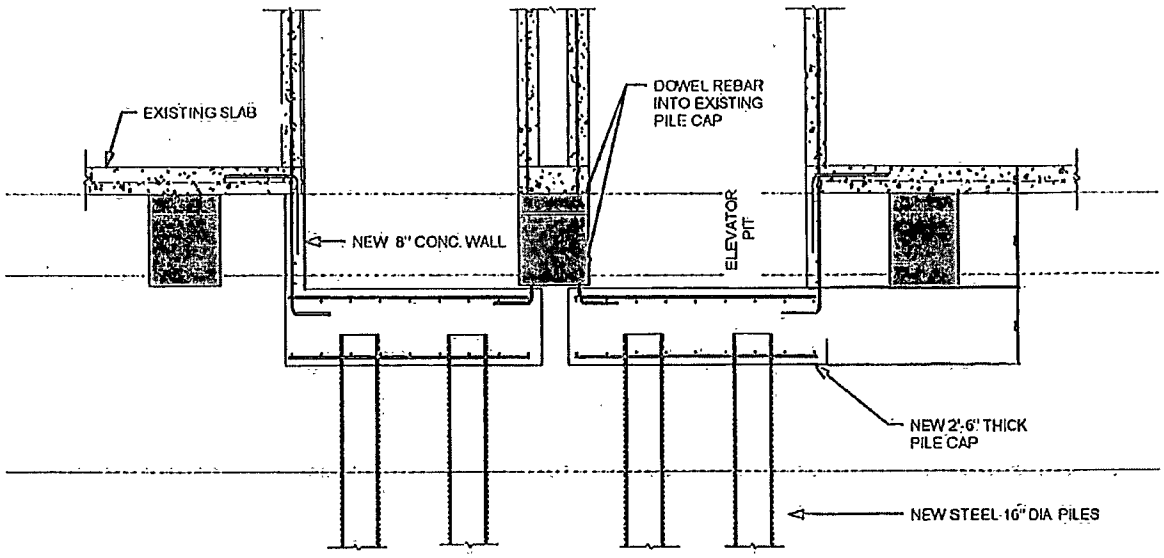
PROJECT NO.: CIF11E006B
FILE NAME: Upcplp2
DATE: DECEMBER 2011
SHEET: 2 OF 4



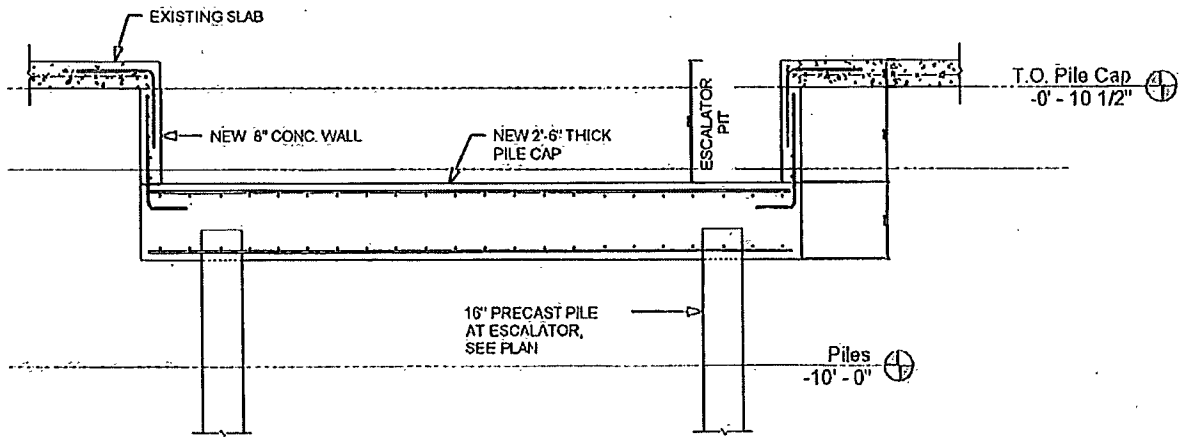
MODIFICATIONS (BUILDING 322)

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

PROJECT NO.: CIF11E0068.
FILE NAME: Upcp/p3
DATE: DECEMBER 2011
SHEET: 3 OF 4



A/E5 SECTION ELEVATOR



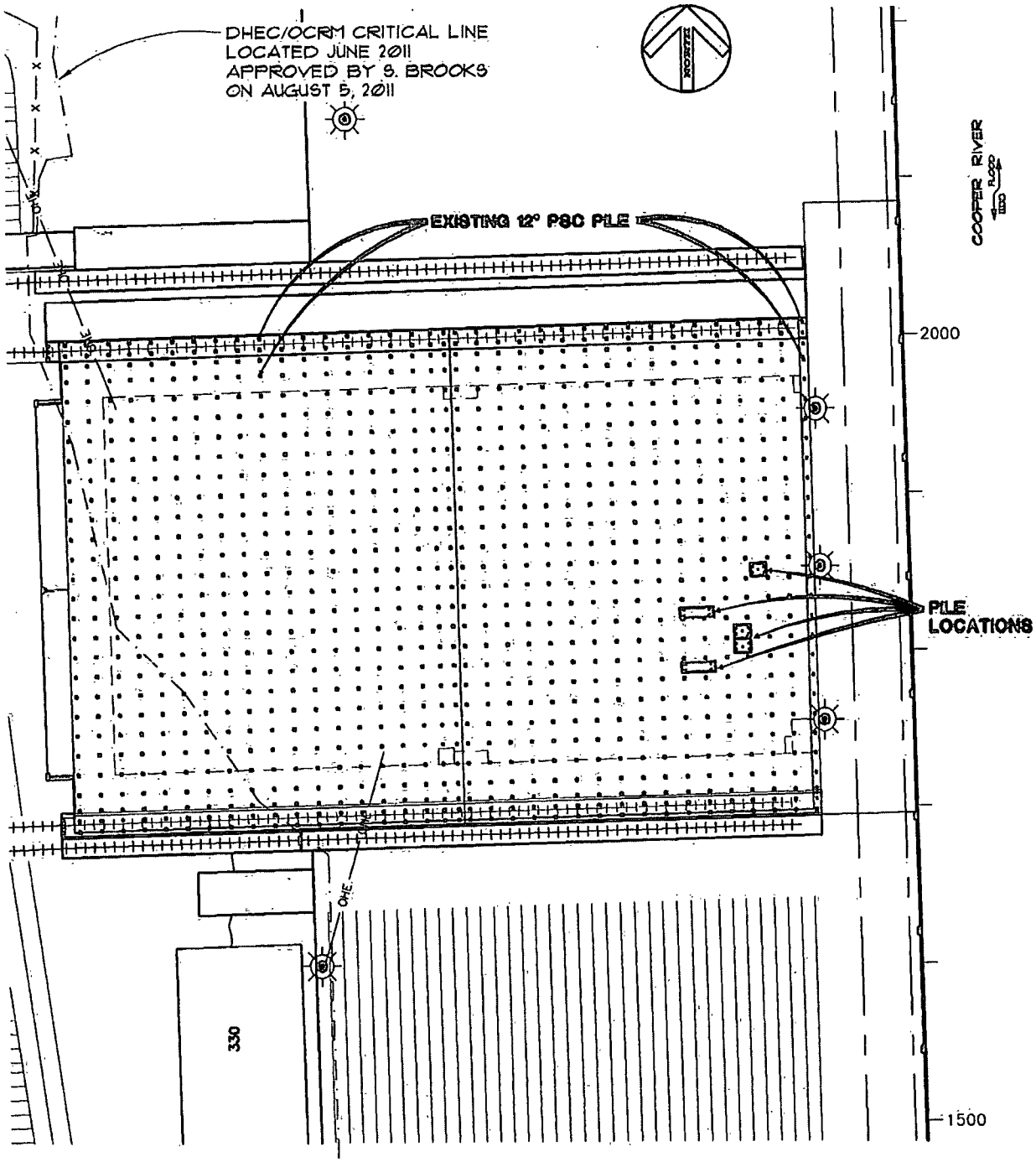
B/E5 SECTION ESCALATOR

MODIFICATIONS
(CROSS SECTION)

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp1
DATE: DECEMBER 2011
SHEET: 4 OF 4

EXHIBIT E



100 0 100

SCALE IN FEET

LEGEND

B B — ELEVATORS

A A — ESCALATOR

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
1/24/12
DERRICK L. BELLAMY

MODIFICATIONS (BUILDING 322)

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

PROJECT NO. : CIF11E006B
FILE NAME : Upcplp4
DATE: JULY 2012
SHEET: 4 OF 11

SCPA 000249

EXHIBIT F

BOARD:
Allen Amsler
Chairman

Mark S. Lutz
Vice Chairman

D H E C
PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

BOARD:
R. Kenyon Wells

L. Clarence Batts, Jr.

Ann B. Kitol, DDS

John O. Hutto, Sr., MD

April 23, 2012

Lieutenant Colonel Edward P. Chamberlayne P.E., Commander
U.S. Army Corps of Engineers
69A Hagood Avenue
Charleston, SC 29403-5107

Re: Certification in Accordance with Section 401 of the Clean Water Act, as amended.
Certification of Consistency with the S.C. Coastal Zone Management Program

Dear Lieutenant Colonel Chamberlayne:

The South Carolina Department of Health and Environmental Control's (Department) Bureau of Water and the Office of Ocean and Coastal Resource Management have reviewed the U.S. Army Corps of Engineers' proposal to amend the Nationwide Permit program regulations. In accordance with agency procedures, the Department issued a Notice of Department Decision on April 06, 2012, taking action on these Nationwide Permits. Department staff determined that provided the proposed actions listed below (and in the attached table) are implemented and the proposed conditions outlined in the April 06, 2012 Notice of Department Decision are adhered to, there is a reasonable assurance that work authorized will be conducted in a manner consistent with the certification requirements of Section 401 of the Federal Clean Water Act (CWA), as amended, and the Coastal Zone Management Act (48-39-10 et.seq.).

In accordance with the provisions of Section 401, we certify that the indicated Nationwide Permits, subject to the provided conditions, are consistent with applicable provisions of Section 303 of the CWA, as amended. We also hereby certify that there are no applicable effluent limitations under Sections 301(b) and 302, and that there are no applicable standards under Sections 306 and 307 of the CWA. The attached general conditions apply to all Nationwide Permits.

Certification and Finding of Consistency

401 Water Quality Certification issued without conditions	Coastal Zone Consistency Certification issued without conditions
3. Maintenance	1. Aids to Navigation
4. Fish & Wildlife Harvesting, Enhan, Attract Devices, & Activities	2. Structures in Artificial Canals
5. Scientific Measurement Devices	3. Maintenance
6. Survey Activities	4. Fish & Wildlife Harvesting, Enhan, Attract Devices, & Activities
7. Outfall Structures and Associated Intake Structures	5. Scientific Measurement Devices
13. Bank Stabilization	6. Survey Activities
15. U.S. Coast Guard Approved Bridges	7. Outfall Structures and Associated Intake Structures
18. Minor Discharges	8. Oil and Gas Structures on the Continental Shelf
19. Minor Dredging	9. Structures in Fleeting and Anchorage Areas
20. Response Operations for Oil and Hazardous Substances	10. Mooring Buoys
22. Removal of Vessels	11. Temporary Recreational Structures
25. Structural Discharges	13. Bank Stabilization
27. Aquatic Habitat Restoration, Estabmt & Enhancement Activities	15. U.S. Coast Guard Approved Bridges
30. Moist Soil Management for Wildlife	18. Minor Discharges
31. Maintenance of Existing Flood Control Facilities	19. Minor Dredging
32. Completed Enforcement Activities	20. Response Operations for Oil and Hazardous Substances
33. Temporary Construction, Access, and Dewatering	22. Removal of Vessels
36. Boat Ramps	25. Structural Discharges
37. Emergency Watershed Protection and Rehabilitation	27. Aquatic Habitat Restoration, Estabmt & Enhancement Activities
38. Cleanup of Hazardous and Toxic Waste	28. Modifications of Existing Marinas
40. Agricultural Activities	30. Moist Soil Management for Wildlife
41. Reshaping Existing Drainage Ditches	31. Maintenance of Existing Flood Control Facilities
45. Repair of Uplands Damaged by Discrete Events	32. Completed Enforcement Activities
48. Commercial Shellfish Aquaculture Activities	33. Temporary Construction, Access, and Dewatering

401 Water Quality Certification issued without conditions	Coastal Zone Consistency Certification issued without conditions
	36. Boat Ramps
	37. Emergency Watershed Protection and Rehabilitation
	38. Cleanup of Hazardous and Toxic Waste
	40. Agricultural Activities
	41. Reshaping Existing Drainage Ditches
	45. Repair of Uplands Damaged by Discrete Events
	48. Commercial Shellfish Aquaculture Activities

401 Water Quality Certification issued with conditions	Coastal Zone Consistency Certification issued with conditions
12. Utility Line Activities	12. Utility Line Activities
14. Linear Transportation Projects	14. Linear Transportation Projects
23. Approved Categorical Exclusions	23. Approved Categorical Exclusions
29. Residential Developments	29. Residential Developments
39. Commercial and Institutional Development	39. Commercial and Institutional Development
42. Recreational Facilities	42. Recreational Facilities
43. Stormwater Management Facilities	44. Mining Activities
44. Mining Activities	46. Discharge in Ditches
46. Discharge in Ditches	

Denial and Finding of Inconsistency

The Department has determined that there is not a reasonable assurance that work authorized by the following Nationwide Permits will be conducted in a manner consistent with the certification requirements of Section 401 of the CWA, as amended, or the Coastal Zone Management Act (48-39-10 et.seq.). In accordance with the provisions of Section 401 and the S.C. Coastal Zone Management Program, we deny 401 Water Quality Certification and Coastal Zone Consistency Certification for these Nationwide Permits.

401 Water Quality Certification denied	Coastal Zone Consistency Certification denied
16. Return Water From Upland Cont. Disposal Areas	16. Return Water From Upland Cont. Disposal Areas
17. Hydropower Projects	17. Hydropower Projects
21. Surface Coal Mining Activities	21. Surface Coal Mining Activities
34. Cranberry Production	24. Indian Tribe or State Administered Section 404 Programs
49. Coal Remining Activities	34. Cranberry Production
50. Underground coal Mining Activities	35. Maintenance Dredging of Existing Basins
51. Land-Based Renewable Energy Generation Facilities	43. Stormwater Management Facilities
52. Land-Based Renewable Energy Generation Pilot Projects	49. Coal Remining Activities
	50. Underground coal Mining Activities
	51. Land-Based Renewable Energy Generation Facilities
	52. Land-Based Renewable Energy Generation Pilot Projects

If you have any questions, please contact Heather Preston at (803) 898-3105 or prestohs@dhec.sc.gov or Rheta Geddings DiNovo at (843) 953-0256 or dinovorg@dhec.sc.gov .

Sincerely,

Heather S. Preston, Director
Bureau of Water
Environmental Quality Control

Rheta Geddings DiNovo, Director
Regulatory Division
Office of Ocean and Coastal Resource Management

Nationwide Permit Number & Topic	401 Cert Action	CZC Cert Action (Outside of the Critical Area)
1. Aids to Navigation	N/A	Issue
2. Structures in Artificial Canals	N/A	Issue
3. Maintenance	Issue	Issue
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Issue	Issue
5. Scientific Measurement Devices	Issue	Issue
6. Survey Activities	Issue	Issue
7. Outfall Structures and Associated Intake Structures	Issue	Issue
8. Oil and Gas Structures on the Outer Continental Shelf	N/A	Issue
9. Structures in Fleeting and Anchorage Areas	N/A	Issue
10. Mooring Buoys	N/A	Issue
11. Temporary Recreational Structures	N/A	Issue
12. Utility Line Activities	Issue w/ Cond	Issue w/ Cond
13. Bank Stabilization	Issue	Issue
14. Linear Transportation Projects	Issue w/ Cond	Issue w/ Cond
15. U.S. Coast Guard Approved Bridges	Issue	Issue
16. Return Water From Upland Contained Disposal Areas	Deny	Deny
17. Hydropower Projects	Deny	Deny
18. Minor Discharges	Issue	Issue
19. Minor Dredging	Issue	Issue
20. Response Operations for Oil and Hazardous Substances	Issue	Issue
21. Surface Coal Mining Operations	Deny	Deny
22. Removal of Vessels	Issue	Issue
23. Approved Categorical Exclusions	Issue w/ Cond	Issue w/ Cond
24. Indian Tribe or State Administered Section 404 Programs	N/A	Deny
25. Structural Discharges	Issue	Issue
26. [Reserved]	N/A	N/A
27. Aquatic Habitat Restoration, Establishment & Enhancement Activities	Issue	Issue
28. Modifications of Existing Marinas	N/A	Issue
29. Residential Developments	Issue w/ Cond	Issue w/ Cond
30. Moist Soil Management for Wildlife	Issue	Issue
31. Maintenance of Existing Flood Control Facilities	Issue	Issue
32. Completed Enforcement Actions	Issue	Issue
33. Temporary Construction, Access and Dewatering	Issue	Issue
34. Cranberry Production Activities	Deny	Deny
35. Maintenance Dredging of Existing Basins	N/A	Deny
36. Boat Ramps	Issue	Issue
37. Emergency Watershed Protection and Rehabilitation	Issue	Issue
38. Cleanup of Hazardous and Toxic Waste	Issue	Issue
39. Commercial and Institutional Developments	Issue w/ Cond	Issue w/ Cond
40. Agricultural Activities	Issue	Issue
41. Reshaping Existing Drainage Ditches	Issue	Issue
42. Recreational Facilities	Issue w/ Cond	Issue w/ Cond
43. Stormwater Management Facilities	Issue w/ Cond	Deny
44. Mining Activities	Issue w/ Cond	Issue w/ Cond
45. Repair of Uplands Damaged by Discrete Events	Issue	Issue
46. Discharges in Ditches	Issue w/ Cond	Issue w/ Cond
47. [Reserved]	N/A	N/A
48 Commercial Shellfish Aquaculture Activities	Issue	Issue
49. Coal Remining Activities	Deny	Deny
50. Underground Coal Mining Activities	Deny	Deny
51. Land-Based Renewable Energy Generation Facilities	Deny	Deny
52. Land-Based Renewable Energy Generation Pilot Projects	Deny	Deny

EXHIBIT G

HISTORIC CHARLESTON
FOUNDATION

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL

2013 JAN -2 AM 10: 27

OFFICE OF GENERAL COUNSEL
ADMINISTRATION
CLERK, BOARD OF DHEC

December 31, 2012

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

RE: P/N # OCRM-12-054-B, South Carolina State Ports Authority

Historic Charleston Foundation (HCF) respectfully requests that DHEC conduct a final review of the decision by OCRM to issue the South Carolina State Ports Authority's (SPA) permit (OCRM-12-054-B) on December 18, 2012. We are requesting this final review conference because we need to better understand what analysis was undertaken to determine the broad environmental impacts that the proposed new cruise passenger facility could have on the historic districts in downtown Charleston.

We also have questions concerning the "special conditions" that were attached to the approved permit. Could you please clarify what the "life of the project" is for these conditions to remain in effect? We assume that this term would be as long as the facility is being operated as a cruise terminal, but this is not clearly defined. Also, the role of DHEC in reviewing proposed future changes to the Voluntary Cruise Management Plan is not clear. Would DHEC undertake its own public review process to assess the appropriateness of any proposed changes to these conditions?

In addition, HCF would like to know if the SPA has submitted the requested information that was outlined in OCRM's letter from June 29, 2012. It is our position that OCRM's request for additional analysis was appropriate for a project of this magnitude, and we believe this information should be made available for the public's review and comment. We have not seen any of these impact studies that were requested by OCRM. Certain bullets included in the June 29th letter were of particular interest to us, including the following requests:

"Please provide the following:

- Current traffic plan for current operations and proposed traffic plan/study that shows the impacts on surrounding traffic and community. Specifically, does the proposed traffic plan increase traffic congestions on neighboring communities? Please provide any proposed drawings/layouts that may be available.
- Information that indicates whether or not cruise ship(s) that will berth at this dock will be equipped with shore power and whether or not the facility will be able to provide shore power.
- A description of activities that will be occurring, in the future, in the area where the current cruise operations exist. Will this area be utilized for cargo ships or shipping

activities in the future? Will the total number of ships calling on Union Pier as a whole increase?

- The Department must evaluate the extent to which the proposed use could affect the value and enjoyment of adjacent owners. Please address how the proposed use of Building 322, the covered staging area and cruise operations could affect the value and enjoyment of adjacent owners.
- Proof of Coordination between the SC State Ports Authority and the State Historic Preservation Office to determine if and how the cruise ship operation is its new location will impact a designated historic area."

In submitted written statements that were provided to OCRM at two public hearings this year, on April 18th and September 19th, HCF requested that OCRM require, as part of its environmental review of the proposed changes to Building 322, that the SPA produce data which analyzes the cumulative impacts of the proposed new cruise terminal use on the surrounding historic districts and neighborhoods. If, through this analysis, potential adverse impacts are determined, then we request the recommendation of reasonable mitigation measures.

In accordance with a Foundation Board resolution dated March 29th, 2011, we also requested that the SPA provide research regarding reasonable alternatives for the site of the new terminal and a justification that the proposed location is the most appropriate. We feel that this information is necessary because it is through this review process that OCRM identifies all direct, indirect and cumulative impacts of the proposed activity and determines whether the requirements of critical area permitting and coastal zone consistency are met.

Since our mission is to preserve and protect the historic, architectural and cultural character of Charleston and its historic environs, we are most concerned with how this intensified use in the heart of the historic district is going to impact the local and National Register-listed historic districts downtown. The expansion of unregulated cruise tourism in Charleston has the potential to create significant adverse impacts on Charleston's historic resources. An objective economic impacts study commissioned by the Foundation, titled *The Cruise Industry in Charleston: A Clear Perspective,* focuses on both the benefits and the costs associated with the cruise industry and its impacts on Charleston residents. This study has identified that there is a clear "non-alignment" of benefits and costs since the bulk of the cruise industry benefits go to the SPA while the bulk of the costs are borne by the residents and businesses located in the surrounding downtown neighborhoods.

Since we have not seen any studies or data produced by the State Ports Authority or OCRM that exhibit an adequate level of review of the potential adverse impacts of this cruise terminal on the city of Charleston, we are requesting this final review conference.

Sincerely,

Winslow Hastie
Chief Preservation Officer

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

December 18, 2012

Derrick Bellamy
SC State Ports Authority
P.O. Box 22287
Charleston, SC 29413-2287

Re: **P/N# OCRM-12-054-B**
SC State Ports Authority

Dear Mr. Bellamy:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to make improvements to an existing waterfront building and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina, and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, *OR* appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

Steven Brooks

Steven Brooks
Senior Regulatory Project Manager
Regulatory Programs Division

Cc: Blair Williams, Wetland Section Manager
Patrick Moore, SCSPA
Nathaniel Ball, USACOE
Enclosure

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office · 1362 McMillan Avenue, Suite 400 · Charleston, SC 29405
Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

   Clerk of the Board
   SC DHEC
   2600 Bull Street
   Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

4. The request for final review should include the following:
   a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
   b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
   c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

July 1, 2010

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office · 1362 McMillan Avenue, Suite 400 · Charleston, SC 29405
Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s):	**SC State Ports Authority**
Permit Number(s):	**OCRM-12-054-B**
Date of Issuance:	**December 18, 2012**
Expiration Date:	**December 18, 2017**
Location:	**On and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina. TMS#: 459-00-00-009.**

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of $5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. **All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.**

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The work as shown on the attached plans will consist of making improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322.

SPECIAL CONDITIONS

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal are conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA require its contractors, for the activities addressed under this permit, to:

   a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

   b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all non road equipment between 100 and 750 horsepower.

   c. turn off construction equipment and vehicles not in active use.

   d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

   e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

7. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

Permit Number: **OCRM-12-054-B**

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

_____ _____

(PERMITTEE(S)) (DATE)

SC State Ports Authority

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

Steven Brooks 12/18/12

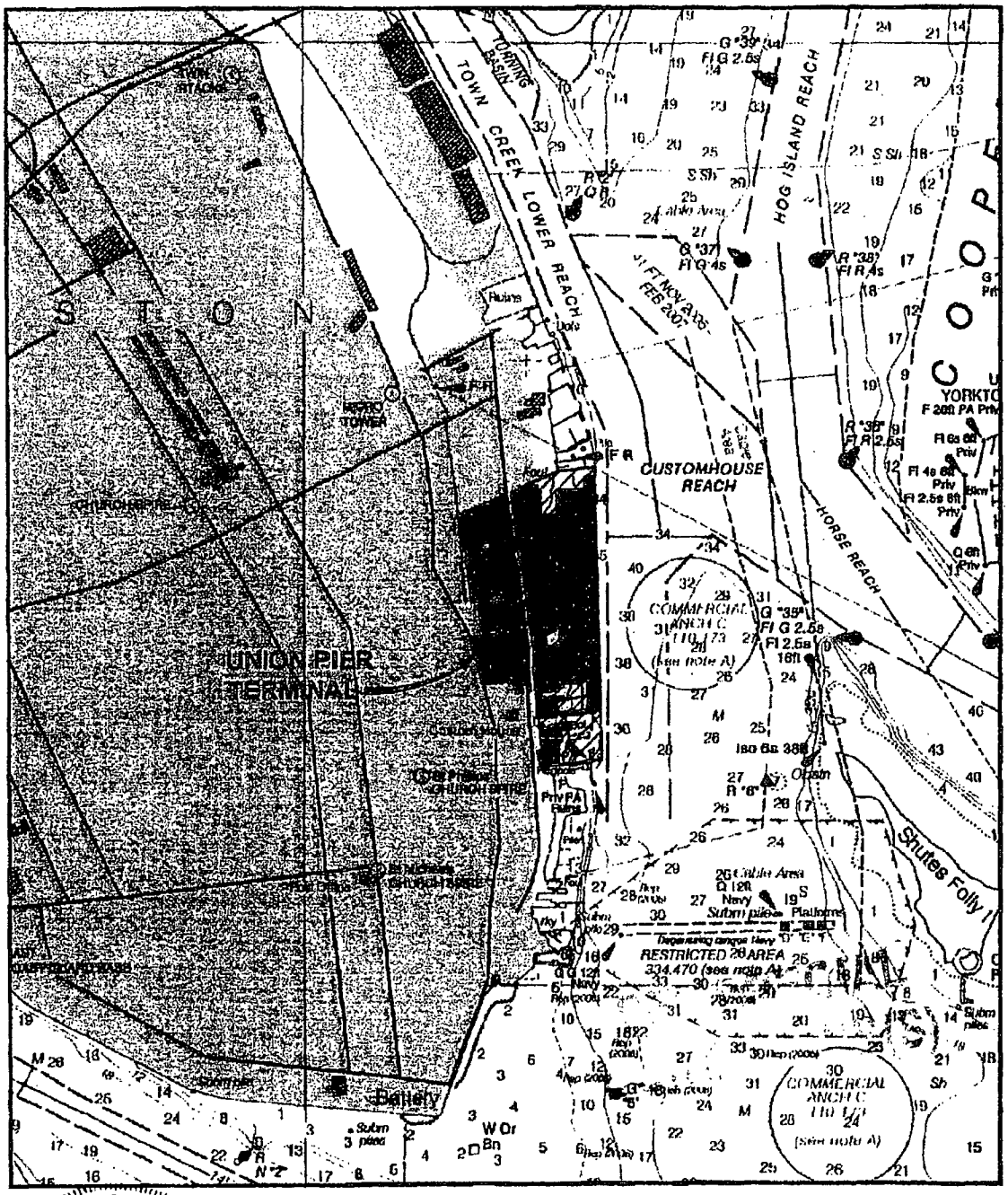
(PROJECT MANAGER, WETLAND SECTION) (DATE)

Steven Brooks
or her Designee
Other Authorized State Official

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.



SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

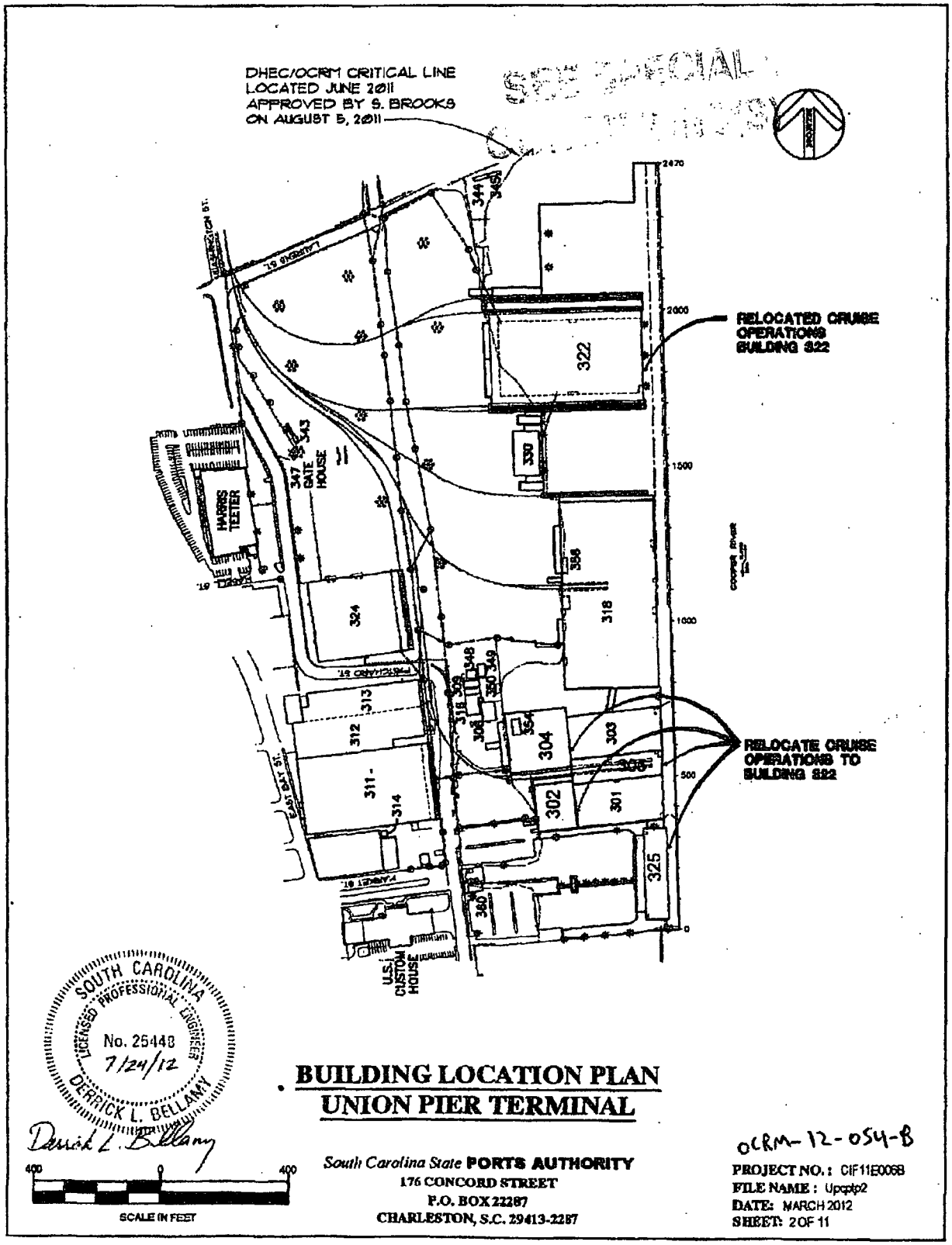
Derrick L. Bellamy

LOCATION

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

OCRM-12-054-B

PROJECT NO.: GF11E006B
FILE NAME: Upcptp1
DATE: JULY 2012
SHEET: 1 OF 11



SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

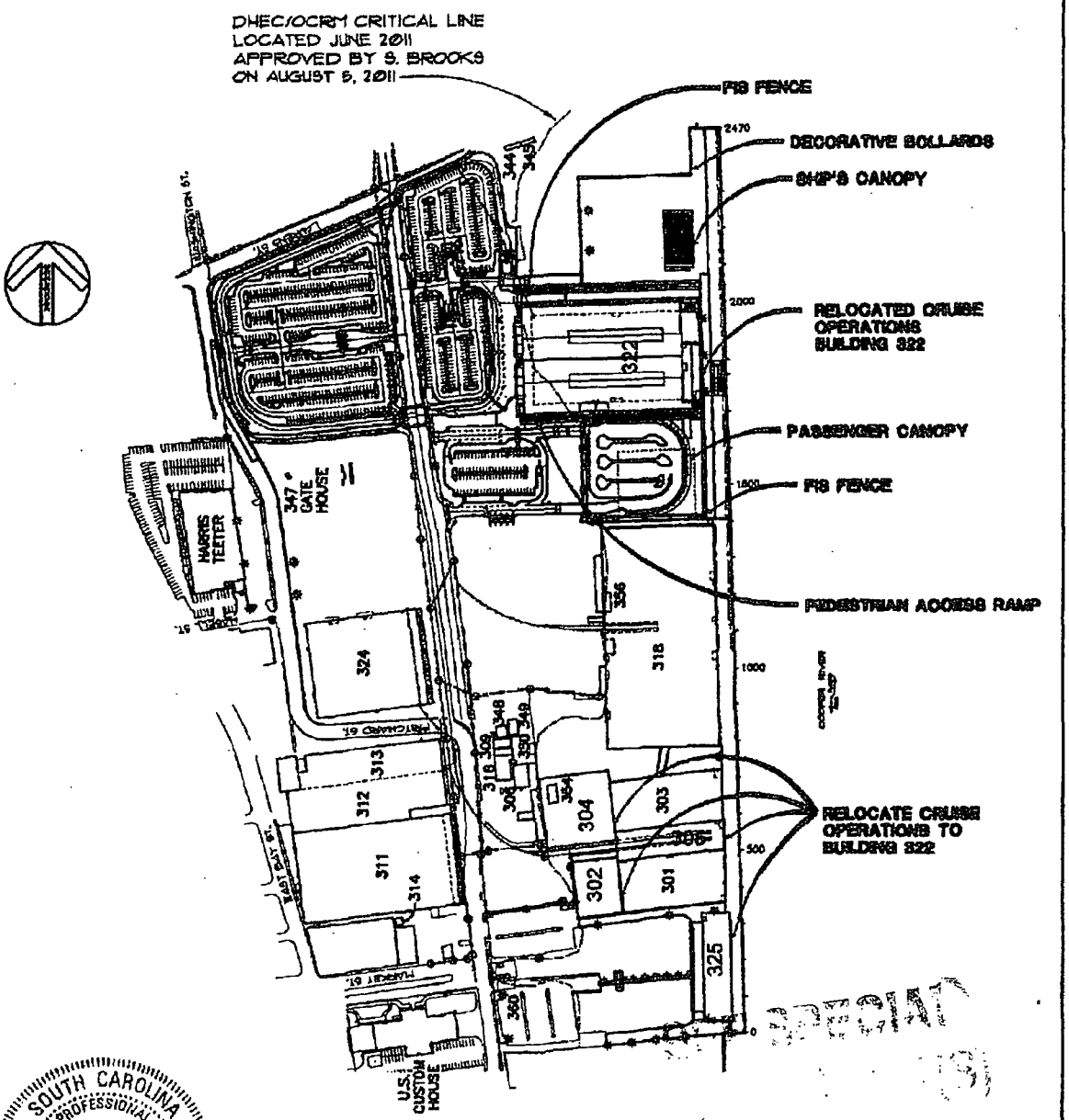
Derrick L. Bellamy

BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

OCRM-12-054-B

PROJECT NO.: CIF11E0068
FILE NAME: Upcptp2
DATE: MARCH 2012
SHEET: 2 OF 11



SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
1/24/12
DERRICK L. BELLAMY

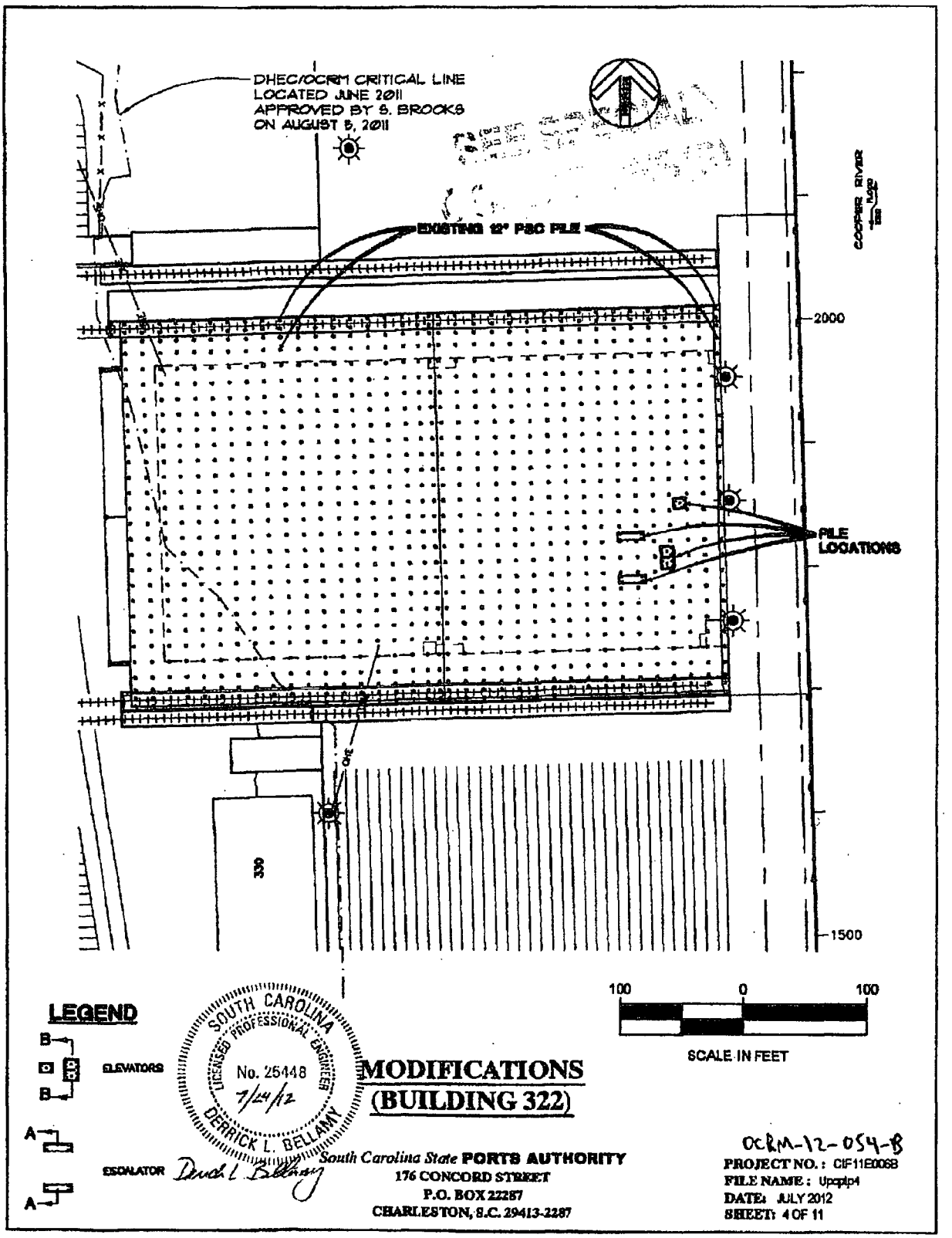
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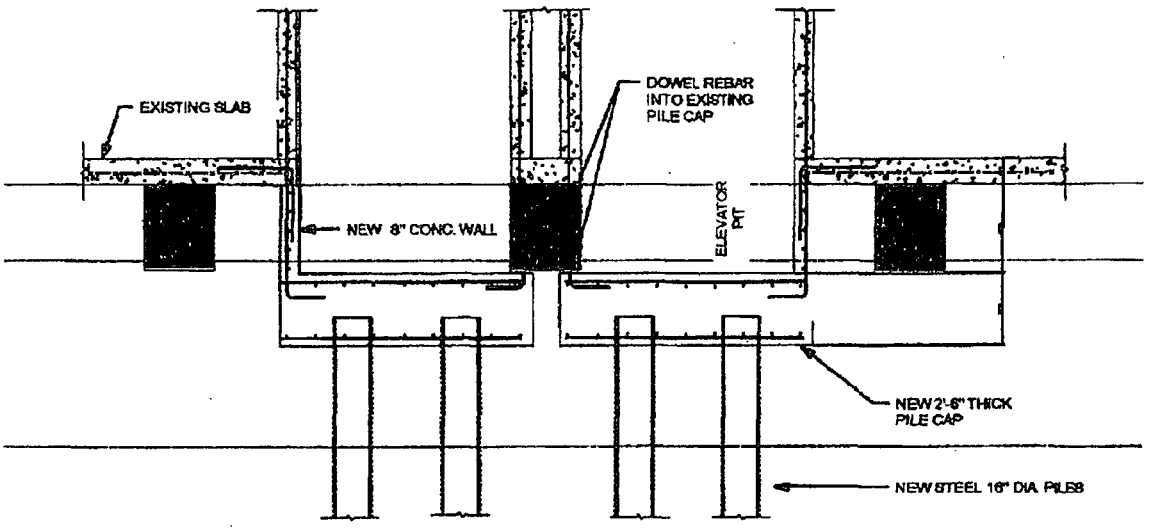
NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

OCRM-12-054-B

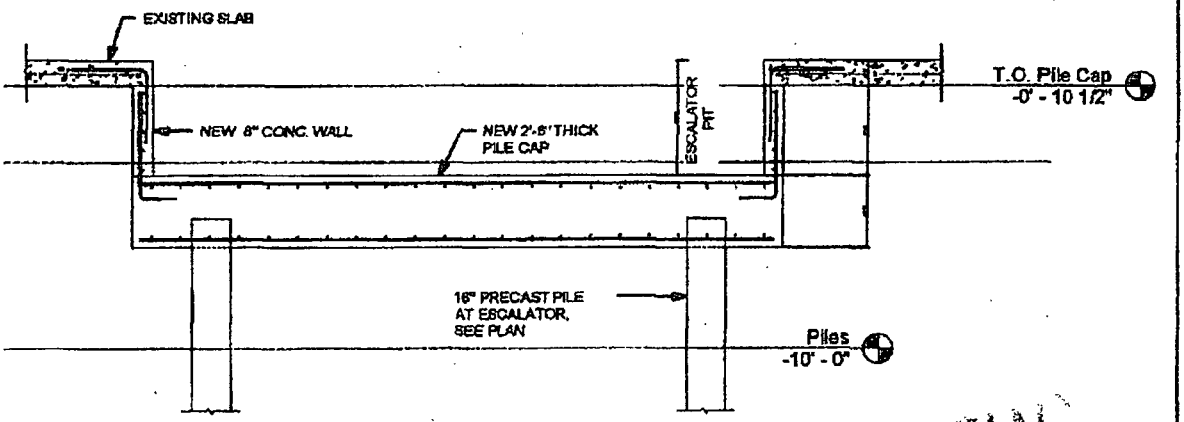
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp3
DATE: MARCH 2012
SHEET: 3 OF 11


DHEC/OCRM CRITICAL LINE
LOCATED JUNE 2011
APPROVED BY S. BROOKS
ON AUGUST 5, 2011
EXISTING 12" PSC PILE
COOPER RIVER
2000
PILE LOCATIONS
322
1500
100
0
100
SCALE IN FEET
LEGEND
B
B
ELEVATORS
A
A
ESCALATOR
SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY
MODIFICATIONS
(BUILDING 322)
South Carolina State PORTS AUTHORITY
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287
OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upgip4
DATE: JULY 2012
SHEET: 4 OF 11



A SECTION ELEVATOR



B SECTION ESCALATOR

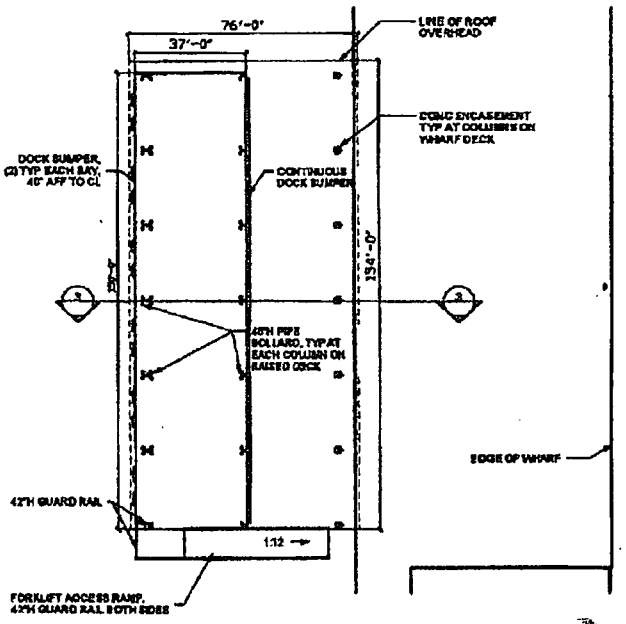
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

David L. Bellamy

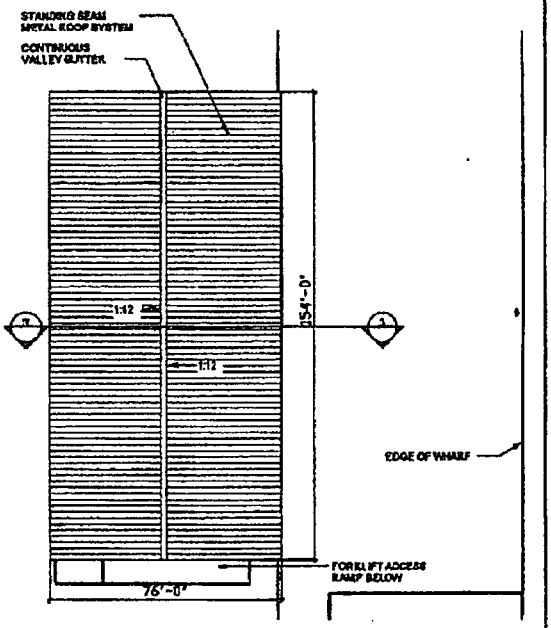
MODIFICATIONS (CROSS SECTION)

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

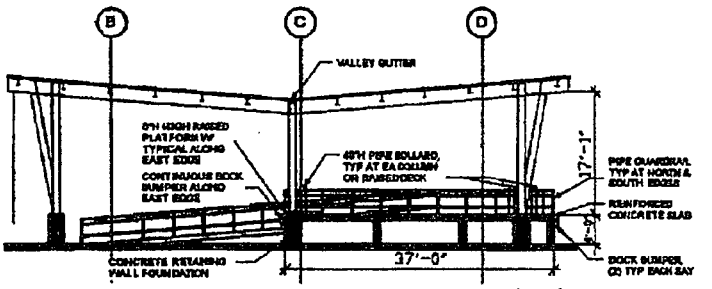
GCRM-12-054-B
PROJECT NO.: CF11E008B
FILE NAME: Upcplp5
DATE: JULY 2012
SHEET: 5 OF 11



1 STORES CANOPY FLOOR PLAN



2 STORES CANOPY ROOF PLAN



3 STORES CANOPY E-W SECTION

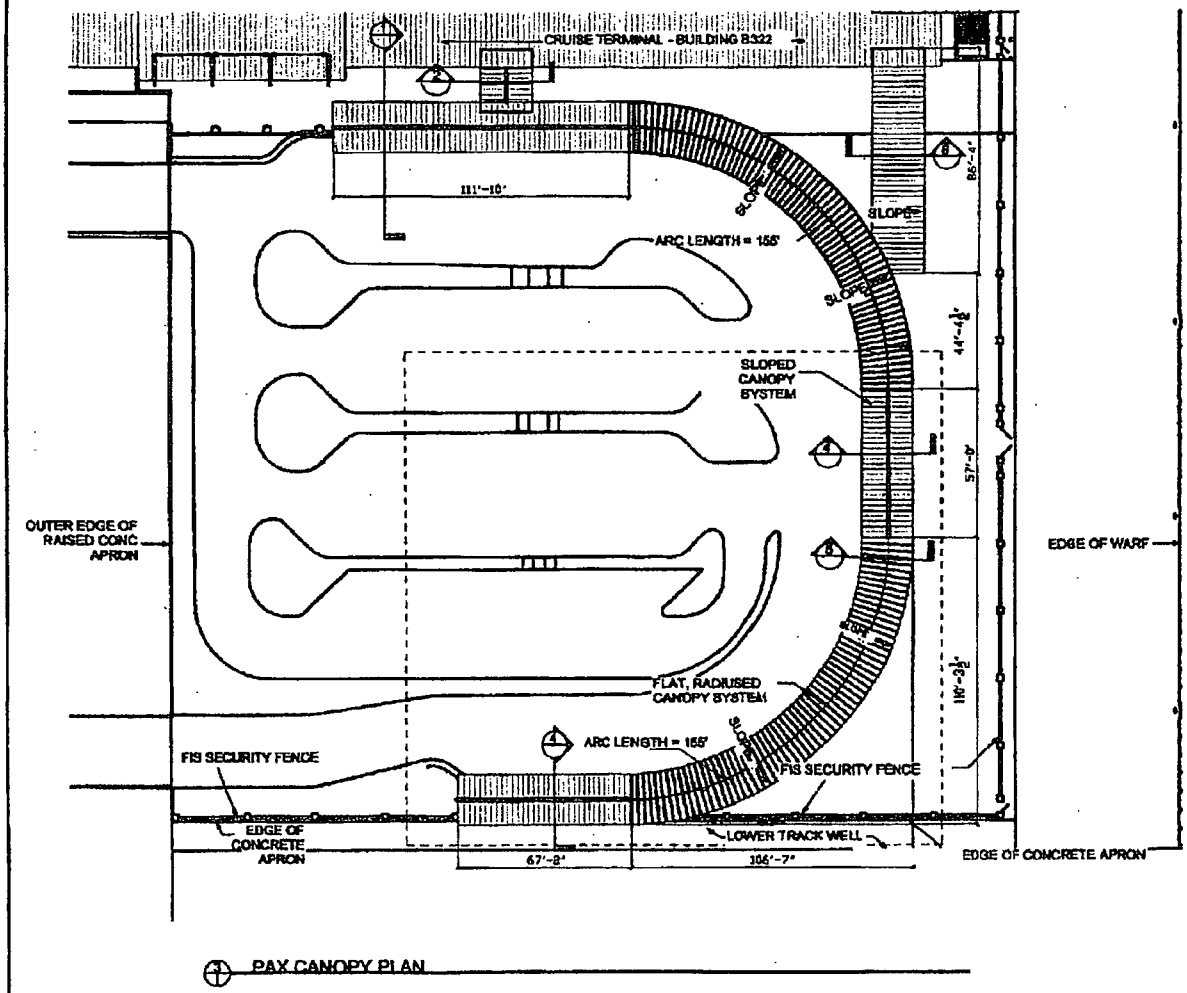
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

MODIFICATIONS
NORTH APRON

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

OCRM-12-054-B

PROJECT NO.: CF11E006B
FILE NAME: Upqlp6
DATE: JULY 2012
SHEET: 6 OF 11



PAX CANOPY PLAN

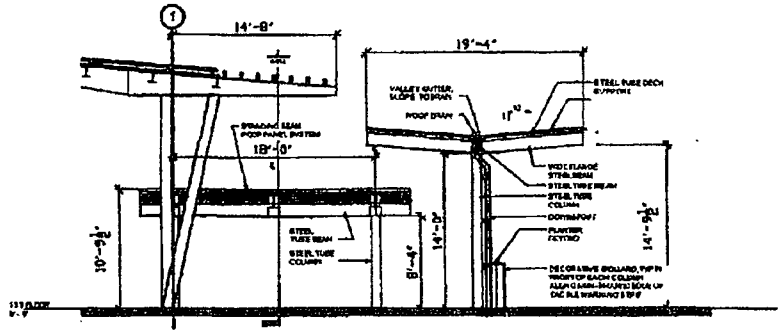
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

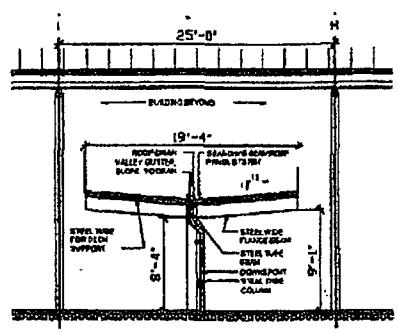
MODIFICATIONS
SOUTH APRON

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

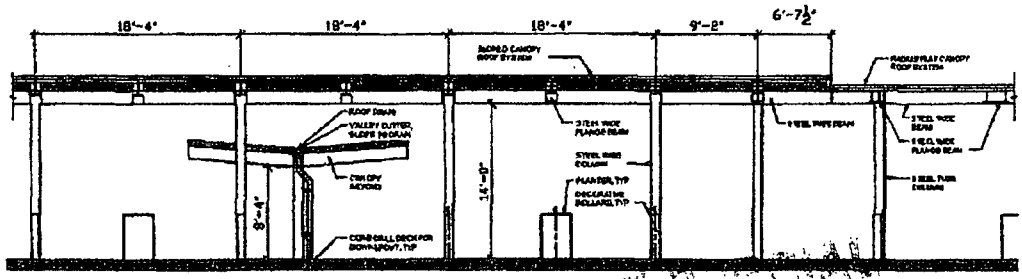
OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcptp7
DATE: JULY 2012
SHEET: 7 OF 11



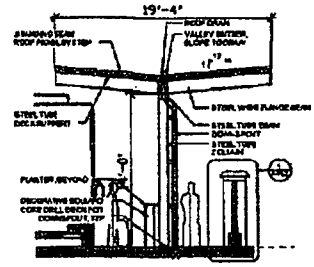
SECTION - PAX DROP OFF ZONE CANOPY



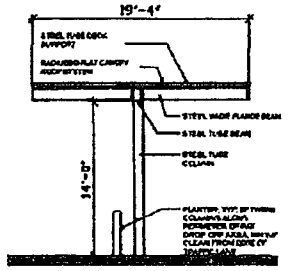
SECTION - PAX DROP OFF ZONE CANOPY @ BLDG INTERSECTION



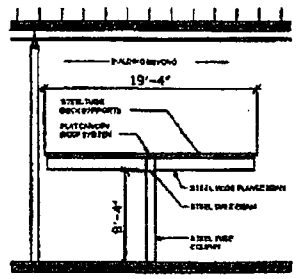
SECTION - PAX ACCESS CANOPY



SECTION - SOUTH PAX ACCESS CANOPY



SECTION - FLAT PAX ACCESS CANOPY



SECTION - FLAT POV BAG CANOPY

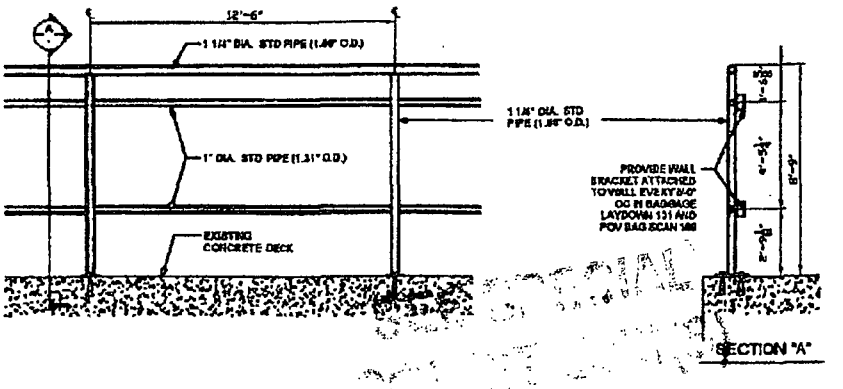
SOUTH CAROLINA
PROFESSIONAL ENGINEER
No. 25149
7/24/12
PATRICK L. BELLAMY

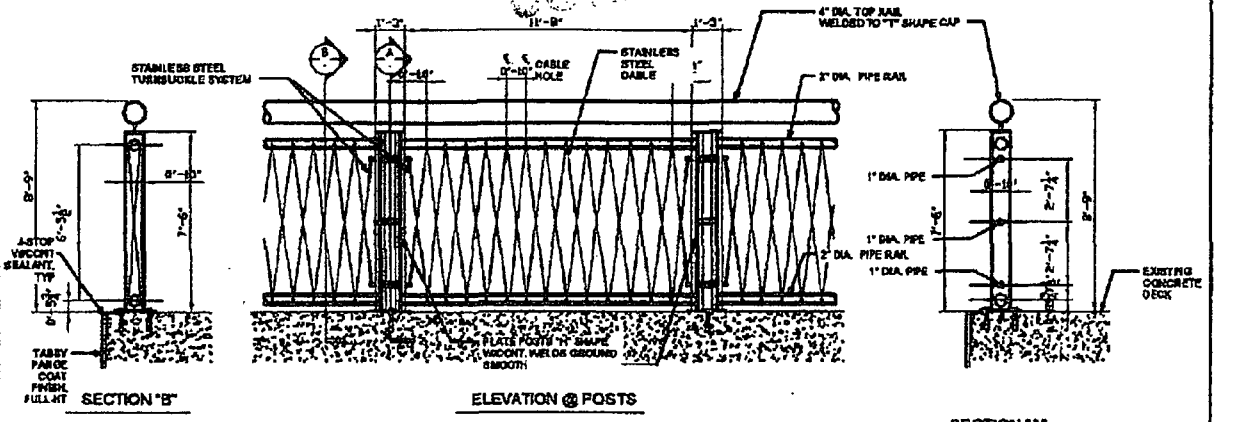
Patrick L. Bellamy

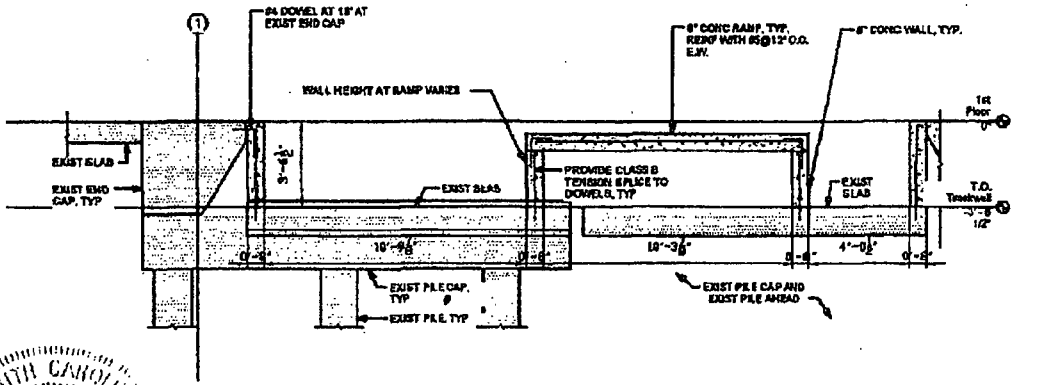
MODIFICATION
SOUTH APRON - DETAILS

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

OCKM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upaptp8
DATE: JULY 2012
SHEET: 8 OF 11







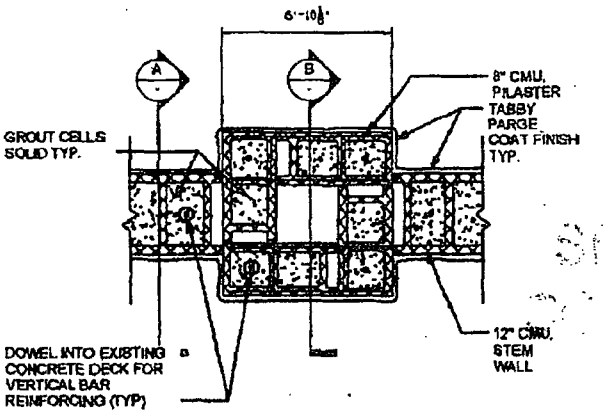
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

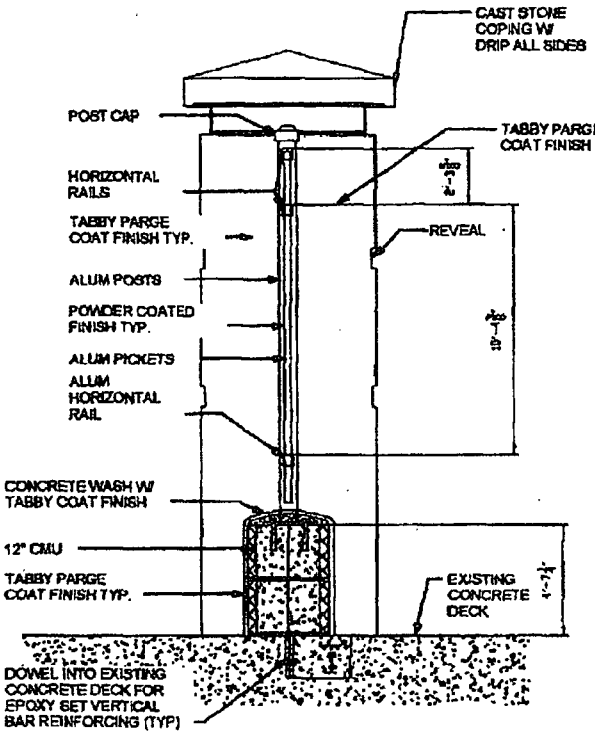
MODIFICATIONS
PEDESTRIAN ACCESS RAMP DETAIL

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

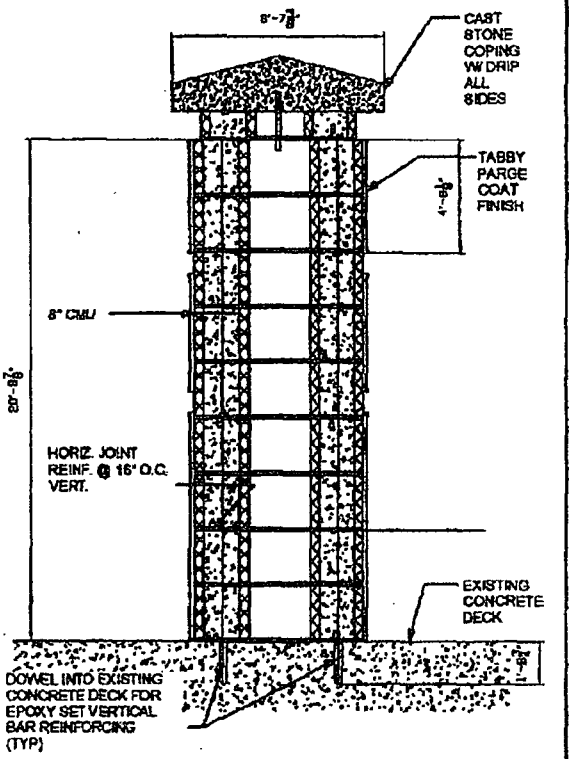
OCRM 12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp9
DATE: JULY 2012
SHEET: 9 OF 11



PLAN DETAIL @ MASONRY PILASTER



WALL SECTION "A" @ MASONRY STEM WALL



WALL SECTION "B" @ MASONRY PILASTER

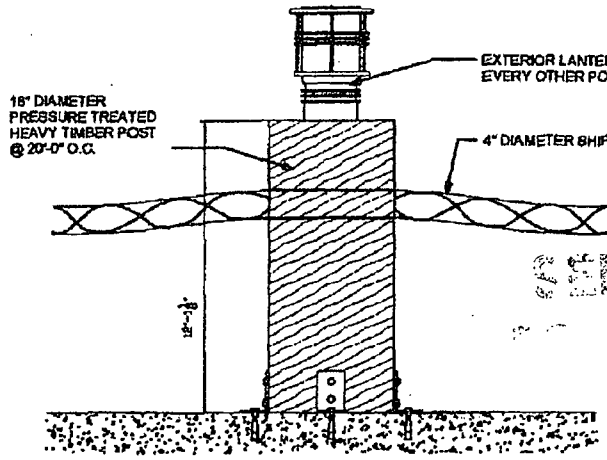
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

Derrick L Bellamy

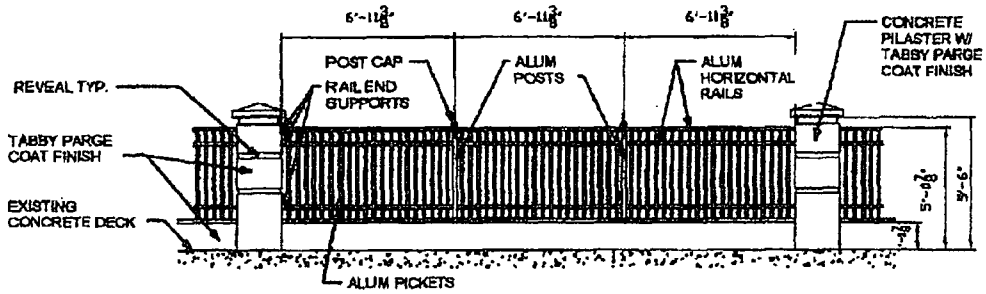
MODIFICATIONS
SECURITY FENCE DETAILS

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

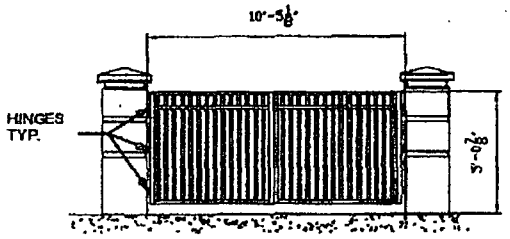
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PROJECT NO.: CIF11E006B
FILE NAME: Upcptp10
DATE: JULY 2012
SHEET: 10 OF 11



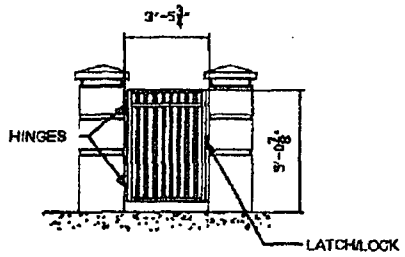
NORTH APRON DECORATIVE BOLLARDS



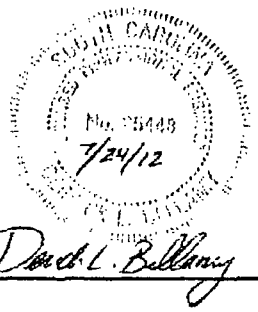
ELEVATION @ FIS SECURITY FENCE



ELEVATION @ ACCESS GATE



ELEVATION @ PED GATE



David L. Bellamy

MODIFICATIONS
SECURITY FENCE DETAILS

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

6CRM-12-054-B

PROJECT NO.: CIF11E0068
FILE NAME: Upcptp11
DATE: JULY 2012
SHEET: 11 OF 11

VOLUNTARY CRUISE MANAGEMENT PLAN
SOUTH CAROLINA STATE PORTS AUTHORITY
AND
CITY OF CHARLESTON

(1) The number of cruise ships will be no more than 104 calls per calendar year.

(2) The port will host no more than one ship at a time at the cruise terminal.

(3) The terminal will be designed at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called Charleston in the past (1,900 to 3,500 passenger design capacity)

(4) A Traffic Management Plan which removes maritime cruise traffic from City streets as soon as possible as well as continued coordination and communication with the Charleston City Police Department and the City Special Events Committee.

(5) A continued commitment by the SCSPA to contribute an allocation to the DASH Downtown Shuttle program, as described in the City Agreement with the SCSPA, providing free shuttle rides to those traveling in the downtown areas of the City.

ATTACHMENT 4

CLARIFICATION OF PROCESS OF CITY CONSULTATION REGARDING CRUISE MANAGEMENT PLAN ALTERATION

Should the SCSPA, at any future date, deem that any material change should be made to the Voluntary Cruise Management Plan, at least one year prior to effecting any such change the following will be done:

(1) Written notification to the Mayor and City Council.

(2) Written notification to the Cruise Neighborhood Advisory Council.

(3) Written notification to Charleston Metro Chamber of Commerce and the Maritime Association of South Carolina.

(4) Written notification to the Historic Charleston Foundation and the Preservation Society.

(5) The convening of a community forum to discuss any material change to the plan.

(6) The solicitation of public input through one or more public hearings, including a public hearing at a City Council meeting.

(7) Careful and thoughtful consideration of the public input.

(8) Report to the Mayor and City Council of the SCSPA board and staff findings and decision.

EXHIBIT H

South Carolina Environmental Law Project

Lawyers for the wild side of South Carolina

a 501c3 non-profit organization

Amy E. Armstrong
President

Michael G. Corley
Staff Attorney

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BOARD OF DIRECTORS

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OUR MISSION

To protect the natural environment of South Carolina by providing legal services and advice to environmental organizations and concerned citizens and by improving the state's system of environmental regulation.

Printed on recycled paper

January 2, 2013

VIA FAX, EMAIL AND U.S. MAIL

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL
2013 JAN -2 PM 4:30
OFFICE OF GENERAL COUNSEL
ADMINISTRATION
CLERK, BOARD OF DHEC

Ms. Lisa Lucas Longshore
Clerk of the Board
S.C. Dept. of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Permit #OCRM-10-169-D
S.C. State Ports Authority
Request for Final Review Conference

Dear Lisa:

Enclosed for filing please find the Request for Final Review Conference, submitted on behalf of the Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Anson House Condominium Owners Association, and the Charleston Chapter of the Surfrider Foundation, along with my $100 filing fee and certificate of service.

Please return a clocked-in copy by FAX.

Thank you very much for your kind cooperation and assistance.

Yours very truly,

Amy E. Armstrong

cc: Marshall Taylor, Esquire
Derrick Bellamy, SPA
Dana Beach
Will Cook, Esquire
Carrie Agnew
Steve Gates
Steve Hanson

Evan Thompson
Kenneth B. Fonville
Marty Morganello

STATE OF SOUTH CAROLINA

BEFORE THE BOARD OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL
2013 JAN -2 PM 4:30

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

Requestors,

vs.

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

Respondents.

RE: Permit number OCRM-10-169-D

REQUEST FOR FINAL REVIEW CONFERENCE

The Preservation Society of Charleston, Charleston Communities for Cruise Control, the Historic Ansonborough Neighborhood Association, the South Carolina Coastal Conservation League, the Charlestowne Neighborhood Association, the Anson House Condominium Owners Association and the Charleston Chapter of the Surfrider Foundation pursuant to S.C. Code Ann. §44-1-60, hereby request that the Board of the South Carolina Department of Health and Environmental Control ("DHEC") conduct a Final Review Conference in connection with the DHEC staff decision to issue a Critical Area Permit and Coastal Zone Consistency Certification # OCRM-12-054-B to the South Carolina State Ports Authority authorizing the construction of pilings and structural changes to staging areas in and over the critical area to enable construction of new cruise ship terminal operations at SPA's Union Pier facility in the City of Charleston.

THE REQUESTORS

1. The Preservation Society of Charleston was founded in 1920 and is the oldest community based historic preservation organization in America. The Preservation Society of Charleston's mission is to inspire the involvement of all who dwell in the Lowcountry to honor and respect our material and cultural heritage. The Preservation Society of Charleston has a membership of over 1,100 households. The Society's sole interest in the cruise ship debate is to ensure maximum protection for the City's historic neighborhoods and residents and appropriate management of mass tourism downtown. The Preservation Society recognizes that while the Charleston Port is old, our modern mega-cruise ship industry is new, and it must be properly located and managed responsibly within an enforceable legal framework. The Preservation Society seeks to protect the historic neighborhoods that continue to be at risk from expanded cruise ship operations.

2. Charleston Communities for Cruise Control ("C4") is a non-profit (educational status) founded in 2010 for the purpose of finding a more appropriate location for the proposed new cruise ship terminal; establishing legally binding limits on the number, size and frequency of cruise ship visits; requiring onshore power to be used by cruise ships docking in Charleston; and providing all cruise lines visiting Charleston with the Charleston Cruise Ship Code of Conduct. C4represents 464 members concerned with the delicate balance between the historical residential port City of Charleston and the tourist experience of the City. C4 has played an active role in the efforts to regulate the cruise ship industry.

3. The South Carolina Coastal Conservation League ("League") is a non-profit membership corporation organized and existing under the laws of the State of South Carolina.

The League represents over 4,000 members throughout South Carolina and the U.S., in particular members that live in Charleston and use and enjoy the aesthetic, historic, cultural and natural resources that would be adversely affected by an increase in size and quantity of cruise ships at Union Pier Terminal. Members of the League breathe the air into which cruise ship emissions are discharged; commute along the streets in Charleston which are congested by cruise ship traffic; and enjoy the historic and cultural beauty of the City, which will be adversely impacted by increased size and quantity of cruise ships.

4. The Historic Ansonborough Neighborhood Association ("HANA") is a membership organization created to address matters of importance to the historic residential neighborhood designated as Ansonborough by the City of Charleston, South Carolina, and to foster a spirit of community and cooperation within the Ansonborough neighborhood. HANA represents its 110 members who are residents of the Ansonoborough Neighborhood, which is adjacent to Union Pier Terminal and the proposed project. HANA has passed resolutions seeking legally binding regulations on the cruise industry in Charleston and supporting an amendment that alternative locations to the Union Pier property be considered.

5. Charlestowne Neighborhood Association ("CNA") is a membership organization created to give Charleston residents a concerted voice when considering matters that concern the peace, tranquility and orderly well-being of the historic Charleston neighborhood. CNA represents its 620 members consisting of residents living south of Broad Street. CNA membership overwhemingly passed resolutions expressing concerns about congestion, pollution, noise, scale, calling for enforceable limits and standards and for study of an alternative terminal location.

6. Anson House Condominium Owners Association represents the thirty-two (32)

condominium units within Anson House. Anson House is located on the corner of Laurens and Concord Streets within the historic Ansonborough neighborhood. Anson House is adjacent to the Union Pier facility.

7. The Charleston Chapter of the Surfrider Foundation ("Surfrider") is a non-profit environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches for all people, through conservation, activism, research and education. Surfrider represents 270 members in the Charleston area.

BACKGROUND OF THE PROJECT AND THE DHEC DECISION

8. SPA's Union Pier facility is located on and adjacent to the Cooper River and is within the City of Charleston. The Union Pier facility is near and adjacent to the Charleston Historic District, listed on the National Register of Historic Places, including the historic neighborhoods of Ansonborough and Charlestowne. Charleston is one of this nation's most historic cities, with one of the most intact inventories of National Register-listed and National Historic Landmark districts and properties. National Historic Landmark and National Register-listed historic districts were qualified for and depend on the maintenance of the character-defining qualities—such as historic setting, context, and small scale. These historic resources are immediately adjacent to the proposed cruise terminal and are clearly within the project's area of potential effects.

9. The atmosphere, ambience and historic scale of the downtown neighborhoods are the primary reasons why Charleston is recognized as a world-class city in which to live, visit and invest. The National Trust for Historic Preservation has formally recognized the endangerment to Charleston's historic resources by placing Charleston on "Watch Status" on the National Trust's 2011 List of America's Most Endangered Places. In addition, the World Monuments Fund listed

Charleston as a 2012 Watch Site to draw attention to the dangers of cruise tourism's adverse impacts there. More recently, an objective study by Columbia, SC-based Miley & Associates, Inc., *The Cruise Industry in Charleston: A Clear Perspective*—the first and only attempt to conduct an objective study of the costs associated with the cruise tourism industry and its impacts on Charleston residents—has identified a "non-alignment" of benefits and costs.

10. Both the Charleston Historic District and the Port of Charleston have been designated Geographic Areas of Particular Concern ("GAPCs") under DHEC's Coastal Management Program. GAPC designation requires heightened consideration in reviewing activities for consistency with the CMP.

11. The Advisory Council on Historic Preservation, the nation's leading independent agency charged with protecting historic resources, and which advises the President and Congress on historic preservation policy, has expressed concern to the U.S. Army Corps of Engineers related to the expansion of the proposed Union Pier facility.

12. On December 18, 2012, the DHEC staff issued notice that it was authorizing the construction five (5) pilings consisting of 16" precast pile driven into the marl necessary to construct two elevators and two escalators and make structural changes to Building #322 and two covered staging areas designed to handle passengers, luggage and loading and unloading of cruise ship supplies. See attached Critical Area Permit, Exhibit A.

13. The permit is a necessary step towards construction of a new cruise ship terminal that would enable cruise ship home-basing operations in Charleston. Currently, SPA conducts cruise ship operations out of several dated buildings a quarter mile away. The existing facilities were not designed to serve as a home base for large, modern cruise vessels, i.e., those having 2,500 passengers or more, and without significant alteration and refurbishment, these structures do not

meet the operational and security requirements for such operations going forward.

14. The new cruise terminal authorized by the DHEC decision would enable cruise ship home-basing operations to continue and indeed expand both in number and size of ships. The Carnival Fantasy currently utilizing the Union Pier facility has a capacity of 2,054 passengers and ten decks. The next generation of Carnival ships has a capacity of 3,650 passengers and fifteen decks.

15. Cruise ships utilize diesel fuel and emit large amounts of air pollution. Pollutants include particulate matter, nitrogen oxides, air toxics and sulfur dioxide ("SO2"). These pollutants are known to to negatively impact human health.

16. The permit contains special conditions that have become binding requirements under the permit. Of particular relevance to this request, the permit contains a requirement that SPA operate the new passenger cruise facility "in accordance with the attached Voluntary Cruise Management Plan (Attachment A)." Exhibit A, special condition #1. The Voluntary Cruise Management Plan attached to the permit limits the number of cruise ships to no more than 104 calls per calendar year; limits the port to no more than one ship per day; and limits the size and profile of cruise ships to that which has been used in the past, i.e., 1,900 to 3,500 passenger design capacity.

17. Currently the fuel burned by cruise ships is 667 times dirtier than diesel fuel burned by 18-wheel trucks. New standards for cruise ship fuel should reduce the sulfur dioxide ("SO2") emissions from cruise ships, but those standards will not be in place until 2015, and even then, the fuel burned will be to 67 times dirtier than diesel trucks.

18. Because the proposed project will enable cruise operations to continue and expand, impacts beyond the critical area itself include harmful air emissions of SO2 and other pollutants;

increased truck and car traffic; increased noise and congestion; decreased property values; and adverse health impacts. Evidence of these impacts can be found within the agency's file for this permit, and will be supported by live testimony should a final review conference be granted.

19. Upon information and belief, to be supported by testimony should final review conference be granted, air pollutant emissions and attendant adverse health impacts can be mitigated by the implementation of onshore power sources. Onshore power is currently utilized at numerous other ports world-wide in an effort to reduce air emissions.

ANALYSIS AND GROUNDS FOR REVIEW

20. The Requestors are informed and believe that the staff's permit decision was made in violation of applicable statutes, regulations and rules contained in the S.C. Coastal Zone Management Act, S.C. Code Ann. §48-39-10, *et seq.*, OCRM Regulations 30-1, *et seq.*, and the Coastal Management Program. Staff erred in issuing the permit, as this project is inconsistent with the applicable laws more fully discussed below.

21. The permit as issued violates Critical Area Regulation 30-11(C) and the Coastal Management Program in that DHEC failed to give proper weight to cumulative impacts in evaluating this project. Both the CMP and the critical area regulations call for the consideration of cumulative impacts resulting from the project. In particular, both call for consideration of the "long-range, cumulative effects" in the context of "other possible development and the general character of the area." R.30-11.C(1); CMP, III-14. Regulation 30-11(c) requires DHEC to consider the "extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area." The Court in *Kiawah Development Partners v. DHEC and SCCCL* 2011 WL 5840326, reached important conclusions relating to the scope of this consideration for projects like this one. Under the

Court's ruling, though this is a request for a critical area permit, the Department must consider impacts beyond "the critical area upon which the device is to be constructed." Id. at 3. The Court in fact held that, "[b]y law, OCRM **must** take into account the impact of any critical area permit" on factors such as upland sprawl and general over development. Id. In short, the *Kiawah Development Partners* case makes clear that OCRM's assessment of this critical area permit is "concerned with the coastal zone, and its vulnerability to manmade alterations." Id. at 4. Indeed, the staff denied *Kiawah Development Partners'* permit request based solely on the direct and indirect impacts flowing from that project.

The Court's holding in *Kiawah Development Partners* is best embodied by its ruling that "While OCRM's permitting authority is limited to critical areas, it is charged with managing the entire coastal zone, and thus **permitting decisions are not to be made in a vacuum**." Id. Rarely will this ruling be more important or more strongly implicated than it is for the project at hand. Yet the agency isolated the impacts flowing from the proposed project in a vacuum. This project creates a host of detrimental impacts that will splinter across the surrounding communities and ecosystems.

Examples of cumulative impacts on the general character of the area, which will be supported by testimony should final review conference be granted, include historic skyline obstruction, water view obstructions, the gridlock on small neighborhood streets caused by massive cruise ship and harmful air emissions.

DHEC staff recognized those impacts by including, as a condition of this permit, limitations on the cruise terminal's operation, including the number and size of calling vessels. However, DHEC failed to conduct a complete analysis of cumulative and secondary effects of its permitting decision by evaluating further measures to minimize impacts on human health,

livability and historic structures.

22. The DHEC staff failed to conduct a feasibility analysis as contemplated by the Coastal Zone Management Act and Critical Area Regulations. "Feasibile" means that the staff decision must be "based on the best available information, including, but not limited to, technical input from relevant agencies with expertise in the subject area, and consideration of factors of environmental, economic, social, legal and technological suitability of the proposed activity and its alternatives. Use of this word includes, but is not limited to, the concept of reasonableness and likelihood of success in achieving the project goal or purpose." The staff failed to undertake the required feasibility analysis in the following respects:

A. The CZMA and Regulations require that "all feasible safeguards are taken to avoid adverse environmental impact resulting from a project." S.C. Code Ann. §48-39-150(A)(9); R. 30-11(B)(9). Upon information and belief, which will be supported by testimony should a final review conference be granted, DHEC staff failed to give consideration to environmental, social and economic factors. Specifically, staff failed to consider the impact that ongoing and expanded cruise ship operations will have on the residents and tourists of Charleston, including the serious health impacts resulting from burning fuel high in sulfur that generates SO2 and other air pollutants. This omission is particularly troublesome given that, when in port, emissions from cruise ships are concentrated in a very highly populated area. SO2 is known to create a variety of health issues, particularly in those with breathing problems, which generates a corresponding spike in medical costs and diminishment of property values.

B. The Regulations require that transportation project "avoid the critical areas to the maximum extent feasible." R. 30-12.F(2)(b). The staff decision fails to ensure that critical areas are avoided and fails to consider alternatives that would avoid critical areas, such as alternative site locations for expanded cruise ship operations.

23. DHEC failed to weigh the "extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state" by failing to consider the impacts to adjacent neighborhoods and businesses from noise pollution, air pollution, traffic congestion, and the historic qualities of the City of Charleston. S.C. Code Ann. §48-39-150(A)(7); R. 30-11(B)(7).

24. The project fails to comply with the Coastal Zone Management Act's requirement that DHEC consider the "extent to which the proposed use could affect the value and enjoyment of adjacent owners." S.C. Code Ann. §48-39-150. Upon information and belief, to be supported by Affidavit and testimony, increased cruise ship operations will adversely affect property values. Decreases in property values will result from increased noise pollution, increased congestion, and emission of particulate matter that falls on and around houses located near the terminal.

The Requestors will demonstrate that cruise ship operations amount to a public and private nuisance because of the traffic congestion, noise, soot and visual pollution. In particular, traffic from cruise tourism is a major inconvenience and causes serious traffic in and around the surrounding neighborhoods, of whom HANA, C4, CNA, and SCCCL have members. One member and resident has reported that soot emitted from the Carnival Cruise Ship, the Fantasy, settles on the interior and exterior of her property, requiring cleaning and maintenance, posing

health concerns, and significantly degrading her use and enjoyment of her property. Requestors will demonstrate that the activities permitted by the SPA have negatively impacted her property values, as well as the property values of her neighbors.

25. The staff decision fails to give the highest priority to the identified primary value of the GAPC, the Charleston Historic District. In the case of a historic site, the priority is placed on uses "which preserve the historical or cultural values for which the site was placed on the National Register of Historic Places." CMP, IV-25. Those values, enumerated in the Charleston Historic District's site nomination, include "the unique visual appeal of old Charleston, a picturesqueness created by the close proximity of buildings, in a wide variety of architectural styles, general harmony in terms of height, scale and proportion, materials, textures, colors and characteristic forms and a flavor of an earlier America." Yet the staff decision fails to give priority to the preservation of these historic and cultural values in violation of the CMP policies.

The scale of the ships are incompatible with the height, scale and mass of Charleston's buildings and are enormous when compared to the historic scale of shipping on Charleston's waterfront. Indeed, the presence of the ship is felt all over the district including bridges leading to and from Charleston on the opposite side of the peninsula, with noise and pollution impacts occurring in areas distant from the terminal itself. This is radically different from the much smaller scale, quieter and otherwise unobtrusive cargo ships which do not require street closures and sandwich board signs to announce their presence.

26. The Requestors are informed and believe that the impacts of the proposed expansion of the Union Pier Terminal will result in significant degradation of air quality; the living and

working environment of Charleston; property values; and the overall historic and cultural values of Charleston.

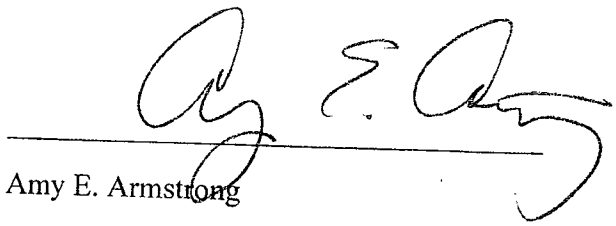
2. As a direct and proximate result of these violations, the Requestors and their members will suffer injury in fact. Among other things, the natural resources and environment of this area will be degraded, resulting in material harm to the Requestors' recreational, environmental, aesthetic and property interests.

28. The Requestors reserve all rights under Section 44-1-60 and other applicable laws to present evidence and argument during the review proceeding.

RELIEF REQUESTED

WHEREFORE, the Requestors request that the Board conduct a final review proceeding and issue an order reversing the proposed decision to issue the permit and certifications, or in the alternative remanding the decision back to staff with instructions to conduct an analysis of alternative terminal locations and to impose a condition for onshore power to minimize adverse air emission impacts. Further, to the extent that limitations on ship numbers or sizes are asserted to be a non-binding condition of the permit by SPA, the Requestors ask the DHEC Board to clarify that these conditions are mandatory.

Respectfully submitted,



Amy E. Armstrong

Michael G. Corley

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585

Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone (843) 527-0078

FAX (843) 527-0540

Attorneys for the Requestors, Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Anson House Condominium Owners Association, Charleston Chapter of Surfrider

Georgetown, South Carolina

January 2, 2013

STATE OF SOUTH CAROLINA

BEFORE THE BOARD OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Anson House Condominium Owners Association, and Charleston Chapter of Surfrider,

Requestors,

vs.

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

Respondents.

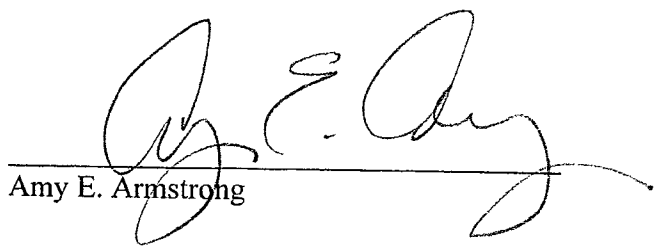
RE: Permit number OCRM-10-169-D

CERTIFICATE OF SERVICE

I hereby certify that on this date I served Respondents SC State Ports Authority and DHEC by placing copies of the foregoing Request for Final Review Conference in the U.S. Mail addressed to:

Derrick Bellamy
S.C. State Ports Authority
P.O. Box 22287
Charleston, SC 29413

Marshall Taylor,
DHEC Legal Office
2600 Bull Street
Columbia, SC 29201



Amy E. Armstrong

Georgetown, South Carolina
January 2, 2013

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

December 18, 2012

Derrick Bellamy
SC State Ports Authority
P.O. Box 22287
Charleston, SC 29413-2287

SEE SPECIAL CONDITIONS(S)

Re: **P/N# OCRM-12-054-B**
SC State Ports Authority

Dear Mr. Bellamy:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to make improvements to an existing waterfront building and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina, and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, *OR* appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

Steven Brooks

Steven Brooks
Senior Regulatory Project Manager
Regulatory Programs Division

Exhibit A

Cc: Blair Williams, Wetland Section Manager
Patrick Moore, SCSPA
Nathaniel Ball, USACOE

Enclosure

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure

Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

SEE SPECIAL CONDITIONS(S)

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

4. The request for final review should include the following:
   a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
   b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
   c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

July 1, 2010

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s):	**SC State Ports Authority**
Permit Number(s):	**OCRM-12-054-B**
Date of Issuance:	**December 18, 2012**
Expiration Date:	**December 18, 2017**
Location:	**On and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina. TMS#: 459-00-00-009.**

SEE SPECIAL CONDITIONS(S)

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of $5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. **All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.**

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The work as shown on the attached plans will consist of making improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322.

SPECIAL CONDITIONS

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal are conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA require its contractors, for the activities addressed under this permit, to:

    a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

    b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all non road equipment between 100 and 750 horsepower.

    c. turn off construction equipment and vehicles not in active use.

    d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

    e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

7. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

Permit Number: **OCRM-12-054-B**

SEE SPECIAL CONDITIONS(S)

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE(S))
SC State Ports Authority

(DATE)

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

Steven Brooks

(PROJECT MANAGER, WETLAND SECTION)
Steven Brooks
or her Designee
Other Authorized State Official

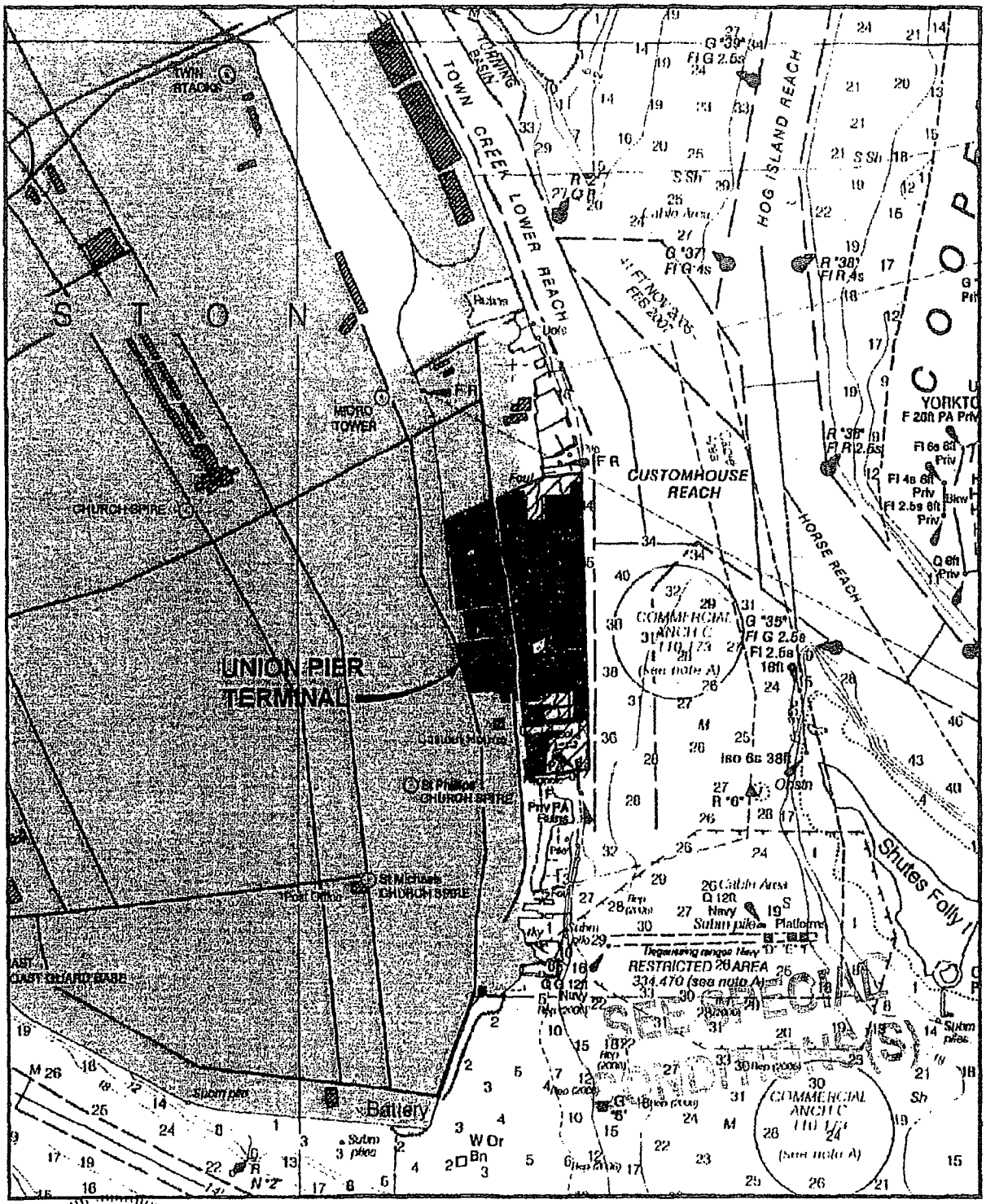
12/18/12

(DATE)

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.



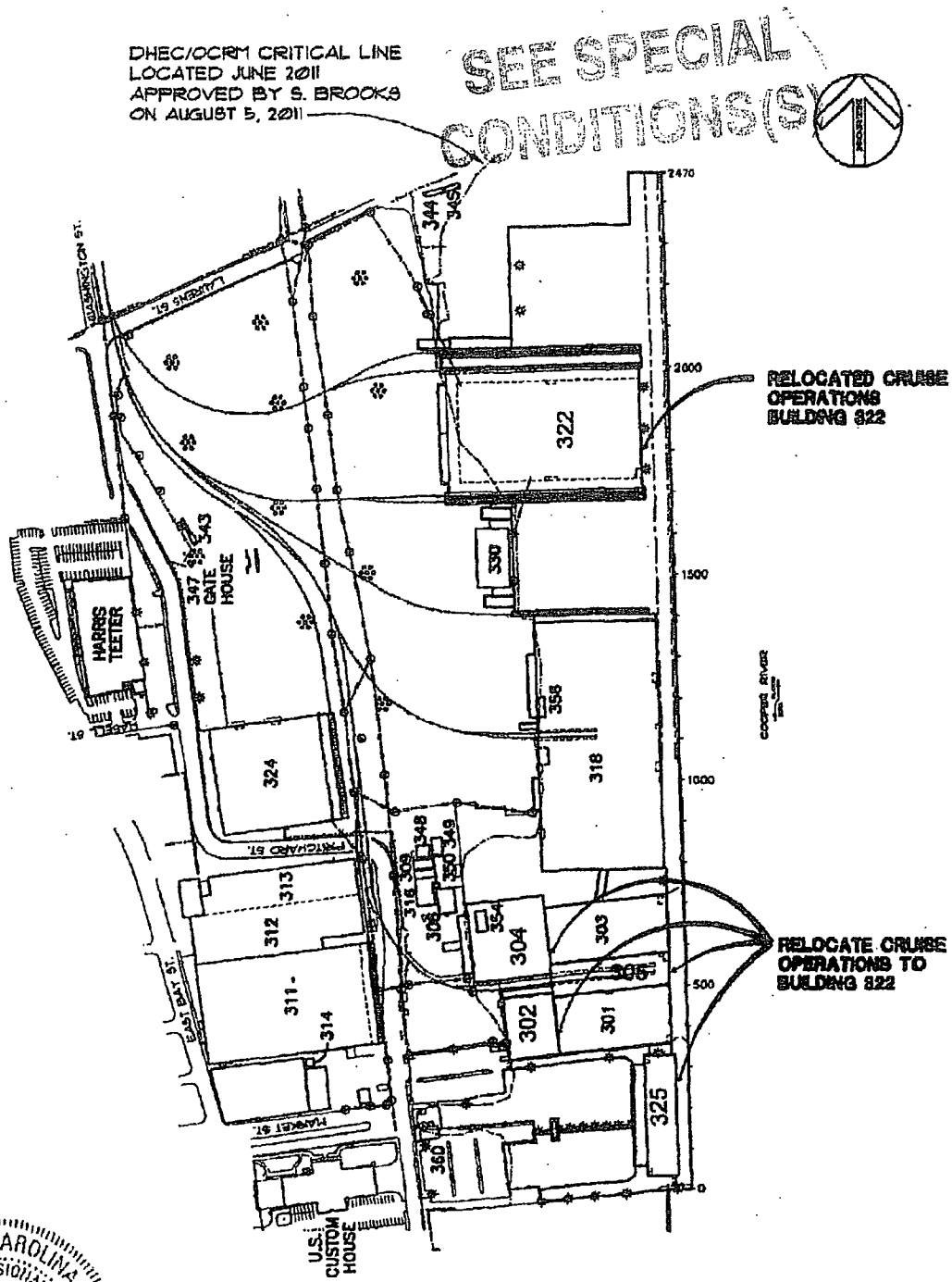
SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY
Derrick L. Bellamy

LOCATION

OCRM-12-054-B

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp1
DATE: JULY 2012
SHEET: 1 OF 11



SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

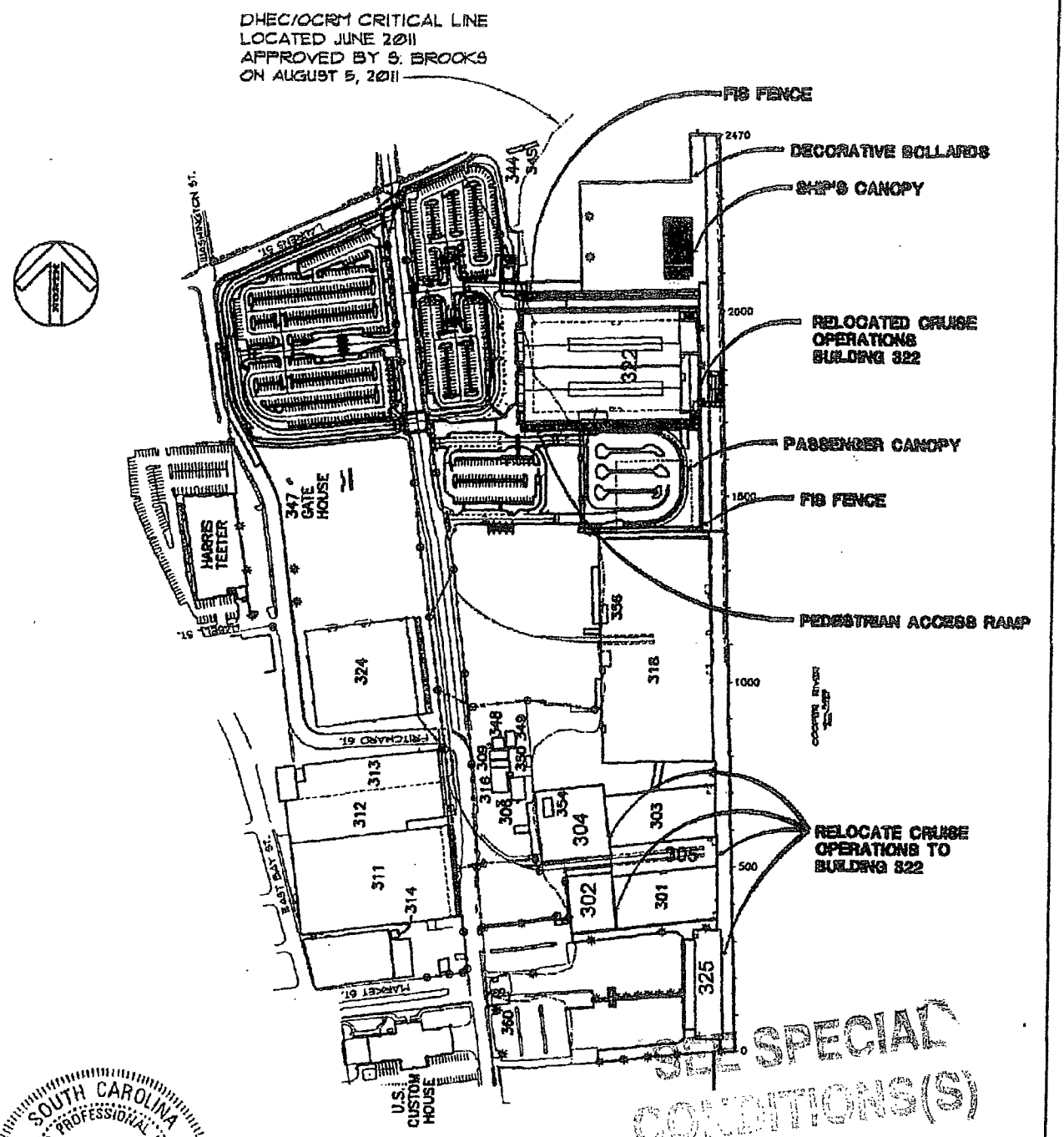
Derrick L. Bellamy

400 0 400
SCALE IN FEET

BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upoplp2
DATE: MARCH 2012
SHEET: 2 OF 11



SEE SPECIAL CONDITIONS(S)

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L Bellamy

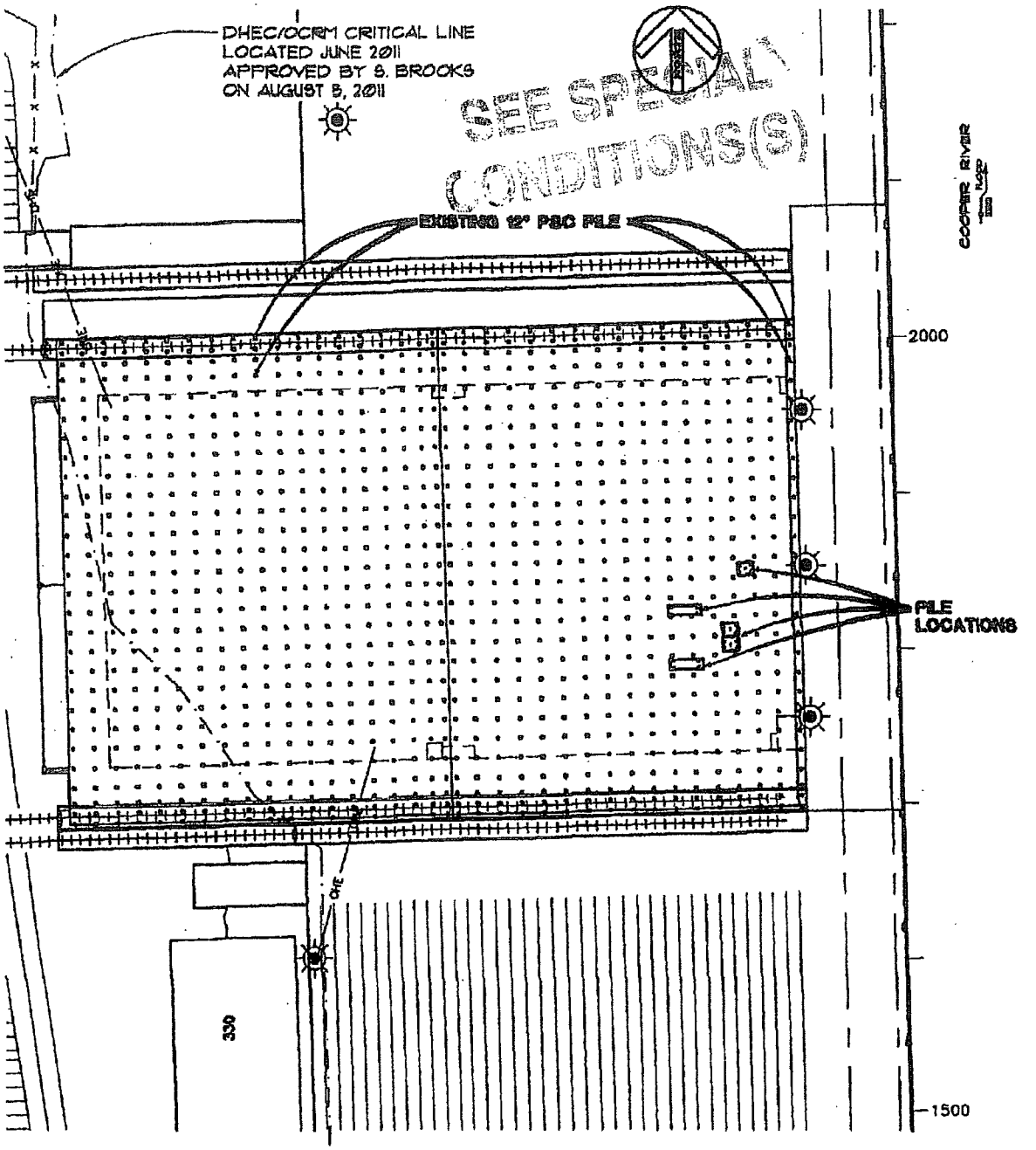
NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

400 0 400
SCALE IN FEET

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

OCRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp3
DATE: MARCH 2012
SHEET: 3 OF 11



LEGEND

ELEVATORS

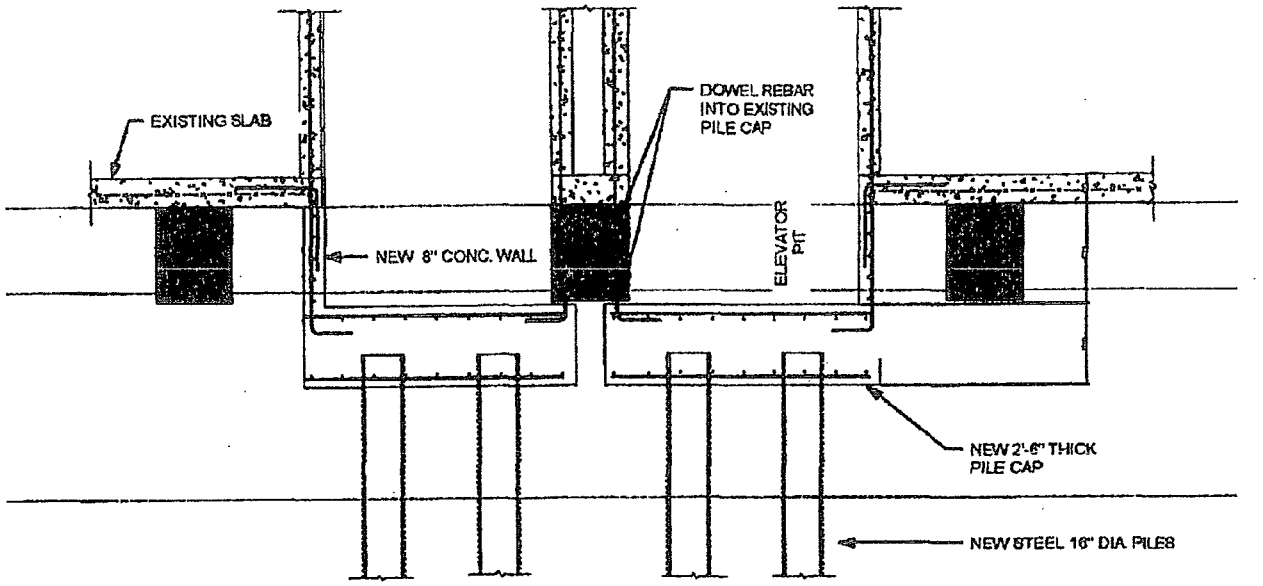
ESCALATOR

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

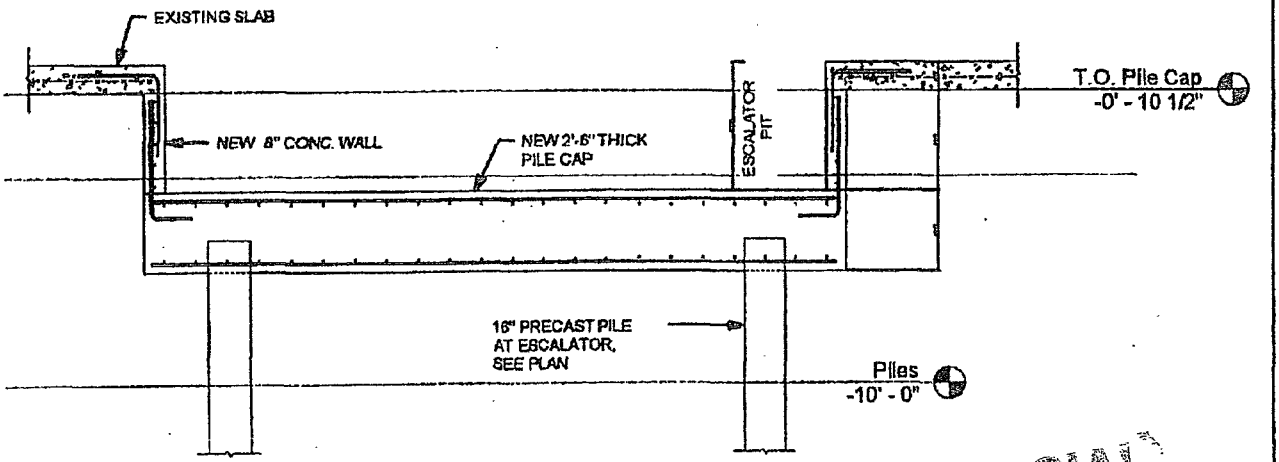
MODIFICATIONS (BUILDING 322)

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

OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upgdp4
DATE: JULY 2012
SHEET: 4 OF 11



A SECTION ELEVATOR



B SECTION ESCALATOR

SEE SPECIAL CONDITIONS

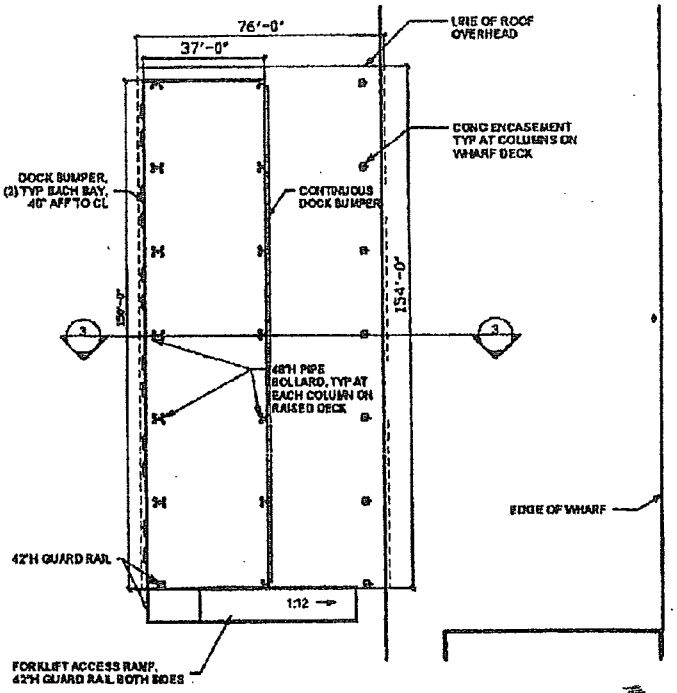
SOUTH CAROLINA PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

Derrick L. Bellamy

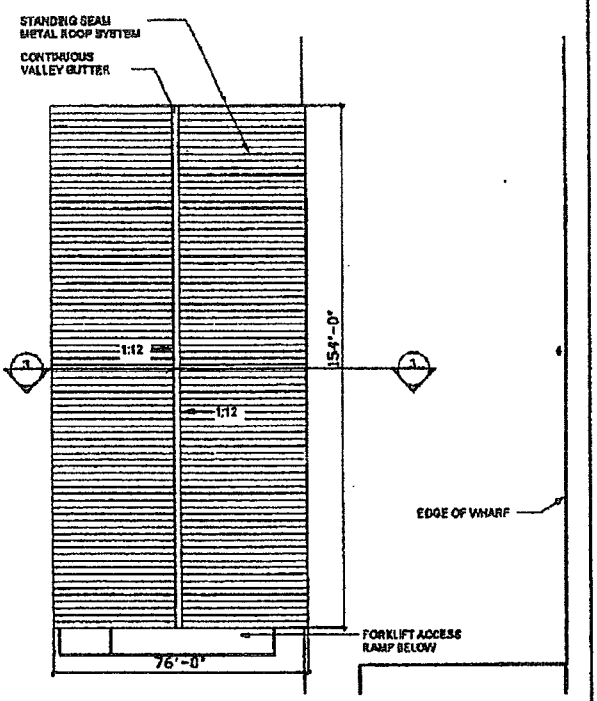
MODIFICATIONS (CROSS SECTION)

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

GCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcplp5
DATE: JULY 2012
SHEET: 5 OF 11

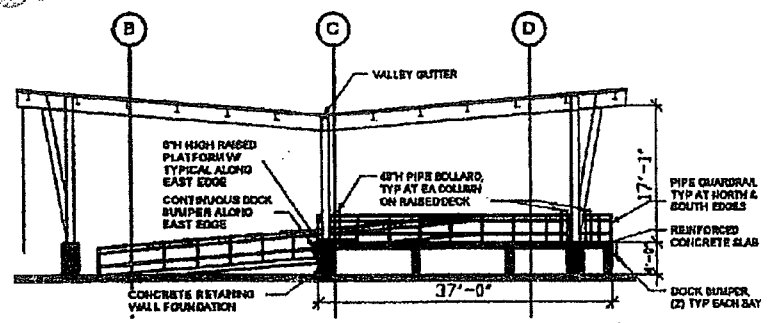


1 STORES CANOPY FLOOR PLAN



2 STORES CANOPY ROOF PLAN

SEE SPECIAL CONDITIONS(S)



3 STORES CANOPY E-W SECTION

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

Derrick L Bellamy

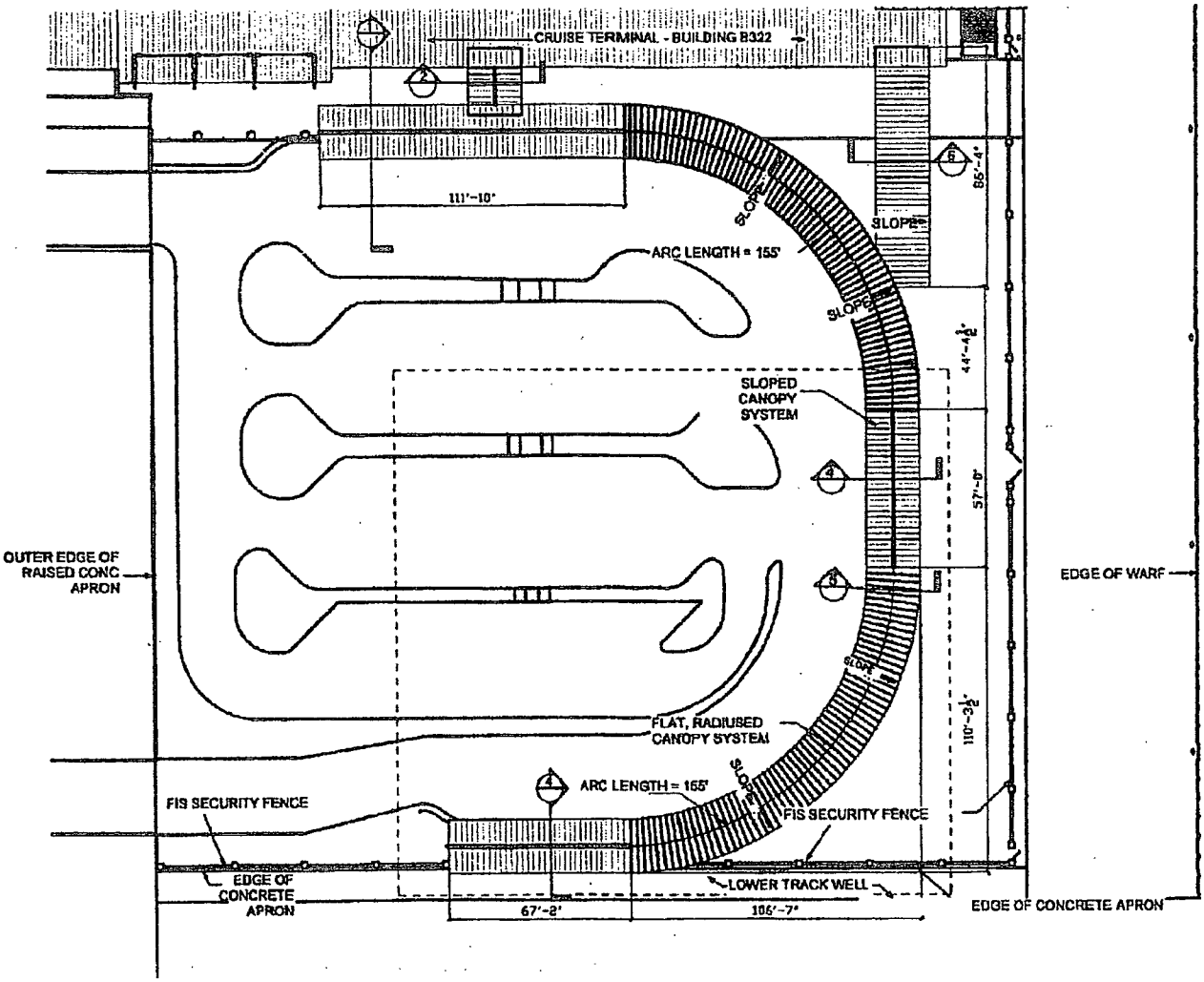
MODIFICATIONS
NORTH APRON

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

OCRM-12-054-B

PROJECT NO.: CIF11E0068
FILE NAME: Upcptp6
DATE: JULY 2012
SHEET: 6 OF 11

SEE SPECIAL CONDITIONS(S)



3 PAX CANOPY PLAN

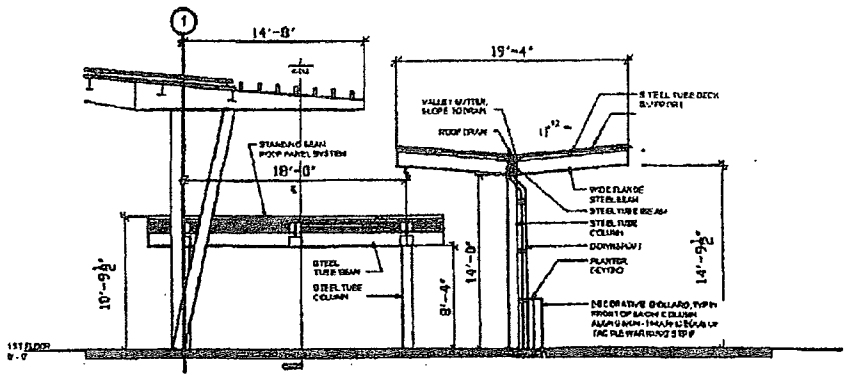
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

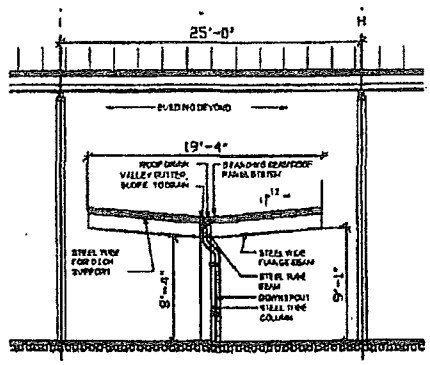
MODIFICATIONS
SOUTH APRON

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

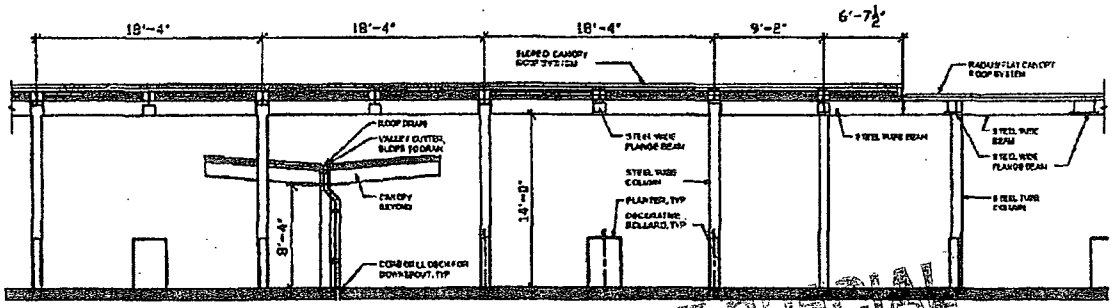
OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcptp7
DATE: JULY 2012
SHEET: 7 OF 11



SECTION - PAX DROP OFF ZONE CANOPY

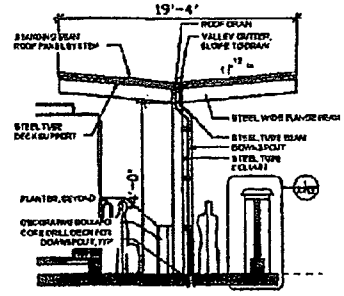


SECTION - PAX DROP OFF ZONE CANOPY @ BLDG INTERSECTION

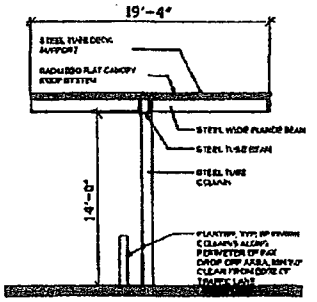


SECTION - PAX ACCESS CANOPY

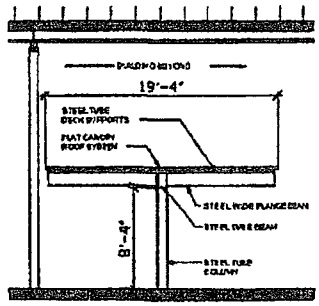
SEE SPECIAL CONDITIONS(S)



SECTION - SOUTH PAX ACCESS CANOPY



SECTION - FLAT PAX ACCESS CANOPY



SECTION - FLAT POV BAG CANOPY

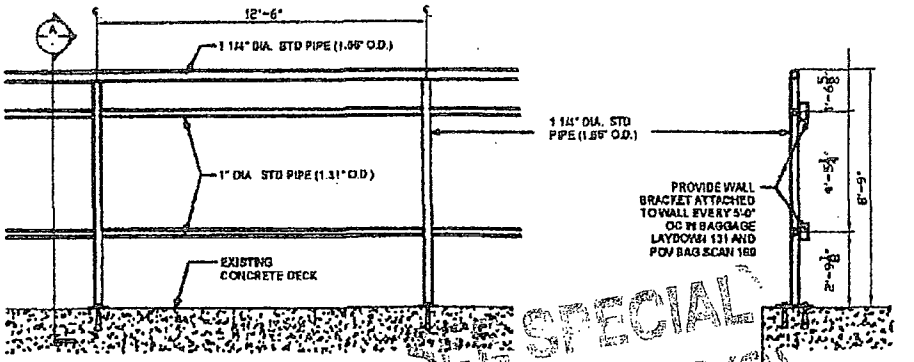
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25143
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

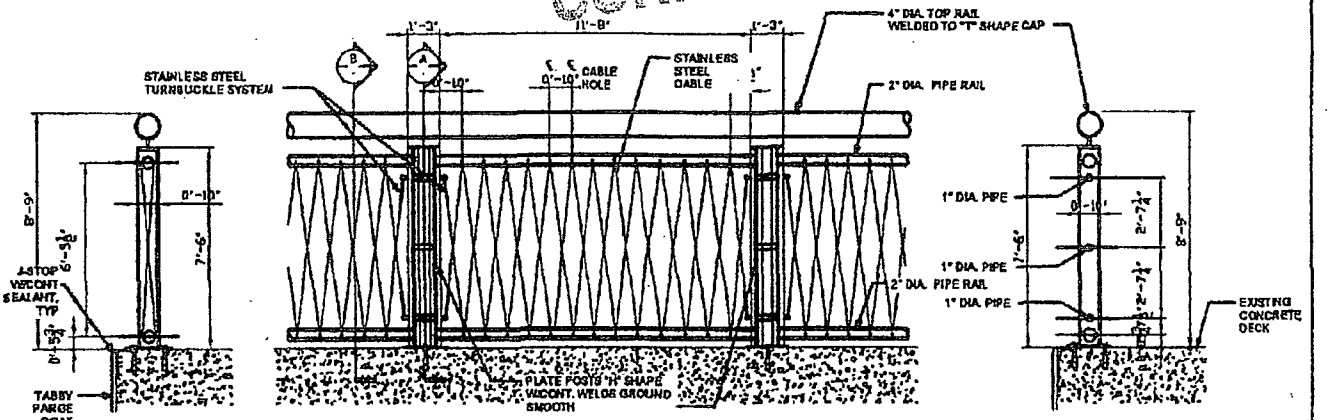
MODIFICATION
SOUTH APRON - DETAILS

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

OCEM- 12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp8
DATE: JULY 2012
SHEET: 8 OF 11



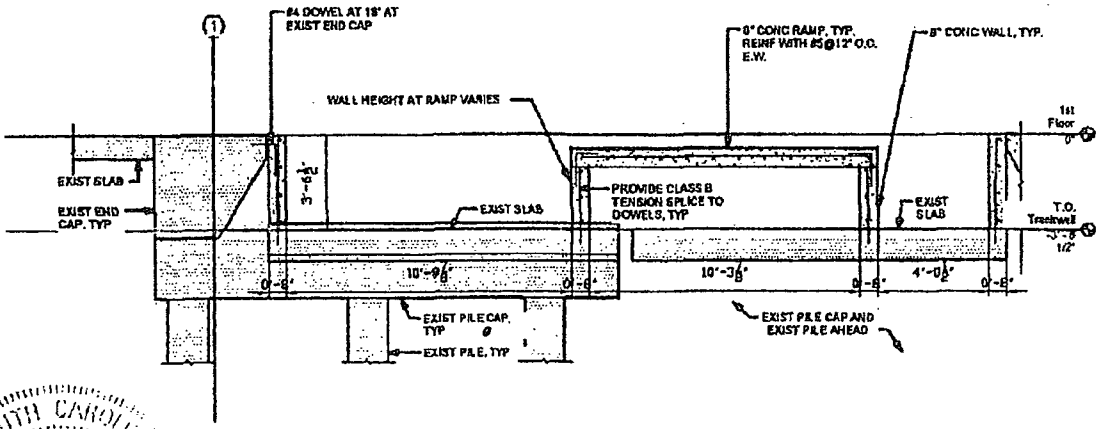
SECTION "A"

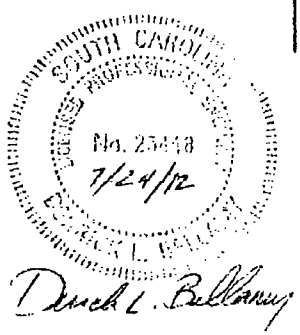


SECTION "B"

ELEVATION @ POSTS

SECTION "A"



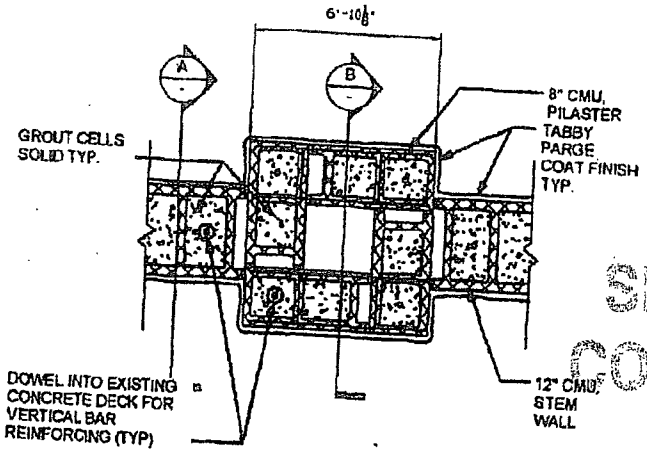


Daniel L. Bellamy

MODIFICATIONS
PEDESTRIAN ACCESS RAMP DETAIL

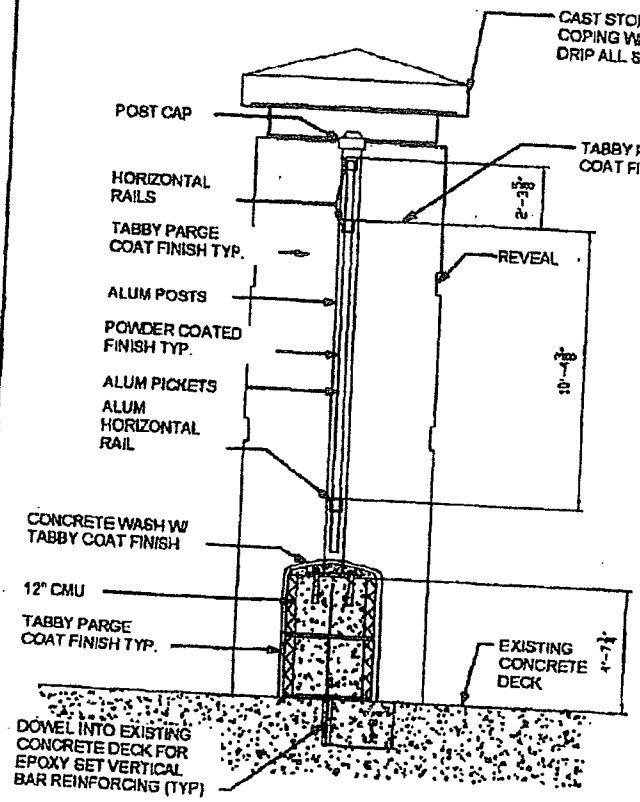
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM 12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcptp9
DATE: JULY 2012
SHEET: 9 OF 11

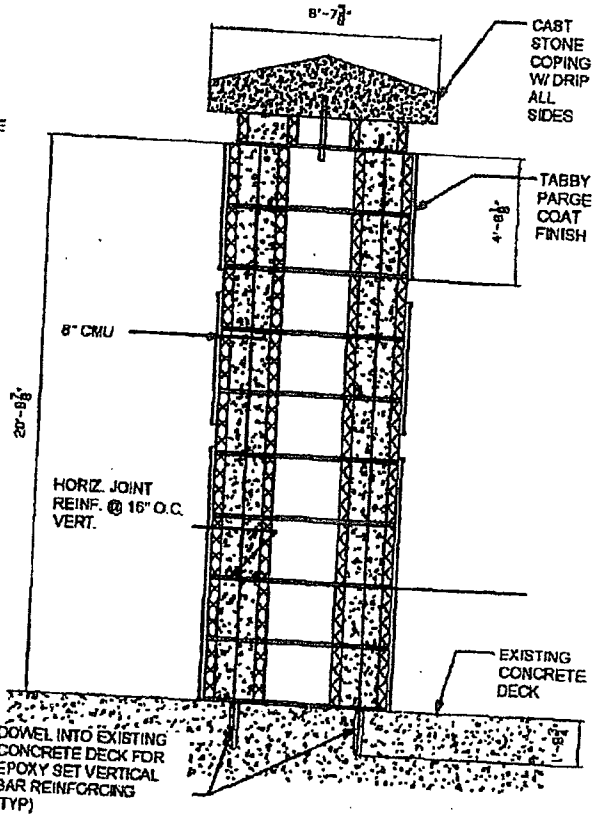


SEE SPECIAL CONDITIONS(S)

PLAN DETAIL @ MASONRY PILASTER



WALL SECTION "A" @ MASONRY STEM WALL



WALL SECTION "B" @ MASONRY PILASTER

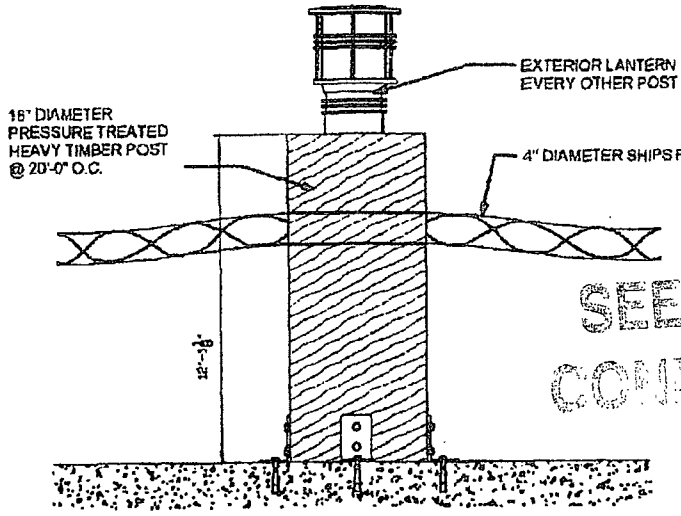
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

Derrick L Bellamy

MODIFICATIONS
SECURITY FENCE DETAILS

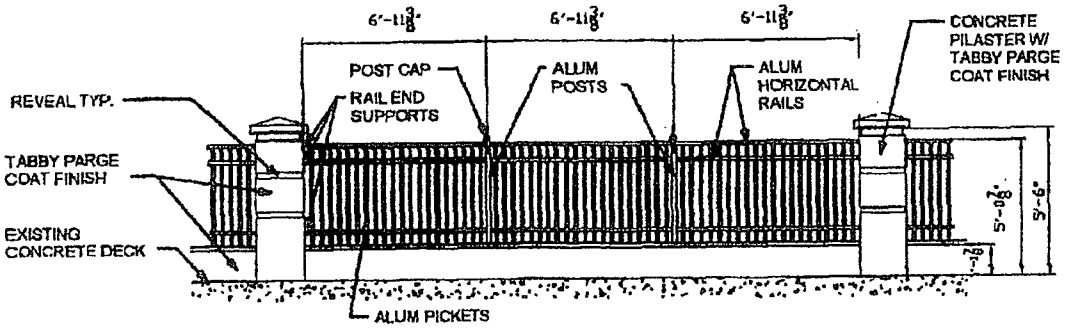
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcptp10
DATE: JULY 2012
SHEET: 10 OF 11

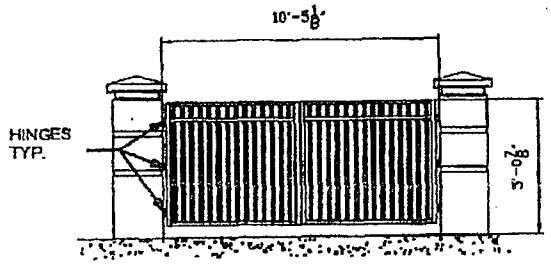


SEE SPECIAL CONDITIONS(S)

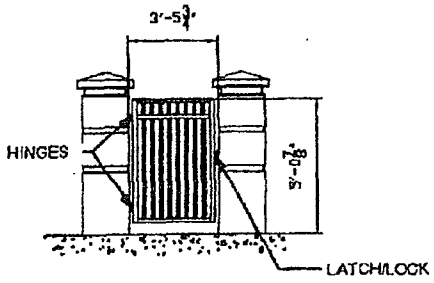
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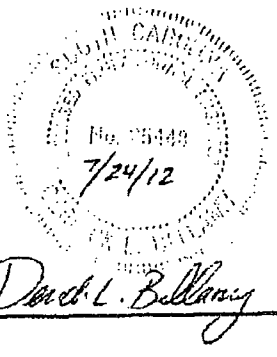
ELEVATION @ FIS SECURITY FENCE



ELEVATION @ ACCESS GATE



ELEVATION @ PED GATE



Daniel L. Bellamy

MODIFICATIONS
SECURITY FENCE DETAILS

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

6CRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp11
DATE: JULY 2012
SHEET: 11 OF 11

ATTACHMENT A

CLARIFICATION OF PROCESS OF CITY CONSULTATION REGARDING CRUISE MANAGEMENT PLAN ALTERATION

Should the SCSPA, at any future date, deem that any material change should be made to the Voluntary Cruise Management Plan, at least one year prior to effecting any such change the following will be done:

(1) Written notification to the Mayor and City Council.

(2) Written notification to the Cruise Neighborhood Advisory Council.

(3) Written notification to Charleston Metro Chamber of Commerce and the Maritime Association of South Carolina.

(4) Written notification to the Historic Charleston Foundation and the Preservation Society.

(5) The convening of a community forum to discuss any material change to the plan.

(6) The solicitation of public input through one or more public hearings, including a public hearing at a City Council meeting.

(7) Careful and thoughtful consideration of the public input.

(8) Report to the Mayor and City Council of the SCSPA board and staff findings and decision.

ATTACHMENT A

VOLUNTARY CRUISE MANAGEMENT PLAN
SOUTH CAROLINA STATE PORTS AUTHORITY
AND
CITY OF CHARLESTON

(1) The number of cruise ships will be no more than 104 calls per calendar year.

(2) The port will host no more than one ship at a time at the cruise terminal.

(3) The terminal will be designed at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called Charleston in the past (1,900 to 3,500 passenger design capacity)

(4) A Traffic Management Plan which removes maritime cruise traffic from City streets as soon as possible as well as continued coordination and communication with the Charleston City Police Department and the City Special Events Committee.

(5) A continued commitment by the SCSPA to contribute an allocation to the DASH Downtown Shuttle program, as described in the City Agreement with the SCSPA, providing free shuttle rides to those traveling in the downtown areas of the City.

SEE SPECIAL CONDITIONS(S)

EXHIBIT I

SOUTHERN ENVIRONMENTAL LAW CENTER

200 WEST FRANKLIN STREET, SUITE 330
CHAPEL HILL, NC 27516-2520

Telephone 919-967-1450
Facsimile 919-929-9421
selcnc@selcnc.org

Charlottesville, VA
Chapel Hill, NC
Atlanta, GA

March 9, 2007

Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, SC 29201

Re: Request for Contested Case Hearing -
South Carolina Coastal Conservation League v. SC Board of Health and Environmental Control, et al. (SCSPA P/N 2003-1T-016-P-C)

Dear Sir or Madam:

Enclosed please find an original and one copy of a Request for Contested Case Hearing, which we submit on behalf of the South Carolina Coastal Conservation League with our check for the $250.00 filing fee. Please file the original Request and return the copy stamped "filed" in the enclosed self-addressed, stamped envelope. By copy of this letter, we are serving a copy of the Request on all parties and counsel.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Very truly yours,

J. Blanding Holman IV
Senior Attorney

JBH/lap
Enclosures
cc (w/encl.): SC Board of Health & Environmental Control
Van Whitehead, Esq.
Randolph R. Lowell, Esq.
Ben A. Hagood, Jr., Esq.
Brian W. Blaesser, Esq.
W. Jefferson Leath, Jr., Esq.

RECEIVED
MAR 14 2007
Willoughby & Hoefer, P.A.

100% recycled paper

ALJ Form #116
9/04

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Coastal Conservation League, (Your name) v. SC Board of Health & Environmental Control; SC Dept. of Health & Environmental Control; SC State Ports Authority (The name of the agency you are appealing)

NOTICE OF REQUEST FOR CONTESTED CASE HEARING

DATE: March 9, 2007

DOCKET NO. ___-ALJ-__-_____-__ (to be assigned by ALC)

Notice is hereby given that SC Coastal Cons. League (your name) does hereby appeal the decision issued by the above named agency and received on Feb. 12, 2007 (date), a copy of which is attached. **(YOU MUST ATTACH A COPY OF THE DECISION OR DOCUMENT DESCRIBING THE AGENCY ACTION YOU ARE APPEALING IN ORDER TO HAVE YOUR CASE PROCESSED).** Please provide a brief statement regarding the issue(s) for which the hearing is requested and the relief requested:

Petitioner requests that the Court vacate the Final Agency Decision of the SC Board of Health and Environmental Control, affirming the issuance of a critical area permit, coastal zone consistency certification, and a Sec. 401 water quality certification to the SC State Ports Authority (SCSPA), authorizing construction of a Marine Container Terminal on the south end of the former Charleston Navy Base in North Charleston, Charleston County (SCSPA Permit No. 2003-1T-016-P-C).

Enclosed is a XX check ____ money order ____ cash in the amount of $ 250.00 for the applicable filing fee in this matter.

SC Coastal Conservation League
Print your name
P.O. Box 1765
Mailing Address
(843) 723-8035
Telephone Number

J. Blanding Holman IV
Sign your name
Attorney for SC Coastal Conserv. League
City, State, Zip Code
Charleston, SC 29402-1765
County of residence or of permit/license at issue
Charleston Co.

Are you represented by an attorney? XX **Yes** _____ **No**
J. Blanding Holman IV
Attorney's name
200 W. Franklin St., Suite 330
Mailing Address
Chapel Hill, NC 27516
City, State, Zip code
(919) 967-1450
Telephone Number

Are you represented by a CPA? _____ **Yes** XX **No**
CPA's name
Mailing Address
City, State, Zip Code
Telephone Number

See attached Addendum for additional counsel.

CERTIFICATE OF SERVICE

I hereby certify that I, J. Blanding Holman IV (your name), on the 9th day of March, 2007, in Charleston (city), South Carolina, served a copy of the foregoing Request for Contested Case Hearing on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Name of person/Agency served: SC Board of Health & Environmental Control
Address: 2600 Bull St.
City, State, Zip Code: Columbia, SC 29201

Name of person/Agency served: Van Whitehead, Esq.
SC DHEC - Office of General Counsel
Address: 1362 McMillan Ave., Suite 400
City, State, Zip Code: Charleston, SC 29405

See attached Addendum for additional parties and counsel served.

ALJ Form #116
9/04

Print your name James Blanding Holman IV **Sign your name** J. Blanding Holman

1) You must complete the **Request for Contested Case Hearing** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address with the appropriate filing fee or Request for Waiver Form:

Clerk's Office
South Carolina Administrative
Law Court
1205 Pendleton St., Suite 224
Columbia, SC 29201

A copy of the Request must also be served on the agency from which you are appealing. If you do not know, you should contact the agency to determine the name of the person to be served with this document.

2) **In order for your case to be processed by the ALC, a copy of the decision or document that you are appealing must be attached to the Request for Contested Case Hearing.**

CERTIFICATE OF DATE OF MAILING

I, James Blanding Holman IV, as attorney for the South Carolina Coastal Conservation League, certify that on this 9th day of March, 2007, I deposited this Request for Contested Case Hearing in the United States Mail, first-class postage prepaid, addressed to

Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, SC 29201

J. Blanding Holman

James Blanding Holman IV

ADDENDUM TO NOTICE OF REQUEST FOR CONTESTED CASE HEARING
(SC SPA Permit No. 2003-1T-016-P-C))

Local counsel for South Carolina Coastal Conservation League:

W. Jefferson Leath, Jr., Esq.
Leath, Bouch & Crawford, L.L.P.
92 Broad Street
P.O. Box 59
Charleston, SC 29402-0059
(843) 513-1071

Additional counsel and parties for Certificate of Service:

For SC State Ports Authority:

Randolph R. Lowell, Esq.
Willoughby & Hoefer, P.A.
930 Richland Street
P.O. Box 8416
Columbia, SC 29202
(803) 771-2123

SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

FINAL AGENCY DECISION

In Re: South Carolina State Ports Authority, P/N 2003-1T-016-P-C

Appearances: Randolph R. Lowell, Esquire, for South Carolina State Ports Authority

J. Blanding Holman, IV, Esquire, for South Carolina Costal Conservation League

Evander Whitehead, Esquire, for South Carolina Department of Health and Environmental Control staff

This matter comes before the South Carolina Board of Health and Environmental Control (Board) for final review pursuant to the provisions of S.C. Code Ann. § 44-1-60. A final review conference was held before the Board on January 11, 2007.

On October 30, 2006, the Department issued a critical area permit, coastal zone consistency certification, and a Section 401 water quality certification (Permit) to the South Carolina State Ports Authority (SCSPA), authorizing the construction of a Marine Container Terminal on the south end of the former Charleston Navy Base located in North Charleston, Charleston County, South Carolina. The purpose of the proposed activity is to expand the throughput capacity for containerized cargo in South Carolina. On November 13, 2006, SCSPA filed a request for review of its Permit. Subsequently, on November 20, 2006, the South Carolina Coastal Conservation League (SCCCL) filed a request for review of the Permit. SCCCL also filed a motion to intervene on December 6, 2006.

At the outset of the final review conference, SCSPA and Department staff notified the Board that they had discussed the issues raised in SCSPA's request for review, and they presented the Board with a proposed modified permit resolving SCSPA's concerns in terms acceptable to Department staff. As SCSPA and Department staff had satisfactorily resolved the

issues in SCSPA's petition for review, the question arose regarding the status of SCCCL. SCSPA asserted that SCCCL was not a party to the matter because it had failed to timely file a request for review and that if SCCCL is not a party, the matter has effectively been settled.

SCSPA's challenge to the timeliness of SCCCL's request for review relies upon S.C. Code Ann. § 44-1-60(E), which provides, "[t]he department decision becomes the final agency decision fifteen days after notice of the department decision has been mailed to the applicant, unless a written request for final review is filed with the department." The Permit was mailed to the applicant, SCSPA, on October 30, 2006, and SCSPA filed a request for review on November 13, 2006. It is undisputed that SCCCL's request for review was filed on November 20, 2006, which was more than fifteen days after the Permit was mailed to the applicant. SCSPA argues that because SCCCL filed its request more than fifteen days after the date of mailing to the applicant, SCCCL's request for review was untimely filed. In response, SCCCL asserts that its request for review was filed within fifteen days after its receipt of notice of the Department's decision.

In this case, the Board accepts SCCCL's assertion that it filed its request for review within fifteen days of its receipt of notice of the Department's decision on the Permit. Based on the Administrative Law Court's reasoning in MRI at Belfair v. SCDHEC, et al., Docket No. 06-ALJ-07-0714-CC, 2006 WL 3232043 (Oct. 18, 2006), the Board finds that SCCCL's request for review was timely filed.

The parties discussed numerous concerns raised by SCCCL as to procedural and substantive aspects of the Department staff's decision. The allegations raised by SCCCL include: 1) the Department should have considered the roadway improvements authorized in the permit issued to the S.C. Department of Transportation (SCDOT) as part of SCSPA's port expansion permit, and 2) Department staff should not have made a decision on the application

prior to issuance of a Final Environmental Impact Statement (FEIS) for the SCSPA project by the federal government. See Notice of Appeal of SCDHEC Permit # 2003-1I-016-P-C granted to SCSPA, record, pp. 65-67.

With respect to the FEIS, SCSPA and Department staff asserted that the requirements of the federal National Environmental Policy Act do not apply to the Department or prevent the Department from making a permit decision prior to finalization of an environmental impact statement. Department staff explained that the draft EIS was reviewed, along with additional information in the permit file. The Board finds it was proper for Department staff to issue the Permit prior to issuance of the federal FEIS.

As to SCCCL's argument of piecemeal consideration, SCSPA and Department staff explained that the distinct nature of the projects and the separate applicants made distinct applications and permit decisions appropriate. The Department staff noted that both applications were reviewed at the same time and were reviewed primarily by the same people. The Board finds Department staff properly reviewed the SCSPA and SCDOT applications and issued the permits as separate documents.

With respect to the other arguments raised by SCCCL, the Board finds no error in the Department staff decision that warrants correction.

Having reviewed the administrative record and having heard from all parties in this matter, the Board unanimously concludes that the Permit modifications proposed by SCSPA and Department staff are proper and comply with the regulations and applicable law, and that Department staff conducted a thorough review of the relevant issues. Therefore, the Board adopts and approves the modified Permit as submitted by SCSPA and Department staff, which is attached as Exhibit A and incorporated herein by reference.

Edwin H. Cooper, III
Interim Chairman
Board of Health and Environmental Control
For the Board

February 8, 2007

Notice of Right to Request Contested Case Hearing Before Administrative Law Court

S.C. Code §44-1-60(F)(2) provides that within thirty days after the receipt of the Board's written final agency decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: http://www.scalc.net. If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the following address:

Lisa L. Lucas
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

EXHIBIT A

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT/COASTAL ZONE CONSISTENCY/WATER QUALITY CERTIFICATION

Permittee(s):	**South Carolina State Ports Authority**
Permit Number(s):	**2003-1T-016-P-C**
Date of Issuance:	**October 30, 2006**
Expiration Date:	**October 30, 2011**
Location:	**On and adjacent to the Cooper River and located at the south end of the former Charleston Navy Base, North Charleston, Charleston County, South Carolina.**

This permit is issued under the provisions of S.C. Code Ann. Sections 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of $5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. **All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.**

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

This permit has been issued authorizing the requested work, with conditions. Specifically, this permit authorizes the construction of a Marine Container Terminal on the south end of the former Naval Base. The facility will consist of container processing and support facility, a wharf with crane structures, dredging for navigational improvements, utilities, and road & rail lines. The container processing and support facilities will consist of office buildings, a truck interchange facility, maintenance buildings, a container freight station, an inspection station, and a security gatehouse. Additionally, installation of a sediment suspension system is also proposed. In particular, the marine container terminal will include:

- Creating approximately 286.5 acres of terminal development on highground and wetland areas that will also include an 11.6-acre, 3,510' long wharf.
- Approximately 77.9 acres of dredged turning basin and berthing areas.
- Disposal of dredged materials in the existing upland dredge disposal area on the south end of Daniel Island.

Impacts from the construction of this Marine Container Terminal will consist of the dredging and filling of 56.6 acres of sub-tidal open water areas. Secondly, the proposed project will involve dredging and then filling 9.6 acres of tidal marsh areas to construct the wharf structure, and 2.4 acres of freshwater wetlands. Additionally, development of the turning basin and berthing area would result in excavation of 77.9 acres of sub-tidal open water areas to a depth of –49 feet mean low water. The total amount of dredging for the turning basin and wharf area will be approximately 6.5 million cubic yards of material. The marine container terminal will be located at the south end of the former Charleston Navy Base, North Charleston, Charleston County, South Carolina. The purpose of the proposed activity is to expand the of throughput capacity for containerized cargo in South Carolina.

To offset these impacts and in the interest of the general public, the DHEC-OCRM recognizes the mitigation program for impacts resulting from the construction of the terminal. To meet OCRM mitigation requirements for wetland impacts, the SCSPA has offered to restore 22 acres of marsh mosaic habitat on the southern end of Drum Island to directly offset the loss of 9.6 acres of saltwater wetland vegetation impacts at a 2.291 ratio to wetland impacts/wetland creation, restoration or enhancement. This ratio exceeds OCRM's requirement of 1:1 for public interest projects.

As part of the consideration of dredging and filling wetland resources, OCRM is required to consider overriding public need and interest. OCRM, through its permitting staff, has determined that the construction of the terminal is in the public's interest and is needed for the region to remain competitive in the global economy however; the facility will also have impacts on the public. To offset these impacts, OCRM fully recognizes the following additional mitigation efforts offered by SCSPA, though not directly required by regulation or law: provide $1,000,000 to SCDNR for restoring and enhancing 8 acres of oyster reefs in waters designated for shellfish harvesting, providing $1,000,000 to The Trust for Public Lands for the purchase of the private held section of Morris Island, providing $1,000,000 to the Nature Conservancy to assist in the preservation of target lands in the Cooper River Initiative Focus Area, providing $1,000,000 towards affordable housing within the affected area, providing $100,000 for monitoring purposes while the terminal is under construction, providing $250,000 towards educational attainment in the affected area, providing $600,000 for the establishment of a career center relative maritime training, providing $350,000 to foster local economic development in the affected area, providing $500,000 towards a health care facility in the affected area, providing $300,000 for a community center, and providing $300,000 for beautification and enhancements of the affected area, providing buffers as defined in section 4.85 of the Memorandum of Understanding and Agreement between the SCSPA and the City of North Charleston dated October 25, 2002, providing appropriate sound barriers along roadways constructed adjacent to residences, and the donation of a three acre parcel to Clemson University for that institution's restoration Institute Campus, appraised at $975,000.

The phrase "prior to any work commencing" or similar language shall mean that the referenced condition must be performed before any work authorized by this permit is undertaken. This permit should not be construed to prohibit construction or demolition activities that are not otherwise governed by this permit. By way of example but not limitation, this permit would not restrict or limit the demolition of a building and the activities related thereto if such demolition would be permissible in the absence of this permit.

CRITICAL AREA PERMIT SPECIAL CONDITIONS

1. Provided the Mitigation Program, dated May 1, 2006, revised on July 19, 2006, and further revised on August 18, 2006 is approved by OCRM with the following exception: OCRM has concerns for successful regeneration of *Spartina alterniflora* plant stock on the site due to the exposure of Drum Island to high energy wave action associated with heavy boat and ship traffic. OCRM will agree to the planting of *Spartina alterniflora* plant stock on 3' centers but requires an assessment of the success of the plants after 1-Year (1-Growing Season). If the assessment reveals that the plants are not successfully regenerating, the SCSPA agrees to replant the area on 1.5' centers. Successful regeneration will be considered to have occurred when a minimum of 75% survival of planted *Spartina alterniflora* plants at the end of 12 months following planting. Section 2.2 and appendix B of the program document must be revised and submitted to all permitting agencies prior to any work commencing under this permit.

2. Provided the federally required EIS is accepted by OCRM as the controlling document for anticipating environmental impacts of the marine terminal. To that end, the EIS has shown substantial evidence that the facility will cause minimal obstruction to natural water flow of navigable water, will not affect the production of marine, natural wildlife or other natural resources, will cause minimal erosion and shoaling of channels (except for the berthing areas, which will be maintained) for the following reasons: a) the navigation channel currently shoals in the absence of a terminal, b) it is estimated that there will minimal shoaling of 1' to 4' in certain reach sections of the Cooper River and is negligible in terms of the overall cubic yardage of material removed by the Corps of Engineers during maintenance dredging events.

Additionally, the project will not create a stagnant water condition. Further, the facility will not cause lethal fish entrapments or deposit sumps.

3. Provided a monitoring and contingency plan must be submitted to SCDHEC-BOW, SCDHEC-OCRM and SCDNR for review and approval concerning the Sediment Suspension System prior to system installation. Monitoring sites must be established in front of the Federal Law Enforcement Training Center (FLETC) piers and the Cooper River Marina to measure sediment accumulation resulting from the wharf construction and the operation of the sediment suspension system. The monitoring and contingency plan must state how frequently SC State Ports Authority will submit data reports to the above-mentioned agencies. Contingency plans must be implemented if shoaling occurs and leads to a negative effect to the navigable waters in these and other nearby areas (despite the existence of the suspension system). This plan must be submitted to OCRM for approval, which may include a performance bond.

4. Provided best management practices are implemented during construction to minimize migration of disturbed or backfilled material from the authorized construction site. These best management practices must consist of devices that are capable of containing material on site (either the highground or backfilled areas) in coordination with the construction of the container yard wall.

5. Provided the 3,510-foot long berth be fully dredged prior to installation of the sediment suspension system.

6. Provided a final dredging plan is submitted to and approved, in writing, by OCRM staff prior to dredging. The dredging plan must include a dredging schedule, the production of a dredging log, the amount of dredge material removed each working day, and procedures to handle emergency situations such as an unanticipated release of dredged materials.

7. Provided that hydraulic dredging is the preferred method for dredging and disposal. The SCSPA and its dredging contractor must make every effort in avoiding the crossing of marsh with spoil pipes on Clouter Island. If such an impact is unavoidable and marsh and wetlands are disturbed, the marsh must be restored to its original contours and conditions, which may involve revegetation similar to the Drum Island mitigation requirements. The pipeline must be clearly marked with navigational lights and reflectors so that it is clearly visible at night.

8. Provided that if clamshell dredging should prove necessary, all measures must be taken to contain any fallout from the clamshell dredge to limit turbidity and prevent re-suspension of sediments as much as possible during dredging operations.

9. Provided signs must be posted on the wharf and areas adjacent to the facility stating the following: "It is against both Federal and State Laws to discharge raw, untreated sewage from any description of watercraft into the waters of South Carolina." Signs should be at least 14" by 18" in size so they can be read clearly.

10. Provided that an as-built survey of the terminal must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the terminal, and be accomplished using the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

11. Provided that a submerged cultural resource survey be undertaken before any site work occurs. This survey must be sent to both OCRM and the State Historic Preservation Officer, State Historic Preservation Office.

12. Provided that the SCSPA continue to reimburse Charleston County Mosquito Control Program for the treatment and inspection of the disposal sites.

13. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the State Archaeologist, South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title

54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

COASTAL ZONE CONSISTENCY CONDITIONS

1. Certification staff has reviewed the freshwater wetlands impacts and mitigation proposal associated with the above referenced project and finds them consistent with the State's Coastal Zone Management Program. Mitigation will be provided through the purchase of 33.1 mitigation credits from an approved mitigation bank. Proof of the purchase of the 33.1 mitigation credits must be submitted to the Office of OCRM prior to any work commencing under this permit.

WATER QUALITY SPECIAL CONDITIONS

1. The applicant must implement BMPs during construction to minimize erosion and migration of sediments off site, as proposed. These practices may include use of mulches, hay bales, silt fences, or other devices capable of preventing erosion and migration of sediments. All disturbed land surfaces must be stabilized upon project completion. All disturbed land surfaces and sloped areas must be stabilized and sloped with a minimum 3/1 slope upon project completion.

2. In areas where silt barriers cannot be effectively employed, mulching, burlap or other suitable materials should be applied and maintained on all disturbed land surfaces to control erosion until the area is permanently stabilized upon project completion.

3. If sediment basins are used, they must be cleaned out when they lose their effectiveness; and all materials removed from the basins must be hauled off site or placed on high land and properly contained and stabilized.

4. Upon completion of construction activities, all disturbed areas, including filled areas, which are not paved, must be permanently stabilized with a vegetative cover. This may include sprigging, trees, shrubs, vines or ground cover.

5. Only clean earthen material free of all potential sources of pollution must be used as backfill.

6. Construction activities must avoid to the greatest extent practicable, encroachment into any wetland/river bank areas not designated as impact areas.

7. Any equipment used within the wetland must be equipped with high floatation tires to minimize rutting and compaction.

8. All necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands.

9. The applicant must develop a spill prevention and clean up plan for this project. The plan should contain the names of appropriate officials to contact in case of a reportable spill and outline measures to be taken. Clean up materials, such as absorbent pads and booms, must be kept at the project site for small spills. This plan must be submitted to the SCDHEC for review and approval prior to initiation of the project.

10. A Permanent Stormwater System Maintenance and Responsibility Agreement must be signed by the SCSPA and sent to SCDHEC. The approved stormwater plan must ensure that outfalls discharging to Shipyard Creek will be located near the mouth of the creek.

11. Dredged material that has been determined acceptable for use as construction fill may be deposited on the terminal site. All other dredged material will be deposited in the SCSPA Daniel Island Confined Disposal Facility.

12. The excavated area must be sloped such that the rear is no deeper than the front and the front is no deeper than the adjacent portion of the Charleston Harbor to maintain circulation.

13. The SCSPA must continue to reimburse the Charleston County Mosquito Control Program for mosquito control efforts including inspection and product application associated with the Daniel Island CDF until it is closed.

14. The applicant must compensate for impacts to vegetated marsh habitat by creating at least 22 acres of marsh mosaic habitat at the southern end of Drum Island. A detailed restoration plan including performance standards, monitoring requirements, and remediation actions must be submitted to USFWS, NMFS, & SCDNR for review and to SCDHEC's Division of Water Quality and OCRM for review and approval prior to any work commencing under this permit. The SCSPA must monitor the mitigation site and provide the SCDHEC's Division of Water Quality and OCRM with monitoring reports. The monitoring, and the monitoring reports, will be completed in accordance with the Corps of Engineers Regulatory Guidance Letter (RGL-06-03) dated August 3, 2006. The reports must be submitted upon completion of the plantings, six months after planting, one year after planting, and at yearly intervals for a total of five years. The restoration will be considered complete when the following success criteria are met: 1) a minimum of 75% survival of planted *Spartina alterniflora* plants at the end of 12 months following planting, and 2) mean stem densities of *S. alterniflora* in the restored marsh > 75% of the mean stem density in the adjacent undisturbed salt marsh at the end of 36 months (3 years) following planting.

15. The applicant must compensate for freshwater wetland impacts by withdrawing credits from an approved mitigation bank (no more than 50% of credits can be from preservation; at least 25% of credits must be from restoration and/or non-buffer enhancement). Credit withdrawal documentation from the mitigation bank must be submitted to SCDHEC's Division of Water Quality and OCRM prior to any work commencing under this permit.

16. The applicant must compensate for adverse impacts that may result from the filling or excavation of intertidal and subtidal habitats by providing $1,000,000 to the SCDNR for the purpose of restoring, enhancing, and monitoring approximately 5.28 miles (8 acres) of oyster reefs at suitable locations in and around Charleston. Priority must be given to designated shellfish harvesting waters with an approved harvesting status as restoration activities in these areas are most likely to result in the production of oyster beds that can be utilized by the public. SCSPA must provide to the Division of Water Quality and OCRM, prior to any work commencing under this permit, (1) documentation of the deposit of funds into an escrow account or other acceptable security, and an irrevocable letter of credit for the noted amount and (2) documentation, utilizing the model transmittal letter (Attachment A), demonstrating that SCDNR has been provided the noted amount only for the purpose of restoring, enhancing, and monitoring approximately 5.28 miles (8 acres) of oyster reefs at suitable locations in and around Charleston.

17. The applicant must compensate for indirect environmental impacts of the proposed project by contributing $1,000,000 to The Trust for Public Lands for purchasing Morris Island. SCSPA must provide to the Division of Water Quality and OCRM, prior to any work commencing under this permit, (1) documentation of the deposit of funds into an escrow account or other acceptable security, and an irrevocable letter of credit for the noted amount and (2) documentation, utilizing the model transmittal letter (Attachment A),

demonstrating that The Trust for Public Lands has been provided the noted amount only for the purpose of purchasing Morris Island.

18. The applicant must compensate for indirect environmental impacts of the proposed project by contributing $1,000,000 to The Nature Conservancy for the purchase of real property interests (in fee or lesser interest) for conservation purposes, restoration, or enhancement of target lands within the Cooper River Initiative focus area. SCSPA must provide to the Division of Water Quality and OCRM, prior to any work commencing under this permit, (1) documentation of the deposit of funds into an escrow account or other acceptable security, and an irrevocable letter of credit for the noted amount and (2) documentation, utilizing the model transmittal letter (Attachment A), demonstrating that The Nature Conservancy has been provided the noted amount only for the purchase of real property interests (in fee or lesser interest) for conservation purposes, restoration, or enhancement of target lands within the Cooper River Initiative focus area.

19. A declaration of restrictive covenants or other preservation documentation addressing the Drum Island mitigation site must be submitted to SCDHEC's Division of Water Quality and OCRM for review and approval prior to recording. A copy of the stamped recorded plat and the stamped restrictive covenants must be submitted to the Division of Water Quality and OCRM prior to any work commencing under this permit.

20. The intake structure of the water jet sedimentation control system must be screened and operated in such a way as to minimize, to the maximum extent practicable, entrainment of aquatic species.

21. The SCSPA must instruct all personnel associated with the project construction and operation of the potential presence of the manatees and the need to avoid collisions with manatees.

22. All SCSPA personnel and contractors will be advised that there are civil and criminal penalties for harming, harassing or killing manatees which are protected under the Marine Mammal Protection Act of 1972 (MMPA) and the Endangered Species Act of 1973 (ESA). The contractor may be held responsible for any manatee harmed, harassed or killed as a result of port activities.2

23. Siltation barriers that may be utilized during the port's construction activities must be made of materials and placed in a manner in which manatees cannot become entangled. The barriers may not block manatee movements and are to be regularly monitored to avoid manatee entrapment.

24. All vessels associated with the project will operate at idle speeds at all times while in shallow waters.

25. If manatees are sighted within 100 yards of the project, all appropriate precautions shall be implemented to ensure protection of the manatees. These precautions shall include operating all equipment in such a manner that moving equipment does not come any closer than 50 feet of any manatee.

26. Any collision with any manatee must be reported immediately to the SC Department of Natural Resources, Heritage Trust Section, (843) 953-9015.

27. The SCSPA will maintain a log detailing manatee sightings, collisions or injuries should they occur during construction. Following construction completion a report summarizing incidents and sightings must be submitted to Endangered Species Biologist, US Fish and Wildlife Service, 176 Croghan Spur Road, Suite 200, Charleston, SC, 29407.

28. The SCSPA must obtain the necessary permits, including dig permits, from the U.S. Navy prior to construction and will comply with the notification provisions of those permits and other requirements.

29. The SCSPA will require ships at their berths to appropriately manage their crew and cargo to ensure that non-indigenous species will not be released into the environment at the proposed project site, as required by the SC State Ports Authority's Tariff Rule 34-165.

30. Should the refinement of the TMDL for the Cooper River find the dredging and backfilling impacts and stormwater impacts impacts to be inconsistent with State water quality standards when considered with the other point and nonpoint sources, the SCSPA and SCDHEC will enter into an agreed-upon MOA after consulting/coordinating with appropriate resource agencies and conservation groups, to outline the goals and objectives and to mitigate appropriately for its impact.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

Permit Number: 2003-1T-016-P-C

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE(S)) (DATE)

South Carolina State Ports Authority

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

(MANAGER, CRITICAL AREA PERMITTING) (DATE)

Curtis M. Joyner
Or his Designee
Other Authorized State Official

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-23-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

ATTACHMENT A

[DATE]

[RECEIVING PARTY]

Enclosed herewith please find documentation evidencing the deposit of [AMOUNT] in an escrow fund for the benefit of [RECEIVING PARTY]. The provision of these funds by the South Carolina State Ports Authority constitutes SPA's compliance with certain terms and conditions of its Permit No. 2003-1T-016-P-C. As required by the permit, the use of these funds is restricted and limited to the [PURPOSE].

Your acceptance of these funds for your benefit constitutes your acknowledgement that the terms and conditions set forth in this transmittal letter are binding upon you, and that you are contractually bound to utilize the stated funds only for the purposes set forth herein. You further understand that the South Carolina Department of Health and Environmental Control is a third party beneficiary of these funds.

Please provide the SPA and DHEC with periodic reports of the utilization and expenditure of these funds. SPA and/or DHEC has the right to review records related to the utilization and expenditure of these funds.

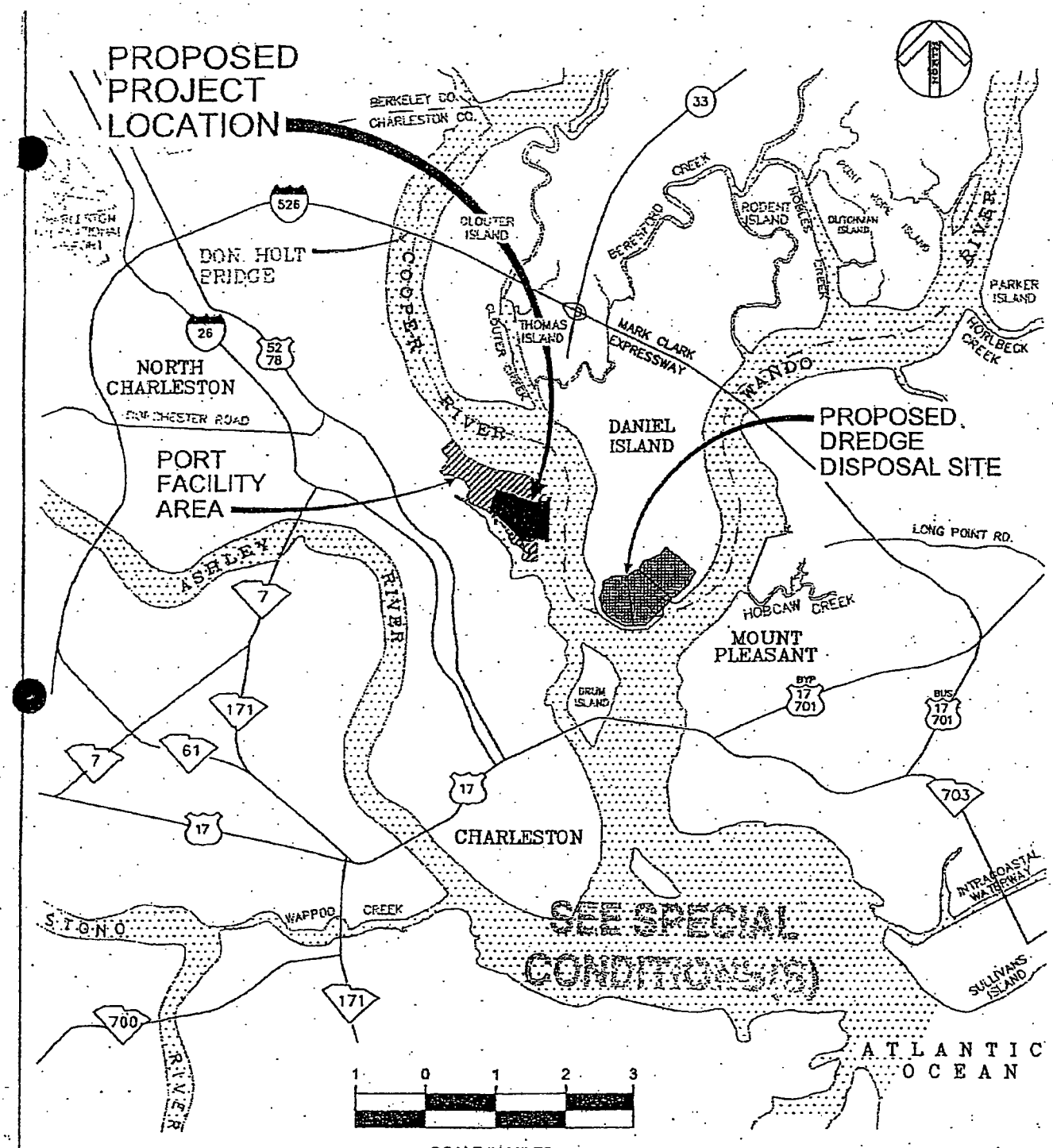
Please sign this letter where indicated below and return an executed copy to me. Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact me.

[STATE PORTS AUTHORITY]

On Behalf of the [RECEIVING PARTY],
I acknowledge and agree to the terms
stated above:

_____
[AUTHORIZED REPRESENTATIVE]
[RECEIVING PARTY]

Enclosures



PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PROJECT NO.: MSC02E028
FILE NAME: CNBPA1A5

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

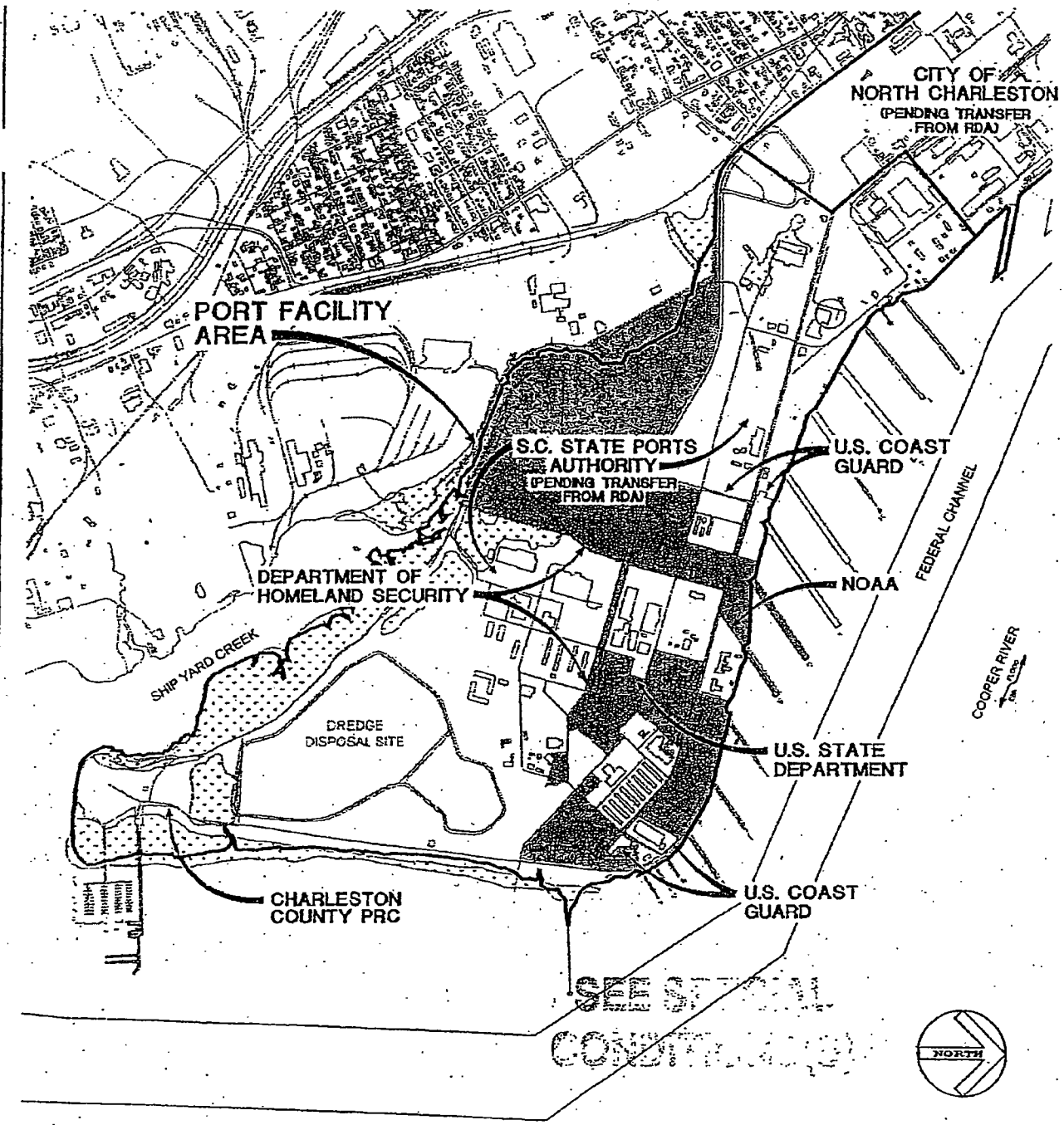
P/N # 2003-1T-016-PC

PROJECT LOCATION

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON, SOUTH CAROLINA
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 1 OF 11 DATE: JANUARY 28, 2005



PERMIT APPLICATION AMENDMENT NO. 5	07/25/05

PROJECT NO. : MSC02E028
FILE NAME : CNBPA2A5

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO PLAN

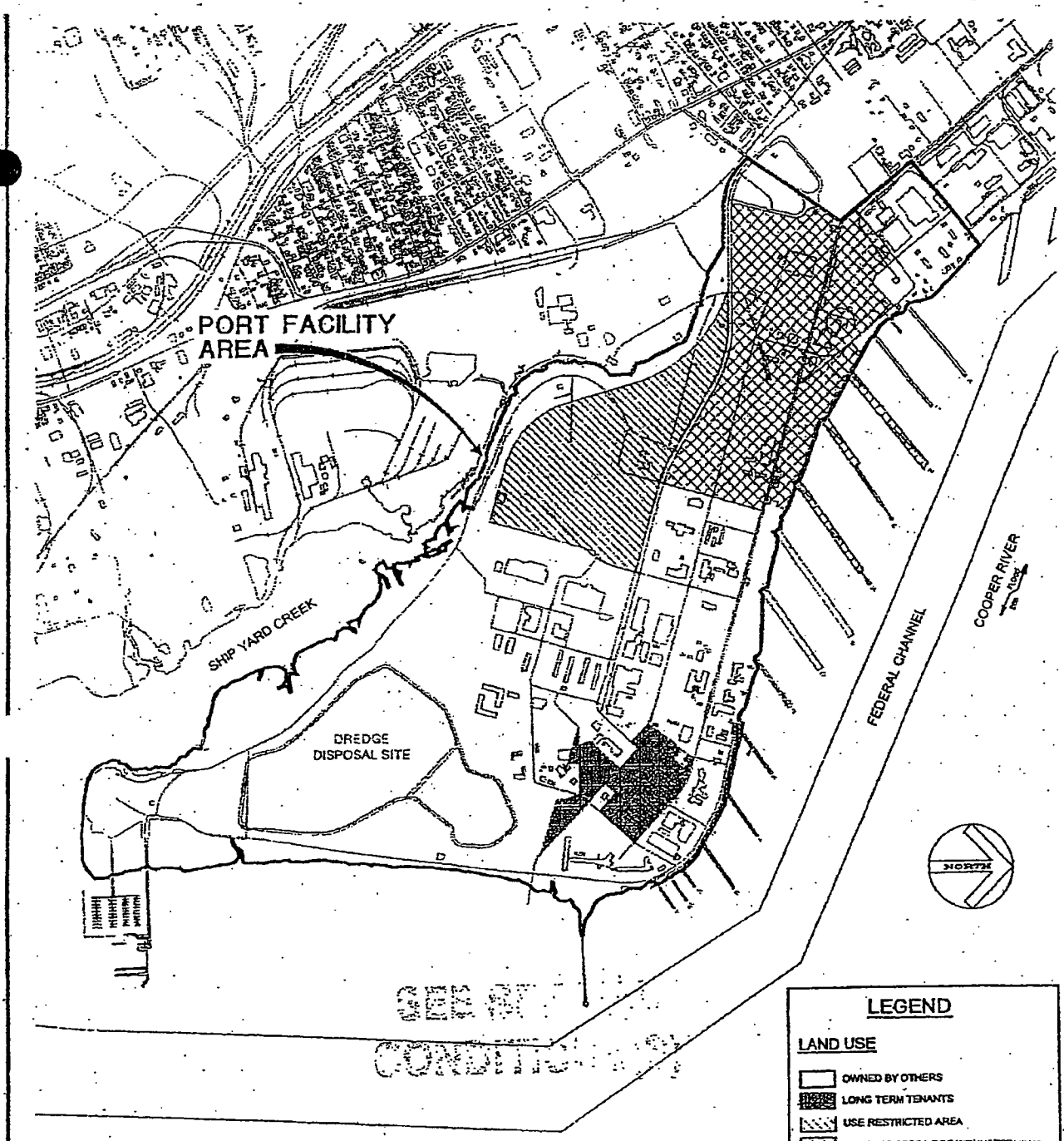
P/N # 2003-1T-016-PC

PROPERTY OWNERS

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 2 OF 11 DATE: JANUARY 28, 2005



PROJECT NO.: MSC02E028
FILE NAME: CNBPA3A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

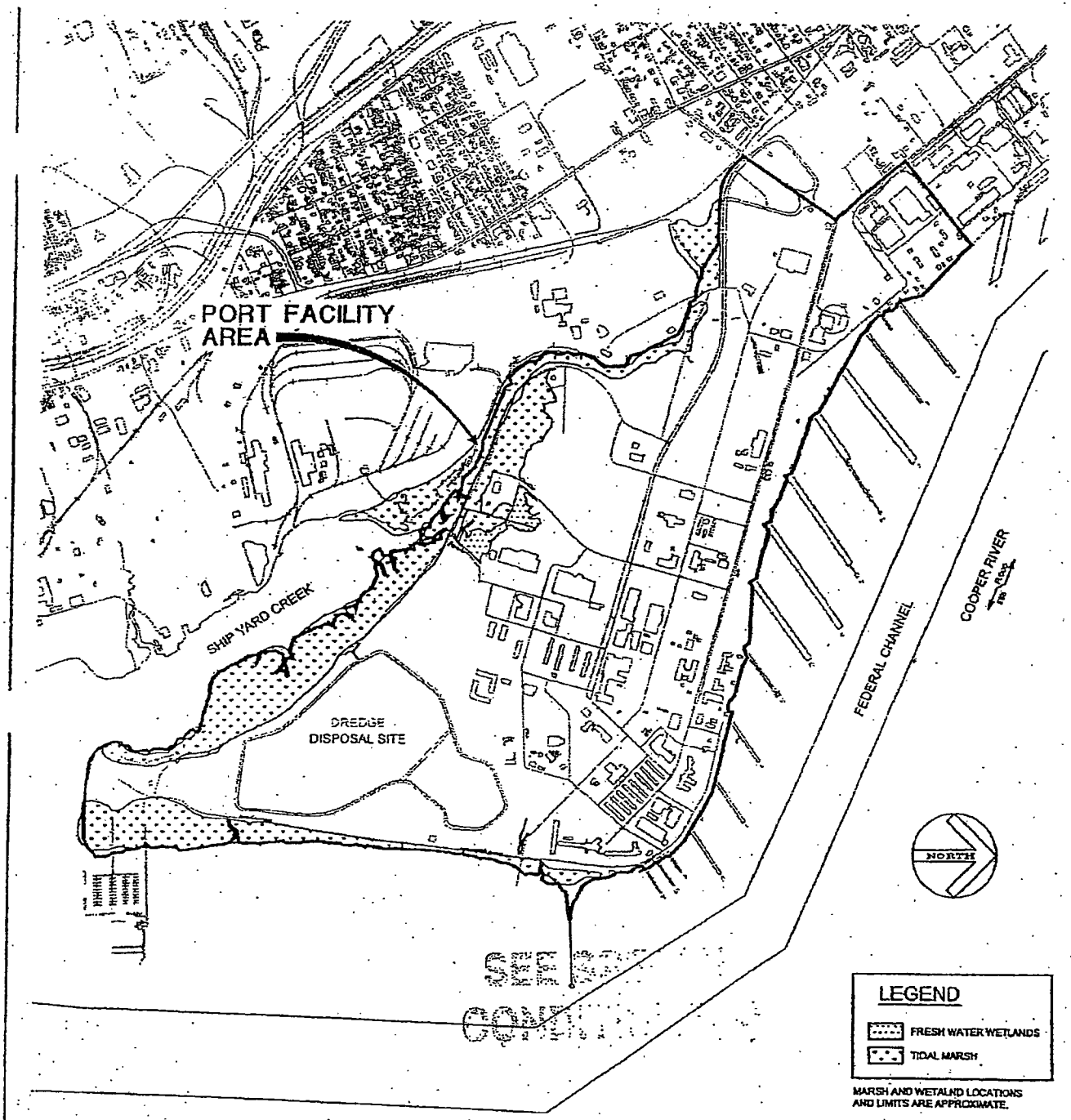
P/N # 2003-1T-016-PC

EXISTING CONDITIONS
(LAND USE)

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 3 OF 11 DATE: JANUARY 28, 2005



PROJECT NO.: MSC02E028
FILE NAME: CNBPA4A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

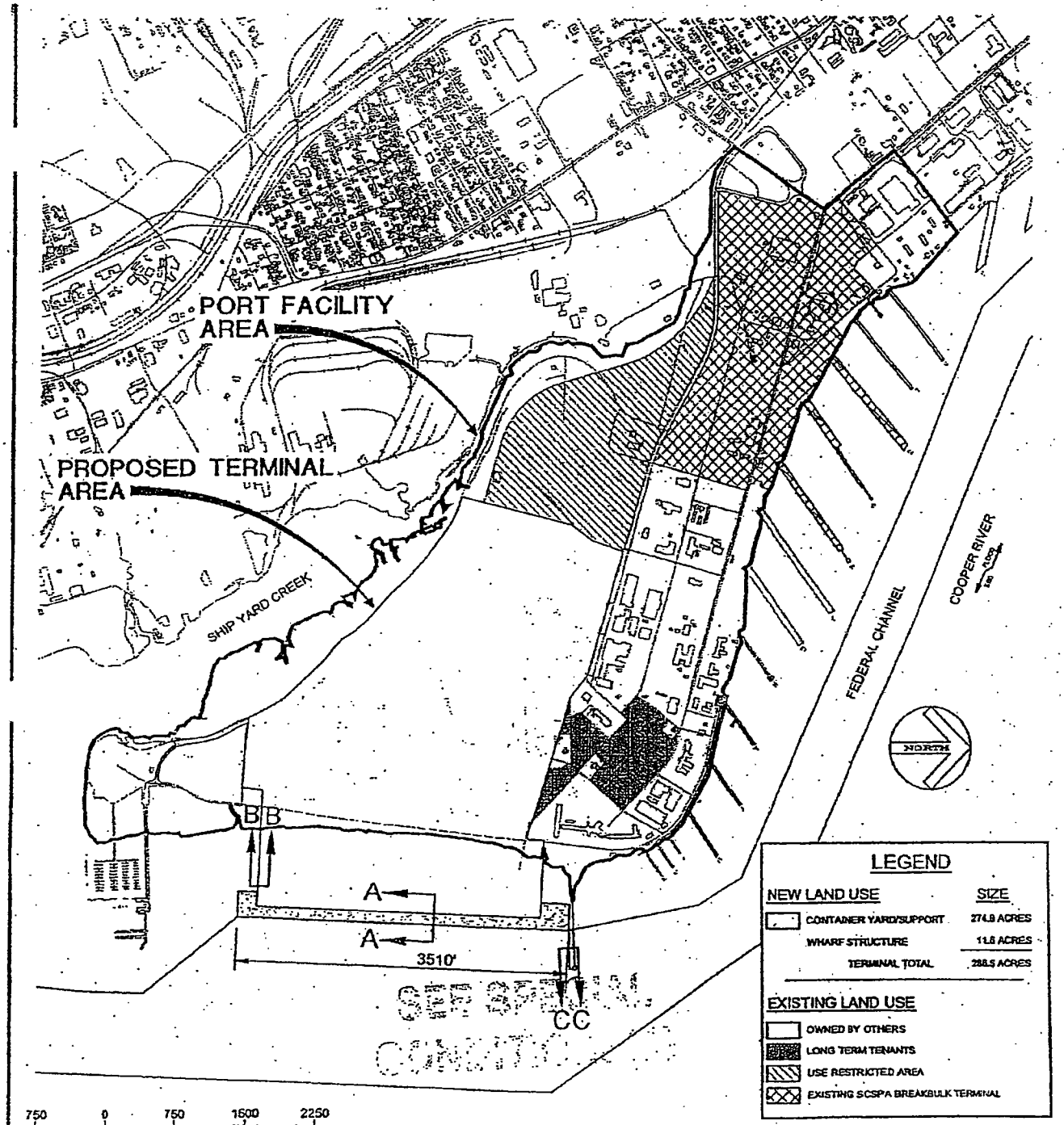
P/N # 2003-1T-016-PC

EXISTING CONDITIONS
(WETLANDS)

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 4 OF 11 DATE: JANUARY 28, 2005



PROJECT NO.: MSC02E028
FILE NAME: CNBPA5A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS:
REFER TO SHEET 2 OF 11

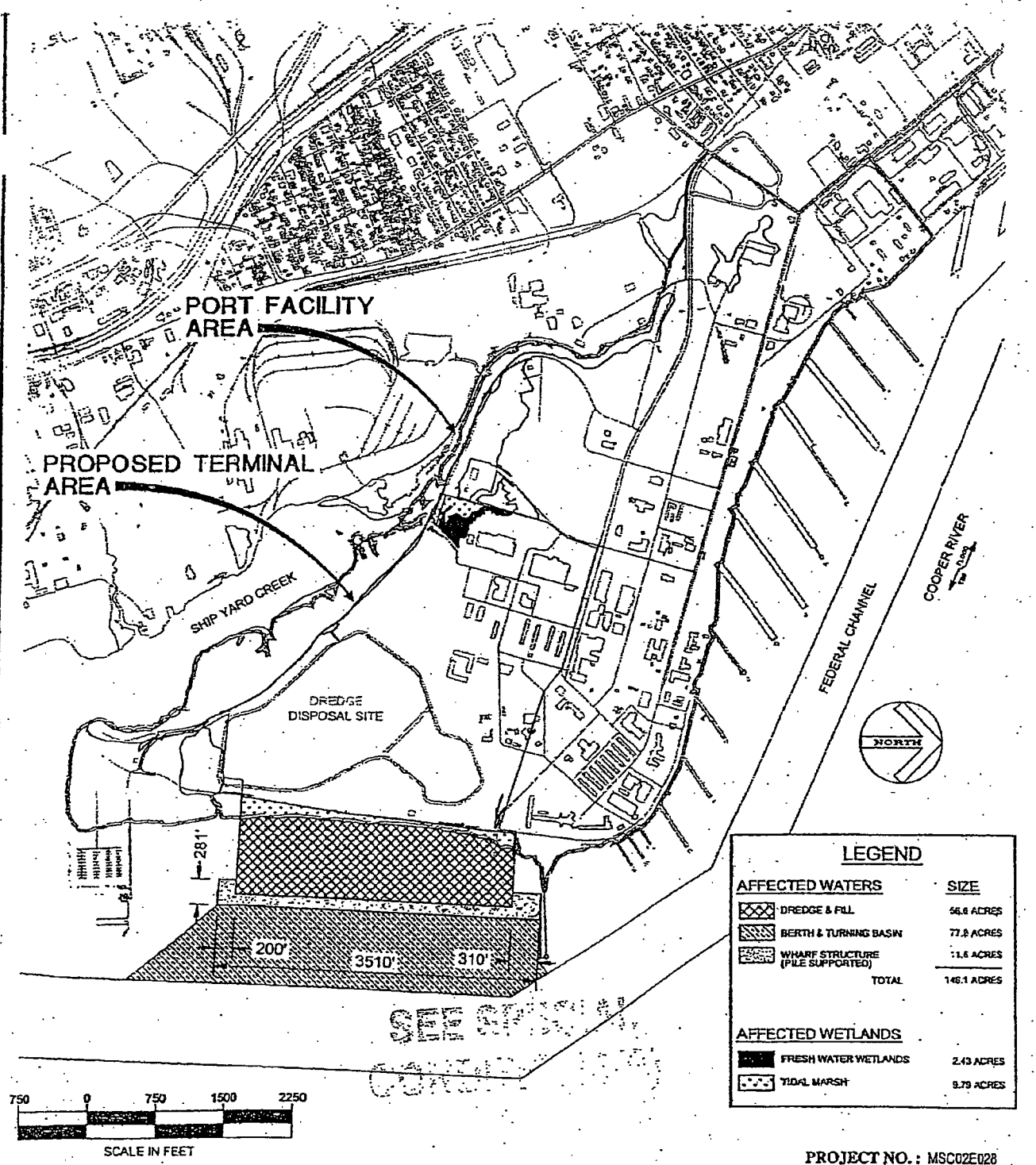
P/N # 2003-1T-016-PC

NEW CONDITIONS
(LAND USE)

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 5 OF 11 DATE: JANUARY 28, 2005



PROJECT NO.: MSC02E028
FILE NAME: CNBPA6A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS:
REFER TO SHEET 2 OF 11

P/N # 2003-1T-016-PC

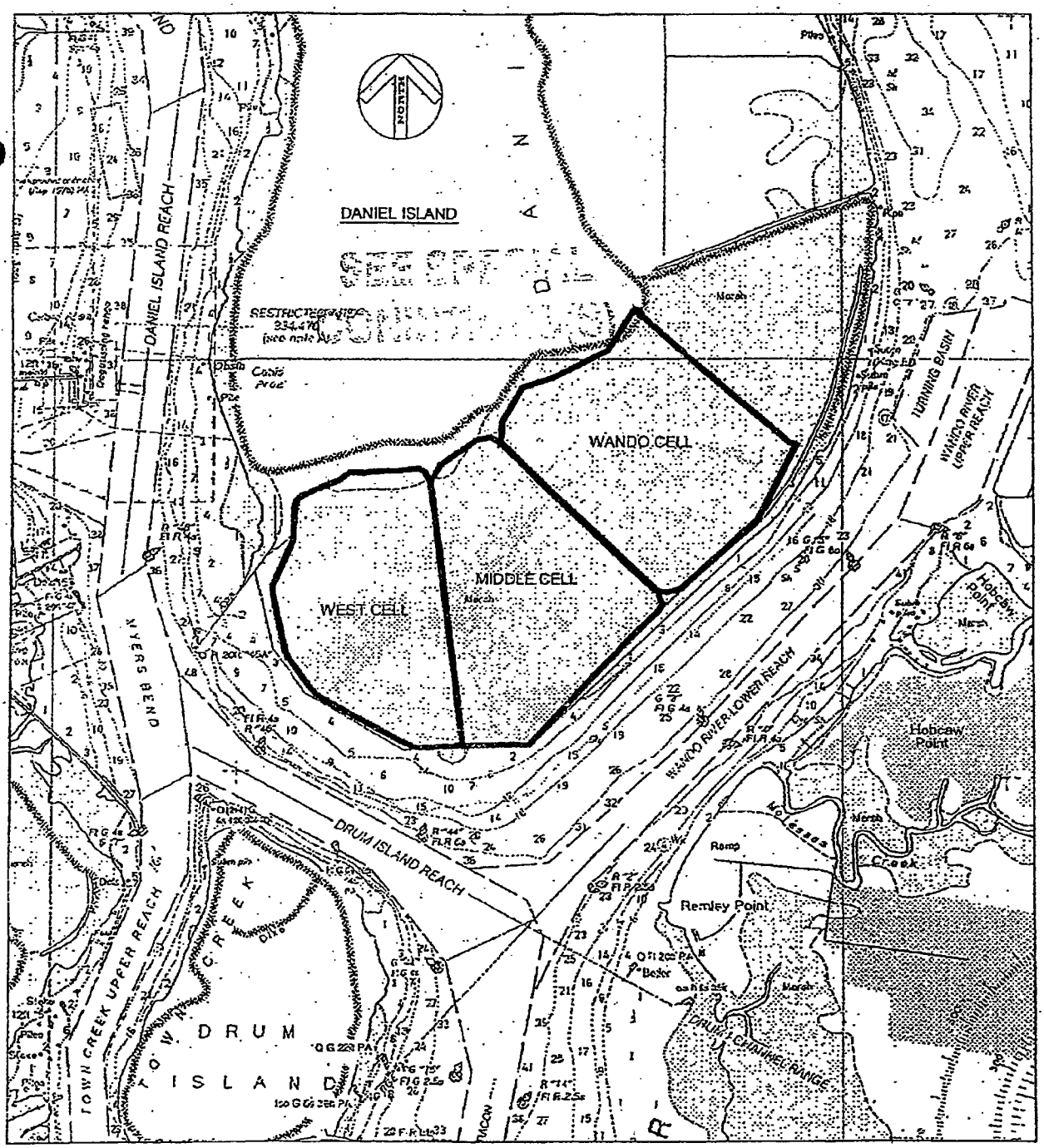
NEW CONDITIONS

(AFFECTED WATERS & WETLANDS)

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 6 OF 11 DATE: JANUARY 28, 2005



2000 0 2000

SCALE IN FEET

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PROJECT NO.: MSC02E028
FILE NAME: CNBPA7A5

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH

DATUM: S.C. STATE PLANE COORDINATES

ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

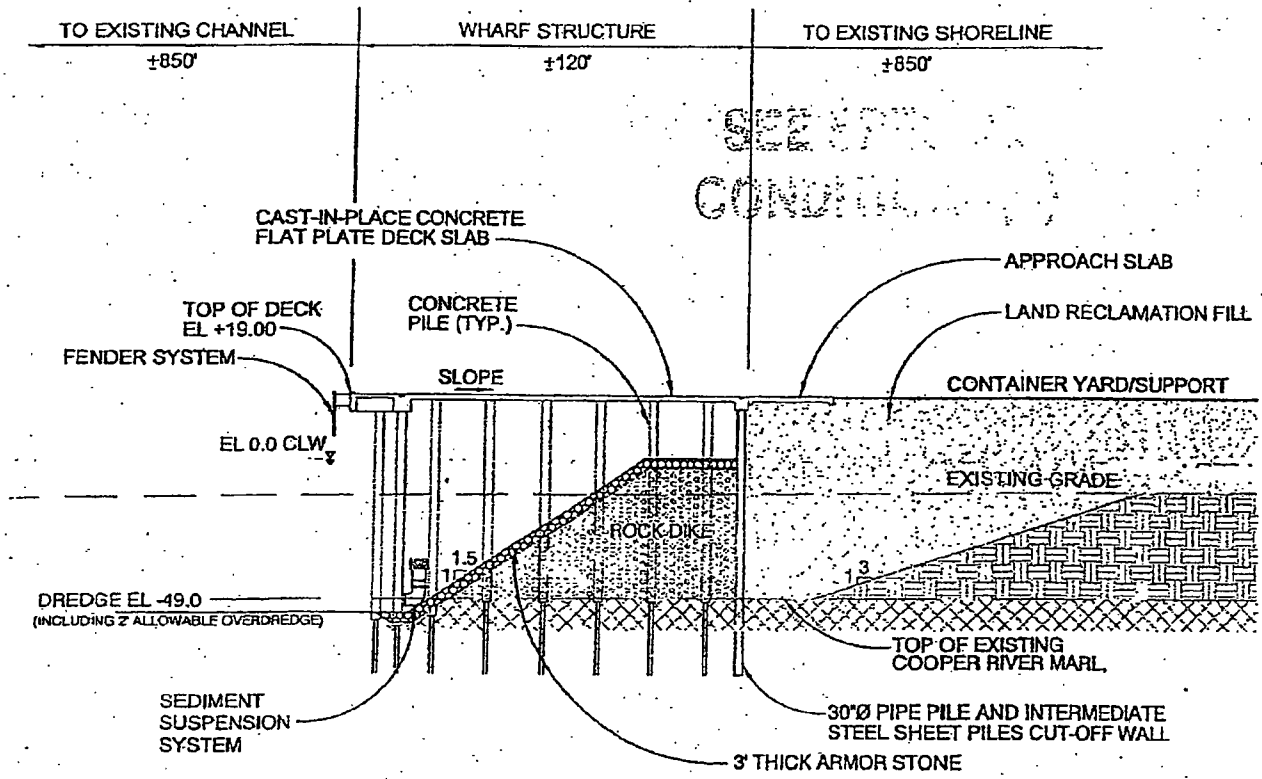
P/N # 2003-1T-016-PC

DREDGE DISPOSAL SITE

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

PROPOSED: NEW CONTAINER TERMINAL

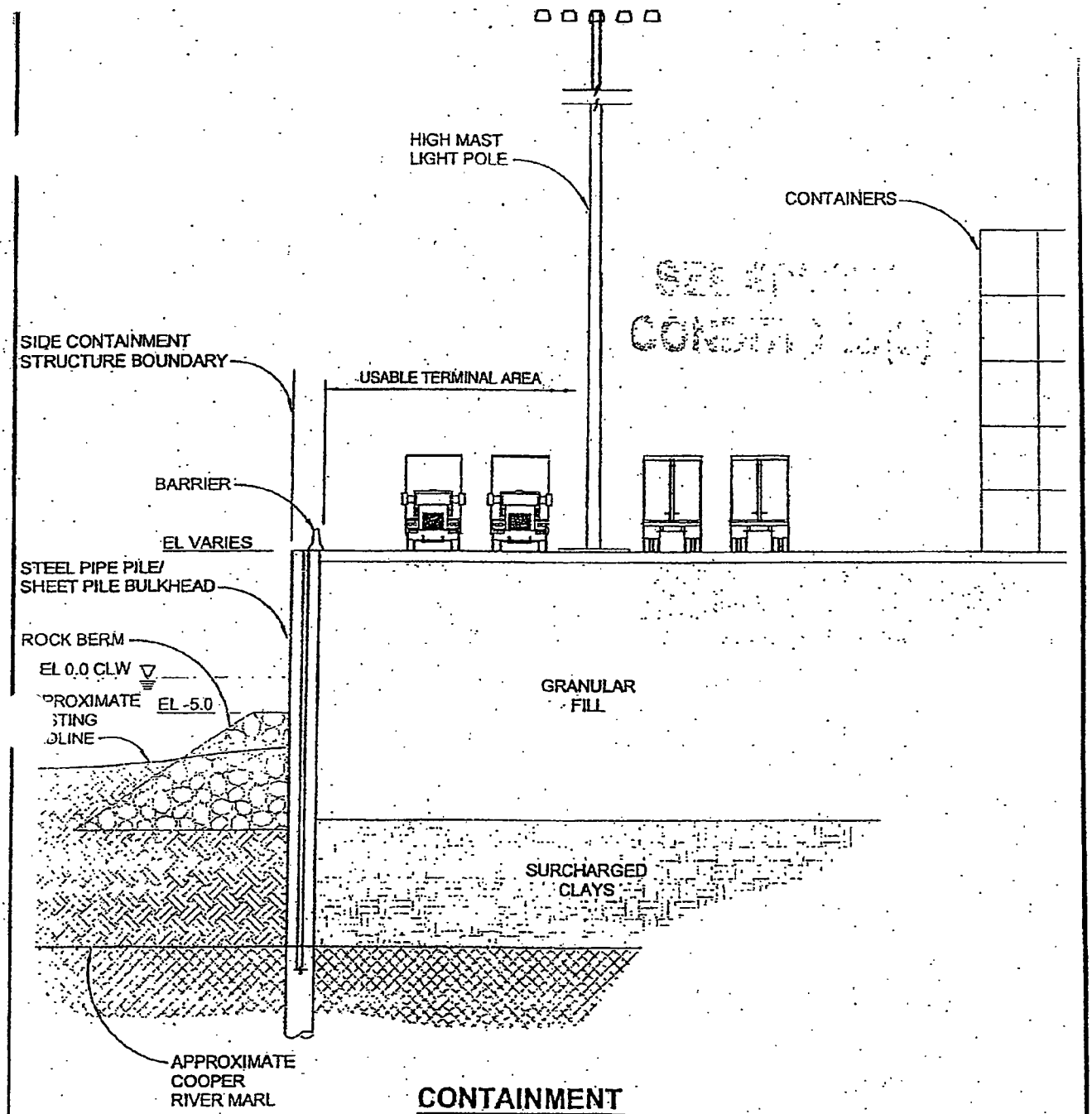
IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 7 OF 11 **DATE:** JANUARY 28, 2005



PILE SUPPORTED DECK & BERTH

N.T.S.

	PERMIT APPLICATION AMENDMENT NO. 5 | 07/25/06	PROJECT NO.: MSC02E028 FILE NAME: CNBPA8A5
PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH DATUM: CHARLESTON LOW WATER (MLW) ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11 P/N # 2003-1T-016-PC	**SECTION A - A** *South Carolina State* **PORTS AUTHORITY** 176 CONCORD STREET P.O. BOX 22287 CHARLESTON, S.C. 29413-2287	PROPOSED: NEW CONTAINER TERMINAL IN: NORTH CHARLESTON AT: FORMER CHARLESTON NAVAL BASE CHARLESTON COUNTY, SOUTH CAROLINA APPLICATION BY: SC STATE PORTS AUTHORITY SHEET: 8 OF 11 DATE: JANUARY 28, 2005



CONTAINMENT STRUCTURE

N.T.S.

PROJECT NO.: MSC02E028
FILE NAME: CNBPA9A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: CHARLESTON LOW WATER (MLW)
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

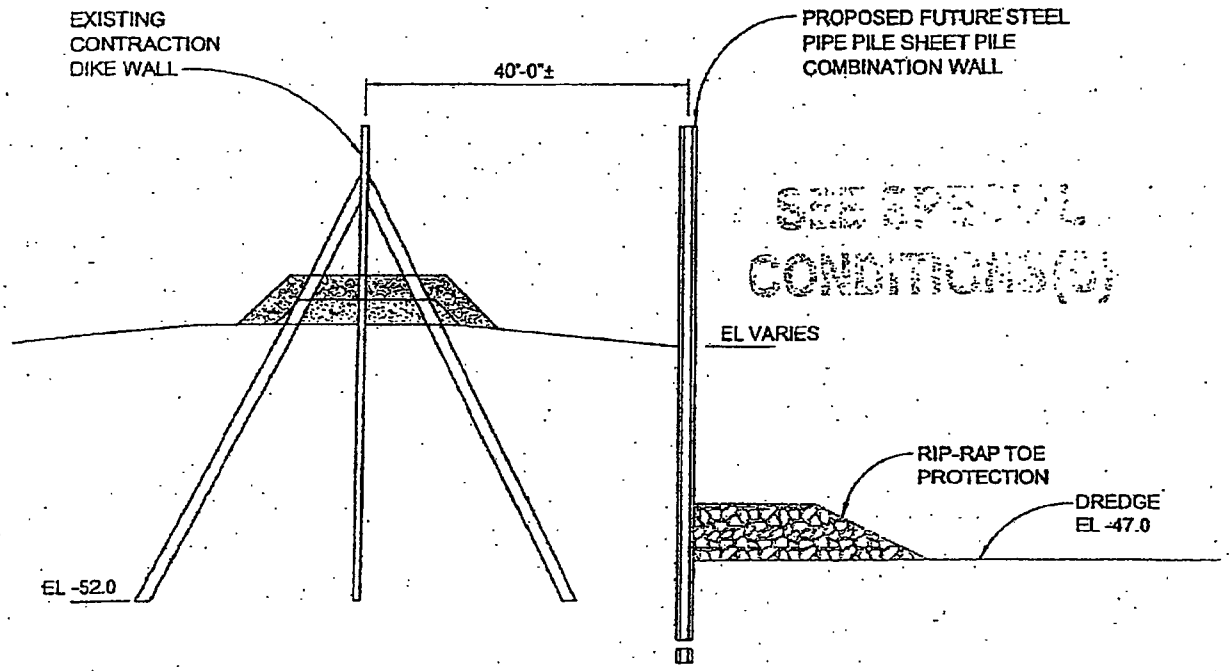
P/N # 2003-1T-016-PC

SECTION B - B

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 9 OF 11 DATE: JANUARY 28, 2005



CONTRACTION DIKE PROTECTION WALL

N.T.S.

PROJECT NO.: MSC02E028
FILE NAME: CNBPA10A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

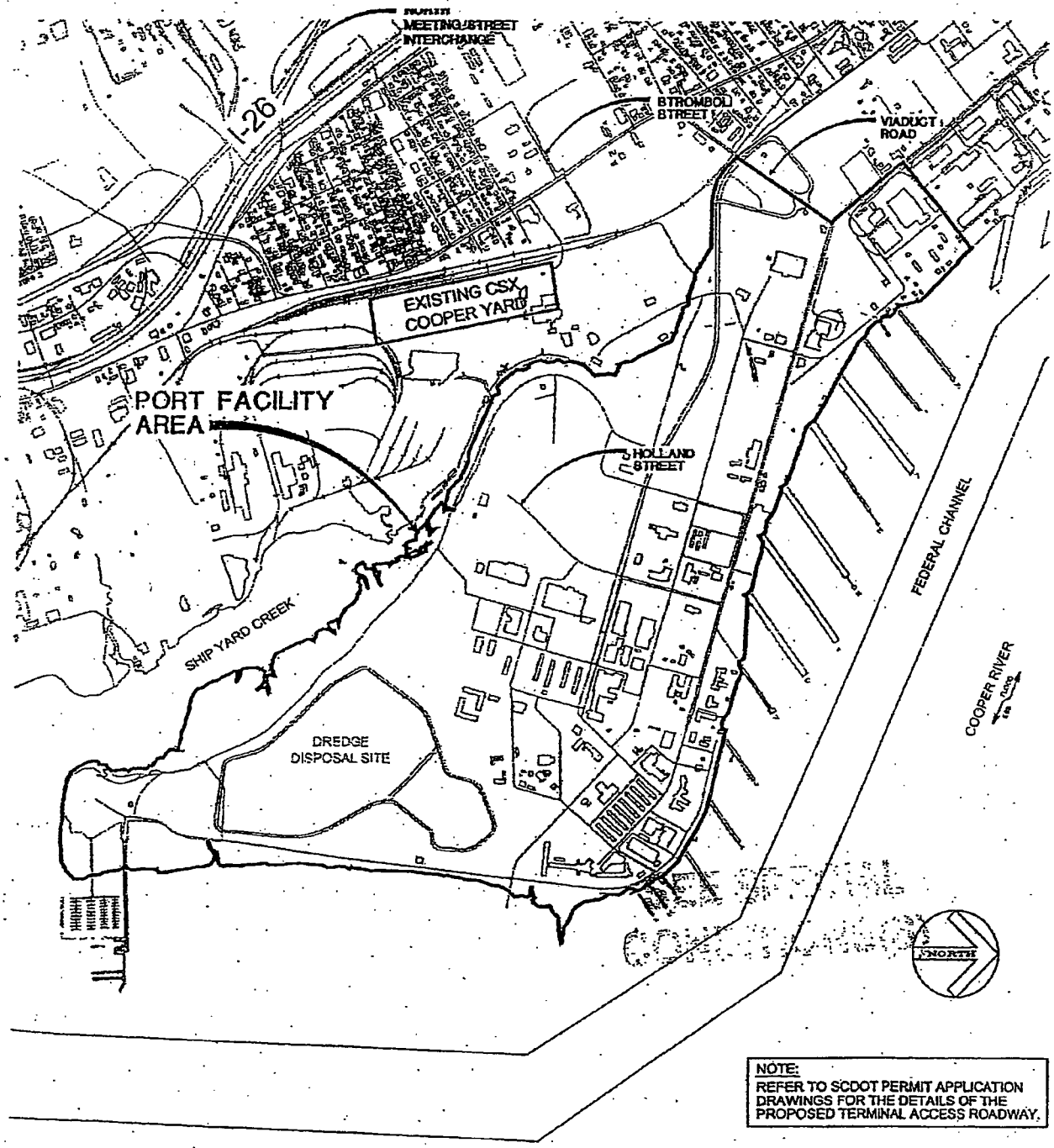
PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: CHARLESTON LOW WATER (MLW)
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

P/N # 2003-1T-016-PC

SECTION C - C

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

PROPOSED: NEW CONTAINER TERMINAL
IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 10 OF 11 DATE: JANUARY 28, 2005



NOTE:
REFER TO SCDOT PERMIT APPLICATION DRAWINGS FOR THE DETAILS OF THE PROPOSED TERMINAL ACCESS ROADWAY.

750 0 750 1500 2250

SCALE IN FEET

PROJECT NO.: MSC02E028
FILE NAME: CNBPA11A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

P/N # 2003-1T-016-PC

EXISTING ROADWAYS

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 11 OF 11 DATE: JANUARY 28, 2005

EXHIBIT J

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, Petitioner, v. SC BOARD OF HEALTH AND ENVIRONMENTAL CONTROL; SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; and SC STATE PORTS AUTHORITY, Respondents.	)	**Docket No. 07-ALJ-07-0107-CC** **PREHEARING STATEMENT OF SOUTH CAROLINA COASTAL CONSERVATION LEAGUE**

1. Nature of the Proceeding

In this contested case, the S.C. Coastal Conservation League ("the League") challenges the final agency decision of the Department of Health and Environmental Control ("DHEC") and its Board to issue coastal zone consistency and water quality certifications and a critical area permit to the S.C. State Ports Authority ("SPA") to construct and operate a new marine container cargo terminal at the former Charleston Naval Base (P/N 2003-1T-016-P-C). The League intends to show that DHEC approved the terminal and a connecting highway before it gathered or considered information that the law requires to be evaluated antecedent to such approval; that DHEC skewed its approval process in violation of clear procedural requirements; and finally that DHEC approved the project despite being presented with, and not refuting, information showing that the project, if constructed and operated, will violate legal standards that under South Carolina law are a prerequisite to approval. In particular, DHEC approved a project that will cause violations of both air and water quality standards, when DHEC's governing laws and regulations plainly prohibit approval where such violations will occur.

2. Statutory Provisions Conferring Subject Matter Jurisdiction to ALC

This action is appealed from a final agency decision of DHEC Board, dated February 8, 2007. The Administrative Law Court has jurisdiction over this contested case pursuant to S. C. Code Ann. § 1-23-600, 44-1-60(F)(2), and R. 61-101(G).

3. Statutory and Regulatory Provisions Giving Rise to Controversy

Below are Petitioner's claims regarding DHEC's decisions, with notation of the statutory and regulatory provisions violated:

Dissolved Oxygen Violation Allowed	R. 61-101(F) CMP[1] II(A)(7)
P.M.$_{2.5}$ "Nonattainment" Allowed	§ 48-39-150(8-9) CMP II(A)(7),(14)
Certification Despite Unknown Impacts	§ 48-39-150(B)
Terminal and Highway Piecemealed (p. 3)	R. 30-11(C)(2) R. 16-101(F)(3)
I-26 Failure Ignored	§ 48-39-150(8), (9) R. 30-11(B)(8)
Induced Channel Deepening Ignored	R. 61-101(F)(3)(c)
Endangered Species Ignored	§ 48-39-150(A)(6) R. 30-11.B(6); CMP at IV-17 R. 61-101-(F)(5)(c)
Security of Terminal In Urban Center Ignored	CMP II(A)(5)
Jasper County Alternative Ignored	R. 61-101(F)(3) § 48-39-150(8), (9) R. 30-11(B)(8)
Noise Impacts Ignored	§ 48-39-150(8), (9) R. 30-11(B)(8)

4. Issues Presented for Determination

Whether DHEC, in issuing coastal zone consistency and water quality certifications and coastal permits for a S.C. Ports Authority marine container cargo terminal at the former Charleston Naval Base, complied with applicable law governing the consideration and issuance of such certifications and permits.

Petitioners expect the following issues will be presented for determination:

[1] Coastal Management Program.

1. Whether the proposed project will cause water quality standards to be violated;

2. Whether the proposed project will cause air quality standards to be violated;

3. Whether DHEC issued certifications before it had adequate understanding of the project's complete impacts;

4. Whether DHEC adequately considered the terminal and connecting highway as a single project in evaluating alternatives;

5. Whether DHEC adequately considered the impacts of the project on I-26, the need to replace and improve I-26, and the impacts of any replacement and improvement of I-26 induced by the project;

6. Whether DHEC gave adequate consideration to channel deepening that this project will induce in Charleston Harbor, and that deepening's impacts;

7. Whether DHEC adequately considered impacts on the endangered northern right whale and all alternatives to minimizing such impacts;

8. Whether DHEC adequately considered meeting the state's container shipping needs through construction of a terminal in Jasper County;

9. Whether DHEC gave adequate consideration to noise impacts from the project on neighboring citizens.

5. Action Requested of ALC

Vacate and remand.

6. Brief Summary of Facts to Be Presented at Hearing

Evidence that project will cause violations of water and air standards; evidence that staff ignored and/or improperly discounted same; evidence staff did not consider impacts to endangered species; evidence staff disregarded cumulative, indirect and secondary impacts including further harbor deepening, failure of I-26, impacts of widening I-26; evidence staff did not consider security of new port in urban area; evidence staff ignored noise impacts; evidence staff issued approvals without first having ascertained overall project impacts and on the basis of uncertain contingencies; evidence staff piecemealed consideration of terminal and highway and did not consider Jasper County terminal alternative, which could have lesser impacts.

7. Summary of Motions to be Raised at Hearing

Plaintiff may seek to establish by motion burdens of production and persuasion and standard of review.

8. **List of Proposed Witnesses and Exhibits**

Witnesses:

Transportation Expert: Lucy Gibson
Air Expert: Ken Kaliski
Gina Kirkland, DHEC
Rheta Geddings, DHEC
Myra Reece, DHEC
Carolyn Boltin, OCRM
Curtis Joyner, OCRM

Exhibits:

- All documents in DHEC and SPA's control related to this project
- All exhibits listed by other parties
- Expert reports of Gibson and Kaliski

Petitioners anticipate identifying additional witnesses, including a water quality expert, and exhibits, and will supplement this filing as those witnesses and exhibits are identified.

9. **Statement Regarding Necessity for Discovery**

Petitioner anticipates the need to conduct discovery of DHEC, SCDOT and SPA and request 90 days from the date of this Prehearing Statement for discovery and trial preparation.

10. **Estimated Time Required for Hearing**

One week if not summarily remanded.

Dated: April 9, 2007.

J. Blanding Holman, IV
Southern Environmental Law Center
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Chapel Hill, NC 27516
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Charleston, SC 29402-0059
jl@leathbouchlaw.com

Attorneys for South Carolina Coastal Conservation League

CERTIFICATE OF DATE OF MAILING

I hereby certify that the foregoing Prehearing Statement of South Carolina Coastal Conservation League was mailed to the Court for filing this the 9th day of April, 2007.

J. Blanding Holman, IV

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Prehearing Statement of South Carolina Coastal Conservation League on all parties by first-class mail, postage prepaid, addressed as follows:

Van Whitehead, Esq.
Staff Attorney
South Carolina Department of Health
and Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405

Sara Bazemore, Esq.
Staff Attorney
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201

Randolph R. Lowell, Esq.
Willoughby & Hoefer, P.A.
P.O. Box 8416
Columbia, SC 29202

This the 9th day of April, 2007.

J. Blanding Holman, IV

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 & Environmental Control and South Carolina State Ports Authority,	)	
Respondents.	)	

REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT[1]

The South Carolina Ports Authority (Ports Authority) respectfully submits this Reply to the Cruise Opponents' January 21, 2014 Response (Response) to its December 27, 2013 Motion for Partial Summary Judgment[2] (Motion). The Ports Authority is entitled to judgment as a matter

[1] The Ports Authority will not identify or rebut every misstatement of the Cruise Opponents in its Response. A lack of specific denial is not an admission or acknowledgement of any statement or assertion or argument by the Cruise Opponents, and the Ports Authority specifically denies and contests any claim not specifically contested herein.

For example, the Cruise Opponents make the wholly unsupported statement that an "examination of the facts shows that DHEC did not purport to consider or issue an individual [401 Certification] in issuing the [Permit]," Resp. at 4, ignoring the law and this Court's ruling that that **the critical area permit serves as the 401 Certification**. Cruise Opponents cite no evidence in support of this contention. However, the issue presented to the Court does not relate to the underlying facts surrounding the 401 Certification itself, but rather whether Cruise Opponents can challenge the 401 Certification component of the Permit at all.

[2] The Response purports to include a "Cross Motion for Summary Judgment," although the filing contains no motion, no argument for a motion, and seeks no relief such as would be

of law that the 401 Certification issued by DHEC, in accordance with South Carolina law, as a component of the critical area permit and coastal zone consistency determination (CZCD) issued December 18, 2012 (Permit No. OCRM-12-054-B) (Permit), is valid and binding, and the Cruise Opponents cannot now challenge it in this proceeding. The Cruise Opponents offer no reason or rationale to alter this legal conclusion.

REGULATORY AND FACTUAL CONTEXT

This is a *de novo* contested case proceeding brought by the Cruise Opponents challenging a decision by DHEC to authorize and permit a portion of a capital improvement project by the Ports Authority at the Union Pier Terminal (UPT) in Charleston, South Carolina (Project).

On January 27, 2012, the Ports Authority submitted a Joint Federal and State Application Form for Activities Affecting Waters of the United States or Critical Areas of South Carolina to the Corps and to OCRM for a permit to engage in activities affecting the waters of the United States and critical areas of South Carolina. This application states as follows in pertinent part:

> *Authorities:* ... 33 USC 1341 .... These laws require permits for activities in, or affecting, navigable waters of the United States.... The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form ... to apply for both the Federal and/or State permit(s).[3]

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requested in a motion. Instead the filing is just a response and only seeks denial of the Ports Authority's motion.

[3] This application was part of the dual-track permitting process of seeking a 401 Certification for an individual permit or a Nationwide Permit from the Corps for the insignificant activity of adding five pile clusters. The individual 401 Certification without conditions (for water quality) issued for the Project in December 2012 reinforces the decision DHEC made with regards to the general 401 Certification for NWP 3 (without conditions) issued in April 2012. As this Court remarked in the January 9, 2014 conference, just because the Cruise Opponents did not think of this "belt and suspenders" approach to permitting does not mean that the Ports Authority and DHEC did not. Transc. at 38:1-3, Jan. 9, 2014 (speaking on the individual 401

The application sought approval for the installation of five pile clusters to be driven into the marl to support the construction of three elevators and two escalators in Building 322. These five pile clusters are to be installed within the existing footprint of the already developed marine terminal and directly underneath the existing footprint of Building 322. The pile clusters will provide further support for Building 322 within its existing footprint as authorized under original UPT permits issued in the 1970s by the S.C. Budget and Control Board. *See* Ex. A, B&CB Permit No. 71-26.

The proposed installation of pilings in a navigable water of the United States is a proposed activity subject to Section 10 of the Rivers and Harbors Act (RHA), which 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. §§ 401 *et seq.* In turn, any applicant for a federal permit or license involving the construction or operation of facilities that may result in a discharge into navigable waters must comply with Section 401 of the Clean Water Act. *See* 33 U.S.C.A. § 1341; S.C. Code Ann. Regs. 61-101. Thus, before issuing a final permit to the Ports Authority authorizing the Cruise Terminal renovations, the Corps must either obtain a 401 Certification or a waiver from the State of South Carolina through DHEC.[4]

In this case, because the Project involves driving pilings in a navigable water of the United States, an proposed activity within the Corps' jurisdiction, a 401 Certification is required from the State of South Carolina (through DHEC) to be issued, denied, or waived within one

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Certification after the Cruise Opponents counsel complained that they were cognizant of only one 401 Certification, the Court stated that "[m]aybe it didn't come up for you, but [it] came up for them.").

[4] The Cruise Opponents ignore the waiver option under federal and state law for complying with Section 401. Notwithstanding the Cruise Opponents claim that it is "undisputed" that a 401 Certification *must* be issued, a project can nevertheless move forward under the waiver option for compliance with Section 401 of the Clean Water Act.

year after receiving the request for certification. In compliance with these requirements, the Project received all of the necessary permits and certifications from DHEC. An application was submitted in January 2012 for the Project, and the Permit was issued on December 18, 2012. This DHEC action, which occurred within one year of the request, serves as the critical area permit, coastal zone consistency determination, and 401 Certification for the Project. Ex. B, OCRM-12-054-B; *see* Order Denying Pet'rs' Mot. to Vacate, filed Dec. 20, 2013, at 6.

I. THE PROJECT RECEIVED A VALID AND BINDING 401 WATER QUALITY CERTIFICATION FROM DHEC IN COMPLIANCE WITH SOUTH CAROLINA AND FEDERAL LAW.

The Project has received all necessary permits and licenses required by state law, including the state requirement under Section 401 of the Clean Water Act. As the Court is aware, in addition to the federal RHA permit, because the Project occurs in a "critical area" of the coastal zone in South Carolina, South Carolina law requires a critical area permit from DHEC, *see* S.C. Code Ann. § 48-39-130(A), as well as a CZCD, *see* S.C. Code Ann. § 48-39-80. DHEC issued the Permit within one year of the request, and that Permit serves as the 401 Certification, the critical area permit, and the CZCD for the Project. Ex. B, Permit; *see* Order Denying Mot. to Vacate, filed Dec. 20, 2013, at 6.

The Cruise Opponents continue to misunderstand the law surrounding the 401 Certification program generally, as well as its application to the Project specifically, in its Response. Indeed, the vast majority of the Response is devoted to re-arguing the motion to vacate. However, as this Court determined:

> Under state law, the critical area permit serves as the 401 Certification and the 401 Certification serves as the CZC Certification.... [W]ater 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.

Order Denying Mot. to Vacate, filed Dec. 20, 2013, at 6. Thus, as a matter of law, the Permit is a 401 Certification for the Project. The re-argument against this holding is untimely and barred because the Cruise Opponents failed to file a motion for reconsideration. The issue presented to the Court through the instant Motion is whether the Cruise Opponents have the ability to even raise the issue of the 401 Certification component in this proceeding since they failed to make any challenge to the 401 Certification to the DHEC Board (and thus failed to exhaust their administrative remedy) or to this Court in the Request for Contested Case or Prehearing Statement (thus waiving and abandoning the issue altogether). For purposes of this contested case, as South Carolina law plainly and clearly reflects, the Permit is a 401 Certification for the Project.[5]

II. THE CRUISE OPPONENTS FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES TO CHALLENGE THE 401 CERTIFICATION, AS THEY FAILED TO RAISE THIS ISSUE OR CHALLENGE THAT COMPONENT OF THE PERMIT TO THE DHEC BOARD.

The Cruise Opponents never challenged the 401 Certification component of the Permit at the DHEC Board or to this Court prior to filing their Motion to Vacate. The Cruise Opponents' failure to raise either the 401 Certification component of the Permit or compliance with

[5] Pursuant to South Carolina law, the Project's critical area permit serves as its 401 Certification. S.C. Code Ann. Regs. 30-2(H), 61-101.A.8. Further, "the [CZCD] determination shall be issued as a component of, and concurrently with, the [401] certification" in accordance with the requirements of a CZCD under the CMP, and "the [401] certification will serve also as the [CZCD]." S.C. Code Ann. Regs. 61-101.A.7.

Regulation 61-101 to the DHEC Board bars it from raising that issue in this proceeding as a matter of law.

In the context of a challenge to a DHEC decision, the statutory prerequisite for seeking a contested case review before the ALC is to first seek review by the DHEC Board.[6] *See* S.C. Code Ann. § 44-1-60; *Wise v. S.C. Dep't of Health & Envtl. Control,* No. 10-ALJ-07-0851 (Feb. 23, 2011) (McLeod, J.) ("A failure to timely file and participate in the DHEC Board review process forecloses a contested case action at the ALC."); *MRI at Belfair, Inc. v. S.C. Dep't of Health & Envtl. Control*, No. 07-ALJ-07-0298-CC (July 25, 2007) (Anderson, J.) ("I find a clear legislative intent that a party may seek contested case review before the ALC **only after a party first seeks review by the Board**.") (emphasis added).

The Cruise Opponents do not contest the fact that they failed to challenge the 401 Certification component of the Permit to the DHEC Board in this matter, by which, as a matter of law, they have failed to preserve the issue for challenge in this Court. Instead, the Cruise Opponents seek to excuse their failure to follow the law, claiming that they did not seek DHEC Board review of the 401 Certification because, at the time DHEC issued the Permit, the Cruise Opponents "understood" that the Water Quality Certification (401) was authorized through the

[6] As evidenced by Cruise Opponents "comments" regarding *de novo* review in their Response, they continue to struggle with understanding the *de novo* review this Court conducts in a contested case matter. As this Court knows, under a *de novo* review standard this Court may issue an order within the same discretionary bounds and authority as the original agency for any matter for which the Court's jurisdiction is properly invoked. Thus, in this case, assuming the Court properly has jurisdiction (*e.g.*, standing exists) the Court has contested case, *de novo* authority over the CZCD and critical area permitting criteria. The Court may deny, grant, or condition these two licenses for the Project as the evidence warrants. This is because the Cruise Opponents filed a Board request for review and contested case request to challenge the critical area permit and CZCD. However, the 401 Certification was not challenged by the Cruise Opponents in the state process. As a result, the Court lacks jurisdiction over the 401 Certification component of the Permit.

NWP 3. Resp. at 7. However, this position is inconsistent with the law and the Cruise Opponents' prior positions.

As discussed, the law unambiguously provides that the 401 Certification has been issued for the Project. The Cruise Opponents were on notice of the law and what it provides. *Ex parte Wessinger*, 235 S.C. 239, 245, 111 S.E.2d 13, 16 (1959) (rejecting argument that failure of resolution of condemnation to reference right of appeal should excuse failure to timely file appeal, stating that "[n]ot only was appellant charged with knowledge of the law ... but he was represented by counsel at the hearing....").[7] Nonetheless, they did not challenge the 401 Certification aspect of the Permit, a failure they now attempt to excuse on the basis of their belief that there was no 401 Certification for them to challenge. This circular argument is not consistent with the governing law and regulations. It is, however, consistent with their apparent strategy in this case to challenge the case only at the federal level. Specifically, the Cruise Opponents acknowledge that they elected to challenge only "SPA's NWP 3 coverage granted by the Corps," and not the "DHEC staff decision to issue certification for NWP #3." Resp. at 7.

In other words, the Cruise Opponents admit that, at least at the outset, they made an affirmative decision to challenge the authorization for the Project only at the federal level. Their failure to challenge the water quality certification aspect of the Permit is entirely consistent with this apparent strategy. The problem is that their failure is not consistent with the law and regulations applicable to the Permit or with the requirement that issues must be presented to administrative agencies and are waived if they are not. Their failure also is not consistent with their own arguments because if the NWP 3 was improperly applied to the Project, the only

[7] Cruise Opponents' legal counsel (SELC and SCELP) routinely oppose permits and projects and have challenged innumerable critical area permits, 401 Certifications, and CZCDs in the past.

alternative is that, under their own theory, the Permit must serve as the 401 Certification. Therefore, under their own legal claims and assertions, Cruise Opponents were on notice of the Permit serving as the 401 Certification because that was consistent not only with the law but also with their own legal claim against the NWP 3.[8]

It is undisputed that the Cruise Opponents failed to challenge or mention the 401 Certification as part of the Request for Board Review. *See* Cruise Opponents' Requests For Review. Therefore, as Cruise Opponents have undeniably and admittedly failed to challenge the 401 Certification before the DHEC Board, they are now barred from challenging the 401 Certification before this court. *See MRI at Belfair,* No. 07-ALJ-07-0298-CC ("I find a clear legislative intent that a party may seek contested case review before the ALC only after a party first seeks review by the Board."); *see also League of Women Voters of Georgetown v. S.C. Dep't of Health & Envtl. Control,* No. 07-ALJ-07-0529-CC (Dec. 15, 2008) (Anderson, J.) (failure to properly and timely request DHEC Board review deprives ALC of jurisdiction to hear case); *S.C. Conservation League v. S.C. Dep't of Health & Envtl. Control,* No. 07-ALJ-07-0107-CC (Sept. 4, 2007) (Geathers, J.) (same); *Wilson v. S.C. Dep't of Health & Envtl. Control,* No. 06-ALJ-07-0799-CC (Mar. 21, 2007) (McLeod, J.) (lack of review by DHEC Board eliminates ALC jurisdiction). As the Cruise Opponents' did not raise a challenge to the 401 Certification

[8] Based on their response, the Cruise Opponents made a strategic decision not to raise the 401 Certification issue before DHEC at any stage despite notice and knowledge that the law dictates that the 401 Certification be issued for the Project as part of the Permit. Having made a strategic decision to proceed as they did, the Cruise Opponents are bound to the consequences of that strategy.

below, and DHEC Board jurisdiction was not triggered, this Court lacks jurisdiction over the 401 Certification component of the Permit.[9]

III. THE CRUISE OPPONENTS HAVE WAIVED ANY CHALLENGE RELATED TO THE 401 CERTIFICATION FOR THE PROJECT.

A party waives or abandons a right when they: (1) had actual or constructive knowledge of its rights, or knew all the material facts upon which the right depended; and (2) expressly or implicitly failed to assert such right. *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 387, 387-88 (1992). Waiver may therefore be express or implied from circumstances indicating a party's intent to waive a known right. *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). Here, the Cruise Opponents failed to make any claim or challenge to any 401 Certification component of the Permit to this Court, and thus have waived and abandoned any challenge to the Project's 401 Certification.

In challenging the Permit before DHEC and this Court, Cruise Opponents never articulated any challenge to DHEC's issuance of the 401 Certification. They did not challenge the 401 Certification before DHEC staff or the DHEC Board. The Cruise Opponents likewise have not challenged the 401 Certification subsequent to the proceedings conducted by DHEC. The Cruise Opponents' Request for Contested Case and Prehearing Statement are devoid of any mention of or citation to the 401 Certification component of the Permit or South Carolina

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[9] The League and its counsel have affirmative acknowledged that a proper challenge at the DHEC Board level is a condition precedent and prerequisite to this Court having jurisdiction.

> The Court: Do you agree that complying with [S.C. Code Ann. 44-1-60(E)] is a prerequisite to being able to later file a contested case before this Court?
>
> Mr. Holman: Under the statute, yes, sir.

Ex. D, Hr'g Tr. at 64:8-12, Docket No. 07-ALJ-07-0107-CC (July 2, 2007).

Regulation 61-101.[10] *See* Cruise Opponents' Requests for Board Review and Requests for Contested Case. In fact, Cruise Opponents do not contest the fact that, at no time prior to filing their Motion to Vacate in this case, have they ever articulated the 401 Certification component of the Permit as a basis for their challenge to the Permit. That constitutes a waiver of their opportunity to challenge the 401 Certification. *Jordan v. State Highway Dep't*, 188 S.C. 83, 198 S.E. 174, 179 (1938) ("The failure to assert at the proper time a legal right constitutes a waiver or abandonment of the same."); *see also Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 546, 725 S.E.2d 698, 701 (2012) (citing *Hurst v. Sumter County,* 189 S.C. 376, 1 S.E.2d 238 (1939) (noting the general rule in civil cases that issues must be raised at the earliest opportunity, or they will be considered waived)); *Scott v. Porter*, 340 S.C. 158, 167, 530 S.E.2d 389, 393 (Ct. App. 2000) (holding that in order to be timely, an objection usually must be made at the earliest possible opportunity).

The Cruise Opponents attempt to excuse their failure to challenge DHEC's issuance of the 401 Certification by noting that the Permit itself states that it is a "Critical Area Permit & Coastal Zone Consistency Certification" and does not expressly reference the 401 Certification. However, because the regulations expressly provide that the Permit constitutes the 401 Certification, the labelling of the Permit is not determinative, especially when the legal effect of the Permit is spelled out in the law. *See* Order Denying Mot. to Vacate, filed Dec. 20, 2013, at 6; S.C. Code Ann. Regs. 61-101.A.8 (DHEC "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."); S.C. Code Ann. Regs. 30-2.H ("The direct permit will serve as the 401 water

[10] However, having been charged with knowledge of the law and the fact that the critical area permit serves as the 401 Certification, they had notice that the individual 401 Certification was issued for the Project.

quality certification for an associated Federal permit."). Moreover, in addressing the water quality aspects of the Project, the Permit review document states that the "[p]roposed port development or expansion and operation must meet existing ... water quality standards, as regulated by the [EPA] and [DHEC.]" Ex. C, DHEC Tech. Summ. at 4. And in the Permit, DHEC required that "all authorized work shall be conducted in a manner that minimizes any adverse impact on ... water quality." Ex. B, Permit at 4. DHEC also imposed the following General Condition:

> ***[A]ll activities authorized herein shall,*** if they involve a discharge or deposit into navigable waters or ocean waters, ***be at all times consistent with all applicable water quality standards***, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.

Ex. B, Permit at 4 (emphasis added). Finally, and maybe most importantly, the language of the Permit states that it is issued pursuant to S.C. Code Ann. Regs. 30-1 through 30-18, which includes Regulation 30-2.H stating that **the critical area permit serves as the 401 Certification**. In short, the Cruise Opponents had actual or constructive knowledge that the Permit would serve as the 401 Certification for the Project, especially if they were successful in their federal challenge to the NWP 3 coverage authorized by the Corps.

As discussed above, the Cruise Opponents' admitted decision to challenge only the NWP 3 coverage authorized by the Corps and not the DHEC water quality certification issued for NWP 3 is consistent with their failure to challenge the water quality certification before DHEC at any stage of the application process for the Project. That is to say, the circumstances of this case demonstrate that the Cruise Opponents intended to undermine the Project by not challenging the water quality certification at any stage before DHEC and attacking the Permit through challenging the federal NWP 3 coverage issued by the Corps. That is a strategic decision

that the Cruise Opponents were entitled to make. However, it does not provide them with a blanket exclusion from the requirement of first presenting a challenge to the appropriate agency and identifying that challenge as an issue in their initial filings with this Court. The Cruise Opponents' undisputed failure to challenge that aspect of the Permit therefore constitutes an abandonment and waiver of that issue.

Cruise Opponents attempt to excuse their failure to challenge the 401 Certification by arguing that the public notices issued for the Project, as well as the Permit itself, did not provide *adequate* notice to them that a 401 Certification was at issue. Resp. at 4. However, an asserted ignorance of law does not excuse the Cruise Opponents' failure to challenge the 401 Certification. *E.g., S.C. Wildlife & Marine Res. Dep't v. Kunkle*, 287 S.C. 177, 179, 336 S.E.2d 468, 469 (1985) ("[I]it is a well-settled maxim that ignorance of the law is no excuse."); *see Am. Legion Post 15 v. Horry County*, 381 S.C. 576, 584, 674 S.E.2d 181, 184 (Ct. App. 2009) (holding that, in rejecting a claim for estoppel, the appellants were "presumed to know the law"); *see also Leamon v. State*, 363 S.C. 432, 435, 611 S.E.2d 494, 496 (2005) ("Ignorance of the statute of limitations is not an excuse for late filing [of a post-conviction relief petition], even when the Petitioner claims he did not learn of the statute because he was incarcerated in another state."). Moreover, in this instance, Petitioners must be charged with knowledge of the regulatory framework. *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 166, 714 S.E.2d 869, 875 (2011) ("All individuals are presumed to know the law, including the nature and extent of a government official's authority, and they are charged with the knowledge that an ordinance may be changed only through compliance with proper procedures."); *Am. Legion Post*, 381 S.C. at 583, 674 S.E.2d at 183 ("Nothing presented [the appellants[from learning of the governing statutes, as we find is required for due diligence."). Given the stakes that they identify in their

various federal and state pleadings, the Cruise Opponents knew or should have known of the 401 Certification provisions and understood how the process works and should have acted diligently. They proceeded on a single track, ignoring the dual-track nature of the Ports Authority's permitting process.

The Cruise Opponents also attempt to excuse their failure to challenge the 401 Certification in this case by noting that the permit in *South Carolina Coastal Conservation League v. South Carolina DHEC*, No. 07-ALJ-070107-CC (March 9, 2007) expressly indicated a "Water Quality Certification" on its face. However, the Cruise Opponents' analogy to this prior license is without merit. Notably, the terms and conditions of the 2006 license referenced by the Cruise Opponents were issued specific to the 401 Certification evaluation (as well as specific conditions pursuant to the CZCD and the critical area permitting criteria). However, in the instant matter, DHEC determined that no special conditions for the 401 Certification (or the CZCD) were warranted, and thus the "special conditions" were imposed under the review for the critical area permitting component of the Permit. As DHEC had previously determined that no additional terms or conditions were necessary for the NWP 3, and the same activity for the same Project was at issue, DHEC acted rationally and consistently in not imposing special conditions on the Project based on the review of the individual permitting for the 401 Certification and CZCD. Because the Permit served as the 401 Certification as a matter of law, the governing provision of which is cited in the Permit, and no specific provisions were included based on 401 Certification review, there was no need to add superfluous verbiage

In short, the Cruise Opponents' express failure to challenge the 401 Certification before DHEC and as part of this contested case even though they knew of the need to present a challenge to that certification, as well as their failure to even acknowledge the law providing that

the critical area permit serves as the 401 Certification, Cruise Opponents have waived their right to challenge the 401 Certification in this court. The Cruise Opponents' failure to contest the 401 Certification throughout these proceedings is consistent and deliberate, and constitutes a waiver of any opportunity to make any future challenge to the 401 Certification in these proceedings.

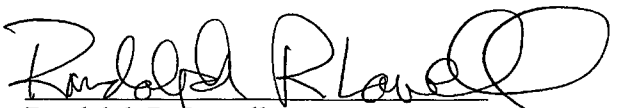
CONCLUSION

The Ports Authority is entitled to judgment as a matter of law with respect to the 401 Certification for the Project as the Cruise Opponents failed to challenge the 401 Certification for the Project at any stage or time. As a result, the Cruise Opponents cannot challenge and have waived and abandoned the right to challenge or litigate the individual 401 Certification for the Project as part of the Permit.[11] The Court should grant the Motion and hold that the 401 Certification is issued for the Project as a matter of law and such decision is final and not subject to challenge in the pending contested case matter.

[SIGNATURE PAGE FOLLOWS]

[11] Whatever factual dispute the Cruise Opponents may or may not have with the DHEC administrative record or underlying documents is irrelevant. They make several claims in the Response about what the documents do or do not say, often without citation or support, but that makes no difference for a determination about whether the Cruise Opponents timely filed or preserved a challenge to the 401 Certification issued as part of the Permit. Indeed, this line of argument obfuscates the Cruise Opponents undisputed failure to take issue with the 401 Certification, which is the only issue before the Court on this Motion.

Respectfully submitted,



Randolph R. Lowell
Tracey C. Green
Chad N. Johnston
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S.C. STATE PORTS AUTHORITY
Post Office Box 22287
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Attorneys for the Respondent
South Carolina State Ports Authority

February 5, 2014
Columbia, South Carolina

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 State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	)	Docket No. 13-ALJ-07-0056-CC **CERTIFICATE OF SERVICE**

This is to certify that I, a paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of **South Carolina Ports Authority's Reply in Support of Motion For Partial Summary Judgment** 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

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
Charleston, SC 29405

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

Breanna M. Karns

Columbia, South Carolina
This 5th day of February 2014.

EXHIBIT A

5-1-11

STATE OF SOUTH CAROLINA)
)
SOUTH CAROLINA STATE BUDGET)
AND CONTROL BOARD)

PERMIT

TO: S. C. State Ports Authority

WHEREAS, the State of South Carolina has title to the Submerged Lands, (the area below the usual low water mark), the Tidelands, (the area between the usual high water mark and the usual low water mark), and the waters of the State. The State of South Carolina holds the Tidelands, Submerged Lands and Waters in trust for and subject to the public purposes and rights of navigation, commerce, fishing, bathing, recreation or enjoyment, other public and useful purposes, and such other rights as are incident to public waters at common law, free from obstructions and interference by private persons; and

WHEREAS, the South Carolina State Budget and Control Board has determined that it is necessary in the interest of the State to require a permit for any construction or excavation below the usual high water mark.

NOW, THEREFORE, IT IS ORDERED:

1. That this permit authorizes you to proceed with the project in accordance with your application for a permit from the Corps of Engineers dated 12 March 1971. This permit grants you the right to proceed in accordance with the plans and specifications shown on the said application. P/N 71-26.

2. That this permit is issued subject to the issuance of a permit by the Corps of Engineers.

3. That the construction shall be modified or removed upon proper demand made by the State.

And it is so ordered this 1st day of May, 1971.

Furman E. McEachern, Jr.
Director, General Services Division
South Carolina State Budget and Control Board

COE00454

EXHIBIT B

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

DEC 29 2012

DHEC - OCRM
CHARLESTON OFFICE

RECEIVED

DEC 19 2012

TRIDENT CONSTRUCTION CO., LLC

MEMORANDUM

TO: **All interested parties**

FROM: **STEVEN BROOKS**

RE: **SC State Ports Authority**
P/N# **OCRM-12-054-B**

DATE: **DECEMBER 18, 2012**

This is to inform you that the above referenced permit was issued and validated on December 18, 2012.

This letter is in reference to the following activities:

To make improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322

Any person adversely affected by this decision has the right to appeal as outlined in the enclosed "Notice of Appeal Procedure."

I Scanned & e-mailed to everyone. No one claimed this. Call 572-7600 to discuss.

Thanks

Bobbie

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed or otherwise sent to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed or otherwise sent to persons entitled to receive notice. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

4. The request for final review should include the following:

a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision

b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference

c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

January 7, 2011

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

JAN 03 2013

DHEC - OCRM
CHARLESTON OFFICE

December 18, 2012

Derrick Bellamy
SC State Ports Authority
P.O. Box 22287
Charleston, SC 29413-2287

SEE SPECIAL CONDITIONS(S)

Re: **P/N# OCRM-12-054-B**
SC State Ports Authority

Dear Mr. Bellamy:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to make improvements to an existing waterfront building and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina, and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, *OR* appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

Steven Brooks

Steven Brooks
Senior Regulatory Project Manager
Regulatory Programs Division

Cc: Blair Williams, Wetland Section Manager
Patrick Moore, SCSPA
Nathaniel Ball, USACOE

Enclosure

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

   SEE SPECIAL CONDITIONS(S)

   Clerk of the Board
   SC DHEC
   2600 Bull Street
   Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

4. The request for final review should include the following:
   a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
   b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
   c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

July 1, 2010

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s):	**SC State Ports Authority**
Permit Number(s):	**OCRM-12-054-B**
Date of Issuance:	**December 18, 2012**
Expiration Date:	**December 18, 2017**
Location:	**On and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina. TMS#: 459-00-00-009.**

SEE SPECIAL CONDITIONS(S)

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of $5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. **All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.**

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The work as shown on the attached plans will consist of making improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322.

SPECIAL CONDITIONS

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal are conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA require its contractors, for the activities addressed under this permit, to:

   a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

   b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all non road equipment between 100 and 750 horsepower.

   c. turn off construction equipment and vehicles not in active use.

   d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

   e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

7. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

SEE SPECIAL CONDITIONS

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

SEE SPECIAL CONDITIONS(S)

Permit Number: **OCRM-12-054-B**

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Barbara L Melvin — 1/2/13

(PERMITTEE(S)) (DATE)

SC State Ports Authority

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

Steven Brooks — 12/18/12

(PROJECT MANAGER, WETLAND SECTION) (DATE)

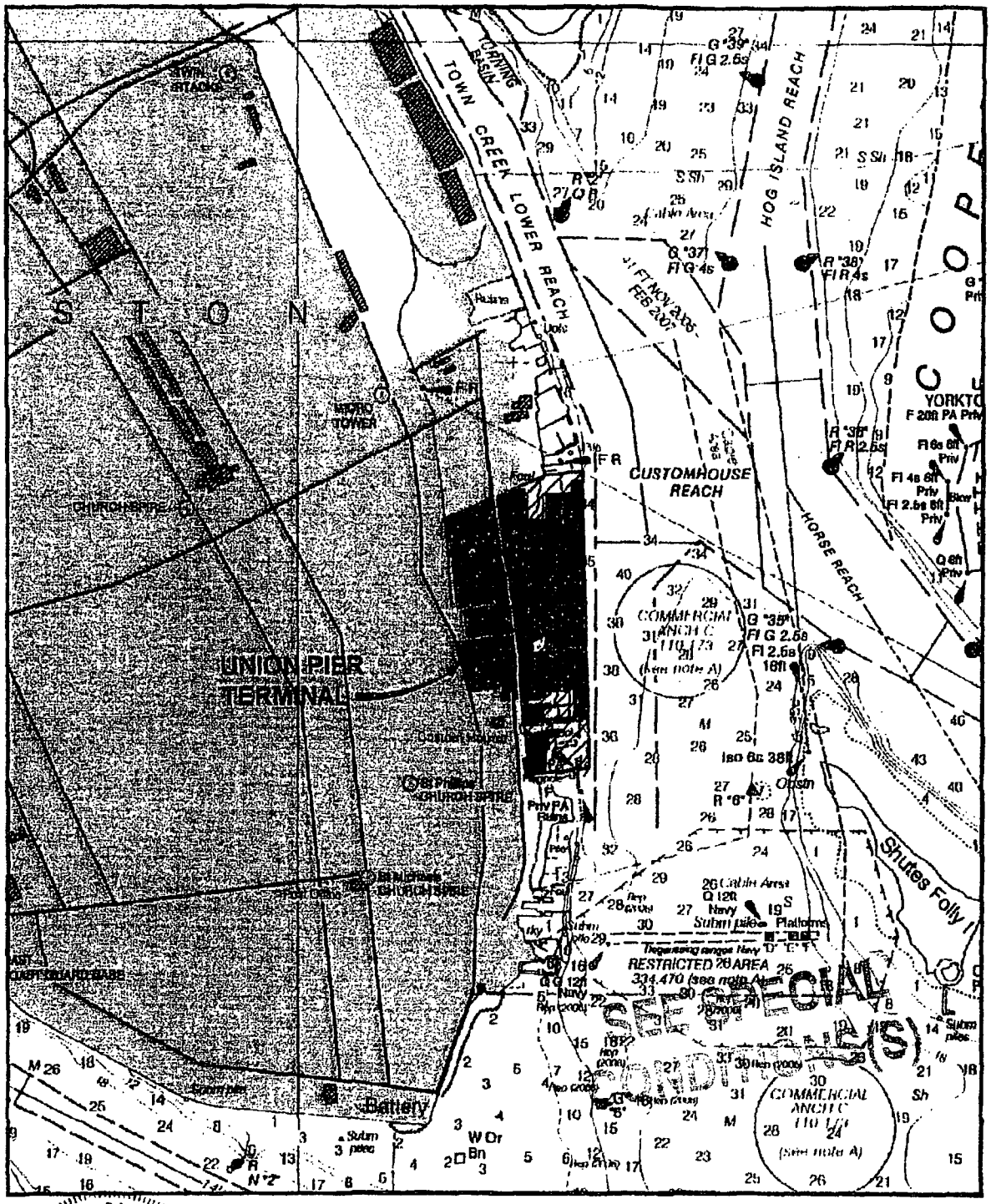
Steven Brooks
or her Designee
Other Authorized State Official

RECEIVED
JAN 03 2013
DHEC-OCRM
CHARLESTON OFFICE

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.



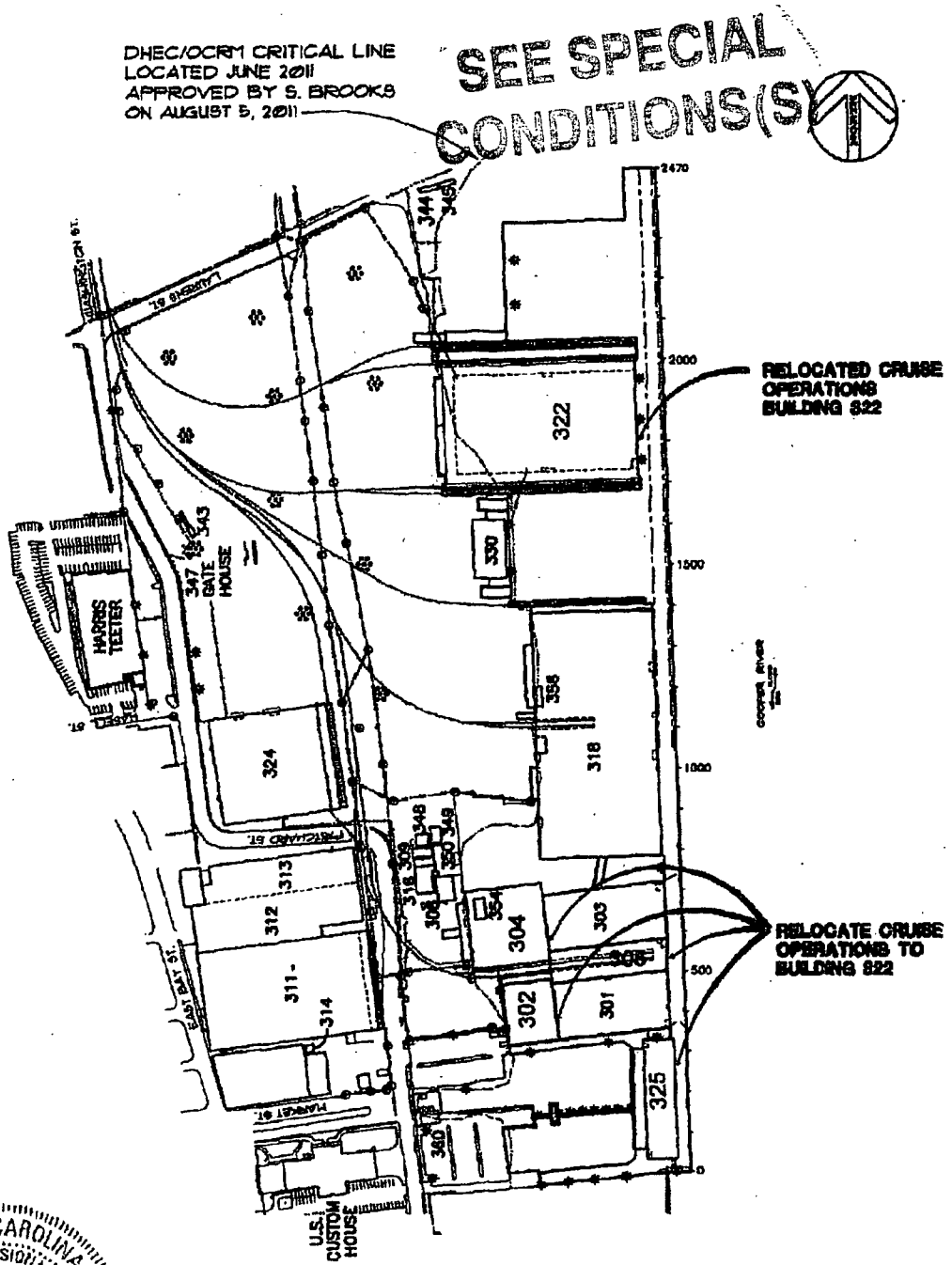
LOCATION

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

OCRM-12-054-B

PROJECT NO.: CF11E006B
FILE NAME: Upcptp1
DATE: JULY 2012
SHEET: 1 OF 11

Derrick L. Bellamy



SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

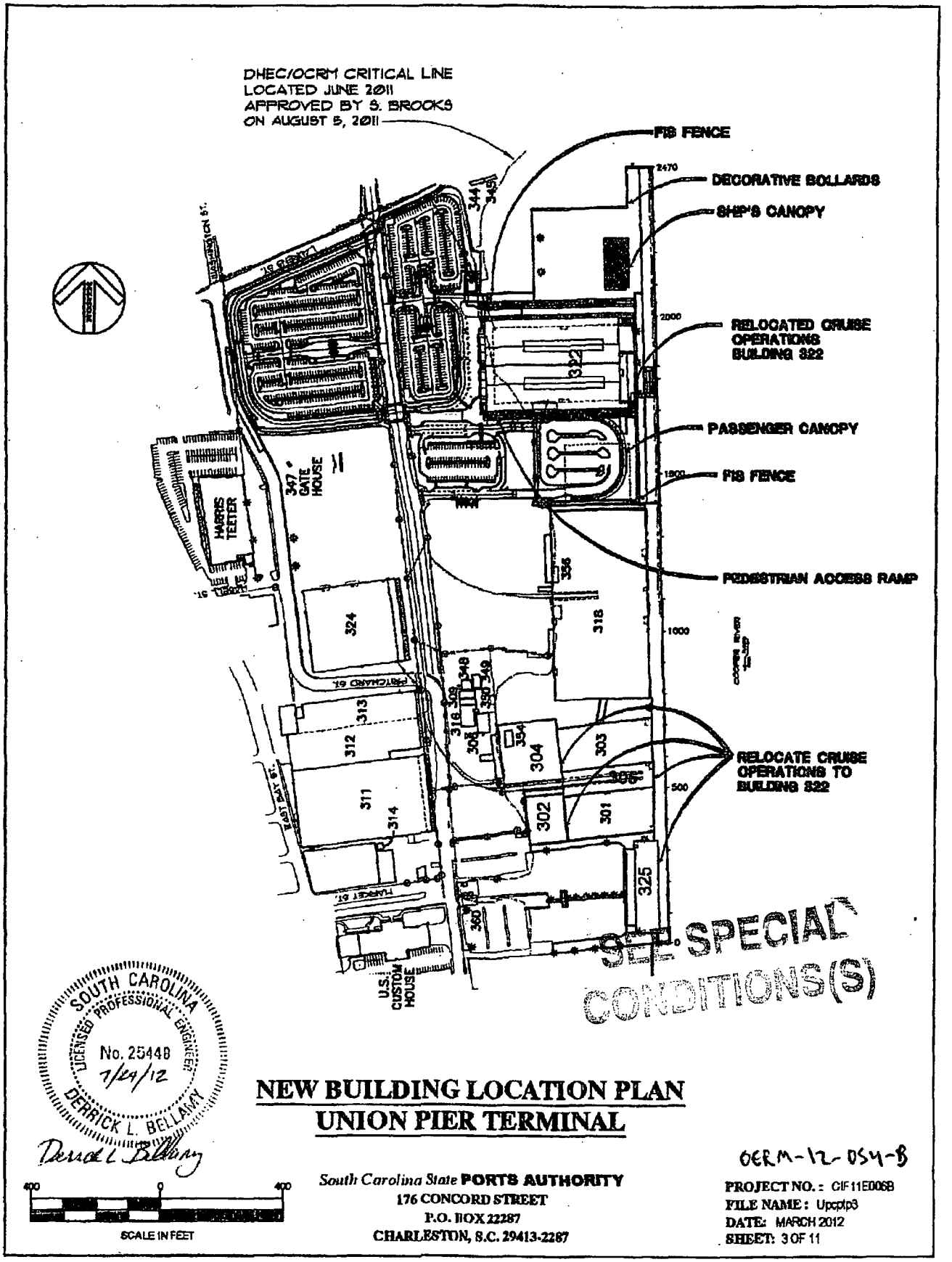
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SCALE IN FEET

BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

OCRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upqplp2
DATE: MARCH 2012
SHEET: 2 OF 11

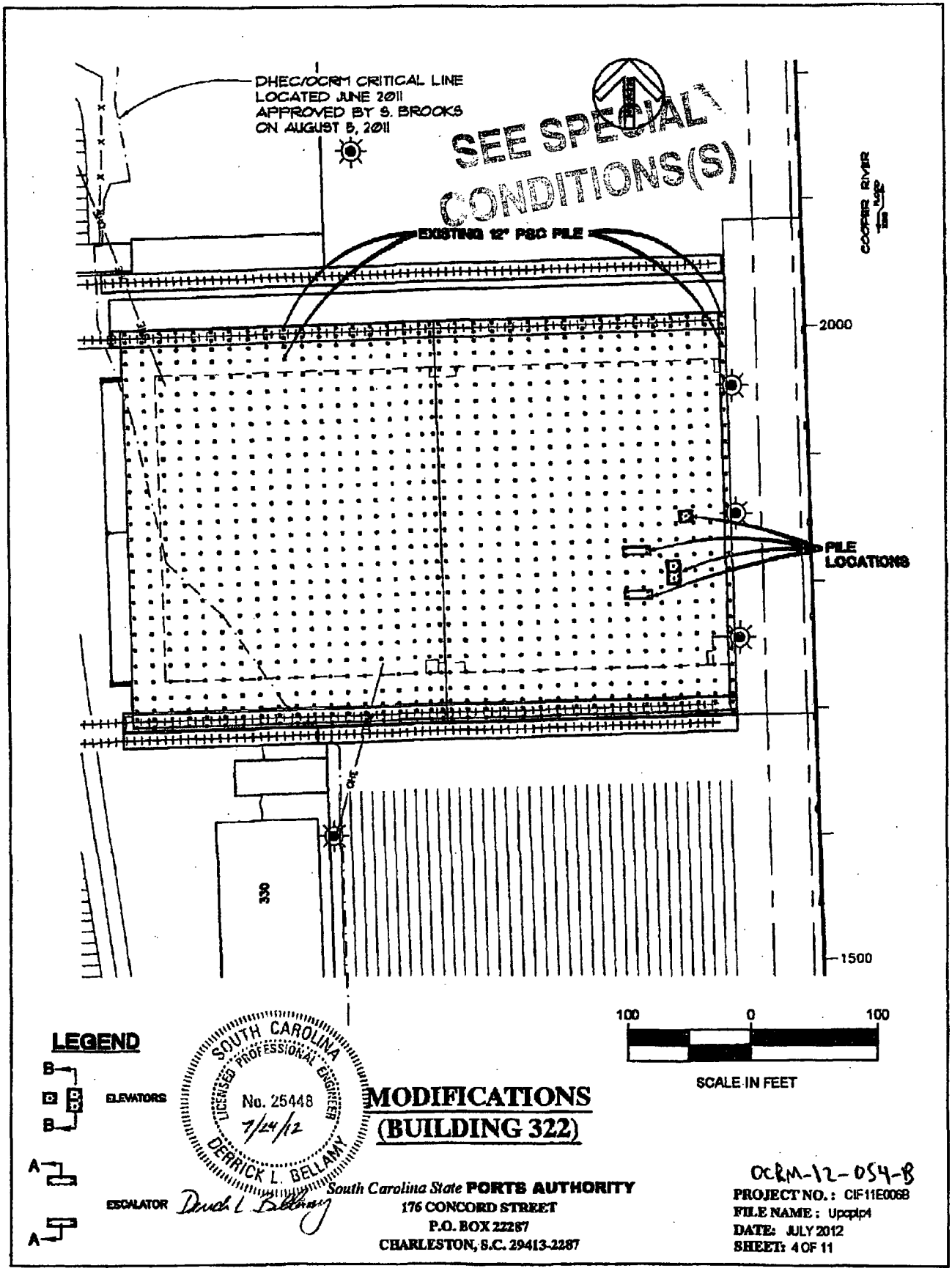


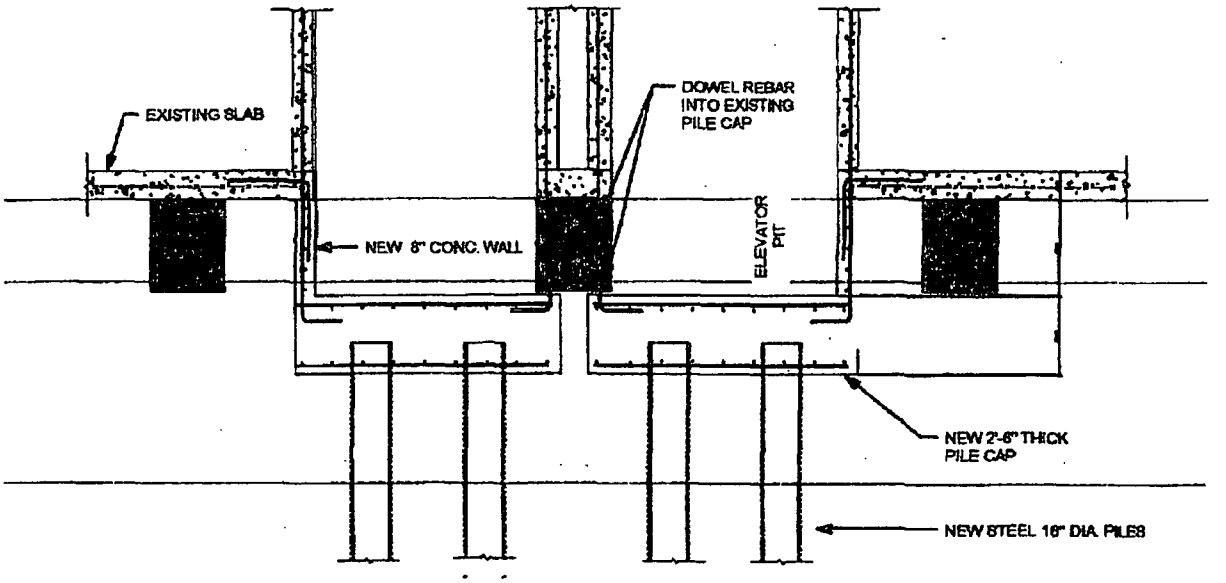
NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

OCRM-12-054-B

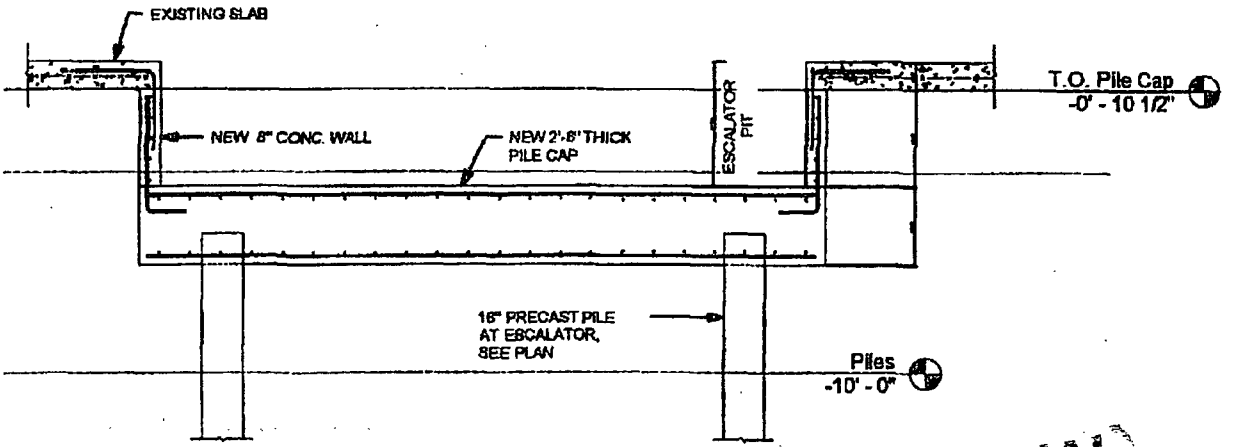
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp3
DATE: MARCH 2012
SHEET: 3 OF 11


DHEC/OCRM CRITICAL LINE
LOCATED JUNE 2011
APPROVED BY S. BROOKS
ON AUGUST 5, 2011
SEE SPECIAL CONDITIONS(S)
EXISTING 12" PSC PILE
COOPER RIVER
2000
PILE LOCATIONS
1500
322
100 0 100
SCALE IN FEET
LEGEND
ELEVATORS
ESCALATOR
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY
MODIFICATIONS
(BUILDING 322)
South Carolina State PORTS AUTHORITY
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287
OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upgdp4
DATE: JULY 2012
SHEET: 4 OF 11



A/S5 SECTION ELEVATOR



B/S5 SECTION ESCALATOR

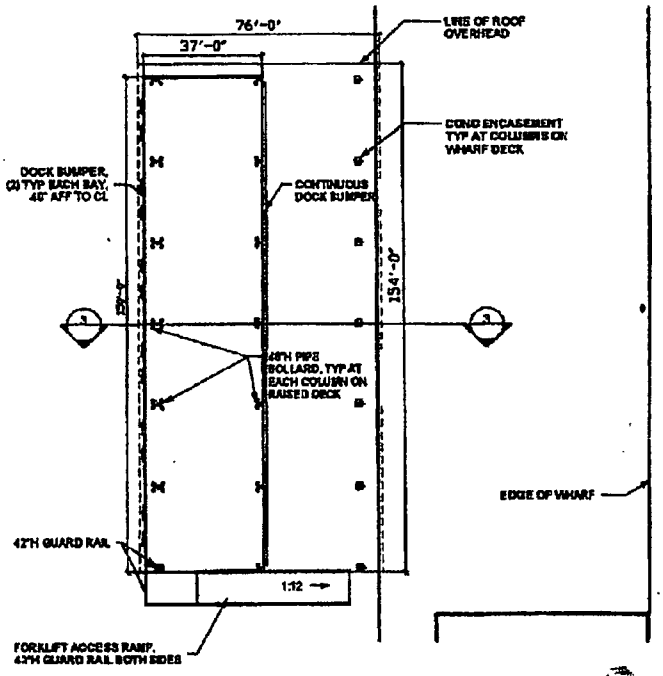
SEE SPECIAL CONDITIONS (6)

SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25449
7/24/12
DERRICK L. BELLAMY
LICENSED

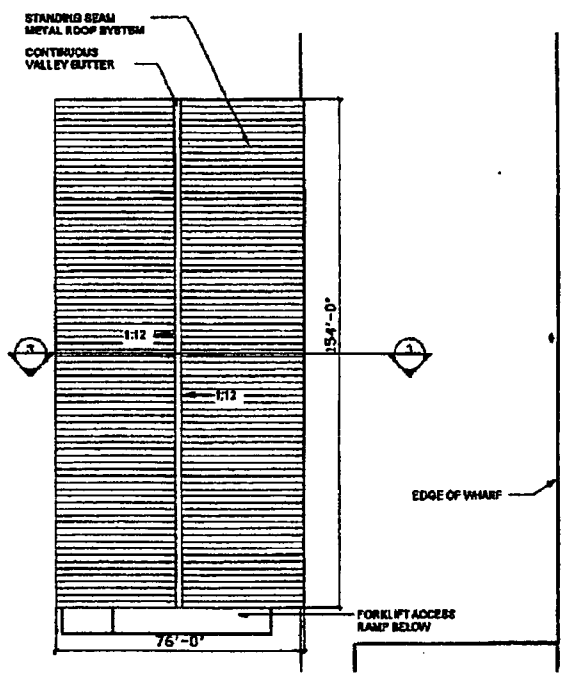
MODIFICATIONS (CROSS SECTION)

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

OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp5
DATE: JULY 2012
SHEET: 5 OF 11

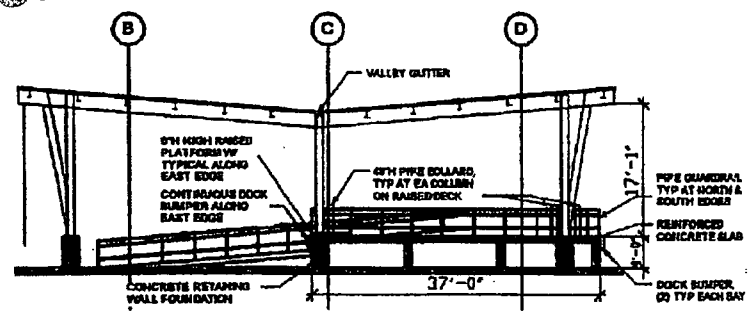


1 STORES CANOPY FLOOR PLAN



2 STORES CANOPY ROOF PLAN

SEE SPECIAL CONDITIONS(S)



3 STORES CANOPY E-W SECTION

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

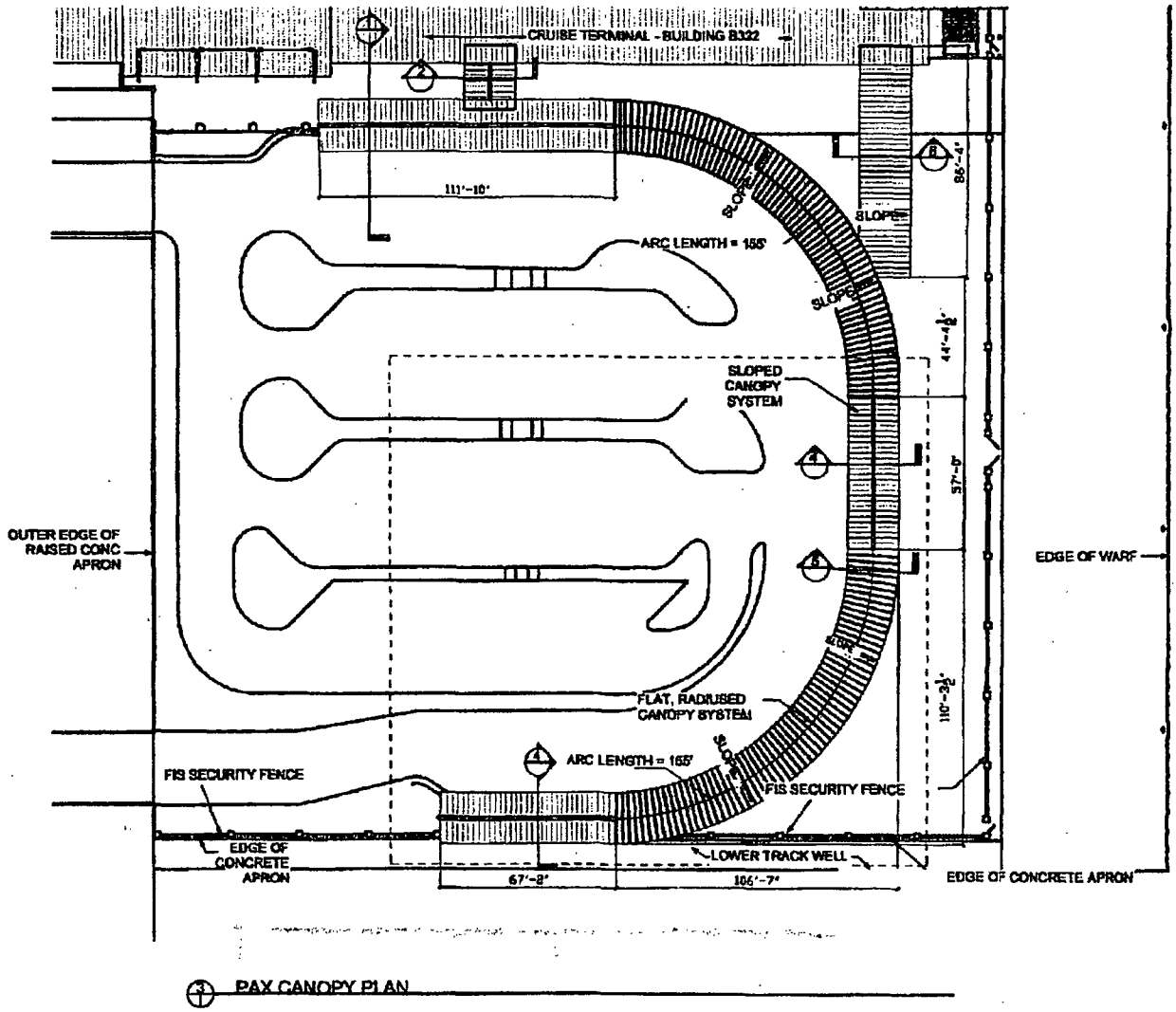
MODIFICATIONS
NORTH APRON

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

OCRM-12-054-B

PROJECT NO.: CF11E0068
FILE NAME: Upgdg6
DATE: JULY 2012
SHEET: 6 OF 11

SEE SPECIAL CONDITIONS(S)



PAX CANOPY PLAN

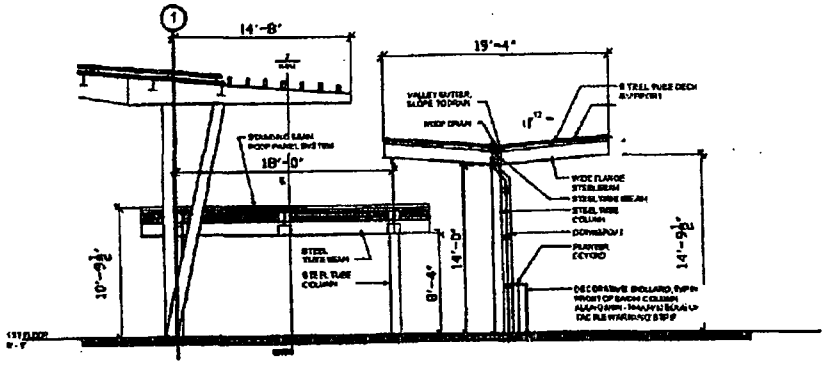
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

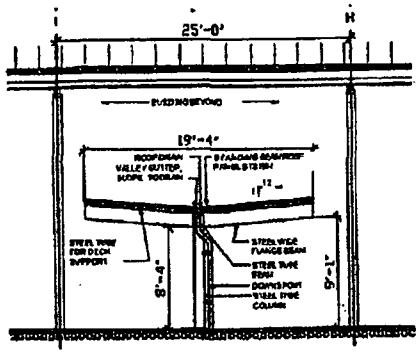
MODIFICATIONS
SOUTH APRON

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

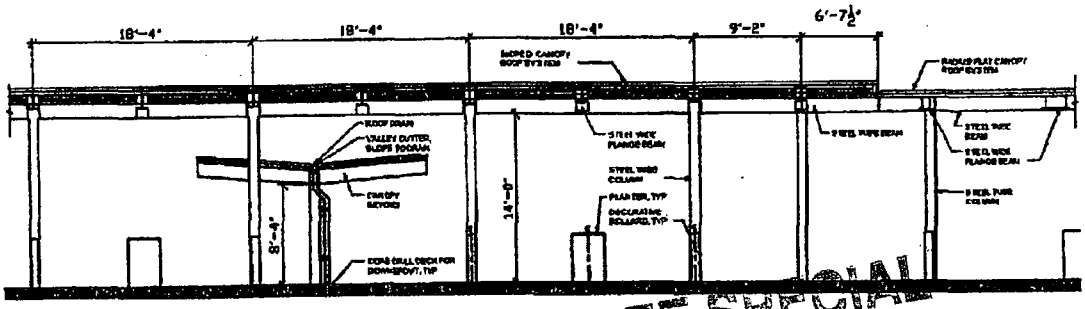
OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcptp7
DATE: JULY 2012
SHEET: 7 OF 11



SECTION - PAX DROP OFF ZONE CANOPY

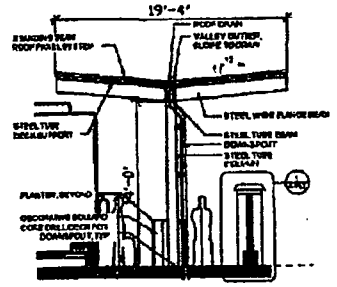


SECTION - PAX DROP OFF ZONE CANOPY @ BLDG INTERSECTION

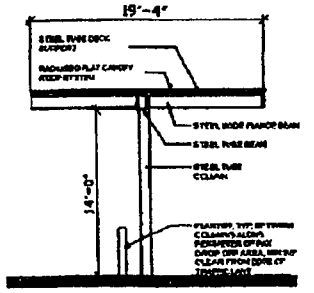


SECTION - PAX ACCESS CANOPY

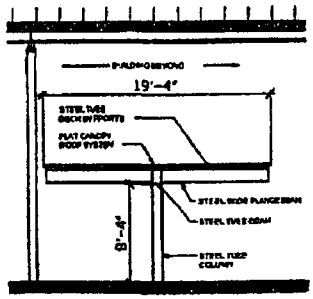
SEE SPECIAL CONDITIONS(S)



SECTION - SOUTH PAX ACCESS CANOPY



SECTION - FLAT PAX ACCESS CANOPY



SECTION - FLAT POV BAG CANOPY

SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25143
7/24/12
DERRICK L. GELLARD

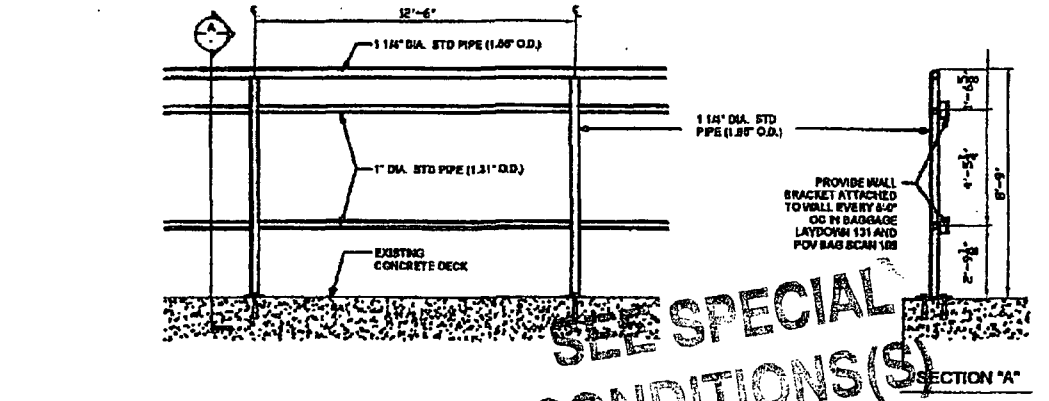
Derrick L. Bellamy

MODIFICATION
SOUTH APRON - DETAILS

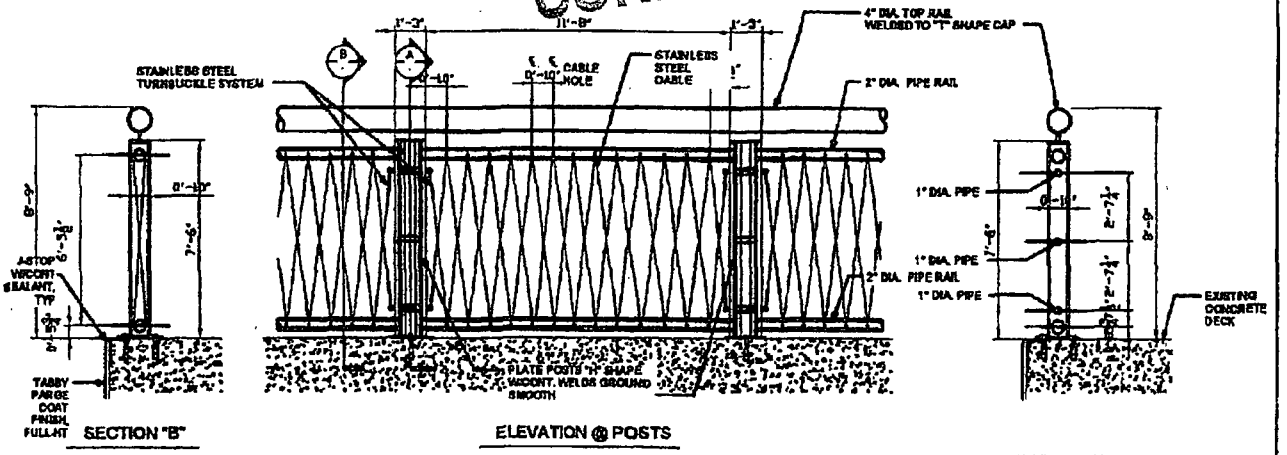
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

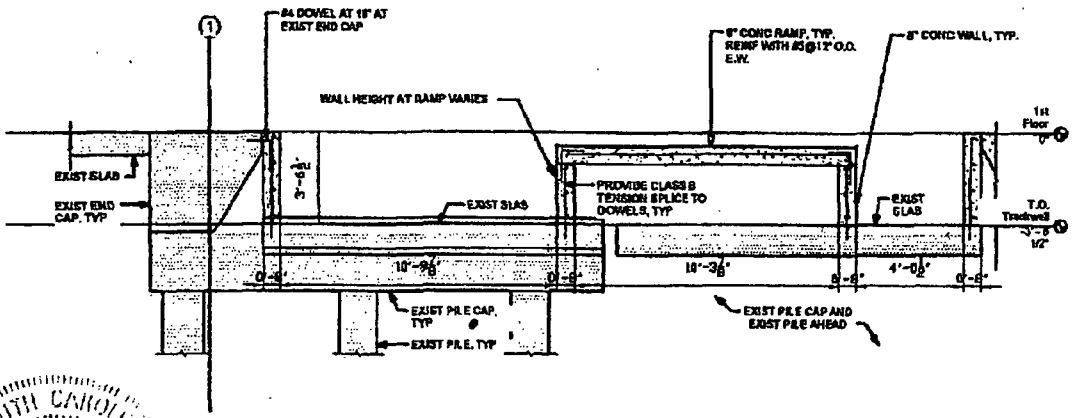
OCRM- 12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcplp8
DATE: JULY 2012
SHEET: 8 OF 11

DHEC-SCPA 000106



SEE SPECIAL CONDITIONS(S)



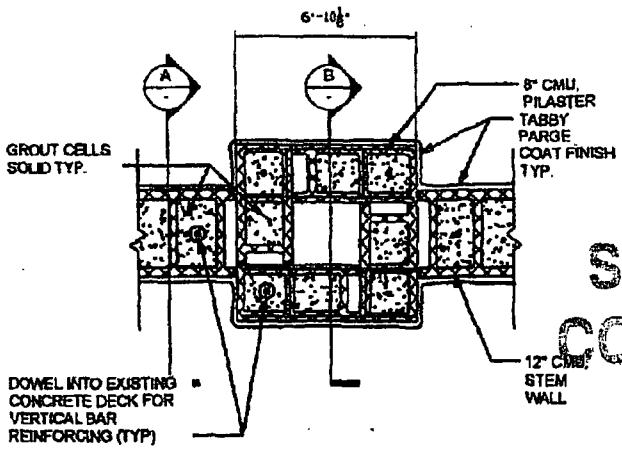


SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
Derek L. Bellamy

MODIFICATIONS
PEDESTRIAN ACCESS RAMP DETAIL

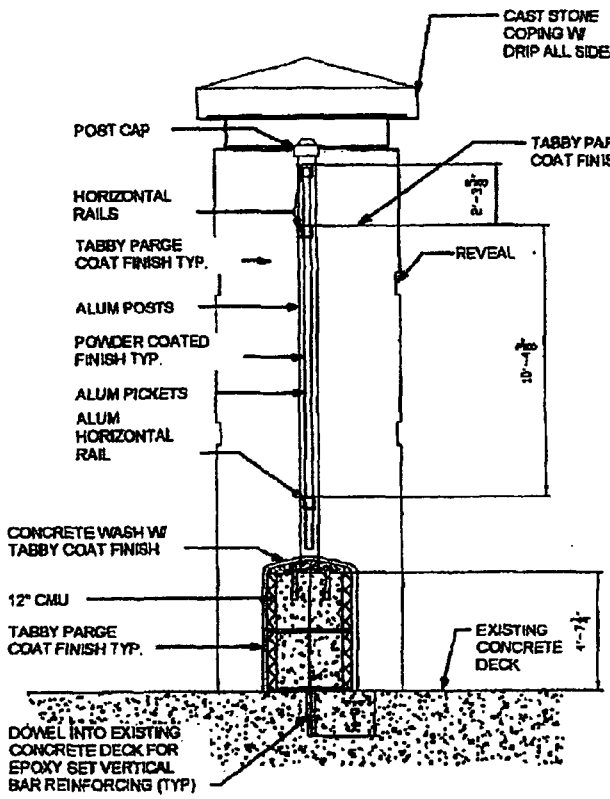
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM 12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcptp9
DATE: JULY 2012
SHEET: 9 OF 11

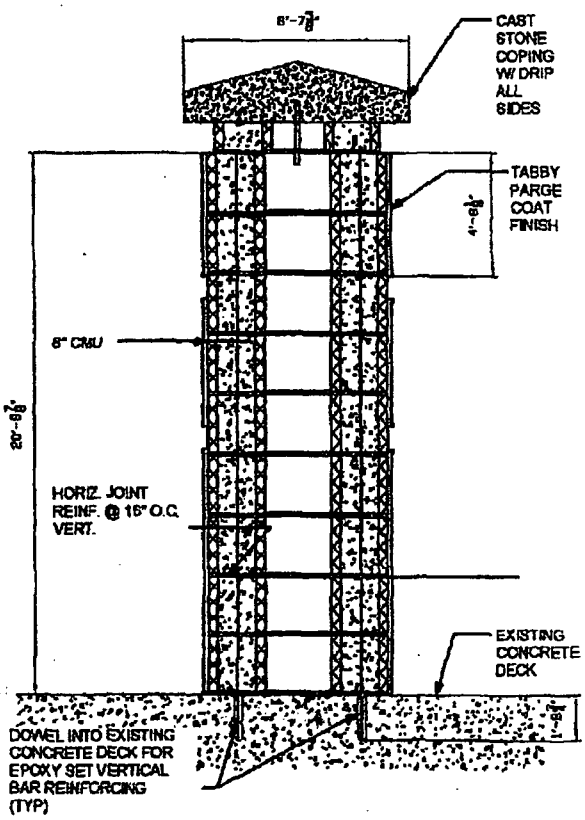


SEE SPECIAL CONDITIONS(S)

PLAN DETAIL @ MASONRY PILASTER



WALL SECTION "A" @ MASONRY STEM WALL



WALL SECTION "B" @ MASONRY PILASTER

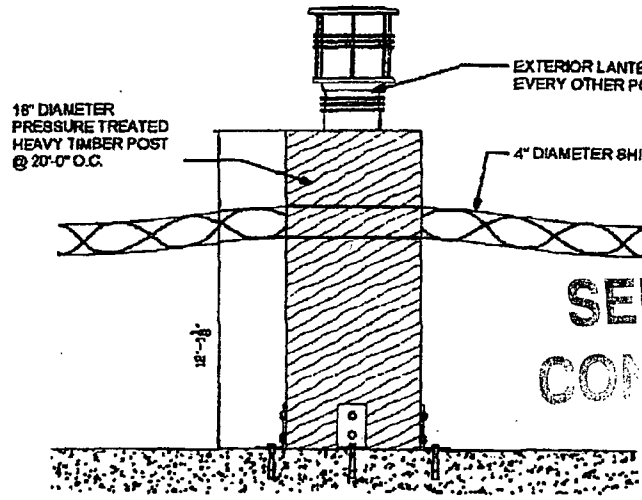
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

Derrick L. Bellamy

MODIFICATIONS
SECURITY FENCE DETAILS

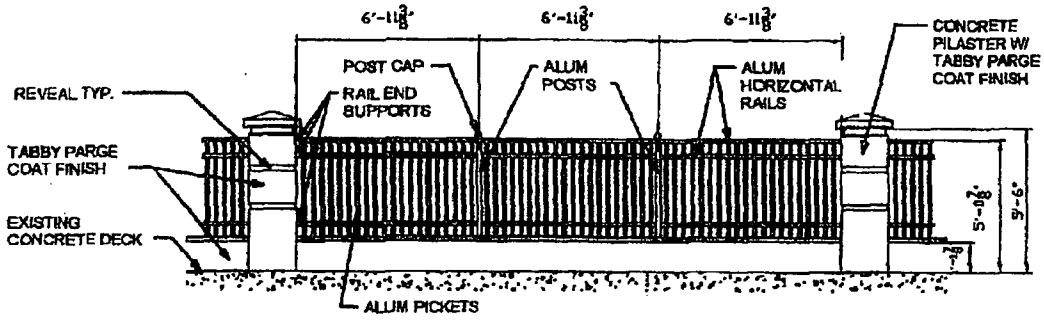
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp10
DATE: JULY 2012
SHEET: 10 OF 11

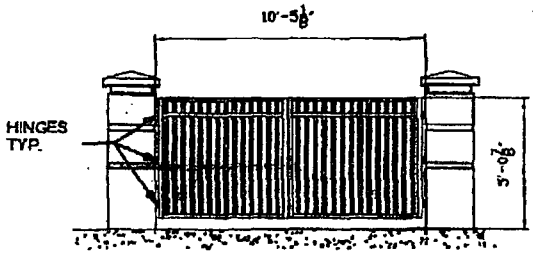


SEE SPECIAL CONDITIONS(S)

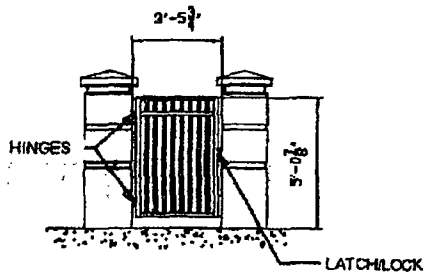
NORTH APRON DECORATIVE BOLLARDS



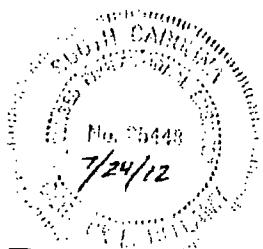
ELEVATION @ FIS SECURITY FENCE



ELEVATION @ ACCESS GATE



ELEVATION @ PED GATE



Derek L. Bellamy

MODIFICATIONS
SECURITY FENCE DETAILS

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

OCRM-12-0854-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcptpt1
DATE: JULY 2012
SHEET: 11 OF 11

ATTACHMENT A

CLARIFICATION OF PROCESS OF CITY CONSULTATION REGARDING CRUISE MANAGEMENT PLAN ALTERATION

Should the SCSPA, at any future date, deem that any material change should be made to the Voluntary Cruise Management Plan, at least one year prior to effecting any such change the following will be done:

(1) Written notification to the Mayor and City Council.

(2) Written notification to the Cruise Neighborhood Advisory Council.

(3) Written notification to Charleston Metro Chamber of Commerce and the Maritime Association of South Carolina.

(4) Written notification to the Historic Charleston Foundation and the Preservation Society.

(5) The convening of a community forum to discuss any material change to the plan.

(6) The solicitation of public input through one or more public hearings, including a public hearing at a City Council meeting.

(7) Careful and thoughtful consideration of the public input.

(8) Report to the Mayor and City Council of the SCSPA board and staff findings and decision.

SEE SPECIAL CONDITIONS

ATTACHMENT A

VOLUNTARY CRUISE MANAGEMENT PLAN
SOUTH CAROLINA STATE PORTS AUTHORITY
AND
CITY OF CHARLESTON

(1) The number of cruise ships will be no more than 104 calls per calendar year.

(2) The port will host no more than one ship at a time at the cruise terminal.

(3) The terminal will be designed at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called Charleston in the past (1,900 to 3,500 passenger design capacity)

(4) A Traffic Management Plan which removes maritime cruise traffic from City streets as soon as possible as well as continued coordination and communication with the Charleston City Police Department and the City Special Events Committee.

(5) A continued commitment by the SCSPA to contribute an allocation to the DASH Downtown Shuttle program, as described in the City Agreement with the SCSPA, providing free shuttle rides to those traveling in the downtown areas of the City.

SEE SPECIAL CONDITIONS(S)

EXHIBIT C

Regulatory Programs Division Decision Document
Impact Assessment for COMMERCIAL DOCK
Office of Ocean and Coastal Resource Management – SCDHEC

TECHNICAL SUMMARY OF REVIEW

Permit Name: South Carolina State Ports Authority – Union Pier
Decision:

Permit:
Permit with Conditions: X
Deny:

I. Background Information:

Database ID# 75114

Permit Number: OCRM-12-054-B

P/N Date: March 23, 2012 Date Received: April 27, 2012

Permit Type: Joint Other Agency Permits: SCDHEC-BOW & Corps

County: Charleston Water Body: Charleston Harbor/Cooper River

Location Description: On and adjacent to Cooper River at 32 Washington Street (Future 180 Concord Street), South Carolina State Ports Authority ~ Union Pier Terminal, Charleston, Charleston County, South Carolina. TMS#: 459-00-00-009.

II. Project Description and Stated Purpose:

Description:

The work as proposed and shown on the attached plans consists of making improvements to an existing waterfront building. Specifically, the applicant seeks to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes are proposed to be made to building 322 and the construction of two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies.

Purpose: The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322

III. Summary of Public and Agency Comments (List by name, date & comment summary; if none, so indicate):

Federal Agencies: **None**

State Agencies: **SCSPA – NOBJ**
SCDNR – NOBJ

Local Agencies: **None**

Public Comment (Include all names from Public Hearing): **See the attached list**

Adjoining Property Owners (Include all names of those who commented:
See the attached list

IV. Environmental Assessment:

A. Describe the coastal resources (i.e., vegetation, habitat, etc.), which will be impacted:

Open water areas beneath an existing wharf and existing building over the water.

B. Watershed and vicinity information (include watershed name & size, classification; any impaired waters listed within impaired parameter; and shellfish status):

The proposed work will be situated within Shellfish Management Area 10B, which is classified as "Prohibited."

1) Vicinity information (include information on developments within watershed within 3 mile radius):
Site is located at an existing SCSPA commercial pier. This area of the Cooper River historically has been utilized directly and indirectly by commercial maritime shipping industry for many years, including the cruise ship industry. The area is currently surrounded by other commercial entities.

2) Existing system stressors (i.e. shellfish closures, 303d):
The proposed work will be situated within Shellfish Management Area 10B, which is classified as "Prohibited."

C. GAPC Review (List any GAPC's present on or adjacent to project site; include agency comments; attach GIS printout; and outline treatment methods):

There are no known endangered species, or SCORE sites resources at this site. The site is adjacent to the "Old and Historic Charleston" district and is designated as a GAPC. The SCSPA Union Pier is also designated as a GAPC.

D. Name and approximate width of water body: **The Cooper River**

V. Policy Assessment:

A. Regulatory History:

1) Previous OCRM authorizations (land disturbance, Federal cert.):

SC STATE PORTS AUTHORITY	**90-4T-172-P**
FLEET LANDING RESTAURANT, LLC	**OCRM-04-339-R**
SC STATE PORTS AUTHORITY	**99-1P-261-P-C**

2) Previous Enforcements (is project in compliance w/all previous permits, etc.): **None**

3) Master Plans (dock, archaeological, wetland): **No**

4) Date of O & M: **N/A**

5) Navigable tributary crossings proposed: **None**

6) Property frontage at highground and water, offsets these lines: **N/A. The existing commercial pier is a SC State Port Authority pier. It is also a permitted/grandfathered structure with permitted/grandfathered activities (including cruise ship operations), that will be modified within the existing pier footprint.**

7) Community or public marina: **Commercial Pier**

8) Water quality sampling/monitoring program required: **No**.

9) Stormwater permit submitted or approved for highground dev: **No. Facility is an existing commercial pier with buildings that have been approved in the past.**

10) Bathroom numbers: **N/A. Facility is an existing commercial pier.**

11) Dock masters office location and number: **No**.

12) SAMP restrictions: **N/A**

13) NERRS review area: **N/A**

14) Deed restrictions: **N/A**

15) Wetland delineation approved by ACOE: **N/A**

16) Development plan and parking approved by local government: **N/A**

17) Valid critical area line certified: **Yes**

18) Marsh ownership claims: **None**

B. Applicable Regulations and Policies (list those that apply only):

1) CZMA:

Approval or denial of permits; appeal to council	**48-39-150**
Legislative declaration of state policy	**48-39-30**
Legislative declaration of findings	**48-39-20**

2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards):

Mitigation Criteria	**R.30-4(G)(2)**
General Considerations	**R.30-11(B)**
Further Guidelines	**R.30-11(C)**

R.30-12(A)(4) The following standards in addition to those in R.30-12(A)(1) apply to construction of commercial docks that are not marinas

R.30-12(E) Marinas, including commercial and community docks with more than 250 linear feet of effective docking space.

R.30-12(F)(2)(d) Transportation

3) CZ Policies (Management Program Document):

Policies for Port Facilities

1) **New port development should take place in existing industrialized areas where sufficient support facilities are available including public utilities, rail and highway transportation access, and navigational channels which are already maintained, unless there are no feasible alternatives or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

2) **Port development should occur in areas that have adequate high ground (non-wetland) acreage for proposed current development and near-term expansion plans, and related facilities. Port development should be located in areas where the filling of productive salt, brackish or freshwater wetlands will not be required or can be minimized. If site preparation does require filling in these wetlands, it must be clearly demonstrated that no other feasible alternatives exist or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

3) **To the extent feasible, port development and expansion should locate on existing channels so that the need for initial and maintenance dredging can be minimized.**

4) **New port development that will require maintenance dredging must identify adequate upland (non-wetland) spoil areas, ocean disposal, or other environmentally-acceptable alternative disposal techniques to meet the long-term demands for spoil disposal.**

5) **Port areas must provide for the handling of dangerous and volatile cargoes and materials in relatively isolated or restricted areas, so that in the event of accident, measures can be implemented to contain any spills or other contamination with minimal environmental damage and limited threat to the health, safety and welfare of the public.**

6) **Wharves, piers, mooring dolphins and other port-related structures should not restrict or block navigation or alter the natural pattern of water currents.**

7) **Proposed port development or expansion and operation must meet existing air and water quality standards, as regulated by the Federal Environmental Protection Agency and the South Carolina Department of Health and Environmental Control.**

8) **Port facilities developed by the State Ports Authority (SPA), as well as by private developers, must be sited, constructed and operated in a manner that is consistent with local and State development**

objectives as set forth in public documents such as comprehensive plans, zoning ordinances and performance standards.

9) **Potential negative impacts on navigation which might restrict port and harbor activities in the area will be considered in evaluation of permits for marinas, docks and piers, transportation facilities (especially bridges), cables and pipelines and other relevant activities.**

10) **Port development or expansion plans must include provision for necessary breakwater or other wake protection measures along major navigable ship channels where appropriate in order to reduce erosion damage. These structures must be in compliance with other applicable policies and Rules and Regulations.**

11) **All bulkheads associated with a port area must meet the policies as stated in the Erosion Control Program [Chapter IV(C)].**

12) **All dredging and dredge spoil disposal policies, as stated in VIII (A) and (B) of the Resource Policies will be applied to port activities.**

13) **All piers and dockage must meet the policy requirements as stated in VI (C) of the Resource Policies.**

14) **Transportation projects associated with port development must follow the transportation policies stated in II (B)-(E) of the Resource Policies.**

15) **The policies for manufacturing will apply to port development and related industrial development (III (D) of the Resource Policies).**

CZMP II – 1
CZMP II, Section II(A)
CZMP III – 5 General Considerations
CZMP III – 14 at I(7)
CZMP III – 14(8)
CZMP III – 19
CZMP III – 20
CZMP III – 22
CZMP IV

Priority of Uses

The following are the uses of priority for all state ports created and operated by the South Carolina State Ports Authority (SPA) beginning with the use of highest priority:

1) Uses which require water access or uses for which the water orientation is the central purpose of the activity, such as maritime shipping, fishing, marine industry, and recreational boating. Included in the uses of highest priority for state ports are provisions to assure safety within the ports. These water-dependent uses should have no prudent or feasible alternative;
2) Water-related uses which do not reduce or degrade the natural value or resources within the port;
3) Nonwater-dependent or nonwater-re1ated uses which retain future flexibility of the port for water-dependent needs.

Designated Sites

The South Carolina Ports Authority owns and manages the following facilities, which are designated as GAPCs: Beaufort County: Port Royal-State Pier 21; Charleston County:' Port of Charleston; Georgetown County: State Piers 31 and 32.

C. Does the project contravene any coastal zone regulations?

(If No, skip to section VII; if Yes, complete Section VI.)

YES ___ X NO

VI. Modifications for bringing the project into compliance with regulations:

A. Modifications required to minimize impacts (list avoidance & minimization measures; buffers; size and/or use restrictions; additional treatment measures; deed restrictions; and agency agreements):

See attached Special Conditions

B. If Permit is denied, explain contraventions of regulations and/or Coastal Zone Management Program.

N/A

VII. Field assessment by: **Steven Brooks/Blair Williams** **June 13, 2012**

(Name) **(Date)**

VIII: Reviewed By:

1. Project Manager: Steven Brooks 12/17/12

(Signature) **(Date)**

2. Section Manager 12/17/12

(Signature) **(Date)**

IX. Notes:
Previously, this project was advertised on public notice on March 9th and March 23rd as a proposal to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. On April 18, 2012, A public hearing was held at the Sterett Hall Auditorium. Subsequently, DHEC-OCRM met with the SC State Ports Authority on July 18, 2012 to discuss additional information that was requested in a letter dated June 29, 2012. At the end of the meeting, it was agreed the SPA would be submitting the additional information as requested. On July 26, 2012, the requested information was received. The application was re-noticed on August 3, 2012 and the comment period was extended to September 2, 2012.

This project was re-public noticed to include proposed modifications consisting of additional structural changes that are to be made to building 322 and the construction of two covered staging areas. A second public hearing was held on Wednesday, September 19, 2012 at 6:00 pm at the Sterett Hall Auditorium. The record of the public hearing was kept open until October 10, 2012, in order to receive any additional comments.

LONGTERM CUMULATIVE AFFECTS

R.30-11(C)(1) The extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area. The long-range cumulative effect of this project will not have any substantive impact to any type of development because development in this area has already been established and completed. Additionally, the long-range cumulative effect of this project will not have any substantive impact to the general character of the area because the general character of this area has been for more than a century an existing commercial pier that is a SC State Port Authority pier with grandfathered activities that include cargo and cruise ship operations.

This is an activity that would be occurring on an existing commercial pier that is a SC State Port Authority pier. The activity (cruise ship operation) currently exists on this facility and is considered grandfathered at this pier.

NEW LOCATION POTENTIAL IMPACT A DESIGNATED HISTORIC AREA

The Union Pier facility is adjacent to the "Old and Historic Charleston" district. The "Old and Historic Charleston" district was listed on the National Register of Historic Places in 1978 for its architectural integrity. The SC State Ports Authority is not undertaking any new activity that would threaten the architectural integrity of this historic district. The Port of Charleston and the historic district have co-existed for many years. In light of the afore-mentioned, it has been determined that there would be no potential adverse effect on the adjacent historic district.

CRUISE SHIP CALLS AFTER SHIFT TO NEW TERMINAL

The South Carolina State Ports Authority (SCSPA) has committed to a very responsible voluntary Cruise Management Plan to manage the number of cruise ship calls per year. The operations for the new passenger cruise facility at Union Pier Terminal will be conducted in accordance with the Voluntary Cruise Management Plan. The SCSPA will include the Department in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

AIR EMISSIONS

Air quality for vessel mobile source is governed by international treaty and federal regulation (MARPOL Annex VI), and Congressional adoption of that treaty. Regulatory authority is under the federal EPA and U.S. Coast Guard.

The cruise ships that will call at this facility are not equipped to connect with shore power. Shore power is prohibitively expensive infrastructure. Shore power is extremely costly, and is usually required only in areas that face air quality challenges. Charleston does not face the air quality challenges.

There will be a reduction in cruise ship related emissions on Union Pier as a result of the implementation of the North American Emission Control Area (ECA), which began in August of this year and will be completely implemented by August 2015. All cruise ships will be required to use lower sulfur fuel as a result of the directives of the North American Emission Control Area (ECA). Emissions will be decreased even further once construction has been completed for the passenger cruise terminal, as this will eliminate emissions associated with shuttling cruise passengers to and from the current offsite parking area and emissions associated with dropping off and picking up baggage, and processing passengers and vehicles near the cruise ship. Additionally, to further mitigate air emissions, the SCSPA has agreed that the space remaining on the south end of the terminal would not be re-utilized to handle cargo. The space remaining on the south end of the terminal would be redeveloped and reunited with the City of Charleston.

In summary, the applicant's request is permissible by law. The proposed work is in line with the general character of the surrounding area. Based on the foregoing, SCDHEC issued a permit authorizing the installation 5 pilings, additional structural changes to building 322, and the installation of two covered staging areas. These activities were issued with the following special conditions:

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal is conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA requires its contractors, for the activities addressed under this permit, to:

    a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

    b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all nonroad equipment between 100 and 750 horsepower.

    c. turn off construction equipment and vehicles not in active use.

    d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

    e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

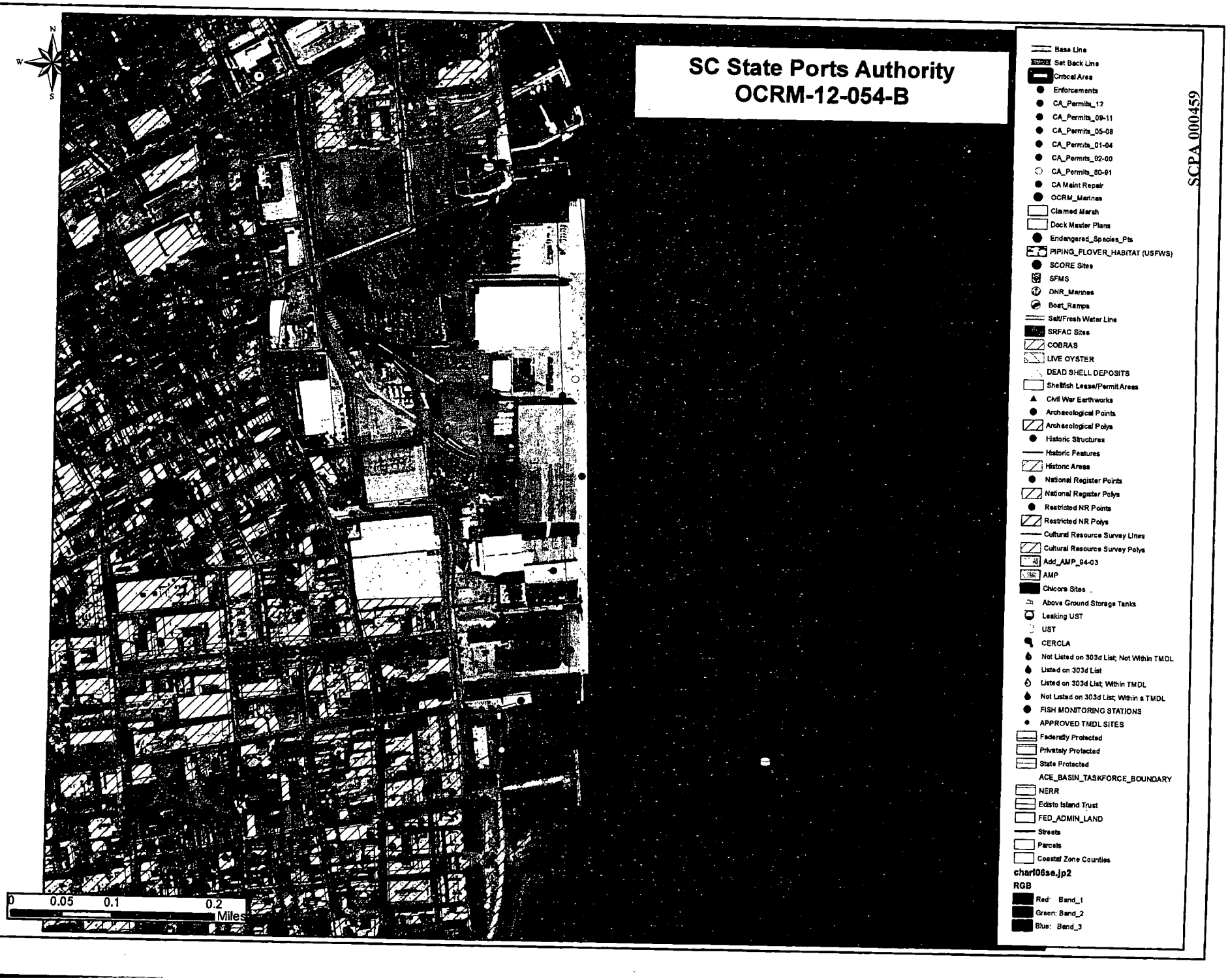
6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning

System equipment.

7. **Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the South Carolina Institute of Archaeology and Anthropology (Mr. James Spirek at 803-777-8170) pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title 54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.**

X. **Attachments Required:**

GIS Review (See Section IV.C. above)
Site Photographs


SC State Ports Authority
OCRM-12-054-B
N
W
S
0 0.05 0.1 0.2
Miles
Base Line
Set Back Line
Critical Area
Enforcements
CA_Permits_12
CA_Permits_09-11
CA_Permits_05-08
CA_Permits_01-04
CA_Permits_92-00
CA_Permits_80-91
CA Maint Repair
OCRM_Marinas
Claimed Marsh
Dock Master Plans
Endangered_Species_Pts
PIPING_PLOVER_HABITAT (USFWS)
SCORE Sites
SFMS
DNR_Marinas
Boat_Ramps
Salt/Fresh Water Line
SRFAC Sites
COBRAS
LIVE OYSTER
DEAD SHELL DEPOSITS
Shellfish Lease/Permit Areas
Civil War Earthworks
Archaeological Points
Archaeological Polys
Historic Structures
Historic Features
Historic Areas
National Register Points
National Register Polys
Restricted NR Points
Restricted NR Polys
Cultural Resource Survey Lines
Cultural Resource Survey Polys
Add_AMP_94-03
AMP
Chicora Sites
Above Ground Storage Tanks
Leaking UST
UST
CERCLA
Not Listed on 303d List; Not Within TMDL
Listed on 303d List
Listed on 303d List; Within TMDL
Not Listed on 303d List; Within a TMDL
FISH MONITORING STATIONS
APPROVED TMDL SITES
Federally Protected
Privately Protected
State Protected
ACE_BASIN_TASKFORCE_BOUNDARY
NERR
Edisto Island Trust
FED_ADMIN_LAND
Streets
Parcels
Coastal Zone Counties
charl08se.jp2
RGB
Red: Band_1
Green: Band_2
Blue: Band_3

SCPA 000459

EXHIBIT D

Transcript of the Testimony of

SC COASTAL CONSERVATION LEAGUE VS. SC DHEC ET AL.

Date: July 2, 2007

CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

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Email: contact@creelreporting.com

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 07-ALJ-21-0107-CC, 07-ALJ-21-0108-CC

South Carolina Coastal Conservation League,

Petitioner,

v.

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

Respondents.

MOTION HEARING
****

Monday, July 2, 2007
10:06 a.m. - 11:57 p.m.

The hearing before the Honorable John D. Geathers, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 2nd day of July, 2007 before Karen L. Yearwood-Cole, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

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and

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Charleston, South Carolina 29413
Attorneys for the Respondent, South Carolina Ports Authority

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EXHIBITS

(No exhibits introduced)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

THE COURT: This morning, we're here to deal with a motions hearing in the matter of South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control and the South Carolina Ports Authority, docket 07-ALJ-21-0107. There's also an additional matter, docket 07-ALJ-21-0108 involving all of the previous aforementioned parties with the exception of the Department of Transportation. I thought that Ms. Durden would be here now and that we could go ahead and dispense with both of these motion hearings at the same time and consolidate them since the issue is the same in both. I don't see any need to have separate argument. Does that make sense?

MR. LOWELL: Your Honor, I think it makes sense in the legal issues. There are some factual distinctions and there actually is one procedural distinction between the two. I mean, I agree, and I suspect that Mr. Holman will probably agree that it doesn't make sense to go through because both my motion and his response are fairly cut and paste on the essential legal issues.

THE COURT: Well, the time frames are the same,

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list? Did you see a newspaper advertisement?
MR. HOLMAN: Your Honor, I don't recall exactly. Usually it happens, we are on mailing lists. Sometimes people will see a notice in the newspaper. They'll learn of it in various ways. I don't recall. Was there one public hearing or multiple public hearings?
MR. LOWELL: On this permit, there's ... I know there was one.
MR. HOLMAN: Yeah, I don't recall particularly, Your Honor.
THE COURT: Are you aware of what the Department's uniform system of public notice is as described as required in 44-1-60(b)? You referenced that section.
MR. HOLMAN: I am in terms of the certification requirements, Rule 61-101(g), and that one says that if you submit a comment, you will get mailed notice.
THE COURT: Do you believe that filing within the 15 day time period is a prerequisite to being able to later file a contested case before the ALC, if you're not satisfied with the ...
MR. HOLMAN: It's an interesting ...
THE COURT: ... results?

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MR. HOLMAN: It's an interesting question of what happens if no petition is filed for review within the 15 day period, and I think the answer is under the statute, that, a contested case hearing challenging the final Agency decision through the mechanism of 44-1-60 is not available, but if that's the case, then the mechanism of the Constitution would be available, and it would not be an exhausted problem. In other words, if for some reason there was some failure of this administrative review process to provide a hearing to someone, does that mean they get no hearing whatsoever ever? I think the answer would be, constitutionally would be no.
THE COURT: Certainly if the Department had some conspiracy that it wanted to keep you in the dark about it and someone, and circumvent the process under the scenario that you described, but the procedures are in place and one doesn't avail one's self of the process, then you can't make an Article 1, Section 22 argument, can you?
MR. HOLMAN: Correct.
THE COURT: Okay.

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MR. HOLMAN: And we're not alleging a mass conspiracy here.
THE COURT: No. I'm just ... that was just for a point of illustration. I'm just saying you can't have it both ways. You can't say well, I'm not going to avail myself of this process, this statutory mechanism that is in place, but I'm going to sit on my hands or put my head in the sand and then I'm going to make an Article 1, Section 22 argument that I'm entitled to due process.
MR. HOLMAN: Yes, Your Honor. I agree with that except to say that there are certain procedures that, even though they exist, may be in themselves constitutionally affirmed. So, there's a nest of questions of whether or not there's an ...
THE COURT: Well, I mean, that's a Constitutional challenge of the procedural process in and of itself.
MR. HOLMAN: Well, it could be a mass applied challenge.
THE COURT: Yeah, yeah.
MR. HOLMAN: For example, for example, if the Agency makes you think one thing and then does

Page 64

something else.
THE COURT: Well, that's what I was alluding to.
MR. HOLMAN: Okay.
THE COURT: Yes.
MR. HOLMAN: And I would say in this case there's not a conspiracy so much as some ball dropping that happened.
THE COURT: But again to my question. Do you agree that complying with subpart E is a prerequisite to being able to later file a contested case before this Court?
MR. HOLMAN: Under the statute, yes, sir.
THE COURT: Okay. So, in essence, the Court's jurisdiction is not an exhaustion problem. Of course, jurisdiction is tied to subpart E. In essence, you can't make the argument that well, that's internal workings of the Department. We're just going to see what happens, and wait until the process works itself out.
MR. HOLMAN: Absolutely.
THE COURT: And then when it does, I don't like the results, so now I'm going to go and attempt to challenge it before the ALC
MR. HOLMAN: Right. There's not going to be sandbagging. What I do think is important to

Exhibit 5

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JOHN W. ROBERTS
ANDREW J. D'ANTONI

*ALSO ADMITTED IN TX

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

November 15, 2013

VIA HAND DELIVERY

The Honorable Ralph K. Anderson, III
Chief Administrative Law Judge
S.C. Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: *Preservation Society of Charleston v. S.C. State Ports Authority*;
Docket No. 13-ALJ-07-0056-CC

Dear Judge Anderson:

The purpose of this letter is to bring to the Court's attention a document recently received by the South Carolina State Ports Authority (Ports Authority) in response to its subpoena issued to Disher, Hamrick & Myers Residential, Inc. in the above-referenced matter. A copy of the referenced document is enclosed as Attachment A for your review. It is relevant to the issue of standing before the Court.

As your Honor is aware, the Cruise Opponents instituted the above-captioned action alleging, *inter alia*, that the cruise ships that frequent the Union Pier Terminal (UPT) have had a negative impact on property values of their members. The Cruise Opponents identified Carolyn W. Agnew as a potential witness in these proceedings concerning "air pollution," a "decrease in property values" resulting from cruise operations at UPT, and "airborne pollutants intruding into

her home...."[1] Ms. Agnew is a key antagonist opposing cruise operations in Charleston, holding press conferences, maintaining a website, and attempting to collect anti-cruise forces to oppose redevelopment of UPT.

In a related action currently pending before the South Carolina Supreme Court, Ms. Agnew submitted a sworn affidavit dated January 24, 2012 (Affidavit)[2] attesting to alleged injuries she has suffered to person and property resulting from UPT cruise operations near her home located at 35-B Hasell Street, Charleston, South Carolina. Specifically, Ms. Agnew avers that she is concerned about the health risks associated with black soot, which she alleges is deposited on the exterior of her home as a result of cruise ship operations.[3] Additionally, Ms. Agnew complains about excessive volume levels of onboard music and ship announcements, alleging that the cruise operations violate noise ordinances and negatively impact the enjoyment of her residential property.[4] Of final note, Ms. Agnew asserts that "[s]everal real estate agents have told residents who want to sell homes that they must disclose that their home is adjacent to a home porting cruise operation because of the negative impacts of the cruise operation on the property."[5] The Affidavit was submitted to this Court by the Cruise Opponents for consideration in an August 19, 2013, filing and was attached to the Ports Authority's Amended Prehearing Statement dated September 18, 2013.

Following your Honor's November 8, 2013, Order denying the Cruise Opponents' Motion to Quash Subpoena, the third party produced the enclosed State of South Carolina Residential Property Condition Disclosure Statement executed by Ms. Agnew on February 5, 2013 (Statement) in connection with the June 2013 sale of her home located at 35 Hasell Street.[6] Pursuant to S.C. Code Ann. §§ 27-50-10 *et seq.*, owners of residential real estate are required to disclose to a purchaser any nuisances or environmental conditions affecting the property on or about the time of sale. Contrary to the assertions made in her Affidavit approximately one year prior, Ms. Agnew affirmatively maintained in the Statement that she had no knowledge of any

[1] Cruise Opponent CNA Resp. to First Set of Interrog., dated April 22, 2013; Cruise Opponent C4's Resp. to First Set of Interrog., dated April 22, 2013.

[2] Aff. of Carrie Agnew, Jan. 24, 2012, *Carnival Corp. v. Historic Ansonborough*, No. 2011-197468 (S.C. Sup. Ct. Original Jurisdiction Granted Jan. 11, 2012).

[3] *Id.* at ¶6.

[4] *Id.* at ¶¶7, 10.

[5] *Id.* at ¶9.

[6] Notably, Ms. Agnew purchased the property in November 2000 for $469,000 and sold the property in June 2013 for $745,000. Clearly an adjacent location to UPT has not caused any injury to Ms. Agnew.

environmental contamination or hazards, including the presence of any hazardous or toxic materials, or of any nuisances, including noise, odor, smoke, etc., affecting the property.[7]

Ms. Agnew's assertions set forth in the Statement are relevant to the Court's consideration of its pending Motion to Dismiss for Lack of Standing and support our position that the Cruise Opponents have failed to demonstrate any element of standing. *See* Ports Authority Mot. to Dismiss for Lack of Standing. Ms. Agnew's allegations mirror the allegations of other affiants in similar locations. As the Court is assessing the credibility and viability of the claims and allegations of the Cruise Opponents in conjunction with the standing analysis, the flip-flopping of a leading Cruise Opponent witness, who executed a sworn affidavit submitted to the courts of this State claiming the existence of a nuisance to advance a position in litigation and then executed a property condition disclosure form affirmatively representing that no nuisance existed to sell her home, is particularly relevant and pertinent. This sort of duplicity has no place in the legal system and should not be countenanced by any court.

Thank you for your time and consideration of this matter.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.

Randolph R. Lowell

cc: Counsel of Record

[7] Statement, p.3, ¶¶15-16.

EXHIBIT A

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT
INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Ann., Title 27, Chapter 50, Article 1 requires that an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions. A complete list of exemptions may be found in S.C. Code Ann., Section 27-50-30.

2. You must check one of the boxes for each of the questions on this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator, or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know, or should have known, of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and, subsequently, something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows, or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. Please consult with your attorney if you have any questions. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as the contract otherwise provides. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Disher Hamrick & Myers Res Inc 25 Cumberland Street Suite 120 Charleston, SC 29401
Phone: (843)577-4115 Fax: H Hamrick

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

AS SELLER OF THE PROPERTY IDENTIFIED HEREIN, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) OR CONDITION/CHARACTERISTIC WITH ANY OF THE FOLLOWING:

		Yes*	No	No Representation
1.	Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck, walkways, or other structural components including any modifications?	☐	☒	☐
	a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ stucco ___ aluminum ___ masonite ___ cement-plank ___ other Brick			
	b. Approximate age of structure 170 yrs.			
2.	Roof and gutters (leakage or other problem)?	☐	☐	☐
	a. Approximate age of roof covering 9			
	a. Are you aware of any leaks during your ownership (or within the past 3 years, if your ownership exceeds 3 years)?	☐	☒	☐
3.	Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4.	Electrical system (outlets, wiring, panel, switches, fuses, circuit breakers, fixtures, etc)?	☐	☒	☐
5.	Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☒	☐
6.	Heating and/or air conditioning? Approximate Age 15	☐	☐	☐
	a. Heat source: furnace ___ heat pump ✓ baseboard ___ solar ___ other ___			
	b. Cooling source: central ✓ wall/window unit(s) ___ other ___			
	c. Fuel source: electricity ✓ natural gas ___ propane ___ oil ___ solar ___ other ___			
	If there is more than one system, please answer questions again on a separate page			
7.	Water supply (water quality, quantity, water pressure)?	☐	☒	☐
	a. water supply is: city/county ✓ community system ___ private well ___ other ___			
	b. water pipes are: copper ✓ galvanized ___ PVC/CPVC ___ polybutelene ___ combination ✓ other ___			
8.	Sewer/septic system?	☐	☒	☐
	a. Type system: septic tank ___ community system ___ other ___ connected to city/county system ___ city/county system available ___ other ___			
	b. Does the system require a sewage lift pump? Yes ___ No ___			
	c. Has the septic system been serviced/pumped during your ownership? Yes ___ No ___			
9.	Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, icemaker, etc- contract may control what transfers)	☐	☒	☐
10.	Present infestation, or damage, **WHICH HAS NOT BEEN REPAIRED** from past infestation of wood destroying insects or organisms or dry rot or fungus?	☐	☒	☐
	Is there a termite bond or warranty? Yes ✓ No ___			
	Name of organization that treats property for organisms: LEDFORD			
	If there is a termite bond or warranty, please provide/describe: expiration date 06/13, transferable ✓, amount of transfer fee ___, What does bond/warrant cover? ___ Is it a repair bond? ___ Is it a retreatment bond only (i.e. no repair)? ___ Other info: ___			

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	Yes*	No	No Representation
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
a. Are you aware of any underground tanks or voids?	☒	☐	☐
* b. Are you aware of any soil drains on the property?	☐	☒	☐
c. Are you aware of any sump pumps on the property?	☐	☒	☐
d. Are you aware of significant fill material on or below ground?	☐	☒	☐

If yes, describe tanks/voids or drains or pumps or material/amount: _____

12. Other built-in systems and fixtures ☐ ☒ ☐
Mark below for any systems that have malfunctions or defects. .
See contract to determine if any systems below convey to new owner.
central vacuum __ pool __ hot tub __ spa __ attic fan exhaust fan __ ceiling fan __ sump pump __
irrigation system __ cable tv wiring or satellite dish __ security system __ fountain __ storage building __
water filtration __ solar panels __ or other systems _____

13. During your ownership, or within the past five (5) years, if ownership exceeds five years, have there been any individual repairs in excess of $500.00 (five hundred dollars) to any item checked in Questions 1-12?

* Explain: 2 Cisterns (?)

#13: Repaired cracked sewer line (part of Condo regime)
Recoated roof to maintain Seal-O-Flex warranty

REGARDING THE PROPERTY IDENTIFIED HEREIN, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

	Yes*	No	No Representation
14. Room additions or other structural changes made during your ownership?	☐	☒	☐
15. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, fuel oil, paint, PCBs, lead hazards, toxic mold, methamphetamine, methamphetamine byproducts, or other hazardous or toxic material (whether encapsulated or buried or covered), any contaminated soil or water, or other environmental contamination of property?	☐	☒	☐
16. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
Explain: _____			
17. Previous damage caused by fire or smoke or water?	☐	☒	☐
18. Violations or variances of building codes, restrictive covenants, other land use restrictions or zoning ordinances that are applicable to the property?	☒	☐	☐
Explain: EXTERIOR EASEMENT W/ HISTORIC CHARLESTON FOUNDATION			
19. Restrictions to property use? (covenants, conditions, or deed)	☒	☐	☐
If yes, are copies attached? available upon request			
If there is a regime fee or similar fee, who do you pay? To be set up by future owner with			
Explain: owner of 35-A unit			

	Yes*	No	No Representation
20. Utility or other easements, shared driveways, party walls, erosion control (seawalls, rip-rap, etc), or encroachments from or on adjacent property?	☒	☐	☐
21. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or insurance issues, notice from any governmental agency, individual(s), or organization(s) that could affect title to the property?	☐	☒	☐

If you choose to volunteer information about nearby issues that may or may not be in the public record yet, please report here: _____

22. If there is a dock, dam, retaining wall, or other structure requiring inspections, permits, etc., have such requirements been complied with in full? Are the documents attached? _____	☐	☒	☐
23. If property includes a manufactured home, has it been legally converted to real property and the DMV title retired? Are the documents attached? _____ Explain: _____	☐	☒	☐
24. Are there flood hazards or is the property in a federally-designated flood plain? If there is flood insurance for the property, what is the amount, time period, and coverage? Available upon request Please describe any erosion and erosion control measures. _____	☒	☐	☐
25. Are there rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing? If there is a management company, please provide name and contact information: _____	☐	☒	☐
26. Are there any outstanding charges owed by for gas, electric, water, sewerage, or garbage services provided to the property that are delinquent? Explain: _____	☐	☒	☐

Answer any of the questions #27-40 that are applicable to this property.

	Yes*	No	No Representation	N/A
27. Owners Association fees or common area expenses/assessments?	☐	☒	☐	☐
28. Are there any resale or rental restrictions?	☐	☒	☐	☐
29. Is Owners Association involved in current or anticipated litigation?	☐	☒	☐	☐
30. Has Owners Association levied special or insurance assessments?	☐	☒	☐	☐
31. Are there any guest, visitor, or animal restrictions?	☐	☒	☐	☐
32. Does the property include assigned parking space(s)?	☒	☐	☐	☐
33. Are keys required to access common or recreational areas?	☐	☒	☐	☐
34. Is a copy of the Master Deed and Bylaws attached?	☒	☐	☐	☐
35. Is a copy of the covenants, conditions, and restrictions attached?	☒	☐	☐	☐
36. Is there a transfer fee levied to transfer the property?	☐	☐	☐	☐

37. What are the Ownership Association dues? $_____ per _____ (month/year/etc.)
38. What do the dues cover? _____ Is insurance included? ____
39. What is the name and contact information for the Owners Association? _____
40. Will any memberships transfer with the property? _____ Documentation attached? _____

Explain: _____

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***IF YOU ANSWERED "YES" TO ANY OF THE PREVIOUS QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS OR ADDITIONAL INFORMATION.**

#32 2 off-street parking spaces

#34/35: Available upon request

Property Address: 35 HASELL STREET UNIT B, CHARLESTON, SC 29401
Initials/Date: Seller(s) CA 2.05.13 Buyer(s) _____

To read the South Carolina Residential Property Condition Disclosure Act, (S.C. Code Ann. § 27-50-10 *et seq.*) please visit: http://www.scstatehouse.gov/code/t27c050.php

This disclosure does not limit the obligation of the purchaser to inspect the physical condition of the property and improvements that are the subject of a sales agreement. The real estate licensee, whether acting as listing agent or selling agent, has no duty to inspect the onsite or offsite conditions of the property and any improvements.

Owner(s) Acknowledgement

Property Address: 35 HASELL STREET UNIT B, CHARLESTON, SC 29401

The property is currently: owner-occupied ✓ leased ___ in an estate ___ in foreclosure ___ vacant ___ (If vacant, how long?) _____
Owner's Name(s): CAROLYN W. AGNEW
Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: Carolyn W Agnew Date: 2.5.13 Time: 1:30 PM
CAROLYN W. AGNEW

Owner Signature: _____ Date: _____ Time: _____

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: Peggy LaBella Date: 5/2/13 Time: 11:00

Purchaser Signature: Frank A. LaBella Date: 5/2/13 Time: 11:00

Property Address: 35 HASELL STREET UNIT B, CHARLESTON, SC 29401
Tax Map Number: 458-05-01-143
Initials/Date: Seller(s) CA 2.5.13 Buyer(s) Frank A. LaBella
Peggy LaBella

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Exhibit 6

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

RESPONSE TO MOTION TO RE-OPEN DISCOVERY
(AND MOTION FOR CONTINUANCE)

On December 23, 2013, the Cruise Opponents filed a motion entitled "Motion to Expand Discovery" which requests a re-opening of discovery and implicitly requests a continuance of the merits hearing currently scheduled for the week of January 27, 2014 (Motion). For the reasons set forth herein, the Ports Authority opposes re-opening discovery and consents to the request for a continuance.[1]

HISTORY OF DISCOVERY IN THIS CONTESTED CASE

Given the scant information provided in the Motion, it is worth reviewing the history of discovery production in this case. The request for contested case was filed on February 11 and

[1] There was no pre-motion consultation under Rule 19.C, RPALC.

this matter was assigned to the Honorable Ralph King Anderson, III on February 19, 2013. Pursuant to Rule 21.A, Rule of Procedure of the Administrative 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.

On May 6, 2013, the Court issued an order for prehearing statements requiring the parties to include, among other things, a "statement regarding the necessity for discovery, if any...." The respective responses in the prehearing statements filed in May 2013 are as follows:

Ports Authority: "Discovery may take between six to nine months to complete. Interrogatories, requests for production, requests to admit, and an expanded number of depositions are appropriate for this matter. The large number of witnesses already listed by Petitioners in discovery demonstrates that the case will require the scope of discovery as to depositions should be expanded beyond the limitations set forth in Rule 21, RPALC, and discovery should be allowed to proceed in accordance with the Rules 26-37, SCRCP."

DHEC: "Discovery is necessary and the parties are in the process of conducting discovery."

Cruise Opponents: "Discovery, including interrogatories, request for production of documents, and depositions, will be necessary. The parties have already filed initial written discovery requests, but anticipate that more discovery will be needed to adequately prepare this matter for hearing."

Indeed, below is a table reflecting the discovery requests and responses exchanged between the Ports Authority and the Cruise Opponents that demonstrates discovery was ongoing at the time of the prehearing statements and that supplemental responses and updates have continued.

REQUESTING PARTY	DATE OF REQUEST	RESPONDING PARY	DATE OF RESPONSE
Ports Authority	February 22, 2013 (Interrogatories)	Cruise Opponents	April 22, 2013; Supplemental, April 23, 2013; Supplemental, Sept. 11, 2013
Ports Authority	March 28, 2013 (Document Production)	Cruise Opponents	June 14, 2013; Supplemental, Sept. 11, 2013; Supplemental, Nov. 19, 2013
Cruise Opponents	April 26, 2013 (Interrogatories; Document Production)	Ports Authority	June 28, 2013; Supplemental, Aug. 12, 2013; Supplemental, Aug. 28, 2013; Supplemental, Sept. 5, 2013; Supplemental, Sept. 12, 2013; Supplemental, Sept. 25,2013; Supplemental, Oct. 4, 2013; Supplemental, Oct. 9, 2013; Supplemental, Oct. 18, 2013; Supplemental, Oct. 4, 2013; Supplemental, Dec. 9, 2013; Supplemental, Jan. 6, 2014.

On May 31, this Court issued an order setting the merits hearing for the week of November 12, 2013. Cruise Opponents' counsel had a conflict and further informed the Court that they "agree with the statement made in Respondent SPA's prehearing statement that discovery will likely take between 6-9 months." Ex. A, Email dated May 31, 2013, Armstrong Email of 2:28 pm. The Court responded that "[a]s the scheduled date provided over four months for discovery, the Court was hopeful the parties could complete discovery within the time

period." Ex. A, Email dated May 31, 2013, Fair Email of 2:45 pm. The Court rescheduled the merits hearing for the week of January 27, 2014.

There was some discussion amongst counsel regarding an expansion of discovery. Ports Authority counsel drafted a proposed scheduling order and proposed protective order that would have modified and expanded discovery and circulated those drafts for comment on July 10, 2013. On August 13, 2013, Cruise Opponents' counsel responded, objecting to any protective order, any additional interrogatories, and expanded depositions. Ex. B, Email dated Aug. 13, 2013; Ex. C, Armstrong Redline. The Ports Authority would not agree to these changes. At that time, given the delay in the response, the pending and developing motions, and the desire to move forward without any additional discovery outside that permitted by the Rules, the issue was dropped by the Ports Authority. Indeed, no party raised the issue of additional discovery and no additional discovery requests were served after the May 20 deadline. The issue of discovery was dropped and was not raised again until December 18 when the Ports Authority pointed out that discovery had closed by Rule on May 20, 2013. Ex. D, Email dated Dec. 18, 2013, Lowell Email of 12:31 pm.

ARGUMENT

I. THE PARTIES HAVE BEEN AFFORDED A FULL AND FAIR OPPORTUNITY TO CONDUCT DISCOVERY AND NO ADDITIONAL DISCOVERY IS NECESSARY.

The burden is upon the Cruise Opponents to demonstrate good cause as to why the discovery period should be re-opened. The Motion contains unsubstantiated assertions without any support or citation, and the Motion fails to even identify the standard and burden they must meet. *See Truehart v. Blandon*, 684 F. Supp. 1368, 1372 (E.D. La. 1988) ("The Court simply cannot accept plaintiff's unsupported statement that further factual discovery would be unnecessary."). Indeed, seven months after the close of discovery, a month away from the

scheduled merits hearing, the Motion was mere reflex. On Wednesday, December 18, the Ports Authority stated that discovery was closed (which recognized the applicable rule) and that the Ports Authority would be filing motions for summary judgment in the near term (again a recognition of the applicable rule). Ex. D, Email dated Dec. 18, 2013, Lowell Email of 12:31 pm. On Monday, December 23, Cruise Opponents counsel filed the instant Motion. The only reason Cruise Opponents now seek to re-open discovery that has been closed for over seven months is to make the argument that summary judgment is inappropriate because they want more discovery, despite having participated in the discovery process when it was open and failing to request that discovery be re-opened before now. This is purely a tactic to try and defeat summary judgment and prolong this contested case.

The Rule requires a showing of "good cause" to alter the discovery provisions in the Rule. Rule 21.A, RPALC. Generally, "good cause" is a "[a] legally sufficient ground or reason." *S.C. Dep't of Revenue v. Zakia*, Docket No. 12-ALJ-17-0395-CC (Jan. 3, 2013) (Robinson, J.) (quoting Black's Law Dictionary); *S.C. Dep't of Revenue v. Marker*, Docket No. 12-ALJ-17-0110-CC (Sept. 6, 2012) (McLeod, J.) (same); *Verde Bio Fuels, Inc. v. S.C. Dep't of Revenue*, Docket No. 09-ALJ-17-0145-CC (April 21, 2009) (Anderson, J.) (same); *Hill v. S.C. Dep't of Health & Envtl. Control*, Docket No. 08-ALJ-07-0183-CC, 2008 WL 38635393 (July 10, 2008) (Matthews, J.) (same); *S.C. Dep't of Motor Vehicles v. Gibson*, Docket No. 07-ALJ-21-0384-AP, 2008 WL 1740065 (March 5, 2008) (Gossett, J.) (same). The Honorable Paige J. Gossett further expounded that "good cause" is a "substantial reason amounting in law to a legal excuse for failing to perform an act required by law." *S.C. Dep't of Motor Vehicles v. Lajuenesse*, Docket No. 06-ALJ-21-0270-AP, WL 2008 1740063 (March 4, 2008) (Gossett, J.). Other courts have similarly addressed what is required to show "good cause" to alter scheduling deadlines.

> Properly construed, ***"good cause" means that scheduling deadlines cannot be met despite a party's diligent efforts.*** 6A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Procedure § 1522.1 at 231 (2d ed. 1990). In other words, this court may "modify the schedule on a showing of good cause if [the deadline] cannot be met despite the diligence of the party seeking the extension." Advis. Comm. Notes for 1983 Amend.; *Forstmann,* 114 F.R.D. at 85. ***Carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief.*** *Johnson,* 975 F.2d at 609.

Dilmar Oil Co., Inc. v. Federated Mut. Ins. Co., 986 F. Supp. 959, 980 (D.S.C. 1997) *aff'd sub nom. Dilmar Oil Co. v. Federated Mut. Ins. Co.*, 129 F.3d 116 (4th Cir. 1997) (emphasis added); *see Whitlock v. Stewart Title Guar. Co.*, 4:10-CV-01992-RBH, 2012 WL 6138227 (D.S.C. Dec. 11, 2012) (unpublished) ("'Good cause' means that scheduling order deadlines cannot be met despite a party's diligent efforts" and also determining that "[n]o good cause has been shown to reopen the expert period or to modify the deadlines concerning experts."); *Derrick v. Johnson Controls, Inc.*, 3:10-CV-3295-CMC, 2012 WL 2072782 (D.S.C. June 8, 2012) (unpublished) ("'Good cause' means that scheduling order deadlines cannot be met despite a party's diligent efforts.). "**If a party was not diligent, the good cause inquiry should end.**" *Johnson Controls, Inc.*, 3:10-CV-3295-CMC, 2012 WL 2072782 (D.S.C. June 8, 2012) (emphasis added); *see also Bachman v. M. Lowenstein & Sons, Inc.*, 85 F.R.D. 10, 13 (D.S.C. 1979) ("Since her present motion also fails to address these issues, this court has been presented with no grounds for vacating its prior order." Further finding that a failure to provide good cause, unusual circumstances, or discuss discovery undertaken in original discovery period precludes re-opening discovery.); *cf. Glass v. Philadelphia Electric Co.*, 64 F.R.D. 559 (E.D. Pa.1974) (when a party is dilatory in pursuing discovery and the time period for discovery has expired, any attempt to reopen discovery must be denied).

Here no good cause exists. The Motion offers no explanation or excuse as to why the Cruise Opponents took no action and otherwise failed to diligently act during the original discovery period and for over seven months thereafter. Discovery has been conducted pursuant to the Rules. No party ever made any request to schedule a deposition during the discovery period. The Cruise Opponents made no attempt in any way conduct any discovery beyond that provided in the Rule. Only a month away from trial, and mere days before the dispositive motions deadline and after notified that the Ports Authority would be filing summary judgment motions, did the Cruise Opponents decide that additional discovery was necessary.

The Ports Authority indicated that six to nine months would be needed for discovery in its prehearing statement. The Cruise Opponents counsel agreed. Ex. A, Email dated May 31, 2013, Armstrong Email of 2:28 pm. The Court expressed a preference for a four-month window on discovery. Ex. A, Email dated May 31, 2013, Fair Email of 2:45 pm. Three hundred seven (307) days from the notice of assignment in this case (on February 19, 2013) was December 23, 2013 (when the Motion was filed). That is more than the nine months indicated in the prehearing statements and more than twice the four-month period the Court indicated that it believed to be sufficient for discovery. In fact, the Cruise Opponents admit that "this case is ready to proceed toward a hearing." Motion at 2. And yet the Cruise Opponents now seek more delay to conduct discovery[2] that they could have sought before the close of the discovery period and could have moved before this Court much sooner than the eve of trial. The Cruise Opponents failed to act

[2] In the prior discussions, the Cruise Opponents refused to allow more than standard interrogatories but did want 15 depositions. Ex. C, Armstrong Redline at 2. In other words, the Cruise Opponents eschewed the most efficient, convenient, and timely form of discovery and desired the most time-consuming and most expensive form of discovery. Indeed, additional interrogatories—which the Cruise Opponents previously refused to expand—could have helped narrow the focus of the issues in dispute which would have allowed for quicker depositions, but this is not the goal or objective of the Cruise Opponents.

with any diligence, and have foregone any claim to additional discovery or to re-open the discovery period. *See Trotter v. Trane Coil Facility*, 393 S.C. 637, 649, 714 S.E.2d 289, 295 (2011) ("We conclude the commissioner did not abuse her discretion in denying Trane's motions for a continuance or to hold the record open for the taking of Dr. James's deposition."); *see Smith v. Reynolds Transport Co.*, Civil Action No. 3:11–cv–2728–CMC, 2013 WL 247714 (D.S.C. Jan. 23, 2013) (unpublished) (plaintiffs delay in seeking to name additional expert until after discovery period had closed and dispositive motions deadline had passed would "entail significant prejudice both to Defendants and the administration of justice"); *see also Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 253, 734 S.E.2d 161, 165 (2012); *DeAcetis v. Whitley*, 14-08-00429-CV, 2010 WL 1077904 (Tex. App. Mar. 25, 2010) (Mem. Op.) (affirming the trial court's denial of a motion to re-open discovery, stating "[t]he trial court could have reasonably concluded that [movant] should have diligently brought motions to compel, instead of waiting until one week before the summary judgment hearing" and "[i]t is well established that the failure of a litigant to diligently utilize the rules of civil procedure for discovery purposes will not authorize the granting of a continuance.").

Indeed, this contested case is not unlike *Savannah Bank, N.A. v. Stalliard*. There, the parties entered into a consent scheduling order stipulating that discovery would be completed by February 15, 2011. *Stalliard*, 400 S.C. at 249, 734 S.E.2d at 163. On May 2, 2011, after the discovery deadline expired, the Appellant filed a motion seeking additional discovery time and a continuance of the Respondent's summary judgment motion. *Id.*, 400 S.C. at 249-50, 734 S.E.2d at 163. The master-in-equity denied the Appellant's motion for additional discovery time and the Appellant appealed, arguing that the denial was improper. *Id.*, 400 S.C. at 248, 734 S.E.2d at

162. The South Carolina Supreme Court concluded that the Appellant's motion was properly denied reasoning that the

> Record indicates that Appellant had ample time during discovery to uncover evidence and speak with any potential witnesses.... If Appellant believed he did not have sufficient time, Appellant should have promptly filed a motion seeking additional discovery time. Instead, Appellant waited until ... two months after the deadline for discovery expired to request an extension ... Thus, we hold that the master properly denied the Appellant's motion.

Id., 400 S.C. at 253, 734 S.E.2d at 165.

The facts and circumstances in this contested case weigh far heavier against the Cruise Opponents than those in *Savannah Bank*. Here, Cruise Opponents seek to re-open discovery after the original discovery period expired after having had ample time and opportunity to conduct discovery and/or to file a motion to expand discovery during the initial ninety (90) day discovery period. Moreover, whereas the South Carolina Supreme Court found the denial of motion to extend discovery proper after the appellant waited "two months after the deadline for discovery expired to request an extension," Cruise Opponents have waited for ***over seven (7) months*** after the close of discovery before filing a motion to re-open discovery in this contested case and mere weeks before the scheduled merits trial date.

Actually, the Cruise Opponents have no pre-hearing discovery rights *per se*, and are only entitled to the procedures afforded by rule, which may be limited and curtailed. *MacDonald v. S.C. Dep't of Labor, Licensing & Regulation*, Docket No. 97-ALJ-11-0598-AP, 1998 WL 166272 (March 25, 1998) (Anderson, J.) ("While contested case litigants are entitled to fundamental due process considerations, there is no constitutional right to prehearing discovery in administrative cases."); *Woodward v. S.C. Dep't of Labor, Licensing, & Regulation*, Docket No. 99-ALJ-11-0333-IJ, 1999 WL 1016099 (June 1, 1999) (Stevens, J.) ("Pre-hearing discovery

in administrative cases is not a constitutional right *per se*."); *Zimmerman v. S.C. Dep't of Labor, Licensing, & Regulation*, Docket No. 97-ALJ-11-0427-IJ, 1998 WL 141701 (March 9, 1998) (Bates, J.) ("While contested case litigants are entitled to fundamental due process considerations, there is no blanket constitutional right to pre-hearing discovery in administrative cases."); *cf. Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984) ("proof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice"); Charles H. Koch, Jr., *Administrative Law & Practice* 142 (3d ed. 2013) ("Therefore failure to provide an opportunity to obtain discovery does not render an administrative hearing unconstitutional.").

This Court has specifically found that denial of a discovery deposition "does not automatically constitute a due process violation." *Brown v. S.C. Dep't of Labor, Licensing, & Regulation*, Docket No. 99-ALJ-11-0333-IJ, 1999 WL 1016099 (Sept. 17, 1999) (Anderson, J.); *Zimmerman*, Docket No. 97-ALJ-11-0427-IJ, 1998 WL 141701 (March 9, 1998) (Bates, J.) (denial of request to take a deposition is not, in and of itself, an abuse of discretion). In this case, Cruise Opponents 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 (90) day discovery period. In other words, Cruise Opponents were afforded both a meaningful opportunity to conduct discovery and a meaningful opportunity to expand discovery, upon a motion for good cause shown, *before* discovery closed on May 20, 2013. *See Zaman v. S.C. State Bd. of Medical Examiners*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it.") (citing *Dusanek v. Hannon*, 677 F.2d 538 (7th Cir. 1982))).

The Cruise Opponents' arguments are inconsistent with their own conduct. For example, they criticize the Ports Authority claiming that it should have either produced every document within 30 days or requested an extension. Motion at 2. The Ports Authority did, in fact, request an extension to respond to the discovery. Ex. E, Email Exchange dated May 22, 2013. The Ports Authority timely responded and has been supplementing the production as additional documents are reviewed and deemed responsive.[3] But the Cruise Opponents failed to either timely respond within 30 days or request an extension in responding to the Ports Authority production requests. They simply ignored the response date. It was up to Ports Authority counsel to reach out to Cruise Opponents counsel to inquire of the status of the discovery and offer an extension when it became clear that the Cruise Opponents could not comply. Ex. F, Email Exchange dated May 7-8, 2013. A second extension of time to respond was then granted by Ports Authority counsel upon request. Ex. G, Email Exchange dated May 29, 2013. And the Cruise Opponents have continued to supplement their discovery responses just as the Ports Authority has with additional documents.[4]

The Cruise Opponents try and excuse their failure to conduct discovery pursuant to the Rules on the grounds that it "would have been impractical for the [Cruise Opponents] to expend the time and expense required to proceed with depositions ... until this Court ruled on the Motion to Dismiss." Motion at 2. Then the Cruise Opponents complain that the Ports Authority has

[3] The Cruise Opponents complain about the Ports Authority's rolling production. Of course, the Cruise Opponents counsel could have consulted with Ports Authority counsel to discuss deadlines and dates, but chose not to. The Ports Authority has spent hundreds of hours working through tens of thousands of pages to determine responsiveness, privilege, confidentiality, etc. A rolling production is the nature of this type of production, and even the Cruise Opponents are engaging in a rolling production with additional supplementation of responses.

[4] The Cruise Opponents drop a footnote chastising the Ports Authority for producing documents dated 2010 in a supplemental discovery response. Yet the Cruise Opponents produced documents dated 2010 in their supplemental discovery response.

continued to update and supplement its production responses. Motion at 2-3. Under the Cruise Opponents theory, the Ports Authority would have been fully justified in not providing any responses after the filing of the Motion to Dismiss or even now with a motion for summary judgment pending. The only explanation for this inconsistency is that they want to attack the Ports Authority and delay the contested case.

Moreover, while the Cruise Opponents complain about receipt and review of the discovery production, they contributed significantly to any perceived delay. The Cruise Opponents have filed a plethora of frivolous and meritless motions, including a motion to remand, a motion to strike inflammatory references, a motion to quash a subpoena, a second motion to remand styled as a motion to vacate, motions for surreplies, and improper surreplies. The Cruise Opponents conduct demonstrates a lack of respect for the time and expense created by their meritless motions and inflicted upon the Court and respondents. While the Cruise Opponents talk about conservation of resources, they have no hesitation about wasting three state agencies' time and money and stand in the way of the efficient administration of justice and judicial economy.

Finally, the Motion provides clear prejudice to the Ports Authority. The Motion only requests that the Cruise Opponents be allowed to conduct 10 depositions. There is no allowance or provision for the Ports Authority or DHEC to conduct depositions or engage in further discovery. Moreover, a request for "10" depositions appears arbitrary. Is this meant to depose experts? Fact witnesses? Both? All witnesses to be called at trial? It is unclear, and no justification or explanation is proffered.

The Cruise Opponents have had the opportunity to conduct discovery. During the ninety day discovery period, Cruise Opponents failed to notice a single deposition and failed to file a

motion to expand discovery beyond the originally prescribed period and scope or otherwise seek to revise or amend the discovery process that they now complain of as being "extensive and protracted." *See Zaman v. S.C. State Bd. of Medical Examiners*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it.") (citing *Dusanek v. Hannon*, 677 F.2d 538 (7th Cir. 1982))).

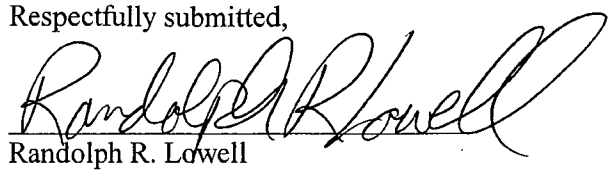
In truth, the parties have exchanged thousands of pages of documents. Discovery has been conducted pursuant to the Rules, and this case is ready for a merits hearing should the Cruise Opponents survive the pending summary judgment motion. Any failure to obtain discovery is the direct result of the failure of the cruise Opponents to act diligently and they waited until over seven months after the discovery period had closed to try and re-open the discovery period. Further delay, time, and expense is unwarranted and the Cruise Opponents have failed to demonstrate good cause to reopen discovery. The Motion should be denied.

II. GIVEN THE MOTIONS FILED, A CONTINUANCE IS WARRANTED.

Through the Motion, the Cruise Opponents implicitly request a continuance of the merits hearing by asking for an additional discovery period of 90 days. Motion at 3. The Ports Authority indicated in its Email exchange with the Court and opposing counsel on December 18, 2013, that given the pending and forthcoming (now filed) motions for summary judgment that it believed a merits hearing the last week of January would be difficult, and at this point is not practical even without additional discovery.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



Randolph R. Lowell
Chad N. Johnston
Tracey C. Green
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
rlowell@willoughbyhoefer.com
cjohnston@willoughbyhoefer.com
tgreen@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 the Respondent
South Carolina State Ports Authority

January 7, 2014
Columbia, South Carolina

EXHIBIT A

From: Amy Armstrong
To: Harvin Fair; Chad N. Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Randy R. Lowell
Subject: Re: Preservation Soceity et al v. SCDHEC and SCPA, 13-ALJ-07-0056-CC
Date: Friday, May 31, 2013 4:11:00 PM

Thanks, Harvin.

The Petitioners are available from January 6th through February.

Amy

On Fri, May 31, 2013, at 02:45 PM, Harvin Fair wrote:

> The Court will consider rescheduling the hearing. Randy was the only one who indicated a time period for discovery. As the scheduled date provided over four months for discovery, the Court was hopeful the parties could compete discovery within the time period.
>
> In order to schedule a week for a hearing, please provide dates the parties will not be available the later part of January 2014 and the month of February 2014.
>
> Thank you for your attention to this matter.
> Sincerely,
> Harvin Fair
> Law clerk to the Honorable Ralph King Anderson, III
> office phone 803-734-6409

From: Amy Armstrong [mailto:amy@scelp.org]
Sent: Friday, May 31, 2013 2:28 PM
To: Harvin Fair; Chad N. Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Randy Lowell (rlowell@willoughbyhoefer.com)
Subject: Re: Preservation Soceity et al v. SCDHEC and SCPA, 13-ALJ-07-0056-CC

Harvin,

I went to put the hearing dates on my calendar and see that I am scheduled to be at the Southeastern Council of Foundations (SECF) Conference from November 13-15 in Homestead, Virgina. I serve on the Board of the Bunnelle Foundation and am attending the conference in that capacity. I have just checked with Bunnelle staff and understand that reservations for my attendance were made, including payment for the conference and hotel, on May 3.

I would have indicated that I was unavailable on those dates, except the Order for Prehearing Statements only asked for availability in the next 90 days. I could cancel these plans, but I would prefer not to back out on this obligation I made to Bunnelle.

In addition, Petitioners agree with the statement made in Respondent SPA's prehearing statement that discovery will likely take between 6-9 months, which could make a hearing in November difficult.

For these reasons,I respectfully request that the Court consider rescheduling the hearing.

Thank you for your consideration,
Amy

On Fri, May 31, 2013, at 01:51 PM, Harvin Fair wrote:

> Attached please find the Notice of Hearing in the above-captioned case that is hereby served upon you.
> The Court has set aside five(5) days for this hearing from Tuesday, November 12, 2013- Monday, November 18, 2013.
> You will not receive a copy of this notice by mail.
> Thank you for your attention to this matter.
> Sincerely,
>
> Harvin Fair
> Law clerk to the Honorable Ralph King Anderson, III
> office phone 803-734-6409

Email had 1 attachment:

- 13 Preservation Society - Hearing Notice.pdf
- 152k (application/pdf)

--
Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078
FAX: (843) 527-0540
amy@scelp.org

--
Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078

FAX: (843) 527-0540
amy@scelp.org

EXHIBIT B

From:	Amy Armstrong
To:	Randy Lowell
Cc:	jl@leathbouchlaw.com; jessie@scelp.org; Bradley Churdar; Philip Lawrence
Subject:	Preservation Society, et al. v. SPA & DHEC
Date:	Tuesday, August 13, 2013 5:00:45 PM
Attachments:	Consent Scheduling Order aea edits.docx

Randy:

I have reviewed your proposed consent scheduling order and have made proposed edits, attached. As far as the protective order is concerned, the Petitioners cannot consent to a blanket protective order and cannot imagine what documents a state agency would have that are entitled to protection. If there are documents you believe are entitled to protection, we ask that you identify the author, the subject matter and the date of those documents, and counsel will review and consider whether we consent to protecting documents on a case-by-case basis.

You indicate in your responses to discovery requests that SPA will make available additional responsive documents at its Charleston office. I would like to set up a time for this review. We are available on August 16, 19-23, 28, 29 and 30th. Let me know which of these dates we can review SPA's production.

Finally, will you consent to a 5 day extension for our reply to your response to our motion to strike?

Thanks,
Amy

--
Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078
FAX: (843) 527-0540
amy@scelp.org

EXHIBIT C

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 **CONSENT SCHEDULING ORDER**

The Court, based upon the consent of the parties finds that it is appropriate to set forth the following schedule for the conduct of this matter. Therefore, it is hereby **ORDERED** that:

1. Except as otherwise modified or set forth in this order, discovery may be had by each party in accordance Rules 26-37 of the South Carolina Rules of Civil Procedure (SCRCP). The limitations on discovery set forth in Rule 21, RPALC are hereby modified accordingly. We can't agree to completely eliminate the limitations placed on discovery under the ALC rules, but we are agreeable to expanding the number of depositions to 15 per side.

2. Any party may depose any witness listed by any party or any person identified as having information relevant to the subject matter of the disputes and issues in this matter. The parties and their counsel shall work together and cooperate to schedule depositions in a convenient and reasonable manner and timeframe. See above. Petitioners provided names of all

persons that have factual information related to the issues in this case and that list was significant because of the far-reaching impacts of SPA's operation of Union Pier terminal; however Petitioners do not intend to present all of those individuals as witnesses. Petitioners would agree to the taking of 30(b)(6) depositions of all the Petitioners, in addition to all of Petitioners' expert witnesses.

3. Each party may serve upon any other party written interrogatories pursuant to Rule 21, RPALC and Rule 33, SCRCP, provided, however, that the number of interrogatories posed to a party by another party shall be limited to 75, including subparts and excluding standard interrogatories. We will not agree to expanding interrogatories.

4. Each party may serve upon any other party requests for admission pursuant to Rule 21, RPALC and Rule 36, SCRCP, provided, however, that the number of requests for admission posed to a party by another party shall be limited to 30, including subparts.

5. Petitioners shall designate their expert(s) no later than October 15 ~~August 2~~, **2013**.

6. Respondents shall designate their expert(s) no later than October 31~~August 16~~, **2013**.

7. Any motions challenging expert qualifications shall be filed no later than ten (10) days following the deposition of the expert in question.

8. All discovery in this matter shall be served in sufficient time to allow for all responses to discovery to be received and all depositions concluded no later than December 31 ~~November 15~~, **2013**.

9. Parties shall file any dispositive motions no later than **December 13, 2013**.

10. The parties shall exchange exhibits intended to be introduced into evidence no later than **January 13, 2014.**

11. The parties shall exchange final witness lists no later than **January 13, 2014.**

12. The parties shall file any objections to exhibits no later than **January 20, 2014.**

13. Any prehearing motions must be filed no later than **January 18, 2014.**

14. Pursuant to the Amended Notice of Hearing issued by the Court on June 12, 2013 in this matter, this case is set for hearing **January 27-31, 2014.**

15. The foregoing discovery schedule and framework is subject to the right of any party to move for a continuance upon good cause shown and to seek a protective or other order on any grounds available under Rule 21 of the Rules of Procedure for the Administrative Law Court and under Rules 27-37, SCRCP.

AND IT IS SO ORDERED.

_____
Ralph K. Anderson, III
Chief Administrative Law Judge

Columbia, South Carolina
June ____, 2013

EXHIBIT D

From:	Harvin Fair
To:	Blan Holman; Randy Lowell
Cc:	Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Tracey Green; Kelly Rainsford
Subject:	RE: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC
Date:	Wednesday, December 18, 2013 2:22:33 PM

At this point in time, Judge Anderson no longer wishes to have a conference regarding the Motion to Vacate.
Judge Anderson is scheduling a status conference for January 9, 2014 at 2:00 pm in Columbia.
The parties need to be prepared to discuss the status of the case and the impact of all pending motions on the trial currently scheduled for the week of January 27, 2014.
Thank you for your cooperation.

Harvin Fair
Law clerk to the Honorable Ralph King Anderson, III
office phone 803-734-6409

From: Blan Holman [mailto:bholman@selcsc.org]
Sent: Wednesday, December 18, 2013 1:43 PM
To: Randy Lowell
Cc: Harvin Fair; Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Tracey Green; Kelly Rainsford
Subject: Re: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC

Ms Fair -

I have a trial Jan 6 and 7, and our response to SPA's forthcoming motion for reconsideration is due Jan 8. (I offered to accelerate our response time if that would help the Court in its scheduling a hearing January 2. Inasmuch as SPA has objected to that proposal, we would stick with the earlier agreed date.) Mr. Lowell has, in his email, asked the Court for an extension of time in which to file a reply. While he did not consult with us, but we have no objection.

I've not had a chance to check with my co counsel, but I could attend a scheduling conference January 9 if that would suit the Court. We would respectfully ask that the Court include a hearing on our motion then, since it involves a narrow dispositive issue of law and has been fully briefed.

Thank you,

Blan

Sent from my iPhone

On Dec 18, 2013, at 12:31, "Randy Lowell" <RLowell@Willoughbyhoefer.com> wrote:

> Ms. Fair:
>
> The Ports Authority still has the opportunity for a reply to the Cruise Opponents'

response. As this Court may recall, in the oral argument on the pending motions the Court postponed argument on the Cruise Opponents' motion to quash the subpoena at the request of Cruise Opponents' counsel because they still had time to reply (which they never filed).

Further, Cruise Opponents' counsel previously requested an extension to respond to the motion for reconsideration until January 8. Now they say they may file sooner. The Ports Authority has the right to a reply. Given prior history and opposing counsel's statement that it may file the response sooner, the Ports Authority respectfully request that the reply be due either 10 days after filing of the response or January 15, whichever is later.

Although discovery has closed, with several motions pending and awaiting orders, a motion for reconsideration to be filed tomorrow, a motion to vacate pending, forthcoming motions for summary judgment, and a forthcoming opinion from the South Carolina Supreme Court that may resolve this case, it seems unlikely that this case will be ready (or even appropriate) for a trial on the merits the week of January 27. *See* ALC Order, dated Dec. 2, at 15 n.7 ("Our courts have not resolved the question of whether increased truck and car traffic as well as increased noise and congestion are legally sufficient to establish standing. This Court is not ignoring these allegations but rather is delaying any ruling on these until this question is resolved in this case or by the appellate courts.").

In light of the pending and impending motions and the impending decision of the Supreme Court, it may be appropriate to hold a status conference the week of January 6.

Randy

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.

From: Blan Holman [mailto:bholman@selcsc.org]
Sent: Wednesday, December 18, 2013 10:08 AM
To: Randy Lowell; Harvin Fair; Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Tracey Green
Cc: Kelly Rainsford
Subject: RE: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC

Ms. Fair -

We would respectfully request that the Court not wait on possible future summary motions from SPA before dealing with our motion, which was already filed. We would be happy to file our response to the motion for reconsideration before January 8.

Thank you,

Blan

Blan Holman
Southern Environmental Law Center
43 Broad St. - Suite 300
Charleston, SC 29401

p. 843 720 5270
www.southernenvironment.org

From: Randy Lowell [RLowell@Willoughbyhoefer.com]
Sent: Wednesday, December 18, 2013 9:57 AM
To: Harvin Fair; Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; Blan Holman; Jefferson Leath; Michael Corley; Philip L. Lawrence; Tracey Green
Cc: Kelly Rainsford
Subject: RE: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC

Unfortunately, that week is scheduled as vacation for me and I will not be available.

However, it appears that such a hearing is premature. A motion for reconsideration of the denial of the motion to dismiss will be filed by the Ports Authority tomorrow, and the Cruise Opponents have requested (and the Court has consented) to an extension on the response date until January 8. Further, the Ports Authority intends on filing at least one motion for summary judgment, one ground of which will be lack of jurisdiction. It would be in the best interests of the Court and the parties to argue all of these motions at one time. Additionally, unless the Court has jurisdiction, then it has no authority to rule on the motion to vacate. Therefore, the motion for reconsideration and the jurisdictional argument in the forthcoming motion for summary judgment must be resolved prior to ruling on the motion to vacate.

Thank you.

Randy

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.

From: Harvin Fair [mailto:hfair@scalc.net]
Sent: Wednesday, December 18, 2013 9:38 AM
To: Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; J. Blanding Holman IV (bholman@selcsc.org); Jefferson Leath; Michael Corley; Philip L. Lawrence; Randy Lowell; Tracey Green
Cc: Kelly Rainsford
Subject: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC
Importance: High

Judge Anderson would like to have a hearing on the Petitioners' Motion to Vacate. The Court has time available on Thursday, January 2, 2014 at 10:00 am for a hearing. Would the parties be available for a hearing on that date?
Thank you for your attention to this matter.

Harvin Fair
Law clerk to the Honorable Ralph King Anderson, III
office phone 803-734-6409

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court. South Carolina Administrative Law Court Trusted Root Certificate https://cn.arx.com/?options=7&bselected=MTU2

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court. South Carolina Administrative Law Court Trusted Root Certificate https://cn.arx.com/?options=7&bselected=MTU2

EXHIBIT E

From: Amy Armstrong [mailto:aascelp@fastmail.fm]
Sent: Wednesday, May 22, 2013 10:47 PM
To: Chad N. Johnston; amy@scelp.org
Cc: Randy R. Lowell
Subject: RE: Preservation Society of Charleston et al. v. SCSPA et al.; 13-ALC-07-056-CC

Of course, that's fine.

Amy

Sent from my Samsung Epic™ 4G Touch

Chad Johnston <cjohnston@willoughbyhoefer.com> wrote:

Amy,

I am writing to see if you would consent to a thirty (30) extension to your clients' First Set of Interrogatories and Requests for Production in the above-captioned matter. The Ports Authority's responses are currently due on May 26, 2013, and I calculate our new due date would be June 25, 2013. Please advise as to your amenability to our request.

Thanks and best regards,

Chad

Chad N. Johnston, Esquire
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202
Telephone #: (803) 252-3300
Facsimile #: (803) 256-8062
E-mail address: cjohnston@willoughbyhoefer.com

Confidentiality Notice: The information contained in this transmittal, including any attachment, is privileged and confidential information and is intended only for the person or entity to which it is addressed. If you are neither the intended recipient nor the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any disclosure, copying or distribution or the taking of any action in reliance on the contents of this transmittal is strictly prohibited. If you have received this transmittal in error, please contact the sender immediately by telephoning the sender at (803) 252-3300 and, also, please delete this transmittal from any computer or other data bank. Upon request, we will reimburse your reasonable costs of notifying us of a transmission error. Thank you.

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EXHIBIT F

From: Randy R. Lowell
To: Amy Armstrong
Cc: michael@scelp.org; jl@leathbouchlaw.com; Lawrence, Philip; Chad N. Johnston
Subject: RE: Preservation Society v. Ports Authority, Docket No. 13-ALJ-07-0056-CC
Date: Wednesday, May 08, 2013 8:58:00 AM

So the bottom line is that you need an extension of time. I will treat your response to my inquiry regarding compliance with the deadline as an extension request and grant a 30-day extension for the response and production. That places your responses due on Monday, June 3.

If you have any difficulties or issues meeting another deadline in the future, please contact me before the deadline passes and I'm sure we can work something out.

Randy

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.

From: Amy Armstrong [mailto:amy@scelp.org]
Sent: Tuesday, May 07, 2013 7:27 PM
To: Randy Lowell
Cc: michael@scelp.org; jl@leathbouchlaw.com; Lawrence, Philip; Chad Johnston
Subject: Re: Preservation Society v. Ports Authority, Docket No. 13-ALJ-07-0056-CC

Randy:

We have been gathering and organizing Petitioners' documents for the last several weeks. As you might imagine, there is a significant volume of documents that are responsive to your requests dating back to 2009, and it is taking a significant amount of time to review, organize and bates label everything. For example, we have 1,800 emails from the Preservation Society alone.

To date all of the discovery responses from Charleston Communities for Cruise Control are bates labeled and organized. That is the only Petitioner for which I have production nearly ready to go. I also have a privilege log near completion with approximately 430 email communications. Most of my clients have provided me all of the requested documents, but even though I am awaiting some documents, I still have a great deal of review and organization before they are ready to be produced.

I anticipate at least 2 more weeks before I can have production completed, particularly since I'm at the top of the trial roster in Horry County next week. I had planned on sending all the responses together, but if you would like I am happy to send them for each petitioner separately as we have them completed.

Amy

On Tue, May 7, 2013, at 02:02 PM, Randy Lowell wrote:

Amy:

I wanted to check on the status of the petitioners' discovery production to the Ports Authority. The Ports Authority served requests for production of documents on the petitioners on March 28, and the response deadline was last Thursday, May 2. I have not received a request for an extension nor have I received any documents. Could you please advise as to the status of the response?

Thanks.

Randy

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.
(930 Richland Street)
Post Office Box 8416
Columbia, South Carolina 29202 (29201)
Telephone #: (803) 252-3300
Facsimile #: (803) 256-8062
E-mail address: rlowell@willoughbyhoefer.com

Confidentiality Notice: The information contained in this transmittal, including any attachment, is privileged and confidential information and is intended only for the person or entity to which it is addressed. If you are neither the intended recipient nor the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any disclosure, copying or distribution or the taking of any action in reliance on the contents of this transmittal is strictly prohibited. If you have received this transmittal in error, please contact the sender immediately by telephoning the sender at (803) 252-3300 and, also, please delete this transmittal from any computer or other data bank. Upon request, we will reimburse your reasonable costs of notifying us of a transmission error. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it was sent) without our express written consent.

--

Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078
FAX: (843) 527-0540
amy@scelp.org

EXHIBIT G

From:	Randy R. Lowell
To:	Amy Armstrong
Cc:	Jeff Leath; Michael Corley; jessie@scelp.org; Chad N. Johnston
Bcc:	Lawrence, Philip
Subject:	RE: Preservation Society, et al.discovery
Date:	Wednesday, May 29, 2013 3:17:00 PM

Sure. Not a problem.

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.

-----Original Message-----
From: Amy Armstrong [mailto:amy@scelp.org]
Sent: Wednesday, May 29, 2013 3:06 PM
To: Randy Lowell; Chad Johnston
Cc: Jeff Leath; Michael Corley; jessie@scelp.org
Subject: Preservation Society, et al.discovery

Randy:

Since we last communicated about Petitioners' overdue discovery, I have had a date certain trial set for June 3rd-4th and the supreme court schedule oral arguments in our Kiawah case on June 5th. I also have a s.ct. brief on cert due on June 7th. These three things have occupied nearly all of my time for the past two weeks and I haven't been able to spend the time preparing discovery responses. I don't see how I will be able to meet the June 3 deadline that you graciously offered.

Would you be willing to extend the date until June 14th?

Thanks,
Amy

--
Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078
FAX: (843) 527-0540
amy@scelp.org

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 State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	)	Docket No. 13-ALJ-07-0056-CC **CERTIFICATE OF SERVICE**

This is to certify that I, a paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of the **Respondent South Carolina State Ports Authority's Response to Motion to Re-Open Discovery** 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

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

Breanna M. Karns

Columbia, South Carolina
This 7th day of January 2014.

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

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN THE DISTRICT OF COLUMBIA

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

July 28, 2014

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 South Carolina Ports Authority's Reply to Cruise Opponents' Return to South Carolina Ports Authority's Motion to Dismiss along with a Certificate of Service. Please file-stamp the extra copy and return it via my courier.

Thank you for your time and consideration. If you have any questions or if you need any additional information, 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
Philip L. Lawrence, Esquire

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