

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE BERKELEY COUNTY COURT OF COMMON PLEAS

Roger M. Young, Circuit Court Judge

Case No. 2010-CP-08-1771

Appellate Case No. 2014-000183

North Pleasant, LLC and Vanguard Development Group, LLC..... Appellants

vs.

South Carolina Coastal Conservation League and Edward Dana Beach, defendants,

Of whom South Carolina Coastal Conservation League is the Respondent,

**RECORD ON APPEAL
VOLUME II OF III**

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INDEX

Orders

Order Denying Defendant SCCCL's Motion to Dismiss Plaintiffs' Claim Under South Carolina Unfair Trade Practices Act filed July 20, 2011.....	1
Order Denying in Part and Granting in Part the Defendants Motion for Summary Judgment filed December 18, 2012.....	3
Order of the Honorable Roger M. Young, Sr. Denying Motions to Alter Or Amend the Order of December 18, 2012 filed March 4, 2013.....	7
Order-Form 4, Dismissing Defendant's Abuse of Process Claim filed June 18, 2013.....	8
Order Denying Motion to Reconsider filed January 17, 2014.....	9

Pleadings

Summons and Complaint filed May 20, 2010.....	16
Answer and Counterclaim filed July 19, 2010.....	28
Reply to Counterclaim filed July 27, 2010.....	37

Other Materials:

Defendants' Notice of Motion and Motion for Partial Summary Judgment filed May 26, 2011.....	41
Defendants' Memorandum in Support of its Motion for Partial Summary Judgment filed June 20, 2011.....	43
Affidavit of Edward Dana Beach in Support of its Motion for Partial Summary Judgment filed June 16, 2011.....	50
Plaintiffs Memorandum in Opposition to Motion for Partial Summary Judgment and in Support of Motion to Compel filed June 20, 2011.....	53
Plaintiffs' Materials in Opposition to Defendants' Motion for Partial Summary Judgment filed June 15, 2011.....	64
Deposition of Richard Chinnis.....	65
Deposition of Nancy Vinson.....	78

Final Order and Decision.....	117
Defendants' Notice of Motion and Motion for Summary Judgment filed July 30, 2012.....	168
Memorandum of Law in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment filed November 13, 2012.....	171
Plaintiffs' Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment filed November 13, 2012 with Attached Exhibits.....	209
Exhibit 1: Deposition of Hamilton Davis	230
Exhibit 2: Pages from Mitchell Flannery Deposition.....	250
Exhibit 4: Pages from Joshua Hulen Deposition	254
Exhibit 6: Pages from Thomas Hartnett Deposition.....	280
Exhibit 7: Pages from Megan Derosiers Deposition.....	290
Exhibit 8: Pages from Dana Beach Deposition.....	303
Exhibit 9: Coastal Conservation League Contributor List.....	394
Exhibit 10: Pages from Charles Lane Deposition.....	405
Exhibit 11: Pages from Robert DeMoura Deposition.....	433
Exhibit 12: Pages from Marshall Sandford Deposition.....	469
Exhibit 13: Pages from Daniel Young Deposition.....	478
Exhibit 14: Pages from Nancy Vinson Deposition.....	486
Exhibit 15: Pages from Steve Nichols Deposition.....	510
Exhibit 17: Board of Trustees Minutes dated February 21, 2006.....	560
Exhibit 18: Conservation Easement and Acceptance.....	572
Exhibit 19: Pages from Gary Morris Deposition.....	592
Exhibit 22: Pages from Christopher Donato Deposition.....	693
Defendants' Notice of Motion and Motion to Alter or Amend Judgment filed January 7, 2013.....	740
Memorandum of Law in Opposition to Plaintiffs' Motion to Alter or Amend and in Support of Defendants' Motion to Alter or Amend filed January 21, 2013.....	744
Plaintiff's Motion to Alter or Amend (Rule 59) filed December 18, 2013....	752
Transcript of Record of the Hearing held before the Honorable Roger M. Young, Sr. December 9-11, 2013.....	762
Plaintiffs' Deposition Designations.....	1016
Defendants' Counter-Deposition Designations.....	1022

Defendants' Deposition Designations.....	1024
Deposition of Daniel Burns dated April 13, 2012.....	1027
Deposition of Flannery Mitchell dated May 30, 2012.....	1046
Deposition of Megan Derosiers dated August 27, 2012.....	1055
Deposition of Robert M. Pittenger September 13, 2011.....	1080
Plaintiffs' Exhibits:	
Exh. 2 Exclusive Right to Sell Agreement.....	1155
Exh. 4 Letter to Michael Bennett from Daniel Burns dated May 11, 2007.....	1160
Exh. 5 Hamilton Davis Voice Mail.....	1161
Exh. 13 Community Cook Out and Bar-B-Que Flyer.....	1162
Exh. 27 Letter of Intent to Dan Burns from North Pleasant, LLC dated March 1, 2007.....	1163
Exh. 32 Email from Josh Hulen to Daniel Fogarty dated March 15, 2007.....	1205
Defendants' Exhibits:	
Exh. 1 Email from George Bullwinkle to Hamilton Davis dated October 8, 2007 attaching the Keystone Tract Development Agreement between North Pleasant, LLC, Vintage Land, LLC and Berkeley County.....	1206
Exh. 4 Letter to Mercer Reynolds from John Frampton dated December 12, 2005.....	1246
Exh. 5 Appraisal of North Pleasant, Vintage Land Keystone Tract in Berkeley County dated October 17, 2005.....	1247
Exh. 10 Email from Josh Hulen to Daniel Fogarty dated February 20, 2007.....	1340
Exh. 12 Email from Paul Smith to Josh Hulen dated April 17, 2007.....	1343

EXHIBIT 14

Deposition of NANCY VINSON

1 to the effect on individual property owners'
2 property taxes, if an area near them was developed
3 into some sort of suburban residential element.
4 Are you familiar with that research at all?

5 A. I know that there was some -- I mean,
6 there's been a lot of national -- some national
7 research. And I remember some discussion about
8 some research, but I don't remember the details.

9 Q. Okay. But that's not something --

10 A. Wasn't involved in.

11 Q. As a person of some standing with the
12 League -- and I say that only in a favorable way --
13 for a number of years, in your mind would it be
14 important before a League representative told rural
15 residents that if a particular development -- piece
16 of property was developed for suburban purposes,
17 their property taxes would go up, that that League
18 representative should have made sure that that was
19 true?

20 A. Yes. Or should have something to back it
21 up. There should be some statistics or some -- it
22 may not be in a specific area, but in general they
23 should certainly have something to back it up.

24 Q. Same question with respect to the League
25 representative telling rural residents that if a

Deposition of NANCY VINSON

1 going about an hour. I can keep going or --

2 A. I'm tough.

3 Q. Then we will. I am going to change horses
4 for you. I think briefly, Ms. Vinson, you were on
5 the board of an organization which went by its
6 initials ACRET, the Ashley Cooper River
7 Environmental Trust.

8 A. Yes.

9 Q. And you, I believe, were the secretary?

10 A. Right.

11 Q. There was a certain amount of money that was
12 provided by state funds to the trust; is that
13 right?

14 A. Yes. 4.75 million.

15 Q. Very good. Do you know where that number
16 came from? How did it happen to end up being
17 \$4.75 million? Do you have any idea?

18 A. No. When the lawyer that was hired by the
19 Commerce Department came to meet with us to talk
20 about the project and discuss a fairly large number
21 of wetlands to be filled with the project, I think,
22 you know, they had had internal discussions. And
23 it was a lot of wetlands to be filled. And I
24 really don't remember, but I think that number
25 didn't come from us. It came from commerce through

Deposition of NANCY VINSON

1 their attorney.

2 Q. Did Mr. Beach ever tell you where that
3 number came from?

4 A. He wasn't involved in those discussions I
5 don't think. I think it was John Hodge and I.

6 Q. Just you and Mr. Hodge?

7 A. I think so.

8 Q. Do you remember when that was?

9 A. Not exactly.

10 Q. Do you know, had the permit been applied for
11 at that point?

12 A. No. They came in before that to talk with
13 us because they knew that 36 acres of wetlands was
14 a large amount. They knew that would get our
15 attention, and they wanted to not have a big
16 problem with, you know -- they wanted to work out
17 any concern on the front end.

18 Q. With whom?

19 A. With us and with the agencies as well, the
20 Corps of Engineers, DNR.

21 Q. So 30-some-odd acres of wetlands was on the
22 site and that was going to have to be filled?

23 A. It might have been 42 to start with. We got
24 them to reduce it a good bit.

25 Q. So they avoided some wetland interruption?

Deposition of NANCY VINSON

1 A. Yes.

2 Q. You have been involved with wetland fill
3 permits before.

4 A. Yes.

5 Q. Are you familiar with what is called a
6 mitigation SOP?

7 A. Yes.

8 Q. Did anybody in your experience with respect
9 to these wetlands and what was to be the Boeing
10 plant ultimately, which was the Vought plant --
11 when Mr. Hodge came to see you, did anybody ever
12 crunch those numbers and say, well, this is how
13 many credits we're going to need to satisfy the
14 Corps' wetlands mitigation?

15 A. I wasn't involved in that. Didn't crunch
16 numbers, but I know there was a lot of discussion
17 about all of that stuff, probably with their
18 attorney and the agencies. No, I wasn't involved
19 in the number crunching, but I'm sure that that was
20 known.

21 Q. Okay. I was going to ask you. Did anybody
22 ever communicate to you in any fashion here is how
23 many credits?

24 A. They might have. I don't recall. It's very
25 likely that did occur. I just don't recall.

Deposition of NANCY VINSON

1 Q. I just happen to have --

2 (Exhibit No. 1 was marked for
3 identification.)

4 Q. This is called at the top decision document
5 for Corps of Army permit. Are you familiar with
6 these type of documents generated by the Corps of
7 Engineers?

8 A. Uh-huh.

9 Q. Let me ask you how familiar are you, for the
10 record. I think I know. But for the record, how
11 familiar are you with this Corps permitting process
12 for wetlands?

13 A. I am, you know, familiar with it and know
14 that for large projects they issue these decision
15 documents.

16 Q. And you have been involved with the Corps
17 with wetland permitting for a long time?

18 A. A few. Usually my experience has been more
19 with the state agencies than the Corps.

20 Q. Okay. If you could, go to page ten with me
21 where there's a compensatory mitigation paragraph
22 towards the top of the page.

23 A. Uh-huh.

24 Q. And down here towards the bottom where it
25 says, the Corps compensatory mitigation SOP

1 suggests that approximately 450 mitigation credits
2 will be required to offset project impacts. Are
3 you familiar enough with the SOP to tell me whether
4 that seems right to you?

5 A. I don't know, no.

6 Q. All right. But what is the process -- let
7 me ask you. What is the process after one knows
8 how many mitigation credits are needed? How
9 typically are those met, in your experience?

10 A. Well, the standard method is to go out and
11 buy the conservation credits from an existing
12 conservation -- I mean, wetlands mitigation effort.

13 Q. Are there any other ways that the Corps will
14 accept, as you're familiar with the function?

15 A. Well, in this case, we created a much better
16 way to get more bang for the buck. By creating
17 this nonprofit board and taking applications for
18 wetlands protection issues that would protect
19 really more wetlands than the standard by adding
20 important tracts to the sort of sprawl blocking
21 green belt.

22 Q. Okay.

23 A. And protecting wetlands in the right places.
24 That would be part of the larger tract that is
25 utilized by wildlife.

Deposition of NANCY VINSON

1 Q. Look at the last sentence there with me, if
2 you would. Where it says, therefore, the Corps
3 believes the mitigation plan will generate more
4 than three times the number of mitigation credits
5 that would typically be required for project
6 impacts.

7 Is that the first time you have ever heard
8 what you-all did with the ACRET money? The
9 4.75 million generated many more credits than was
10 needed.

11 A. No. That was our goal. It was our goal to
12 do that because these were public funds, and we
13 wanted to leverage that money to get the most
14 wetland protection for -- you know, possible. So
15 we, you know, looked at proposals. We solicited
16 proposals that would, you know, essentially have
17 private entities like the Audubon Society and Ducks
18 Unlimited competing for the money and coming up
19 with the projects that would -- that they would be
20 adding funds to that would result in a larger --
21 much larger protection than just the standard
22 amount of credits that you get for -- that was our
23 goal.

24 Q. I'm sorry. Go ahead.

25 A. That was our goal.

Deposition of NANCY VINSON

1 Q. Okay. Indeed. So a much smaller amount of
2 money, is it fair to say, could have been spent to
3 meet the Corps' actual mitigation requirements,
4 these 450 credits?

5 A. I don't really know. I never looked at how
6 many dollars per credit or any of that. So I just
7 don't know about that.

8 Q. Are you familiar with the Newkirk
9 Environmental people?

10 A. Yes.

11 Q. Are they adept at calculating --

12 A. Yes.

13 Q. -- credits?

14 A. Yes.

15 Q. I was going to say credits under the SOP.
16 We're talking over each other.

17 A. Sure.

18 Q. Okay. Are they also adept, in your
19 experience, with finding ways to satisfy the Corps'
20 mitigation requirements?

21 A. Yes.

22 Q. The Newkirk people got involved with the
23 ACRET process at some point, did they not?

24 A. Yes.

25 Q. Tell me why they got involved.

Deposition of NANCY VINSON

1 A. We needed to purchase some credits from the
2 mitigation bank because not all of the -- something
3 specific or some specific reason we needed to
4 purchase wetlands of this type or wetlands that
5 were restored or some specific wetlands. And I'm
6 thinking that Newkirk was involved with that
7 transaction.

8 Q. Okay.

9 A. If I'm remembering correct.

10 Q. Was Nat Ball at the Corps involved with this
11 process?

12 A. Yes.

13 Q. What was his involvement?

14 A. He kind of ran the show from the Corps'
15 perspective.

16 Q. Okay. And in terms of ACRET's dealing with
17 him, what was he doing?

18 A. He had to agree to anything that ACRET, you
19 know, decided on. If we -- he had to give the
20 ultimate approval for yes, this is mitigation.
21 Yes, this meets the requirements. Yes, this is an
22 acceptable way to spend that money.

23 Q. Was Newkirk brought in because Mr. Ball was
24 not willing to give mitigation credit for some of
25 the things that the ACRET board wanted to do with

Deposition of NANCY VINSON

1 the \$4.75 million?

2 A. I don't really remember. The lawyer would
3 have been, you know, their representative -- the
4 company's representative would have been involved
5 in those discussions. I know that we needed some
6 certain type of wetlands and that the -- the things
7 that we were looking at didn't meet some of the
8 requirements that needed to be met.

9 Q. Okay.

10 A. So that sounds right to me.

11 Q. Okay. I don't propose to give you -- I will
12 suggest to you that I was provided some e-mails by
13 Mr. Lane, which you participated in the
14 conversations with him about Nat Ball.

15 And let me -- is it true that Mr. Ball's
16 position was becoming somewhat of a problem for
17 you-all's spending of this money?

18 A. He was very by the book, and Charles Lane
19 might have preferred to be more creative.

20 Q. Okay. Isn't it true that some of the
21 purchases that were made to protect land were land
22 that was not a wetland at all?

23 A. Right. It was land that was, you know,
24 bordering the wetland, land that would provide
25 important habitat to create a buffer, and also as

Deposition of NANCY VINSON

1 part of a larger eco system.

2 Q. Okay. So purchases that you-all
3 obviously --

4 A. I think every purchase contained some
5 wetlands.

6 Q. All right. One of the purchases was
7 essentially a pine plantation. Isn't that correct?

8 A. I don't know. Which one was that?

9 Q. I will let you tell me.

10 A. If it was bordering on another important
11 wetland or wetland system to provide buffer and
12 prevent development, then that was probably
13 appropriate.

14 Q. I understand. Are you familiar with this
15 letter? It's a letter from Mr. Morris, Gary
16 Morris. It's ultimately to Ms. Hadden?

17 A. Let me read it. Now, what was your
18 question?

19 Q. On the second page of this letter, there's a
20 list of purchases, various properties and so forth.

21 Do you recall -- does this refresh your
22 recollection whether any of these particular
23 properties were wetland tracts or mainly pine
24 plantations?

25 A. I don't remember discussions about property

1 being mainly a pine plantation, no.

2 Q. Do you remember that -- whether or not the
3 conservation easements, the real estate documents
4 that were put in place, that in some cases those
5 were not the standard conservation easement that
6 the Corps of Engineers would normally require?

7 A. I think some had to be the standard ones
8 that the Corps would normally require. And then I
9 think after their specific mitigation requirements
10 were met, then other easements were used that
11 were -- didn't have to be the exact qualifications
12 that the Corps would require.

13 Q. You have taken me far down the road with
14 your answer. Is it true that the -- that a good
15 bit more money was spent out of the ACRET funds
16 than was necessary to actually meet Corps' --

17 A. I believe that's true. If that was our
18 document.

19 Q. So once you had met the Corps' mitigation
20 requirements, you could then do other things with
21 the money that -- where the Corps wouldn't
22 necessarily have given you mitigation credit. Is
23 that an --

24 A. Say that again.

25 Q. Well, we were talking about different -- you

Deposition of NANCY VINSON

1 used different forms of the real estate documents.

2 A. Right. It could be a simpler kind of a
3 conservation easement without the more highly
4 technical Corps wetlands easement, and the wetlands
5 would still be just as protected. So after meeting
6 the strict requirements of the Corps -- of the
7 Corps' easement, then we could use the -- it was
8 easier to do and just as protective, normal
9 conservation easement to protect some of the
10 wetlands, yes.

11 Q. And the reason you're able to do that, to
12 use the less restrictive -- in your words, more
13 normal easement, is because the Corps' mitigation
14 requirements had already been satisfied?

15 A. I believe so.

16 Q. All right. Let me ask you to take a look
17 at --

18 (Exhibit Nos. 2, 3, 4, 5 were marked
19 for identification.)

20 Q. It's called amended memorandum agreement.
21 Are you familiar with this document?

22 A. Yes, I have signed it apparently.

23 Q. You did?

24 A. Yes. My signature is on this, so apparently
25 I was familiar with it. I haven't seen it in some

Deposition of NANCY VINSON

1 time. It would take me a few minutes to
2 refamiliarize myself with it. But what would you
3 like to know?

4 Q. This document, was this important in terms
5 of defining what the ACRET trust was supposed to do
6 with that state money?

7 A. Let me read it first.

8 Q. Okay.

9 A. Okay.

10 Q. Tell me -- I don't want to put words in your
11 mouth. I do, but I won't. What is the role of
12 this document in terms of the ACRET mission?

13 A. It sort of says that there will be
14 4.75 million placed in trust, and we will figure
15 out what wetlands to protect with it. So it's kind
16 of the memorandum that spells out how that --

17 Q. All right. So this is telling you-all what
18 you were supposed to do with the money?

19 A. Right.

20 Q. And this was a statement, isn't that
21 correct? You have to verbally answer.

22 A. Yes.

23 Q. We always forget no matter how often we have
24 done this.

25 It never changed its character, did it, if

Deposition of NANCY VINSON

1 you know, or was it always state money?

2 A. As far as I know.

3 Q. All right. In the very first page, very --
4 the first paragraph, number one, the second
5 sentence says, the mitigation trust is a lump sum
6 payment, \$475,000. Two, satisfied compensatory
7 mitigation required by the Corps and to fulfill the
8 terms of this agreement.

9 What I don't understand is how we got from
10 that statement, where this money was supposed to be
11 spent satisfying compensatory mitigation required
12 by the Corps, to some part of that money being
13 spent that wasn't necessary to satisfy a mitigation
14 requirement by the Corps?

15 A. Okay. Let me read this, and I'll point it
16 out to you. So it doesn't just say satisfy the
17 compensatory mitigation requirements. It says and
18 to fulfill the terms of this agreement.

19 Q. Right.

20 A. In this agreement it says, such funds shall
21 be used exclusively for the accusation of wetlands
22 and adjacent upland tracts for conservation
23 easements consistent with the terms of this
24 agreement. So it was for wetlands and uplands.
25 And that's number three.

Deposition of NANCY VINSON

1 Q. Okay. Right. If you know -- I guess, your
2 role on the board, weren't you the secretary?

3 A. Yes.

4 Q. What was your -- what did you do as the
5 secretary with respect to the board?

6 A. I took some notes at the meetings, I
7 recorded votes, and polled members at the request
8 of the chair of the board. I called meetings, I
9 notified the newspaper to make sure that legal
10 notices went out for meetings. I compiled all of
11 the proposals that came in and provided copies to
12 all of the board members. I kind of pushed and
13 pushed to try to keep the process moving along.
14 This was a unique thing. It had not been done
15 before in South Carolina. I'm not sure across the
16 country. And so it was a real learning process for
17 everyone. For example, I mean, Ducks Unlimited had
18 never dealt with the Corps easements before, the
19 type that the Corps wanted. So that was a learning
20 curve. And so I tried to keep things rolling
21 along, and do the role a secretary would normally
22 do.

23 Q. Mr. Beach, I believe, has been identified as
24 a trustee as were you. You were identified as a
25 trustee. He was also identified as the treasurer.

Deposition of NANCY VINSON

1 Do you remember that? What did he do as a
2 treasurer?

3 A. Nothing. I did it all.

4 Q. So you did the work for him. Did he sign
5 things?

6 A. No. I signed things. I mean, he might have
7 signed some letter or something occasionally, but I
8 signed the checks.

9 Q. All right. This money that came to the
10 trust, were you aware that it came from an economic
11 development bond issued by the Department of
12 Commerce?

13 A. Sounds familiar.

14 Q. Did anybody ever explain to you what the
15 limitations were by virtue of that bond issuance on
16 how the money can be spent?

17 A. No. I would assume that the Commerce
18 Department and the lawyer that they hired would --
19 I mean, I would not spend -- or spent money
20 inappropriately. So no, I'm not really familiar
21 with that.

22 Q. In doing the work of treasurer, did you
23 prepare anything or sign anything? Have any --
24 that's a bad question. Let me start over. As the
25 individual doing the work of the treasurer, did you

Deposition of NANCY VINSON

1 do anything, the point of which was to confirm that
2 the money being spent by the trust was consistent
3 with the bond issuance?

4 A. I don't really remember. It's possible. I
5 just don't recall.

6 Q. This is -- first of all, this is a heavily
7 redacted version that was supplied to me by the
8 Department of Commerce dated August 28th of 2003.
9 And it's entitled to Project Buffalo, which I -- it
10 identifies the Vought aircraft and Alenia project
11 that we have been speaking of.

12 On the third page at the bottom, there's a
13 paragraph -- a couple of sentences entitled
14 wetlands mitigation. The site -- apparently this
15 is a typo, but it says the site as -- apparently it
16 meant to say has extensive wetlands. With the help
17 of Governor Sanford, we arranged an agreement with
18 Dana Beach to support the mitigation plan to
19 purchase \$5 million dollars worth of acreage and
20 pristine wetlands and marsh.

21 Do you have any knowledge of whether there's
22 any truth to that statement?

23 A. The Governor and Dana could have had a
24 conversation. I mean, the first I knew about it
25 was when John Hodge called me. I just don't

Deposition of NANCY VINSON

1 remember if Dana was in on an early meeting or not.

2 Q. Okay.

3 A. Dana and the Governor talked not
4 infrequently.

5 Q. So you don't remember if Dana told you that
6 I had this -- I made this deal with the Governor,
7 or I had a conversation with the Governor or
8 anything about that?

9 A. I don't remember that. I thought it -- I
10 mean, he could have. I just don't remember that.
11 I thought it came from, you know, our discussions
12 with John Hodge, mine or ours, whichever. I
13 don't -- I just don't recall.

14 Q. Then let me ask you this. Why was more
15 money spent doing preservation, buffering, all of
16 the things that you did, why was more money spent
17 than was necessary to meet the Corps' mitigation
18 requirements?

19 A. That was the plan from the start, to create
20 a project that was really in the public interest,
21 that really did a lot more than just paying into
22 our existing conservation bank would do. That was
23 the plan. It was public funds, and it was to be
24 used to further public purposes of protecting
25 significant lands. That was always the planned

Deposition of NANCY VINSON

1 purpose for the project.

2 Q. I understand you absolutely believe that
3 there was public benefit to this.

4 A. It was a larger amount of wetlands -- I
5 mean, the amount of wetlands was large. And so
6 there really needed to be a public interest above
7 and beyond just a normal wetlands fill, I think.
8 It was probably in the folks mind at the time too.

9 Q. What do you mean by that?

10 A. Normally, the League might oppose such a
11 significant wetland fill. That's a lot of
12 wetlands. So there needed to really be a public
13 interest in them, because the public interest is
14 what suffers when too many wetlands are filled.
15 You know, you need flooding downstream, groundwater
16 recharge is impaired, and wildlife habitat is
17 potentially lost. So there needed to be an
18 important public benefit to a project with such a
19 large amount of wetland fill.

20 Q. Would the -- would not a project generating
21 such a large amount of jobs in the economic
22 benefit, would that not have constituted --

23 A. There needs to be --

24 Q. -- public benefit?

25 A. There needs to be also an environmental

1 benefit, not just economic. When you're damaging
2 the environment, you need to -- that was the whole
3 goal to make it a really win-win situation for the
4 environment and the economy.

5 Q. If the state, which was paying for all of
6 the infrastructure, of course, at this project,
7 including the wetlands mitigation, if the state had
8 said, we're going to pay for this with the people's
9 money, the public money, our money --

10 A. Pay for what?

11 Q. Pay for wetland mitigation.

12 A. Okay.

13 Q. But they said, we're just going to pay for
14 what it costs to meet the government's mitigation
15 requirements and that's all. And if you have any
16 of that money left over, give it back to the state.
17 Would the League have opposed the project do you
18 think?

19 A. I don't know. We look at all the benefits
20 and all of the harm, and I don't know. We did
21 appeal the DaimlerChrysler plant because we had
22 great concerns about wetlands. And it was -- that
23 were planning to be filled for that. And I think
24 the next day or something they went to Alabama.
25 Alabama was also courting that -- some other

Deposition of NANCY VINSON

1 states. Because of the large amount of wetland
2 fill, and I'm thinking it might have been even the
3 same tract. I don't remember. And so the state
4 didn't want anything like that to happen again I'm
5 sure. And we don't like to be in a position to
6 appeal big important permits either. So they
7 wanted to be sure that there were good
8 environmental benefits in this project. And the
9 State is to be commended for wanting to be sure
10 that when they are destroying significant amounts
11 of wetlands that there are real environmental
12 benefits as well as economic ones.

13 Q. So if the State had said, no, we are going
14 to pay to meet government mitigation requirements,
15 the League might have considered --

16 A. The League would have looked at it
17 carefully. Just as with any large project, it
18 might have considered appealing it.

19 Q. As you did with the DaimlerChrysler, even if
20 that would have meant the project going to North
21 Carolina or to Alabama?

22 A. Well, we called the Governor before we
23 appealed the other plant and tried to, you know,
24 get together and see if we could work something out
25 because it was a significant amount of wetlands and

Deposition of NANCY VINSON

1 the mitigation wasn't even, you know, being -- we
2 felt it was very inadequate, the DaimlerChrysler
3 situation. We're not even opposed -- I don't
4 remember the details. It was irregular. So would
5 you repeat the question?

6 Q. No. You answered the question.

7 A. Okay.

8 Q. Who was the Governor at that time?

9 A. Hodges, I believe.

10 Q. Governor Hodges. All right.

11 A. I got a call from him the next day.

12 Q. What did he say?

13 A. Dana talked to him. He was not pleased.

14 Q. Who was not?

15 A. The Governor was not pleased with the
16 appeal.

17 Q. After the appeal. I'm sorry. What did you
18 you-all want for the Governor to do with respect to
19 DaimlerChrysler?

20 A. It seems like the permit was about to be
21 issued without wetlands mitigation, without a plan
22 for it or anything. I can't remember the details,
23 but it seems like it was irregular. It was just
24 totally avoiding the proper process, and we didn't
25 even know what the mitigation was, whether it would

EXHIBIT 15

Deposition of STEVE NICHOLS

1 Q. Okay.

2 A. So we began looking at that. There is a
3 more normal process or framework to address those
4 that the Corps follows. They have had a standard
5 operating procedure for identification of
6 mitigation to ultimately end up with an equal
7 comparison, apples to apples.

8 Q. Okay. So the large conservation project was
9 sort of a big idea or main idea?

10 A. Yes.

11 Q. And held in common by most. And did
12 people -- did some of these stakeholders or
13 interest groups suggest particular projects to you?

14 A. Yes.

15 Q. Okay. What were some of those suggestions?

16 A. Well, when we met with Noel Thorn, who was
17 representing what they were calling at the time the
18 Cooper River Initiative, which was a broad-based
19 consortium or collection of -- not resource, but
20 environmental groups. Coastal Conservation League,
21 Trust For Public Land, Nature Conservancy, Lord
22 Berkeley Trust, among others. There was a large
23 number. That had an interest in acquiring
24 easements up the Cooper River and through -- and
25 the Ashley River -- Ashley and Cooper.

Deposition of STEVE NICHOLS

1 that money. And from that, the original -- I'm
2 going to say ACRET, but the group that was
3 representing ACRET in putting that together and
4 through Noel Thorn, their efforts had asked -- and
5 I think we had proposed originally \$4 million to go
6 to this large land conservation effort.

7 Q. Okay. And did you make suggestions about
8 how the large effort or large project would be
9 undertaken?

10 A. We did.

11 Q. What did you say?

12 A. Really, it was -- this was all provided by
13 the groups -- the Cooper River Initiative groups
14 provided us a framework of how they proposed to
15 structure. And the idea was that they had
16 identified a number of tracts of land that they
17 wanted to see easements, and they had been working
18 with those property owners to secure easements,
19 whether they were donated, purchased at reduced
20 rates, or outright purchased. And key to that was
21 the purchase of what they considered were a
22 couple -- in one particular case, the Keystone
23 Tract, a critical tract that if they could secure,
24 other property owners had said, if that's secured,
25 then I'm willing to move forward with an easement

Deposition of STEVE NICHOLS

1 point he was working for the Nature Conservancy.
2 But my understanding was he was representing this
3 Cooper River Initiative.

4 Q. And the Nature Conservancy was a member of
5 this group?

6 A. Yes.

7 Q. And do you know -- did he tell you or did
8 you learn whether Mr. Thorn or anyone else in the
9 group had talked to the owners of Keystone about
10 possibly acquiring the property?

11 A. I don't know whether he did.

12 Q. Did he suggest -- did Mr. Thorn or anybody
13 else suggest a price at which the property could be
14 acquired?

15 A. I don't remember one.

16 Q. And was his suggestion that they acquire fee
17 simple title to the property or simply an easement
18 on the property?

19 A. Fee simple title. I do recall in the
20 last -- I don't know whether the \$4 million was
21 suitable for purchase of what -- the tracts that
22 they were looking at. I do remember in --
23 following discussions with them as we had to
24 whittle that number -- that original \$4 million
25 down, that the group, Cooper River Initiative,

1 probably have that in our file, but I don't recall.

2 Q. All right. Anything else I need to know
3 about the mitigation work that you -- your firm did
4 at the Port as it might relate to this matter?

5 A. Nothing stands out.

6 Q. No further information as it relates to the
7 Keystone Tract, for example?

8 A. Well, I think you have seen our files. I
9 mentioned those target properties. It was
10 identified as a targeted property through that
11 process.

12 Q. Right. You-all identified it on a map that
13 you drew based on the feedback or interviews that
14 you were conducting?

15 A. That's correct. And it was suggested in the
16 Draft Environmental Impact Statement Mitigation
17 Plan and comments came back that said we would
18 rather see something lower in the harbor. And so
19 we identified in that first thing, a number of
20 targeted properties. And then narrowed that down
21 through that input process.

22 Q. And the suggestion of the Keystone Tract, in
23 particular, came from the Cooper River Coalition?

24 A. Correct.

25 Q. And anyone else?

Deposition of STEVE NICHOLS

1 A. No. Not that I remember.

2 Q. Not from the Coastal Conservation League?

3 A. No. Not direct -- again, I remember
4 meeting, but I don't remember that conversation.

5 Q. All right. Let's move over to Vought. And
6 recognizing that it was going on at -- this work
7 was going on at the same time.

8 A. Right.

9 Q. Vought was handled a little bit differently,
10 correct?

11 A. Correct.

12 Q. Tell me how the Vought process was
13 different.

14 A. We, again, came in to this mid -- well,
15 toward the end of the process. So my involvement
16 doesn't include everything that led up to that
17 mitigation. My understanding of it was that the
18 permitting of that needed to be progressed through
19 more quickly than normal. And part of that was the
20 Department of Commerce's insistence to get the
21 project permitted -- mitigation is always a long
22 process. They had provided a fee of, I think,
23 \$4.75 million or contribution for the mitigation.

24 Q. Okay. They who?

25 A. The Department of Commerce.

1 Q. Department of Commerce. Okay. And they
2 were doing that as an incentive to get the project
3 built -- located there and built?

4 A. That would be my understanding. Again, I
5 wasn't directly involved in that.

6 Q. All right. So this was \$4.7 million of
7 state money that was being contributed toward
8 mitigation?

9 A. Correct. The permit was issued with
10 contingencies or conditions for the mitigation that
11 outlined how that \$4.75 million would be used to
12 offset the impacts, to mitigate.

13 Q. All right. Had work been done prior to the
14 setting of this amount on what the mitigation would
15 require?

16 A. I wasn't involved in it. I assume there
17 was, but --

18 Q. So you assume that someone else had done
19 what you just described having had happened for the
20 Port in terms of trying to assess the direct and
21 indirect impacts of coming up with a number that
22 was tied to it?

23 A. Right. Somehow.

24 Q. But you don't know who did that?

25 A. No, I don't.

Deposition of STEVE NICHOLS

1 Q. Do you know how the \$4.7 million was arrived
2 at?

3 A. I do not.

4 Q. Was this a number that the Department of
5 Commerce and the applicant -- who was the applicant
6 in this case? Was it the State or was it the
7 Vought people?

8 A. I don't know who the applicant was at that
9 point. At the time it was -- it may well have been
10 the State. It may be a project -- it was Vought.

11 Q. Vought. Okay. So presumably Vought agreed
12 with the State that this 4.7 was an appropriate
13 amount for mitigation?

14 A. Again, I don't know who suggested or how
15 they came to that number. I do remember that there
16 was discussion from the agencies that roughly 450
17 credits was necessary to mitigate for it. And
18 there was discussion that the \$4.7 million was
19 certainly much more than was necessary to create
20 the 450 credits that they had identified.

21 Q. Well, tell me about that. Who was having
22 that discussion?

23 A. The 450 credits was in the -- in here in the
24 permit or the decision document.

25 Q. And the decision document is a document of

Deposition of STEVE NICHOLS

1 the Corps of Engineers?

2 A. Correct. The basis for them issuing their
3 explanation or basis for them issuing a permit.

4 Q. And the decision document -- let's go ahead
5 and mark it.

6 (Exhibit No. 1 was marked for
7 identification.)

8 Q. We have marked Exhibit 1 to your deposition.
9 Have you seen this document before?

10 A. Yes.

11 Q. What is it?

12 A. It is the decision document for the Vought
13 Aircraft Industries permit.

14 Q. And as we just said, it's a document
15 produced by the Corps of Engineers, and it is their
16 action based on the proposed mitigation plan in the
17 EIS?

18 A. The permit in its entirety.

19 Q. The permit in its entirety?

20 A. Right.

21 Q. Which includes the mitigation plan?

22 A. Yes. There was no EIS for this. This was a
23 404 permit.

24 Q. Which is under the Clean Water Act?

25 A. Correct.

Deposition of STEVE NICHOLS

1 Q. And as I understand it, Newkirk did not work
2 on the mitigation component of this application?

3 A. That's correct.

4 Q. What was Newkirk's involvement?

5 A. We were contracted by Ducks Unlimited in
6 2006 -- the fall of 2006. Ducks Unlimited was a
7 part that -- the \$4.75 million was put into escrow
8 or given to ACRET to manage. And in that when
9 we -- by the time we got involved, Ducks Unlimited
10 had been working with ACRET to secure easements on
11 Poplar Grove Plantation as part of that mitigation.
12 And apparently they had made some efforts to
13 propose that to the Corps, but it wasn't in a form
14 that the Corps recognized as appropriate for a
15 mitigation plan. And they asked -- Ducks Unlimited
16 contracted with us directly to assist them to
17 create a mitigation plan to approve to give to the
18 agency so that it would be approved so that the
19 moneys could be released from ACRET to purchase
20 these easements.

21 Q. Was this mitigation plan then different from
22 what was submitted to the Corps?

23 A. During the permitting process you mean?

24 Q. Yes.

25 A. Yes. What was submitted during the

Deposition of STEVE NICHOLS

1 permitting process by others simply was the outline
2 of the framework of where the \$4.75 million would
3 be held, who would oversee it, the formation of
4 that board, who was on the board, and what it could
5 be spent for.

6 Q. Okay. And that's the ACRET body that we
7 have talked about earlier?

8 A. That's correct.

9 Q. And that was -- that was what the mitigation
10 plan in the application was?

11 A. That's correct.

12 Q. All right. And that was a proposal by
13 Vought?

14 A. I don't know where it came from to begin
15 with.

16 Q. If Vought is the applicant --

17 A. I would assume, yes, that it's Vought's
18 project.

19 Q. So Vought would have come up with the ACRET
20 structure or idea?

21 A. I don't know, again, who developed that
22 structure. Reading the decision document and some
23 of the history to it as I went through that, I
24 assumed in looking at the memorandum of agreement,
25 that Vought, along with the ACRET members, Coastal

Deposition of STEVE NICHOLS

1 Conservation League in particular, was working
2 toward that mitigation plan.

3 Q. Okay. It was submitted though by Vought as
4 its mitigation plan?

5 A. That's correct.

6 Q. Now, when you say ACRET had members, what do
7 you mean?

8 A. I believe it's spelled out in here. It
9 was -- the board was composed of members from
10 Vought, Coastal Conservation League, DNR, Fish and
11 Wild Life, and a variety of different regulatory
12 and conservation groups that sat on the board to
13 make the decisions of how this money was to be
14 used.

15 Q. And you believe that's spelled out in
16 Exhibit 1?

17 A. I think so. I assume you would like me to
18 find it?

19 Q. If you can. If you can't, that's okay.

20 A. I don't know that I see it here immediately.
21 Again, I remember in looking through my files when
22 they were subpoenaed to see that somewhere.

23 Q. Do you know how the members of ACRET were
24 chosen?

25 A. I do not. I do remember -- again, vaguely,

Deposition of STEVE NICHOLS

1 who was -- or generally who was on that group. And
2 I remember in either the decision document or the
3 permit or in comments of that, that the Corps asked
4 not to be -- they were originally to be on it, but
5 they asked to be removed from that and only to
6 ultimately have the final say of the recommendation
7 from ACRET to say that the funds may be disbursed.

8 Q. So who was it from Ducks Unlimited who
9 contacted you?

10 A. Badge Humphries was involved and Craig
11 LeShack. Craig was really our point of contact.

12 Q. So tell me what you did.

13 A. They had proposed the acquisition of an
14 easement on Poplar Grove. And their biologist had
15 come up with what they thought were appropriate
16 mitigative measures to offset. At some point they
17 must have proposed that to the Corps who sent it
18 back and said that's not either detailed enough or
19 suitable or whatever. We went through it and
20 recognized right away that while there were some
21 notable conservation efforts involved in what they
22 were doing, they didn't meet what the Corps was
23 looking for, which was that direct mitigation
24 component.

25 And in my conversations with Nat Ball at the

Deposition of STEVE NICHOLS

1 Corps of Engineers, who was the project manager,
2 Nat made it very clear to us that he recognized the
3 \$4.75 million was much more than was necessary to
4 meet what he needed. From the Corps' perspective,
5 he was concerned only by that -- the direct
6 impacts --

7 Q. Okay.

8 A. -- of wetland fill. And his directions to
9 us were you provide direct mitigation to us and
10 that completes that requirement of that. The rest
11 of it will follow the outline and structure of the
12 ACRET agreement. So working with Ducks Unlimited,
13 we looked back and started realizing that they
14 needed -- that what they were proposing was not
15 going to meet that direct mitigation, and they
16 needed to add something to it.

17 Q. Okay. So what did you propose for the
18 direct mitigation?

19 A. Ultimately there was purchase of mitigation
20 credits and purchase of an easement on Millbrook
21 Plantation with upland buffers, but that easement
22 was different than the easements that had been
23 proposed. It was based on the Corps' restrictions.

24 Q. Which, as I understand it, are more
25 restrictive than perhaps other conservation

Deposition of STEVE NICHOLS

1 easements?

2 A. They are.

3 Q. They basically don't allow really any
4 activity -- any human activity?

5 A. No activity, no timber harvesting.

6 Recreational use is permitted. And at that point
7 in 2006 and 2007, the Corps of Engineers -- you
8 would calculate that total number of credits, which
9 we were basically given as needing 450 credits is
10 what they had told us that they needed. And so we
11 were looking at how can you generate. Of that
12 credit number, the Corps requires a certain
13 percentage to be either restoration or enhancement
14 credits. It cannot all be preservation. So that's
15 where they were falling short in their proposals.

16 Q. Where were they buying their credits?

17 A. The credits were purchased from Pigeon Pond
18 Mitigation Bank.

19 Q. All right. I don't know anything about
20 that. What's Pigeon Pond?

21 A. Mitigation banks are established in advance
22 of impacts.

23 Q. I understand. I'm sorry. I understand what
24 the banks are. I just wasn't familiar with Pigeon
25 Pond?

Deposition of STEVE NICHOLS

1 A. Pigeon Pond is owned by MeadWestvaco.
2 Newkirk Environmental manages it, but it's owned by
3 MeadWestvaco. It's about 1,300 acres up in
4 Berkeley County that has been restored.

5 Q. So those -- that's the direct impact
6 requirement that you just described for me, the
7 credits in Millbrook. Then how about the other --
8 what were your suggestions for the other uses?

9 A. The other suggestions were the ones that
10 were given to us by Ducks Unlimited and ACRET that
11 they were already trying to work in. So really we
12 took what they were trying to pursue and added to
13 the direct -- put that component in there that they
14 were lacking, and presented it to the agency so
15 that they would -- so it was an easement on
16 Millbrook and Poplar Grove.

17 Q. Okay.

18 A. And ultimately I believe there were
19 additional easements that were acquired to exhaust
20 that total that was funded for that. But again,
21 once -- we were working only for Ducks Unlimited.
22 And if I remember right, Ducks Unlimited had been
23 stretched fairly thin because they had already
24 committed to that easement, and so they weren't
25 able to back up.

Deposition of STEVE NICHOLS

1 Q. Was Ducks Unlimited a part of ACRET?

2 A. Yes.

3 Q. You had mentioned earlier that Mr. Ball had
4 said that the 4.7 was more than he needed to
5 satisfy the Corps' requirements?

6 A. Right.

7 Q. Is it -- was there anything that you thought
8 was improper about the applicant doing more
9 mitigation than the Corps required?

10 A. Again, I wasn't involved in it. So I don't
11 know the context of which it was developed or how
12 that number was derived. It certainly for us was
13 out of context for a direct mitigation project.

14 Q. Out of context meaning unusual?

15 A. Yes.

16 Q. But, again, I will ask the question. Did
17 you see that there was anything improper about it?

18 A. No. I don't know that there was.

19 Q. Tell me about your involvement -- or your
20 contact with the Coastal Conservation League in
21 this process and what you recall about that.

22 A. Our involvement was limited to one, maybe
23 two meetings at the Corps of Engineers with ACRET,
24 which Nancy Vincent was present. Again, we were
25 working directly for Ducks Unlimited trying to get

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

This document is an evaluation of the application for a Department of the Army permit submitted by Haynesworth, Sinkler, and Boyd, P.A. on behalf of Vought Aircraft Industries, Inc. and constitutes a review for compliance with the 404(b)(1) Guidelines, an Environmental Assessment, a Finding of No Significant Impact (FONSI), and Statement of Findings.

1. Applicant: Vought Aircraft Industries, Inc.

2. Location and Project Description:

A. Location: The project site is located on an unnamed tributary of the Ashley River at the intersection of Interstate 526 and International Boulevard in Charleston County, South Carolina (Latitude 32.87438 N, Longitude 80.03212 W).

B. Project Description: The work consists of the placement of fill material in waters of the U.S. to develop an aerospace manufacturing and integration facility with room for expansion, growth, and co-location of suppliers. In detail, the work specifically consists of the placement of fill material in 8.33 acres of jurisdictional wetlands to construct the first phase of an aerospace manufacturing facility. The footprint of this phase of development consists of 770,000 square feet of buildings, parking areas, taxiways, and necessary utilities. Since future phases of the manufacturing facility will support the construction of aircraft that are still in the design phase, there is some uncertainty regarding the overall size of future buildings. However, the second phase of the facility is expected to impact 9.25 acres of jurisdictional wetlands, and the third phase of the facility will impact 20.75 acres of jurisdictional wetlands.

C. Changes to Project: The revised project consists of reducing the placement of fill material in waters of the United States by 13.51 acres. The applicant reduced the overall footprint of the project by eliminating four small warehouses/buildings and concentrating the overall footprint of the third phase of the development into three large manufacturing warehouses.

3. Project Purpose:

A. Basic: The basic project purpose is to place fill material in waters of the U.S. to create the elevations necessary to construct the proposed industrial development.

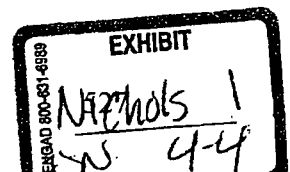
B. Overall: The overall project purpose is to construct an aerospace manufacturing and integration facility with room for expansion, growth, and co-location of suppliers.

4. Scope of Analysis: The scope of analysis is the limits of the footprint of the proposed facility.

5. Statutory Authority: Section 404 of the Clean Water Act of 1972, as amended.

6. Other Federal, State, and Local Authorizations Obtained or Required and Pending:

A. State Water Quality Certification (WQC): The WQC was issued on April 8, 2005, with



**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

conditions. A general condition of the Federal permit incorporates the WQC conditions as part of the Department of the Army permit.

- B. Coastal Zone Management (CZM) consistency/permit: The CZM consistency determination was issued on April 8, 2005, with conditions.
- C. Other authorizations: Pursuant to the S.C Storm Water Management and Sediment Reduction Act, a land disturbance permit was issued on February 28, 2005, with conditions.

7. Date of Public Notice and Summary of Comments:

- A. Pre-application meeting(s): The Corps attended two pre-application meetings to discuss the proposed project.
- B. Important dates: The Corps received the application on December 23, 2004. The Corps requested additional information on December 28, 2004, which was received on January 4, 2005. The Corps considered the application complete on January 4, 2005. The Corps issued a public notice on January 7, 2005, and sent this notice to all interested parties including appropriate State and Federal agencies.
- C. Public notice comments: The Corps has reviewed all of the comments submitted in response to the circulation of the public notice. The Corps has summarized these comments below:
 - 1) U.S. Environmental Protection Agency (EPA): No comments were received.
 - 2) U.S. Fish and Wildlife Service (USFWS): USFWS stated that existing wetland resources were previously impacted by mining. However, the remaining wetlands contribute to the overall integrity of the system and their loss would facilitate the continual degradation of natural resources in the area. USFWS stated that these areas perform important water quality functions that include retention of stormwater runoff, flood water abatement and groundwater recharge. In addition, onsite wetlands and uplands provide habitat for wildlife.

USFWS believes that the majority of the proposed structures are speculative because they are identified for potential or future uses. They expressed concern that the proposed mitigation plan, other than the preservation of the remaining 5.73 acres of onsite wetlands, was not quantified. USFWS recommended that the applicant submit a complete mitigation plan and that they explore redesigning the proposed facility to avoid and minimize wetland impacts.

- 3) National Marine Fisheries Service (NMFS): NMFS stated that direct impacts to EFH are not anticipated. However, the cumulative effect of the proposed work and other similar activities can be expected to diminish the abundance, diversity, and health of federal and state trust fisheries through the elimination of ecological functions and food

Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.

webs that are supported by wetlands. NMFS also stated that the proposed project has a high public interest component and that the proposed mitigation plan, if properly implemented, would protect a large and ecologically important area within the overall project area that appears destined for development and environmental degradation. NMFS recommended that DA authorization be withheld until the Corps determines that the proposed mitigation plan will be implemented properly and will offset the proposed impacts. No conservation recommendations were offered pursuant to EFH.

- 4) S.C. Department of Natural Resources (SCDNR): SCDNR stated that the project site has been historically altered by phosphate mining, road construction, ditching, and draining. SCDNR believes that the remaining onsite wetlands will provide little mitigation value because they will be fragmented and will retain few characteristics of their current function and value. They recommended that the applicant submit a detailed mitigation plan to be reviewed and approved by the regulatory and resource agencies. SCDNR stated that it is difficult to show reasonable avoidance and minimization without specific construction proposals. They stated that a worst case scenario can be permitted provided that the permit is conditioned to address avoidance and minimization of wetland impacts from future expansion and growth. They also recommended that the proposed work be phased so that impacts associated with future activities will not occur until specific plans are known.
- 5) State Historic Preservation Officer (SHPO): No comments were submitted in response to the public notice. However, SHPO met with the permittee to discuss the proposed project and determined that an archeological survey is not required because the majority of the project site was previously impacted by phosphate mining in the late 19th and early 20th century. The remainder of the project site is either wetlands or areas that exhibit relatively low potential for archeological resources. SHPO asked that they be notified immediately if any archeological materials are discovered during construction.
- 6) Organizations: Two recognized Indian Tribes, Eastern Shawnee Tribe of Oklahoma and Catawba Indian Nation, advised this office that they have no concerns with regard to known cultural properties or sites associated with the proposed work. However, they requested to be notified if Native American archaeological sites and/or human remains are discovered during the construction of the proposed work.
- 7) Individuals: Ms. Jean Everett of the College of Charleston Biology Department stated that the onsite wetlands include a rare and valuable plant community that typically does not occur on the coastal plain. She stated that the clayey soil found on the project site has high levels of calcium and magnesium and supports a unique plant community, which will be difficult to mitigate offsite because of the unusual soil type. Ms. Everett strongly opposes the filling of any wetlands and volunteered to assist in identifying rare and sensitive plant communities onsite.
- 8) Others Including Internal Coordination: CESAC-TS-ON and CESAC-PM offered no objections to the proposed work. CESAC-TS-DH stated that onsite wetlands provide stormwater storage and conveyance of offsite stormwater through the project site. In

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

addition, TS-DH stated that the proposed project should be designed to retain any increase in stormwater runoff that results from the alteration of the project site. TS-DH also stated that the proposed project should not increase downstream flows or back water onto adjacent properties.

D. Additional information required by Corps after the Public Notice: The Corps requested additional information on the site selection process and the alternative sites that were evaluated to determine if the proposed site is the least environmentally damaging practicable alternative. The Corps also requested copies of alternate site layouts on the project site that were evaluated to avoid and minimize impacts to waters of the United States. Since future phases of the proposed facility will construct aircraft that are still in the design phase, it may not be possible for the applicant to identify the specific physical requirements of these future facilities. The Corps requested that the applicant provide reasonable assumptions that can be used to evaluate the proposed structures.

The Corps also requested that the applicant revise the Memorandum of Agreement for Wetlands Mitigation for Project Buffalo so that the District Engineer's role is limited to approving or denying the release of funds and/or the purchase of specific tracts of land or easements for mitigation. The Corps requested that the applicant submit a description of existing wetland habitat, mitigation worksheets, and a wetland restoration plan that meets the guidelines outlined in the SOP for Compensatory Mitigation. In addition, the Corps requested that the applicant provide written documentation from SCDOT that they will be allowed to relocate South Aviation Road in the future.

E. Applicant's response to the comments: On February 14, 2005, the Corps coordinated with the applicant the comments received in response to the public notice. The applicant presented their response to agency and public concerns about alternative sites and alternative layouts on the project site at an interagency meeting that was held on February 16, 2005. The applicant also presented a more detailed description of the proposed mitigation plan and requested feedback from the regulatory and resource agencies.

Vought issued a Request for Proposal (RFP) in March 2004 to identify potential sites for the proposed manufacturing and integration facility. The site selection criteria included access to a 9,000 foot long runway, a deep water port, an Interstate Highway, a Class I Railroad, 200-acres of developable land, necessary utilities, and a work force capable of providing at least 1,200 jobs over the life of the project. Based on the responses to the RFP, four potential alternative sites (Tulsa, Oklahoma, Mobile, Alabama, Kinston, North Carolina, and North Charleston, South Carolina) were identified.

Vought evaluated each of these four sites for their ability to meet the project needs. The Mobile, Alabama site is located immediately adjacent to Mobile, Bay. The construction of the proposed facility would require the placement of fill material in a minimum of 50 acres of estuarine waters, demolition of 130 residences and 5 community structures, and the relocation of low-income, minority residents. In addition, sub-surface contamination associated with the previous operation of former Army Air Corps and Air Force bases on this site will likely impact development of this alternative site because stormwater must be

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

discharged directly into Mobile Bay. In addition, the project site is located in a flood prone area where manufacturing could be disrupted by adverse weather conditions.

The Kinston, North Carolina site is located in a rural area that is 44 miles from the nearest deepwater port. Road and rail infrastructure would need to be constructed to access the project site. The construction of the proposed facility would require the placement of fill material in 195 acres of wetlands or the relocation of several public roadways. The permittee also expressed concern about the availability of a technical, manufacturing work force and the support services necessary to operate an industrial facility.

The Tulsa, Oklahoma site is connected to the Mississippi River by barge traffic through a series of locks and dams. However, this river system is subject to extreme droughts and flooding at different times of the year. The construction of the proposed facility would require the construction of a rail spur and some road improvements. The elevation of this site varies from 643 feet to 582 feet and would require significant earthwork and drainage improvements to minimize stormwater impacts on the adjacent city park. The construction of the proposed facility would directly impact 11 acres of wetlands, 5,000 linear feet of perennial streams, and drainage from the airport would be redirected into wetlands located at the adjacent city park where it may cause flooding. In addition, the site is not immediately available because of bankruptcy proceedings associated with previous user of the site.

With regard to minimization of impacts on the project site, the applicant reduced the overall footprint of the project by eliminating four small warehouses/buildings and concentrating the third phase of development into three large manufacturing warehouses and two small office buildings. The revised site layout reduced total wetland impacts by approximately 13 acres. Since the project site is located on the hydrologic divide between the Ashley River and the Cooper River, the applicant has designed the project so that treated stormwater and wastewater flows southeast into the Ashley River. The remaining, undisturbed wetlands onsite will be hydrologically connected to wetlands located on the South Carolina Research facility site and will flow toward the Cooper River.

The applicant described the proposed mitigation plan at the February 16, 2005, interagency meeting. The mitigation plan consists of establishing a committee to evaluate proposals from non-profit organizations to preserve wetlands through the purchase of land or conservation easements. According to the mitigation plan, this committee will consist of 4 representatives appointed by the permittee, 3 representatives appointed by the S.C. Coastal Conservation League, one member each from SCDHEC's Bureau of Water, SCDHEC's OCRM, USFWS, NMFS, SCDNR, and the SC Conservation Bank.

Since the permittee is considered the responsible party for the impacts to waters of the United States and the mitigation plan, the Corps will work directly with the permittee. The permittee will submit specific mitigation proposals to the Corps for their review and approval. The South Carolina Department of Commerce has agreed to provide 4.75 million dollars to fund the mitigation plan once the Department of the Army permit is issued. The permittee is required to obtain authorization from the Corps prior to implementing a specific proposal or committing any of these resources.

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

The permittee provided the Corps with a copy of their February 28, 2005, state stormwater permit, which states that their preliminary landclearing plans meet the requirements of the S.C. Storm Water Management and Sediment Reduction Act. The permittee also provided the Corps with additional information on their stormwater management plan for the entire project site on March 29th, April 4th, and April 6, 2005. This included information on the relocation of the existing East Channel, the construction of stormwater management ponds that will accommodate the increase in onsite runoff and the passage of anticipated flows through the project site.

After researching the issue, the permittee notified the Corps that South Aviation Road is owned and operated by the Airport Authority. Since the existing road and the proposed road corridor are located within the area that will be leased by Vought, they plan to obtain written authorization from the Airport Authority prior to relocating South Aviation Road. The permittee will provide the Corps with detailed plans that include the relocation of South Aviation Road prior to implementing the third phase of the proposed development.

F. Additional Coordination of Project Revisions: The applicant submitted revised permit drawings and a written response to agency and public concerns regarding the mitigation plan on March 16, 2005. On March 18, 2005, the Corps provided USFWS, SCDNR, NMFS, and Ms. Everett a copy of the revised permit drawings and the mitigation plan. The Corps has summarized these comments below:

- 1) U.S. Fish and Wildlife Service (USFWS): In a letter dated, March 30, 2005, USFWS removed their objections to the revised project based on the reduction of wetland impacts and the increase in onsite wetland mitigation. In addition, USFWS stated that their concerns regarding the off-site compensatory mitigation plan have been addressed.
- 2) National Marine Fisheries Service (NMFS): In a letter dated, March 30, 2005, NMFS removed their objections to the revised project. NMFS stated that they support the current plan of action to offset wetland losses and they look forward to participating in the interagency committee that will oversee mitigation planning.
- 3) S.C. Department of Natural Resources (SCDNR): SCDNR removed their objections to the revised project based on the information that was provided in our March 18, 2005, letter. According to SCDNR, this additional information adequately addressed the issues raised in their February 4, 2005, letter.
- 4) Individuals: Ms. Everett continues to object to the revised project based on the loss of the rare plant community that is located on the project site. According to Ms. Everett, southern sugar maple is present on the project site and is often associated with rare and threatened plant species. Ms. Everett has attempted to get permission to survey the project site and has stated that she cannot withdraw her objections, until she can determine whether the project site supports endangered plant species.
- 5) Others Including Internal Coordination: CESAC-TS-DH requested that a permit condition be included in the permit that requires the permittee to implement and maintain

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

appropriate erosion control measures. TS-DH removed their objections to the revised project based on the permit condition and the additional information that was submitted by the permittee.

8. Project Impacts:

- A. **Direct (Primary) Impacts:** Direct project impacts include the placement of fill material in 38.33 acres of waters of the United States and the relocation of an existing jurisdictional ditch. The first phase of development consists of the placement of fill material in 8.33 acres of jurisdictional wetlands. This phase consists of 770,000 square feet of buildings, parking areas, taxiways, and necessary utilities. Since future phases of the facility will support the construction of aircraft that are still in the design phase, there is some uncertainty regarding the overall size of future buildings. The second phase of the facility is expected to impact 9.25 acres of wetlands, and the third phase is expected to impact 20.75 acres of wetlands. Site clearing and grading will be limited to the footprint of the current phase of development.
- B. **Indirect (Secondary) Impacts:** Indirect project impacts include the relocation of the existing rental car facilities on the project site to upland sites located on the opposite side of International Boulevard. Underground storage tanks associated with the rental car facilities onsite will be closed and removed in accordance with SCDHEC regulations. The project site is currently served by water and sewer facilities, and will not require any upgrades offsite.

The permittee has received a stormwater permit to clear and grade approximately 90 acres of uplands on the project site. Erosion control measures such as a temporary sediment pond, silt fences, and rock check dams will be used to prevent the release of sediment into aquatic resources. The development of the project site will result in an overall increase in stormwater from the conversion of forested uplands and wetlands into impervious surfaces. The permittee will be required to obtain an NPDES permit to ensure that the discharge of stormwater does not exceed preconstruction volumes. Stormwater that passes through the project site and onsite stormwater will pass through stormwater management ponds that are designed to slowly release the anticipated 10 year storm event.

The Corps anticipates that the construction of stormwater management ponds may adversely impact two jurisdictional wetlands, WL-1 and WL-12. These two wetlands (a total of 0.75 acres) are located immediately adjacent to stormwater ponds that are planned for future phases of the project. Although neither of these wetlands will be impacted by the first phase of development, the Corps anticipates that they will likely be drained as a result of the excavation and/or expansion of stormwater ponds in the future.

The project site is located immediately adjacent to an existing Interstate and a Class I railroad. The construction and operation of the facility does not require the construction of any new road or rail infrastructure. However, if parts and supplies are delivered to this facility by rail in the future it may be necessary to construct an approximately 1.2 mile rail-

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

spur. A rail spur would be primarily located on property that is already owned by the Charleston International Airport and would require approximately 0.75 acres of wetland impacts. In the event that a rail spur is required in the future, Department of the Army authorization will be required and, if issued, appropriate mitigation will be secured.

The construction and operation of the facility will result in a minimal increase in traffic on local roads associated with workers commuting to and from the proposed facility. New turning lanes will likely be required on International Boulevard and South Aviation Avenue to accommodate the flow of vehicle traffic. The operation of the facility will also require the construction of an electrical substation onsite. The substation will be connected to an existing 115 kV line, which is located approximately 0.5 miles from the project site, by a new overhead powerline. The powerline will be constructed parallel to an existing drainage canal and will require the clearing of vegetation within 0.25 acres of jurisdictional wetlands.

The facility is part of a global manufacturing process that includes parts that are made in Japan and Italy, which will be shipped to the North Charleston facility using a modified 747 large cargo freighter (LCF). The LCF will continue its path around the globe and will deliver the assembled fuselage and tail sections to Boeing's facility in Redmond, Washington, before returning to Japan for more parts. At full capacity, the proposed facility will result in an increase of approximately two flights a day at the Charleston International Airport.

The facility is located immediately adjacent to an existing airport and ambient noise and light levels at the project site will be lower than those at the airport. The facility will be designed to comply with local noise ordinances and lighting will be designed to minimize the impact on air traffic and the adjacent community. We anticipate that the proposed project will have minimal impacts on noise and light in the adjacent community.

Air emissions associated with the proposed facility will primarily consist of combustion of natural gas to operate a large autoclave to cure the composite sections of the aircraft, particulates generated by sanding, volatile organic compounds such as solvents used in the painting process, and small quantities industrial lubricants and other materials used in the manufacturing process. Total emissions are expected to be below the threshold requirements of a Title V major source facility. Therefore, the facility is expected to be covered by a minor source permit or a conditional major source permit.

The facility will be considered a large-quantity generator of hazardous waste pursuant to the Resource Conservation and Recovery Act. The primary waste streams are solvents and paints that are used in the manufacturing process that will be stored on site for less than 90 days before being shipped to an appropriate disposal facility. The permittee does not plan to use any underground storage tanks in its operation.

The construction and operation of the proposed facility will require a capital investment of approximately \$300 million into the local economy and will employ more than 600

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

people, at higher than average wages for the area. The facility is expected to have an economic impact of more than \$560 million on the local community.

- C. Cumulative Impacts: Consideration of the above-listed direct and indirect project impacts revealed that there would be no significant cumulative impact on the environment resulting from the project when added to other past, present, and reasonably foreseeable future actions regardless of their source.

The facility is located within a developed area, immediately adjacent to the existing Charleston International Airport, the South Carolina Research Park, and Interstate 526. The environmental effects of this project are primarily limited to the project site and do not extend beyond the immediately adjacent properties. As described above, the facility will be designed to comply with the appropriate state or local stormwater, water quality, air quality, noise, and light standards.

Aircraft manufacturing is a relatively clean industry, and this facility will not generate any process wastes. Therefore, domestic wastewater is sufficient to serve the project site. Project wastes are limited to hazardous solid wastes that will be temporarily stored onsite and disposed properly. Relative to other industries in the area, the proposed facility will generate a large number of skilled, manufacturing jobs with above average wages and minimal impacts to the environment.

The original site selection criteria included access to a 9,000 foot long runway, a deep water port, an Interstate Highway, a Class I Railroad. It is our understanding that the facility will primarily be supported by the LCF. Depending upon how parts and supplies are transported to and from the project site in the future, other modes of transportation such as the deepwater port, Interstate Highway, or Class I Railroad may become more or less important over the life of the project. The Corps anticipates that each of these modes of transportation will likely be used to varying degrees by different suppliers. However, the overall contribution of this project to future port, highway, or rail traffic is considered minimal.

9. Mitigative Measures and Alternatives Analysis:

- A. Avoidance: The location of the proposed facility on the project site is limited because of existing airspace and radar restrictions. In addition, the logistics associated with transporting relatively large aircraft parts and the assembled aircraft fuselage require that the buildings are located close to the airport runway so that the LCF can reach the facility by taxiway. The proposed impacts to waters of the United States are not considered avoidable because of the logistics of the manufacturing process and the overall site requirements for each phase of development.
- B. Minimization: Efforts to minimize impacts to aquatic resources include eliminating four buildings/warehouses that were included in the original proposal and concentrating the overall site plan. In addition, the applicant eliminated the railroad spur because the LCF is expected to carry manufactured parts and the completed fuselage section. The

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

applicant minimized impacts to WL-1 and WL-12 by not incorporating them into the stormwater ponds. However, for the purposes of this evaluation we are assuming that these areas will still be adversely affected by the excavation of the adjacent stormwater ponds in the future.

- C. **Compensatory Mitigation:** Impacts to aquatic resources that could not be avoided or minimized will be mitigated by preserving 17.77 acres of jurisdictional wetlands onsite and 2.53 acres of upland buffers onsite. In addition, the permittee plans to implement an offsite mitigation plan that consists of preserving wetlands and upland buffers, implementing wetland restoration plans, and/or purchasing conservation easements that would protect wetlands from future development. The permittee plans to create a committee that will accept and review proposals to purchase land and/or conservation easements. The South Carolina Department of Commerce has agreed to establish a \$4.75 million fund that will enable the permittee to meet the mitigation requirements for the project. The permittee will obtain authorization from the Corps to implement a specific proposal prior to committing any of these resources. The Corps plans to forward each of the mitigation proposals to the other regulatory and resource agencies that participated in the review of the project for comment prior to making a decision whether to approve or deny a specific mitigation proposal. The Corps' compensatory mitigation SOP suggests that approximately 450 mitigation credits will be required to offset the project impacts. According to the mitigation plan, the fund will enable the permittee to preserve and buffer more than 1,000 acres of wetlands and other aquatic resources. Therefore, the Corps believes that the mitigation plan will generate more than three times the number of mitigation credits that would typically be required for the project impacts.
- D. **Conclusions of Alternatives Analysis:** It has been determined that there are no practicable alternatives to the discharge that would have less adverse impact on the aquatic ecosystem. The basic purpose of the discharge was considered to be non-water dependent (see Item 3A). Based on this determination, this office presumed that practicable alternatives that did not involve a discharge into a special aquatic site were available and would have less adverse impact on the aquatic ecosystem unless clearly demonstrated otherwise. As described above, the applicant has provided additional information on three alternative sites that were considered. One of the alternative sites required the placement of fill material in almost 200 acres of jurisdictional wetlands. In the event that public roads could be relocated to avoid and minimize impacts to waters of the United States, there were additional concerns that the adjacent rural community would not be capable of supporting the operation of an industrial facility or providing a suitable work force. Another alternative site required the placement of fill material in more than 50 acres of jurisdictional wetlands and estuarine waters of the United States and is located in a flood prone area that is subject to flooding. The third alternative site required the placement of fill material in more than 10 acres of jurisdictional wetlands and more than 5,000 linear feet of perennial streams. In addition, this site is not currently available because of bankruptcy proceedings associated with previous user of the site. Based on this information, the proposed site is considered the least environmentally damaging practicable alternative.

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

10. Public interest review:

A. Public interest factors: The Corps reviewed all of the public interest factors including, but not limited to, the effects the work might have on conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership, and in general, the needs and welfare of the people. These public interest factors have been evaluated for their adverse effect, a beneficial effect, a negligible effect, or no effect. It has been determined that there are no adverse effects on these factors unless otherwise addressed below. In addition, other relevant factors as necessary and the interest of the applicant have been evaluated to determine the overall balance of the project with respect to the public interest. Consideration has also been given to the extent of the public and private need for the project and the extent and permanence of the beneficial or detrimental effects the proposed work is likely to have on the private and public uses to which the project site is suited.

B. Threatened or endangered species: A review of the information supplied by the applicant, other pertinent documents and/or information, and comments received in response to the public notice indicates that no aspect of the proposed project is likely to jeopardize the continued existence of threatened or endangered species nor destroy or modify the habitat of these species determined critical in accordance with the Endangered Species Act of 1973.

It has been determined that the project will have no effect on any federally endangered, threatened, or proposed species and will not result in the destruction or adverse modification of designated or proposed critical habitat. USFWS issued a letter dated October 26, 2004, that stated the proposed action is not likely to have an effect on resources that are currently protected under the Endangered Species Act.

C. Corps wetland policy: The proposed wetland alteration is necessary to realize the project purpose. The proposed work should result in minimal adverse environmental impacts. The benefits of the project would outweigh the minimal detrimental impacts. Therefore, the project is in accordance with the Corps wetland policy.

D. Essential Fish Habitat: Under the EFH consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act, it was the determination of this office that the proposed project would impact 38.33 acres of freshwater habitat upstream of estuarine substrates and emergent wetlands utilized by various life stages of species comprising the red drum, shrimp, and snapper-grouper management complexes. However, we further determined that the proposed action would not have a significant individual or cumulative adverse impact on EFH or fisheries managed by the South Atlantic Fishery Management Council and the National Marine Fisheries Service. NMFS made no conservation recommendations regarding EFH.

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

11. Corps Analysis of Comments and Responses: The request by SHPO that they be notified if archeological materials are encountered prior to or during construction is embodied in a general condition of the Federal permit.

The request by Eastern Shawnee Tribe of Oklahoma and Catawba Indian Nation is addressed by a general condition of the federal permit requires that the permittee notify this office immediately in the event that any previously unknown historic or archaeological remains are found and that this office will initiate the Federal and state coordination.

The Corps' review of the project included an evaluation of alternative sites, avoidance and minimization of impacts to waters of the United States onsite, and the proposed mitigation plan. As described above in Section 7E and 9D, the permittee evaluated several alternative sites before selecting the proposed site in North Charleston. The development of each of the alternative sites would result in impacts to waters of the United States. However, the Corps believes that the project site is the least environmentally damaging practicable alternative that meets the permittee's needs as described in their permit application. USFWS, NMFS, and SCDNR were presented additional information on the site selection process during the February 18, 2005, interagency meeting. They indicated that the permittee had addressed their concerns at this meeting and formally withdrew their objections to the proposed project in letters, dated March 30, 2005.

As described above in Section 7D and 9A, the overall development of the project site is dictated by the size and dimensions of the aircraft fuselage that will be produced at this facility and the logistics associated with loading the fuselage onto the LCF. The facility is designed so that the LCF can taxi directly to the joint integration facility, parts can be offloaded into the facility, parts move through the assembly line, and the assembled fuselage is loaded onto the LCF as shown on the process flow diagram, drawing sheet 7 of 15.

The first phase of development consists of two warehouses that are oriented end to end so that aircraft components can be moved directly from one manufacturing warehouse/process into the next process. Future phases of the proposed facility are similarly oriented to facilitate the movement of aircraft components through the manufacturing process. The overall development includes five warehouses that are greater than 330,000 square feet, two that are greater than 250,000 square feet, and one that is greater than 200,000 square feet. Therefore, it is not possible to avoid all impacts to waters of the United States.

Initially the permittee attempted to avoid impacts to depressional wetlands located on the project site. In response to the concerns of the USFWS, NMFS, SCDNR and this office, the permittee evaluated alternate site layouts. Concentrating the overall footprint of the proposed facility, eliminating the railroad spur, eliminating four small buildings/warehouses, and shifting the location of one building so that impacts to aquatic resources are limited to the footprint of an access road reduced overall project impacts from 51.53 acres to 38.33 acres of wetlands. USFWS, NMFS, and SCDNR were presented additional information on alternate site layouts during the February 18, 2005, interagency meeting. They stated that the permittee had addressed their concerns at this meeting and formally withdrew their objections to the proposed project in separate letters, dated March 30, 2005.

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

The development of the project site has also been broken down into three phases to address concerns about the timing of impacts to waters of the United States. The first phase will impact 8.33 acres of jurisdictional wetlands. Since future phases of the facility will support the construction of other aircraft that are still in the design phase, there is still some uncertainty regarding the overall size of the future buildings. The second phase of the facility is expected to impact 9.25 acres of jurisdictional wetlands, and the third phase of the facility will impact 20.75 acres of jurisdictional wetlands.

The phasing of the proposed project ensures that impacts to aquatic resources will not occur until there is some degree of certainty that the next phase of the manufacturing facility will be constructed on the project site. This ensures that avoidance and minimization will continue to be evaluated throughout the development of the project. Therefore, the following special condition will be placed in the federal permit:

That the permittee will submit to the Corps for review and approval a copy of the most recent stormwater management plan and updated construction drawings, prior to initiating each new phase of the proposed project. The permittee must receive written approval from the District Engineer, or his designee, confirming that reasonable efforts have been made to avoid and minimize impacts to waters of the United States prior to proceeding with each new phase of the project.

To address the concerns of USFWS, NMFS, SCDNR and this office, a detailed mitigation plan was submitted by the applicant to offset unavoidable, adverse impacts to aquatic resources. As described above in Section 9C, the permittee plans to preserve the remaining 17.77 acres of jurisdictional wetlands and 2.53 acres of upland buffers onsite. Many of the preserved wetlands are located immediately adjacent to areas that are being filled and developed. Therefore, it is not possible to establish an undisturbed upland buffer in these areas. However, the permittee has agreed to establish at least 10-foot wide upland buffers wherever it is possible.

In addition, the permittee has proposed an offsite mitigation plan that consists of establishing a committee that will accept and review proposals to protect wetlands from future development. The South Carolina Department of Commerce has agreed to establish a \$4.75 million fund that will enable the permittee to preserve wetlands and upland buffers, implement wetland restoration plans, and/or purchase conservation easements. The permittee will obtain authorization from the Corps to implement a specific proposal prior to committing any of these resources.

The permittee submitted worksheets to estimate the number of mitigation credits that would be required for the proposed impacts to waters of the United States. The Corps' compensatory mitigation SOP indicates that approximately 450 mitigation credits will be required to offset the project impacts. According to the mitigation plan, the proposed fund will enable the permittee to preserve and buffer more than 1,000 acres of wetlands and other aquatic resources. The Corps believes that the mitigation plan will generate more than three times the number of mitigation credits that would typically be required for impacts associated with the entire project. Since the permittee will begin implementing the mitigation plan when the permit is issued, all of the

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

mitigation will be accomplished prior to the construction of the second or third phase of development. According to the applicant, the entire mitigation plan will be implemented even if the latter phases are not constructed.

To ensure compliance with the proposed mitigation plan, the following conditions will be included in the permit:

That the permittee recognizes that their commitment to perform and implement the mitigation plan, dated February 18, 2005 (Revised April 6, 2005), was a deciding factor towards the favorable and timely decision on this permit and that the permittee recognizes that a failure on its part to both actively pursue and implement the mitigation plan may be grounds for modification, suspension or revocation of this Department of the Army authorization.

That the permittee will take all appropriate action to ensure that the \$4.75 million mitigation fund is established as described in the mitigation plan and Memorandum of Agreement (MOA). In accordance with the MOA, dated April 6, 2005, this fund must be established within 30 days of permit issuance. The permittee must submit the following: 1) written documentation to the District Engineer that the funds have been deposited in an escrow account or other account acceptable to the government, or 2) an irrevocable letter of credit for the full amount. The fund is to be used for the sole purpose of providing mitigation for the environmental impacts associated with the development of the aircraft manufacturing and integration facility advertised by Public Notice #2004-1N-402, dated January 7, 2005.

Upon establishment, the funds must be immediately available for the acquisition, restoration, and/or enhancement of approved tracts of land for mitigation sites as proposed by the permittee and approved by the District Engineer.

That all proposals submitted by the permittee must include assurances that normal, necessary, and reasonable costs associated with establishing wetland mitigation areas such as wetland surveys, land surveys, legal fees, clearing grading, vegetative planting, preparation and submittal of mitigation monitoring reports, etc. are fully funded. That the permittee will participate in the mitigation committee as outlined in the mitigation plan, and will facilitate the committee's efforts to evaluate proposals to preserve wetlands, enhance wetlands through the preservation of upland buffers, and restore wetlands by implementing approved wetland restoration projects, so that the mitigation plan is implemented in a timely manner. If the permittee is unable to execute the mitigation plan within three years of the date of issuance of this permit, the permittee will actively work with the Corps of Engineers to develop an alternative plan to accomplish the necessary mitigation.

That as compensatory mitigation for impacts to aquatic resources, the permittee will preserve 17.77 acres of unaltered wetlands and 2.53 acres of unaltered upland buffers onsite. Preservation shall be by means of either deed restrictive covenants or conservation easement. The covenants or easement documents and surveyed plat of the

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

mitigation area must be submitted to the District Engineer or his designee for review and approval prior to execution. Sample language for restrictive covenants and easement documents are enclosed for your consideration.

That the permittee must submit evidence of execution and recording of the preservation easements or covenants and surveyed plat of the mitigation area to both the Corps of Engineers and DHEC prior to commencement of the final phase of the authorized work.

The permittee provided the Corps with a copy of their February 28, 2005, state stormwater permit, which states that their preliminary landclearing plans meet the requirements of the S.C. Storm Water Management and Sediment Reduction Act. The permittee began clearing and grading the upland portion of the project site in March. The stormwater permit was conditioned so that the wetlands and a 50-foot upland buffer will not be disturbed until the necessary state certifications and federal permit are issued. The permittee provided TS-DH additional information of the stormwater management plan for the entire project site. This included information on the overall drainage that passes through the project site, the relocation of the East Channel, the anticipated increase in onsite stormwater, and the ability of the stormwater management pond to accommodate a 10 year and 100 year storm event.

The project site is surrounded on three sides by existing roads. The permittee has indicated that very little offsite stormwater passes through the project site. The culverts that pass underneath each of the three roads flows away from the project site, and the primary drainage associated with the existing airport runway is also away from the project site. According to the permittee, the existing culverts are sufficient to handle the anticipated flows.

Although the basic design of the first phase of development has been completed, there are a number of minor adjustments that are being made in the field because of site conditions. In addition, there is some uncertainty how stormwater facilities will be expanded to accommodate future phases of development. Therefore, TS-DH requested that the following permit condition be included in the federal permit:

That the permittee must use appropriate erosion control measures to ensure that sediment does not migrate from the project site into adjacent wetlands or other aquatic resources. The permittee must routinely monitor and maintain these erosion control measures to ensure they are working properly. In the event that there is an accidental release of sediment, the permittee will restore the impacted area and incorporate all necessary measures to prevent any further release of sediment.

Ms. Everett continues to oppose the filling of wetlands and/or the destruction of what she considers to be a rare plant community that is located on the project site. According to Ms. Everett, southern sugar maple can be associated with a number of spring ephemerals that typically do not occur on the coastal plain. She stated that the clayey soil found on the project site has high levels of calcium and magnesium and supports this unique plant community. She believes that it will be difficult to mitigate offsite because of the unusual soil type. Ms. Everett has attempted to get permission to survey the project site and has stated that she cannot

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

withdraw her objections, until she can determine whether the project site supports endangered plant species.

There is some question whether the plant community that Ms. Everett would like to see protected is located in wetlands or uplands on the project site. The species which she considers rare and endangered in the coastal plain of South Carolina are not federally listed species and in some cases these plant species are prolific in the piedmont or other areas of the state. In addition, the calcium and magnesium rich soils (Alfisol) that are located on the project site are fairly common on the coastal plain. However, the calcium and magnesium rich portion of the soil profile is typically located below the soil surface. In this case, the mining of phosphate rock on the project site has transposed the soil profile.

The Corps recognizes that Ms. Everett considers these plant communities to be rare, and they are certainly not a dominant forest type on the coastal plain. However, southern sugar maple and beech forest are located elsewhere in the state and the coastal plain. The permittee has avoided and minimized environmental impacts to the greatest extent practicable, and has clearly demonstrated that the project site is least environmentally damaging practicable alternative for the proposed project.

12. Determinations:

A. Finding of No Significant Impact (FONSI): Consideration has been given to the following criteria: Environmental setting without the project, the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives of the proposed action, relationship between local short-term use of man's environment and enhancement of long-term productivity, any irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented, information obtained by circulation of a public notice to Federal, State and local agencies, conservation groups and interested parties. Based on the information presented above and in consideration of other pertinent documents and/or information, and after considering the purpose of and need for the action, alternatives (as appropriate), the effected environment and the consequences of the action, I have concluded that the proposed project will not result in a significant impact on the human environment. As a result, the preparation of an Environmental Impact Statement (EIS) is not warranted.

B. Evaluation of the 404(b)(1) Guidelines: The Corps has reviewed the proposed project in accordance with the 404 (b)(1) Guidelines. It is our determination that:

- 1). The proposed alternative is the least environmentally damaging and practicable alternative after consideration of cost, existing technology, and logistics in light of overall project purpose.
- 2). The proposed alternative does not;
 - a. Violate any applicable State water quality standard;

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

- b. Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;
- c. Jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or result in likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended.
- d. Violate any requirement imposed by the Secretary of Commerce to protect any marine sanctuary designated under title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

3). The proposed alternative does not cause or contribute to significant degradation of the water of the United States.

4). All appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps.

It is noted that the findings of no significant degradation above were based upon appropriate factual determinations, evaluations, and tests required by subparts B and G, after consideration of subparts C through F, with special emphasis on the persistence and permanence of the effects outlined in those subparts.

C. Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

D. Public Hearing Request: No requests for a public hearing were received.

E. Public Interest Determination: I find that issuance of the Department of the Army permit as prescribed by current Department of the Army regulations for the proposed work in accordance with the drawings attached hereto, is based on a thorough analysis and evaluation of the various factors enumerated above; that the project will not adversely affect any of the public interest factors; that there are no reasonable alternatives available to the applicant that will achieve the purposes for which the work is being constructed; that the proposed work is in accordance with the overall desires of the public as reflected in the comments of State and local agencies and the general public; that the proposed work is deemed to comply with established State and local laws, regulations and codes; that there have been no identified significant adverse environmental effects related to the work and that the proposed work will not significantly affect the quality of the human environment; that the issuance of this permit is consistent with National policy, statutes, and administrative

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

directives; and that on balance, issuance of a Department of the Army permit is not contrary to the public interest.

F. Title III of the Civil Rights Act of 1964 and Executive Order 12898: The proposed permit action has been analyzed pursuant to regulations implementing Title III of the Civil Rights Act of 1964 and Executive Order 12898. It has been determined that the project would not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin nor would it have a disproportionate effect on minority or low-income communities.

G. Other Determinations: A special condition has been included in this permit, which requires that a copy of the permit and drawings be available at the site of the permitted activity during construction.

In light of the special conditions a compliance inspection will be conducted to determine if compliance with the terms and conditions of the permit has occurred. In addition, by special condition, the permittee will be required to submit a self-certification statement of compliance within 60 days of completion of the work authorized herein.

13. Special Conditions:

- a. That the permittee agrees to provide all contractors associated with construction of the authorized activity a copy of the permit and drawings. A copy of the permit will be available at the construction site at all times.
- b. That the permittee shall submit a signed compliance certification to the Corps within 60 days following completion of the authorized work and any required mitigation. The certification will include:
 1. A copy of this permit;
 2. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
 3. A statement that any required mitigation was completed in accordance with the permit conditions;
 4. The signature of the permittee certifying the completion of the work and mitigation.
- c. That the permittee will submit to the Corps for review and approval a copy of the most recent stormwater management plan and updated construction drawings, prior to initiating each new phase of the proposed project. The permittee must receive written approval from the District Engineer, or his designee, confirming that reasonable efforts have been made to avoid and minimize impacts to waters of the United States prior to proceeding with each new phase of the project.
- d. That the permittee will take all appropriate action to ensure that the \$4.75 million mitigation fund is established as described in the mitigation plan and Memorandum of Agreement (MOA). In accordance with the MOA, dated April 6,

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

2005, this fund must be established within 30 days of permit issuance. The permittee must submit the following: 1) written documentation to the District Engineer that the funds have been deposited in an escrow account or other account acceptable to the government, or 2) an irrevocable letter of credit for the full amount. The fund is to be used for the sole purpose of providing mitigation for the environmental impacts associated with the development of the aircraft manufacturing and integration facility advertised by Public Notice #2004-1N-402, dated January 7, 2005.

- e. Upon establishment, the funds must be immediately available for the acquisition, restoration, and/or enhancement of approved tracts of land for mitigation sites as proposed by the permittee and approved by the District Engineer.
- f. That all proposals submitted by the permittee must include assurances that normal, necessary, and reasonable costs associated with establishing wetland mitigation areas such as wetland surveys, land surveys, legal fees, clearing, grading, vegetative planting, preparation and submittal of mitigation monitoring reports, etc. are fully funded.
- g. That the permittee will participate in the mitigation committee and will facilitate the committee's efforts to evaluate proposals to preserve wetlands, enhance wetlands through the preservation of upland buffers, and restore wetlands by implementing approved wetland restoration projects, so that the mitigation plan is implemented in a timely manner. If the permittee is unable to execute the mitigation plan within three years of the date of issuance of this permit, the permittee will actively work with the Corps of Engineers to develop an alternative plan to accomplish the necessary mitigation.
- h. That as compensatory mitigation for the impacts to aquatic resources, the permittee will preserve 17.77 acres of unaltered wetlands and 2.53 acres of upland buffers. Preservation shall be by means of either deed restrictive covenants or conservation easement. The covenants or easement documents and surveyed plat of the mitigation area must be submitted to the District Engineer or his designee for review and approval prior to execution. Sample language for restrictive covenants and easement documents are enclosed for your consideration.
- i. That the permittee must submit evidence of execution and recording of the preservation easements or covenants and surveyed plat of the mitigation area to both the Corps of Engineers and DHEC prior to commencement of the final phase of the authorized work.
- j. That the permittee must use appropriate erosion control measures to ensure that sediment does not migrate from the project site into adjacent wetlands or other aquatic resources. The permittee must routinely monitor and maintain these erosion control measures to ensure they are working properly. In the event that

Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.

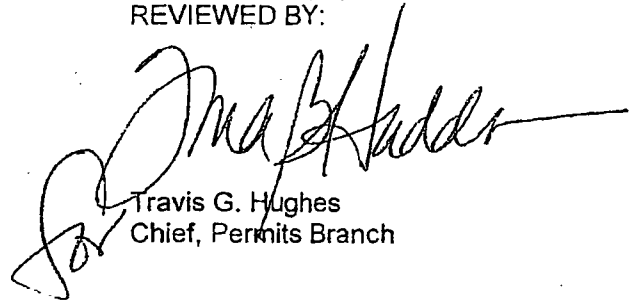
there is an accidental release of sediment, the permittee will restore the impacted area and incorporate all necessary measures to prevent any further release of sediment.

PREPARED BY:



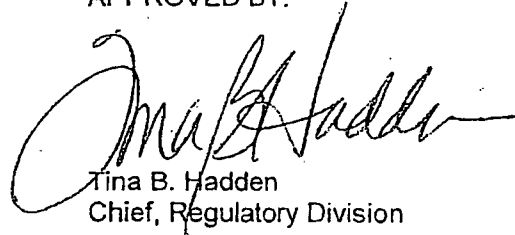
Nathaniel I. Ball
Project Manager
Permits Branch

REVIEWED BY:



Travis G. Hughes
Chief, Permits Branch

APPROVED BY:



Tina B. Hadden
Chief, Regulatory Division

April 8, 2004

For: Alvin B. Lee
Lieutenant Colonel, U.S. Army
District Engineer



A copy of the NAO was attached to the letter.

MEMORANDUM

TO: BOBBY RIGGS

FROM: NOEL THORN

RE: COOPER RIVER CORRIDOR PROTECTION WORK

DATE: SEPTEMBER 20, 2005

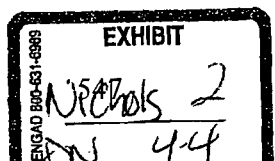
As you requested, this memorandum is intended to provide you with brief overview of the current, on-going work for the protection of the remaining unprotected properties along the east and west branches of the Cooper River located to the north of the Amoco tract. The unprotected lands within the East Branch represents almost 17,000 acres and the Upper West Branch about 7,000 acres, for a total of approximately 24,000 acres of properties yet to be protected. Please see the attached map showing the general location of the East Branch and Upper West Branch areas.

As background, there has been recent significant protection activity on-going in the subject corridor as evidenced by approximately 40,000 acres now under some form of public/private conservation, not considering the approximate 250,000 acres of the adjacent and surrounding Francis Marion National Forest. Included in those recent 40,000 acre totals is the recent public/private initiative involving South Carolina Department of Natural Resources (SCDNR), United States Forest Service (USFS), conservation-based NGO's and private land owners to protect Bonneau Ferry, Mepkin Abbey and the Mead Family properties, totaling approximately 20,000 acres.

Shortly after the completion of the aforementioned Bonneau transaction, the conservation community now finds that we are experiencing very serious development pressures within the East Branch. Significant local and regional opposition to any potential development has been formed, led by representatives of neighboring land owners including representatives of the local minority communities located in and around the East Branch properties.

In response to the overwhelming concern regarding potential development within the East Branch area, a broad-based consortium has been formed, led by SCDNR, to attempt to mitigate adverse development considerations. Working with SCDNR are The Nature Conservancy, Low Country Open Land Trust, Ducks Unlimited, Lord Berkeley Conservation Trust, Coastal Conservation League and others actively involved in coastal conservation efforts. This consortium has been working with and consulting with property owners within the East Branch, other interested adjacent land owners and representatives of local communities considering both private and public interests, to include federal, state and local agencies.

As of this writing there are serious on-going negotiations and discussions with most land owners located within the boundaries of the East Branch addressing the East Branch matters. It is our hope that those talks will lead to the protection of about 15,000 acres, representing the majority if not most of the East Branch properties, within a relatively short period of time. Critical to the success of that effort will be the fee



acquisition of certain properties (about 4500 acres) coupled with donated conservation easements from adjacent land owners (about 10,500 acres). The donation of conservation easements is dependent and contingent on the terms of the intended acquisition, and vice-versa. If we achieve success in raising the necessary capital to support the acquisition, we believe we have the commitment from neighbors for the easements. We believe we have raised at least 50% of the necessary capital to support the acquisition component and are now pursuing other options for the remainder. If we achieve success we believe the effort may produce approximately 15,000 acres of protection within the East Branch.

Concurrent with our work in the East Branch effort is an initiative to protect the remaining Upper West Branch properties. Under the leadership of Lord Berkeley Conservation Trust, we are now meeting with and consulting with included land owners and those talks have led to a strategy that may involve a combination of purchased and donated easements. We are pursuing funding options for the purchased easement component contemporaneously with our efforts for the East Branch initiative.

To aid in your consideration of this matter we thought it would be helpful to describe some of the significant conservation and ecological considerations within the subject areas. To that end we have included extracts, highlighted in red color and taken from The Nature Conservancy internal communications and memoranda that we hope will be helpful, as follows:

Ecoregional Significance

The Mid-Atlantic Coastal Plain Ecoregional Plan has identified the Sewee to Santee Portfolio as a TNC Priority Action Area. The Sewee to Santee Portfolio contains 4 Conservation Areas (CA) that are treated in aggregate as one integrated functional landscape – including Francis Marion National Forest (FMNF) and the Cooper River. The FMNF CA is located in Charleston and Berkeley Counties, South Carolina, and covers 250,000 acres. The sand ridges and better drained portions of the forest support the endangered longleaf pine ecosystem. Longleaf pine communities of the FMNF represent one of the largest remaining ecologically intact complexes of longleaf pine forests. The National Forest's red-cockaded woodpecker (RCW) population with 368 active clusters is a designated U.S. Fish and Wildlife Service recovery population. Also, significant populations of federally endangered/threatened wood stork, flatwoods salamander, shortnose sturgeon, loggerhead turtle, bald eagle, pondberry and American chaffseed all occur at the site.

The Cooper River CA is located in Charleston and Berkeley Counties, South Carolina, and covers 97,500 acres. The site supports significant longleaf pine forest with similar ecological attributes as that of the FMNF as well as the federally listed Atlantic shortnose sturgeon. The site is important to the protection of the Cooper River corridor and as a southern buffer to the FMNF. The river drains almost 1,400 square miles of uplands and wetlands, including fresh and brackish marshes. The West Branch of the river is a meandering natural channel bordered by extensive tidal marshes, old rice fields, and levees in varying states of disrepair. The East Branch is a tidal slough throughout its 7.5 miles in length.

The U.S. Forest Service (USFS) estimates that as much as 12,500 acres of the FMNF could be adversely impacted by incompatible residential development within the East Branch. Large-scale development in this area of the FMNF would effectively shut down prescribed fire on both the public and neighboring private lands that use this practice regularly. Some of the most extensive longleaf pine forest on the FMNF occurs in the immediate area. This area is extremely diverse and contains the highest concentration of listed species on the entire Forest:

- An estimated 34 federally endangered red-cockaded woodpecker clusters occur in this area.
- There are 5 records for the federally threatened flatwoods salamander in the area of impact, including 3 recently active breeding ponds. Flatwoods salamanders are nearly extirpated from South Carolina and the FMNF population is the last and most recently documented.
- The sensitive gopher frog has similar habitat requirements to the flatwoods salamander. There are 8 documented gopher frog breeding ponds in the impacted area.
- The area has 6 federally endangered pondberry populations.
- American chaffseed is a federally endangered plant occurring in frequently-burned longleaf pine forests. There are 3 American chaffseed sites in the impacted area, all of which are declining.
- Additionally, there are at least 10 other records for sensitive species that need fire to persist in the area, including: red pitcher plant, pondspice, incised groovebur, and crested fringed orchid.

The density of listed or sensitive species is truly unique and the reduction in frequency or elimination of prescribed fire would result in tremendous negative impacts to the FMNF, a critical component of the Sewee to Santee landscape.

It is our hope that within the very near future we will be in a position to firm up our understandings and agreements with both the owners of the intended acquisition opportunity within the East Branch but also with the donated easement land owners in the East Branch and the purchased/donated easement land owners in the Upper West Branch. As those findings unfold and to the extent possible we will certainly keep you informed of our progress.

Thank you for giving us the opportunity to present this wonderful conservation opportunity to you and your clients.

Cooper River Corridor

UPPER
WEST BRANCH

EAST BRANCH

Upper West Branch
12,457 acres

Upper East
1,440 acres

BP Project
1,372 acres

Lower, Pleasant
1,227 acres

Locator map

Cooper River
Corridor



Private Protected Property
State Protected Property
Federal Protected Property
Berkeley County Parcels
Urban Areas

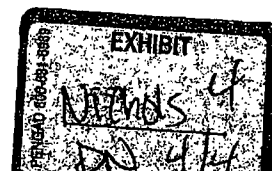
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Draft Proposal: Cooper River West Branch – SPA

Project Abstract: *The Cooper River West Branch is comprised of 10 critical tracts totaling 4,768 acres, 3,145 acres of which are wetland acres. These tracts collectively represent a significant corridor of valuable riparian habitat along the Cooper River and provide a strategic link between three areas of previously protected property, including Mepkin Abbey, Wadboo and Mulberry Plantation. Berkeley County, Berkeley County Soil and Water Conservation District, The Lord Berkeley Conservation Trust, The Nature Conservancy (TNC) and its conservation partners are actively pursuing the conservation of the Cooper River Corridor, of which the West Branch is a key component. These 10 tracts lie within the Cooper River Focus Area Task Force boundary, and are identified as significant by the Cooper River Special Area Management Plan and the Berkeley Cooperative Greenspace Initiative. A grant of \$2,749,250 from the State Ports Authority Mitigation Bank for the Cooper River West Branch project will be matched by \$5,108,000 in partial easement donations/bargain sales for a total easement value of \$7,857,250 to protect 4,768 acres worth \$13,355,750. Protection of the West Branch is considered essential in protecting the ecological integrity of the Cooper River and a large complex of private conservation lands from significant threats of incompatible land use associated with the rapidly expanding Charleston Metropolitan Area (CMA). Conservation of the West Branch tracts would contribute an additional 20 river miles of permanent protection along the West Branch of the Upper Cooper River Estuary and would greatly complement current efforts to protect additional tracts along the East Branch such as the Keystone tract and neighboring private plantations. Further, the West Branch tracts as a whole represent a unique, one-time opportunity to permanently remove the threat of highly incompatible development and its associated impact on the Cooper River watershed.*

Data from Clemson University's Strom Thurmond Institute project a 71 percent increase in urban expansion (rate of conversion from rural to urban lands) within the CMA during the period of 1994-2030. The existing unprotected status of the West Branch tracts similarly represents a significant threat to the existing complex of protected lands and associated wetland ecosystems in the Cooper River watershed. Accordingly, failure to adequately protect the tracts would result in substantive irreversible damage to extensive, nationally significant wetland communities as well as to numerous rare and endangered species currently found in the region. The tracts support extensive forested wetland communities, considered by the U.S. Fish and Wildlife Service to be one of the most ecologically significant and threatened wetland types in the country. The tracts also support historic ricefields that are currently managed for waterfowl and wading birds. Private lands adjacent to the West Branch tracts support high concentrations of federally endangered red-cockaded woodpecker populations as well as significant populations and/or suitable habitat for four other federally endangered plant and animal species. Incompatible development of the West Branch tracts would adversely impact prescribed burning required to maintain the viability of fire- dependent habitats on nearby private lands which harbor numerous rare, threatened or endangered species.

Location and Size: Within the Upper Cooper River – West Branch watershed, the 4,768-acres represented by 10 tracts is located in Berkeley County immediately east of the Town of Moncks



Corner. 9 of the 10 Cooper River West Branch tracts straddle the river and are generally located between U.S. Highway 52 and SC Highway 402. The 10th tract strategically sits between Bluff and Medway Plantations, serving as a critical inholding between these two privately protected properties (see attached map). Both Gippy and Lewisfield are accessible via Old Highway 52. The tracts across the river are bordered on the east by Doctor Evans Road. Each tract includes a system of interior plantation roads and have limited structures.

Threats: According to Clemson University's Strom Thurmond Institute, South Carolina's coast faces growth of 700,000 new inhabitants over the next 20 years. Commensurate with such growth will be high land conversion rates (a 71 percent increase in urban areas projected to occur in the Charleston Metropolitan Area between 1994 and 2030) and escalating property values. Given the strategic location of the Cooper River West Branch tracts to the Francis Marion National Forest (FMNF), other formally protected public and private conservation lands and historic minority communities, appropriate and immediate conservation of these tracts is critical to significant ecological, cultural and human resources on a regional scale. Incompatible development of these tracts would result in substantive, irreversible damage to extensive, nationally significant wetland communities as well as to numerous rare and endangered species.

Each tract has strong potential for development. Current zoning for all of the tracts is Flex 1 which permits 3 units per acre. The Gippy and Lewisfield tracts are particularly vulnerable due to their adjacency to the Town of Moncks Corner and associated amenities including water and sewer. Developers have already approached at least one of the landowners represented in the West Branch package. If developed to full capacity, it is estimated that the West Branch tracts collectively could support up to 4,869 units on 1,623 acres of uplands as permitted by current zoning.

Funding from SPA mitigation to purchase easements would significantly lessen the impact that development would impose on the tracts themselves as well as the larger Cooper River watershed. For example, the 1,076-acre Salt Point Timber, LLC tract under current zoning could support 855 units on its 285 acres of uplands. With a purchased easement program, enabled by the SPA mitigation funds, this property could be restricted to 4 units with a minimum of 100-foot wetland and riparian buffers, representing a drastic decrease in development impact. It should also be noted that Salt Point Timber, LLC is one of the parties ready to pursue a purchased easement should the funds be made available to the Cooper River West Branch tracts.

Habitat Features:

Wetlands: According to National Wetlands Inventory data and GIS calculations, the Cooper River West Branch tracts contain approximately 3,145 acres of wetlands associated with the Cooper River. Additionally, numerous non-riverine wetlands are located throughout the tracts. Nearby lands of the FMNF support numerous types of natural freshwater wetland communities. The U.S. Fish and Wildlife Service (USFWS) identifies forested wetlands as a nationally decreasing wetlands type of high ecological value. In addition to their ecological functions of water storage/ flood control and pollutant filtration, forested wetlands provide critical habitat for migratory birds. Accordingly, protection of the Cooper River West Branch tracts would advance two USFWS key priorities, wetlands protection and conservation of migratory bird populations. Informal surveys and geomorphology suggest that significant occurrences of the following community types likely occur on the tracts:

Historic Ricefields. A variety of wetland plant communities are related to historic rice fields on the Cooper River. These include non-tidal forested inland fields as well as tidal remnant and intact dike systems within the immediate floodplain. A broad array of woody herbaceous and floating-leaved aquatics are associated with the above mentioned wetland types. These specific species include: bald cypress (*T. distichum*), red maple (*Acer rubrum*), water tupelo (*Nyssa aquatica*), alligator weed (*Alternanthera philoxeroides*), water weed (*Elodea canadensis*) and (*Egeria densa*), fanwort (*Cabomba caroliniana*), coontail (*Ceratophyllum demersum*), muskgrass (*Chara* sp.), dwarf spikerush (*Eleocharis parvula*), spikerush (*Eleocharis* sp.), rush (*Juncus biflorus*), duckweed (*Lemna minor*), lotus (*Nelumbo lutea*), nitella (*Nitella* sp.), white water-lily (*Nymphaea odorata*), smartweed (*Polygonum* sp.), pickerelweed (*Pontederia cordata*), variable-leaved pondweed (*Potamogeton diversifolius*), pondweed (*Potamogeton* sp.), widgeon grass (*Ruppia maritima*), duck potato (*Sagittaria latifolia*), water pimpernel (*Samolus parviflorus*), bulrush (*Scirpus validus*), cordgrass (*Spartina* sp.), narrow-leaved cat-tail (*Typha angustifolia*), common cat-tail (*Typha latifolia*), bladderwort (*Utricularia* (sp.)), yellow-eyed grass (*Xyris caroliniana*), horned-pondweed (*Zannichellia palustris*), eel grass (*Zostera marina*).

Nonriverine Swamp Forest This community is found in flat, poorly-drained interstream drainage areas occurring on shallow organic soils throughout most areas of the tract. Standing water is present for at least several months of the year. The canopy is quite diverse; none of the trees that dominate Nonriverine Swamp Forests is limited to this community type. Instead, species that are often dominants in other communities are mixed together here. They include pond cypress (*Taxodium ascendens*), bald cypress (*T. distichum*), red maple (*Acer rubrum*), swamp tupelo (*Nyssa sylvatica* var. *biflora*), pond pine (*Pinus serotina*), loblolly pine (*Pinus taeda*), red bay (*Persea palustris*), sweet bay (*Magnolia virginiana*), and loblolly bay (*Gordonia lasianthus*). Shrubs include fetterbush (*Lyonia lucida*), titi (*Cyrilla racemiflora*), buttonbush (*Cephalanthus occidentalis*), and Virginia willow (*Itea virginica*). Such wetland herbs as Virginia chain fern (*Woodwardia virginica*), cinnamon and royal fern (*Osmunda cinnamomea* and *O. regalis*), lizard's tail (*Saururus cernuus*), false nettle (*Boehmeria cylindrica*), and others may be present.

Coastal Plain Small Stream Swamp Forest Coastal Plain small stream swamps are present in Atlantic Coastal Plain floodplains of small blackwater streams. These swamps are very poorly drained, remaining saturated to flooded with occasional periods of drought. Dominant tree species include black gum (*Nyssa biflora*), bald cypress, red maple, water oak (*Quercus nigra*), ash (*Fraxinus pennsylvanica*), and sweet-gum (*Liquidambar styraciflua*). Understory and shrub components include ironwood (*Carpinus caroliniana*), sweet bay, red bay, holly (*Ilex* sp), persimmon (*Diospyros virginiana*), Virginia willow, and fetterbush. Vines are abundant and include muscadine (*Vitis rotundifolia*), greenbriers (*Smilax rotundifolia* and *S. laurifolia*), Virginia creeper (*Parthenocissus quinquefolia*), and poison ivy (*Toxicodendron radicans*). Herbs may be abundant or sparse, and include giant cane (*Arundinaria gigantea*), Virginia chain fern, partridge berry (*Mitchella repens*), and sedges (*Carex* spp.).

Pond Cypress Pond These elliptical, circular, or irregularly-shaped wetlands occur at several locations and generally support some surface water throughout the year. Pond cypress is the dominant tree species; however, swamp tupelo also occurs. Shrubs include dahoon (*Ilex cassine* var. *myrtifolia*), buttonbush, and titi. False nettle, St. John's Wort (*Hypericum* sp), and thoroughwort (*Eupatorium* sp) are characteristic herbs rooted in the soil or in floating logs or stumps.

Uplands: Upland portions of the tracts are dominated by loblolly pine (*Pinus taeda*) and mixed pine hardwoods. A variety of grasses, herbs and forbs, including panic grasses (*Panicum* spp), vasey grass (*Paspalum urvillei*), ragweed (*Ambrosia artemisiifolia*), and goldenrod (*Solidago* sp), are associated with the pine stands. Principal hardwoods include sweet-gum and water oak.

Relationship to Larger Ecologically-Protected Units: The Cooper River West Branch tracts are strategically-oriented properties within the Sewee to Santee landscape, a vast 800,000-acre region surrounding the Cooper River East and West Branches, the FMNF, the Cape Romain National Wildlife Refuge (CRNWR), and the Santee River and Delta. The region is internationally recognized for its significance to coastal wetlands, migratory birds, and rare, threatened or endangered plant and animal species. Some 425,000 acres have been formally protected through federal ownership (FMNF, CRNWR), state ownership (Capers Island Heritage Preserve, Santee Coastal Reserve, Santee Delta Wildlife Management Area [WMA], Yawkey Wildlife Center, Bonneau Ferry WMA, WeeTee State Forest/WMA and Hampton Plantation State Park), and privately protected lands, including some 45 properties totaling more than 40,000 acres (approximately 30,000 of which are located in the Cooper River watershed) placed under conservation easements.

Due to geographic location and functional ecological linkages, the following sites are particularly germane to the Cooper River West Branch tracts as integral components of the Sewee to Santee landscape:

Bonneau Ferry Wildlife Management Area (WMA)

In 2004, the South Carolina Department of Natural Resources (SCDNR) acquired the 10,000-acre Bonneau Ferry tract, located approximately 5 highway miles from the southernmost point of the Cooper River West Branch tracts. The property supports ecological attributes similar to the FMNF, including extensive longleaf pine communities (2,000 acres), 11 red-cockaded woodpecker clusters, and important forested wetland complexes (1,700 acres).

Conservation Easement Properties

Within the Cooper River watershed, multiple tracts of private properties totaling some 30,000 acres are currently under conservation easements with local and national land trusts and SCDNR. These properties buffer as well as augment wetland and other ecological attributes of the adjoining or nearby public conservation lands.

Francis Marion National Forest

The 260,000-acre National Forest supports one of the largest and most diverse longleaf pine ecosystems remaining in the Southeast. The longleaf pine (*Pinus palustris*) ecosystem is considered by the U.S. Forest Service (USFS) to be one of the most botanically diverse in North America, with more than 1,000 species of plants represented. More than 30 types of natural plant communities have been documented in the Forest. Thirty-two species of orchids, 22 species of ferns, and 12 species of carnivorous plants are associated with the unique plant communities of the Forest.

The Forest supports two federally-endangered plant species: pondberry (*Lindera melissifolia*) and American chaffseed (*Schwalbea americana*). At least 31 other plant species

have been identified by the USFS as sensitive species, and most are candidates for federal listing as threatened or endangered. The Forest harbors one of the largest remaining viable populations of the federally-endangered red-cockaded woodpecker (*Picoides borealis*) in the world. The National Forest's red-cockaded woodpecker population, consisting of 368 active clusters, is a designated U.S. Fish and Wildlife Service (USFWS) recovery population.

Two other federally-listed endangered or threatened animal species, the southern bald eagle and the woodstork, are found in the Forest. Additionally, the Forest functions to protect water quality of the Cooper River, harboring two aquatic federally endangered species, the shortnose sturgeon (*Acipenser brevirostrum*) and Florida manatee (*Trichechus manatus latirostris*). The Forest also provides important habitat for 13 sensitive species, most of which are candidate species for federal listing as threatened or endangered.

Within the context of the landscape surrounding the FMNF, formal protection of the Cooper River West Branch tracts and implementation of appropriate management regimes would aid the recovery of numerous federally listed species referenced above.

Work Plan:

Project Partnerships: A coalition of public and private-sector partners is actively engaged in protecting key remaining unprotected properties in the Upper Cooper River watershed, including the Keystone tract, with the Cooper River West Branch tracts identified as a high priority. The Lord Berkeley Conservation Trust (LBCT) is the lead partner in protection of the Cooper River West Branch tracts. Ducks Unlimited, the Lowcountry Open Land Trust, The Nature Conservancy (TNC) and SCDNR, together with LBCT, currently hold some 30,000 acres of conservation easements in the Cooper River watershed, and are actively engaged in securing additional easements in the region. Further, the USFS is working with TNC to acquire strategic inholdings within the FMNF. Protection of the Cooper River West Branch tracts, together with SCDNR's recent acquisition of Bonneau Ferry, and the complex of existing and pending conservation easements and nearby lands of the FMNF, yields an unprecedented consolidation of key parcels linking large ecological units totalling some 300,000 acres.

Land Protection Strategy: The Cooper River West Branch tracts will be protected through purchased easements, all of which will be achieved through bargain sales, held by LBCT and secondarily by a nationally recognized land trust such as Ducks Unlimited or The Nature Conservancy. LBCT is currently negotiating protection strategy details with the landowners. Development will be limited to an average of 4 residential units per tract (**less than 1% of the total capacity allowed under current zoning**) with appropriate upland buffering and protection of all significant wetlands.

Project Completion Schedule:

- September – November 2006 - Preliminary land protection strategy development
- December 2006 – Finalize land protection strategy concept agreement
- January – July 2007 – Begin implementation of land protection strategy
- July 2007 – July 2008 - Complete implementation of land protection strategy

Budget: With reference to the attached Appendix 1, the combined value of the upland and wetland acres of the subject properties is \$13,355,750. Of that total, the upland component is \$10,997,000 and the wetland component is \$2,358,750. The easement value of the upland

acres is determined at 50% of the value of the uplands, or \$5,498,500. It is assumed the landowners will donate/bargain sale 50% of the upland easement value, or \$2,749,250. The landowners are also assumed to contribute the value of the easement for the wetland acres at \$2,358,750, for a total of \$5,108,000. **This proposal assumes a request for the purchase component of the value of the easement for the upland acres, or 50% of \$5,498,500 equal to \$2,749,250.**

Management Plan: As the specific protection strategies for the Cooper River West Branch tracts have not yet been finalized, formal management plans have not been prepared. Regardless of the ultimate protection strategies employed to conserve the tracts, the following conservation principles/actions may be incorporated into the management plans:

- Inventory and community classification of all significant wetlands
- Formal protection of wetlands, including adequate upland buffers
- Identification and implementation of upland silvicultural practices that will protect significant wetland features; an increase in rotation age beyond standards that have historically been practiced for fiber production; and consideration for transitioning all or selected portions of the uplands from loblolly pine to longleaf pine (*Pinus palustris*) communities
- Preparation and implementation of a prescribed fire management plan that will enhance wildlife habitat and biodiversity values and aid in the restoration of natural communities
- Identification, protection and management of rare, threatened or endangered plant and animal species

Project Leverage: Lord Berkeley Conservation Trust is working with the landowners of the Cooper River West Branch tracts to negotiate purchased easements at bargain sale prices. Appendix 1 attached to this proposal illustrates the values of each tract, both unrestricted and restricted, and the potential for leverage through bargain sales. A grant of \$2,749,250 from the State Ports Authority for the Cooper River West Branch project will be matched by \$5,108,000 in partial easement donations/bargain sales for a total easement value of \$7,857,250 to protect 4,834 acres worth \$13,355,750. The grant represents 21% of the total dollar value of these tracts.

Lord Berkeley Conservation Trust: Historical Habitat Conservation Performance

LBCT has a history of land protection in Berkeley County and the Cooper River Corridor in particular. Since 1992, LBCT has protected 21,300 acres through the donation and purchase of conservation easements, resulting in substantive coastal wetland and associated habitat protection. The Lord Berkeley Conservation Trust (LBCT) is a locally based, non-profit organization dedicated to protecting, preserving and managing the natural resources and habitat of Greater Berkeley County for future generations to enjoy. LBCT is directly involved in protecting land for its natural, recreational, scenic, historical or productive value.

2003: Upper West Branch Protection Program



Berkeley County GIS Department
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12/9/2005



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APPENDIX 1

Valuation of Cooper River West Branch Tracts

Name	Acres	Value/acre	Total Value	Easement Value (50% of total for upland acres)	Purchase of Easement (50% of easement value)	Landowner Contribution
Brickhouse	213 total					
	96 upland	\$7,000	\$672,000	\$336,000	\$168,000	\$168,000
	113 wetlands	\$750	\$84,750	\$0	\$0	\$84,750
			\$756,750	\$336,000	\$168,000	\$252,750
Salt Point	1076 total					
	285 upland	\$7,000	\$1,995,000	\$997,500	\$498,750	\$498,750
	791 wetland	\$750	\$593,250	\$0	\$0	\$593,250
			\$2,588,250	\$997,500	\$498,750	\$1,092,000
Willow Grove	310 total					
	48 upland	\$7,000	\$336,000	\$168,000	\$84,000	\$84,000
	214 wetlands	\$750	\$160,500	\$0	\$0	\$160,500
			\$496,500	\$168,000	\$84,000	\$244,500
Smith	137 total					
	74 upland	\$7,000	\$518,000	\$259,000	\$129,500	\$129,500
	63 wetlands	\$750	\$47,250	\$0	\$0	\$47,250
			\$565,250	\$259,000	\$129,500	\$176,750
Umbria	294 total					
	55 upland	\$7,000	\$385,000	\$192,500	\$96,250	\$96,250
	239 wetlands	\$750	\$179,250	\$0	\$0	\$179,250
			\$564,250	\$192,500	\$96,250	\$275,500
Whitehall	266 total					
	45 upland	\$7,000	\$315,000	\$157,500	\$78,750	\$78,750
	221 wetlands	\$750	\$165,750	\$0	\$0	\$165,750
			\$480,750	\$157,500	\$78,750	\$244,500
Lewisfield	739 total					
	218 upland	\$7,000	\$1,526,000	\$763,000	\$381,500	\$381,500
	521 wetlands	\$750	\$390,750	\$0	\$0	\$390,750
			\$1,916,750	\$763,000	\$381,500	\$772,250

Name	Acres	Value/acre	Total Value	Easement Value (50% of total for upland acres)	Purchase of Easement (50% of easement value)	Landowner Contribution
Gippy	708 total					
	201 upland	\$7,000	\$1,407,000	\$703,500	\$351,750	\$351,750
	507 wetlands	\$750	\$380,250	\$0	\$0	\$380,250
			\$1,787,250	\$703,500	\$351,750	\$732,000
Buck Hall	774 total					
	405 upland	\$7,000	\$2,835,000	\$1,417,500	\$708,750	\$708,750
	369 wetlands	\$750	\$276,750	\$0	\$0	\$276,750
			\$3,111,750	\$1,417,500	\$708,750	\$985,500
Pawley	251 total					
	144 upland	\$7,000	\$1,008,000	\$504,000	\$252,000	\$252,000
	107 wetlands	\$750	\$80,250	\$0	\$0	\$80,250
			\$1,088,250	\$504,000	\$252,000	\$332,250
TOTAL:	4768		\$13,355,750	\$5,498,500	\$2,749,250	\$5,108,000
SUMMARY:	1571 Upland acres		\$10,997,000	\$5,498,500	\$2,749,250	\$2,749,250
	3197 Wetland acres		\$2,358,750	\$0	\$0	\$2,358,750
GRAND TOTAL:	4768		\$13,355,750	\$5,498,500	\$2,749,250	\$5,108,000

EXHIBIT 17

**MINUTES OF QUARTERLY MEETING OF
BOARD OF TRUSTEES OF
ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST**

February 21, 2006

The Quarterly Meeting of the Board of Trustees of Ashley-Cooper Rivers Environmental Trust, a South Carolina Nonprofit Corporation (the "Corporation") was held on Tuesday, February 21, 2006, at 9:00 a.m., at the offices of Haynsworth Sinkler Boyd, P.A., 134 Meeting Street, Charleston, South Carolina.

Trustees Present:	John Adams Hodge Nancy Elizabeth Vinson Charles G. Lane Edward Dana Beach John Hensel for OCRM
Trustees Present By Conference Call:	Charles P. Newton III Elizabeth Ann Blackshire Thomas F. Stubbins Kay B. Davy Jason Ares
Trustees Absent:	
Others Present:	Peggy McClintock, Paralegal Jason Johnson, Conservation Fund Badger, Ducks Unlimited

Nancy: The media has been notified of this meeting as required by FIOA. Are there any corrections or additions to the minutes of the November 29, 2005 Quarterly meeting?

Newt: Motion to accept amended minutes

John: Second

Newt: Motion passed

Nancy: Do we need to ask North Charleston to come in for an interview?

Dana: North Charleston doesn't meet our timeline of being underway this year and complete in the next two or three years.

Charles: I agree, they are just beginning to develop the project. There is a new technology for phragmite, which is non-native vegetation from the far east that is clogging up the channels. The phragmite can be handled with the new chemical in an 18 month period.

Dana: DNR has contact with Aquatic Management, and they are involved with the eradication of phragmite. How does it affect native vegetation?

Charles: It takes a few cycles of the chemical to eradicate all of it. You spray one time, and then check for growth a few weeks later and spray again. The native vegetation can return once the phragmite has died.

Dana: We determined that we wanted an established non-profit in place when we funded a project. North Charleston has not set up a non-profit. North Charleston does not qualify for our funding.

Nancy: Yes, I agree. North Charleston is in the beginning phase, and has not met our minimum standards for eligibility.

John H: I sent North Charleston a letter late last week asking them to respond to these kinds of concerns.

Nancy : How does the Department view phragmite?

John: Yes it would be of benefit to eradicate phragmite.

Nancy: Should we pursue this?

Charles: How much would it cost generally?

Dana: That would depend on how many acres. It would be calculated as a cost per acre.

Charles: If we do this we would need to eradicate the phragmite totally. We can't just do it in part, or it will come right back. We do have a restoration component to consider. Should we let them know how to revise?

Dana: Let's put on the record our interest but note the deficiency of their application. It may be worthwhile to use a portion of the funds on this.

John H: Maybe we can help them, but we need to keep in mind the grant's responsibility to conservation and preservation of the wetlands.

Charles: Let's talk about other projects and pick the best of them, and then find out if we have spare funds to disperse. Keystone seems to be going in a different and satisfactory direction. They won't be done in time. It may be two years before we know how the limited development will pan out.

Jason: This is Jason Johnson from the Conservation Fund.

Nancy: I asked Jason here to answer some questions about the Middleton project. A smaller committee can go over the legal aspects at a later date.

John H: We can ask questions and then go into an Executive Session to discuss the proposals, and then go back to a general session if we want to ask Jason more questions. We can make our recommendation to Vought through Newt, with our intention to award the funds after the Corps approves, then do the legal paperwork. First, today we will discuss the proposals. Second we can make a recommendation. Third, we prepare to submit our proposal to the Corps. We will need to include the acreage affected and restoration component. We will need very specific information for the Corps. To gather that info we can ask the applicant to help.

Nancy: Do we want to ask questions or begin with an overview of the Middleton project?

Newt: Let's have an overview first.

John H: Jason can give us an overview and then when Badge arrives he can speak.

Jason: The Middleton project includes a total of 5,800 acres of easement, which is separate from Middleton Place and the house and gardens. That is across Ashley River Road. There are 2,300 acres of marshlands and 164 acres of lakes. The Dula family has a contract with the Conservation Fund for \$4 million in conservation easements. The contract limits the Dulas to 10% development of the total designated area that would be 580 units limited to 800 acres. I have provided Nancy with the draft easement. We are looking for a holder of the easement and have been negotiating with Lowcountry Open Land Trust. We have changed our timeline to closing in mid-June 2006 and first we need to get all of our funding in order and execute and record the easements. We also need an amendment to the agreement with the Dulas consenting to closing that soon.

Dana: The origin of the Poplar Grove is 3,500 units in Dorchester County. Developers Edwin Cooper and Vic Mills were to purchase easement. The requirement is Ashley River Historic Area. All together there are 15,000 acres, with development all around. \$10 million in Millbrook will match Poplar Grove and Middleton for \$4 million for 10% development. Millbrook voluntary and may tighten up later. For the last 20 years conservation has failed. A sum total of 13,000 acres can be protected here.

Newt: Will our one million make the June 06 transaction happen?

Charles: We would need more than one million. Conservation Fund will commit to full amount if we contribute 2 million and that would close out the whole deal with Middleton and Poplar Grove to secure the 100% easement.

Newt: If we do contribute the \$2 million what's the leverage ratio?

Charles: Our funds trigger the grant, donated conservation easements by the Hanahan family for Poplar Grove. Ducks Unlimited needs \$10 million and they are raising money, the fair market value must be \$20 million, so the leverage is enormous.

Dana: Two million facilitates \$14 million. The three easements together are in the \$50-60 million range. That's a 30 to 1 leverage ratio.

Badge: I am with Ducks Unlimited. We have raised \$2 million.

Charles: Ducks Unlimited raised \$2 million I private funding for Poplar Grove for protecting the landscape.

John H: Jason, how much more will the Conservation Fund need if we give \$2 million?

Jason: We found a guarantor to cover our \$2 million that will allow us to close.

John H: We want to make sure we have something in writing, some kind of documentation that you will be able to cover the completion of the project.

Jason: Last week we sent a NAWCA application for \$1 million and we should hear back next week. That money would come in in the fall. We have \$500,00 from the Doris Duke fund, and a \$500,000 request in to the SC Conservation Bank.

John H: What's the first?

Jason: NAWCA, North American Wetlands Conservation Act.

Dana: Poplar Grove needs \$10 million. Ducks Unlimited committed. There are six or more sources of funding for a total of about \$2 million. Then \$2 million from the Conservation Bank.

Charles: Actually Poplar Grove has \$4 million from the Conservation Bank, private are \$2 million, \$2 million in contingency from the Conservation Fund if we give \$2 million and if Middleton and Millbrook go forward.

Nancy: Poplar Grove accounts for \$8 million

Charles: Right, we need 2 million more, and also need legal costs. Component for mitigation and restoration. Should we look to North Charleston for restoration to meet the obligation.

John H: Even if the money for acquisition if matching funds make restoration possible then we fulfil obligation.

Dana: Small amount which will be matched. Ducks Unlimited requires \$2 million, that was a joint request with Middleton. The Ducks Unlimited money will go toward the \$10 million to Poplar Grove. The Conservation Fund has \$4 million to Middleton.

Charles: Our \$4 million goes to \$60 million in conservation.

John H: Can someone set forth funding proposals for due diligence?

Ann: Good idea

Dana: A one page summary of the whole project and the role the trust is being asked to play.

Newt: Yes, I'd like a Sunday morning comic page explanation.

Charles: If we make a gift how much would be left over for North Charleston?

John H: \$4 million, we'd be left with \$800,000 for grants to North Charleston or anyone else. We would need more information from North Charleston or we could do a second Request for Proposals.

Charles: I have seen many good projects, with bad proposals. Let's tell them how to resubmit, and maybe this project can be successful and valuable to the citizens.

John H: If we can lead them toward more efficient goals, we can have a more active role in helping.

Newt: I move to go into Executive Session.

John H: Second

Newt: Jason, Badge, please stand by

Nancy: Let's talk about the process. The lawyers can work out the contract which stipulates the contingencies we require to be met for the grant.

Charles: Ducks Unlimited has a well developed project and their work is clean. The Conservation Fund still has work to do and hurdles to overcome. They need to show proof of the guarantee, and show they have a qualified conservation easement document. The document form does not meet standards required or equal to the Poplar Grove easements. We can give them the money if they address these problems.

Newt: I see two paths. We don't have to go to the Corps with everything at once.

Charles: Do you want to withhold the \$100,000 on restoration of the hardwood? The proposal is cleaner if we send both to the Corps, because we may get gummed up with North Charleston, and then not have the restoration component addressed.

John H: The proposal that goes to the Corps should have some restoration or it may be criticized.

Charles: The due diligence is done, and it is well organized.

Newt: Can we make a motion?

Charles: I move that we award Ducks Unlimited \$2million for partial purchase of the bargain conservation easement at Poplar Grove and an additional \$100,000 contributed to restoration of the hardwoods.

John H: Let me make a friendly suggestion to add onto the end of that motion that the motion is subject to approval by DHEC and the Army Corps of Engineers.

Charles: Poplar Grove will go forward.

John: Middleton is important.

John H: I second the motion

Newt: Any objections to enter into discussion? Let's stick to the Poplar Grove project and go through to the contract phase, and then double back later to consider the other proposals. Can anyone suggest a timeline? Who will draft the agreement?

Charles: John Hodge can draw up a contract. It would be subject to approval by DHEC.

John H: How do you put together contracts with the Conservation Bank? I mean we don't need to reinvent the wheel here.

Charles: Most of our awards go to documentation. Our outside counsel can let us know what to include. His name is George Bailey.

John H: Let's have a discussion with him, so that our agreement can mirror what the Conservation Bank does.

Newt: Someone will need to prepare the single sheet summary of the proposal.

John: Badge can do that.

John H: What percentage will affect the wetlands?

Charles: We can use Ducks Unlimited documentation to show Middleton what to provide.

John H: We can do that and also stipulate a date to motivate them. So first we need to draft a proposed contract, and then we need the one page summary. I'd like to include the restoration plan for the Corps. We can ask Badge to provide the documentation.

Newt: I'd like to see a self-sufficient package. The first step is to put together a package with the contract and documentation and get to the Corps for feedback.

John H: I'll ask Nat how to match expectations.

Newt: When will we have a committee meeting to pass and submit to Corps?

Nancy: Maybe the attorneys, Ann and John Hodge can handle this to save time.

Charles: Most of what we need ready, and we can use as a model for later projects, should be ready by the end of March.

Nancy: Should the whole committee sign off?

John H: We can email to all members of the committee to determine if we need to hold a follow up meeting. We can have a meeting to verify the final contract and disburse the funds after the Corps accepts it.

Newt: I would like to make sure that we ask for a positive response from every member in the email. That is not to say that if you don't respond it can be taken as a positive response, but that each member will respond and state clearly their support of the proposed contract.

John H: We can't just reimburse someone for something they would already have done. We need to make sure that our proposed contract shows that our money is making the project happen.

John: I'm not comfortable with a vote because DNR is not here and this is my first time at a meeting. I will abstain from voting.

Newt: Nancy, please note for the record that we encourage each agency to submit their critique after review.

Nancy: The motion by Charles Lane to award Ducks Unlimited \$2 million and \$100,000 for wetlands restoration provided that Ducks Unlimited successfully executes an agreement with the ACRET board and subject to approval by DHEC and the Army Corps of Engineers.

Newt: Let's vote. Jason Ares

Jason: Yes

Newt: Dana Beach

Dana: Yes

Newt: Kay Davy

Kay: Yes

Newt: John Hodge

John H: Yes

Newt: Charles Lane

Charles: Yes

Newt: NN

NN: Yes

Newt: Nancy Vinson

Nancy: Yes

Newt: Ann Blackshire

Ann: Yes

Newt: Tom Stubbins

Tom: Yes

Newt: John Hensel

John: Abstain

Newt: The motion is passed.

Charles: Should we call in Badge?

Newt: What approach should we take with the North Charleston project?

Charles: They only seem to have an idea and not a plan. The creeks are in really bad shape. I hope we can do something with \$700,000. DHEC and FWS may know how best to help them.

John : They have been trying to get a project going. North Charleston is not ready. They have property issues, but we can find out.

Dana: They won't respond to tough questions. DNR or other agencies are already involved. It is the right project, but the wrong administration. We can acknowledge the value of the project they are trying to undertake, and find out if they will develop it.

John H: Do we recruit another non-profit?

Dana: Who is a good choice?

John: DNR might know.

John H: The purpose is conservation of wetlands with a restoration component. If it will all go to restoration we need documentation to show that we meet our mandate.

Dana: I don't feel confident restoration with North Charleston will move toward conservation. They want to buy a trailer park and clean up that property to make it part of the watershed.

Charles: Let's make an attempt.

Newt: Have Jason and Nancy get North Charleston to focus on one element with a clean proposal.

Nancy: We should not vote in Executive Session.

John H: Right. We will re-vote in General Session. If we give North Charleston a chance, and we have documentation, that shows we have tried to foster this project.

Nancy: What about Middleton?

John H: How many acres?

?: 100 acres

Dana: Bottomland hardwood

Charles: Restore the area

John H: We are so far beyond the Corps SOP. 100 acres might cover what we need to do. There may be other projects out there.

Newt: Middleton?

Charles: There are two issues to resolve. The poor draft of the conservation easement. We must require a qualified easement.

Newt: We need to list the issues for Middleton to revise.

John H: I want to motivate them. Should we tell them that we will fund if they do these things, or that we will reconsider their proposal if they do these things first?

Dana: 10% development, there is a debate between the Dulas and the Conservation Fund about what uses will be included.

Charles: Poplar Grove controls the development area. They need a commitment to close 100% on the easements.

Dana: Confirm with Ducks Unlimited and Poplar Grove, this would also give the Conservation Fund more leverage to draw the line with the family. So the points are: Is it a qualified easement? And does it meet the standard of original Poplar Grove easement.

Newt: Is the easement on file for their review?

?: Yes.

John H: The Conservation Fund should provide a one page money trail. Should we offer a set amount of money?

?: Yes, \$2 million.

Charles: Yes, a baseline report.

Dana: Can I give my proxy to another member and leave early?

Newt: Let's go to General Session. Please make the motions.

Newt: The Chair will now entertain motions.

Charles: Funding request

Nancy: The motion by Charles Lane to award Ducks Unlimited \$2 million and \$100,000 for wetlands restoration provided that Ducks Unlimited successfully executes an agreement with the ACRET board and subject to approval by DHEC and the Army Corps of Engineers.

John H: I second

Newt: In favor?

All: Aye

Newt: Opposed? Motion approved.

Nancy: Jason Ares and Nancy Vinson will have further discussions with North Charleston about their proposal.

?: I so move, second, approved

Nancy: Third motion

John H: We communicate our intention to award \$2 million to the Conservation Fund for purchase of conservation easements at Middleton with the following conditions that the grant is subject to:

1. Qualified conservation easement
2. Description of funding mechanism that will have 100% funding to close
3. Baseline documentation including maps, property involved etc.
4. Subject to approval of DHEC and the Army Corps of Engineers.

These conform to Ducks Unlimited, Poplar Grove and forms submitted previously.

Dana: Let's add Ducks Unlimited Poplar Grove "and application made to

Charles: Let's amend to say documents in place by June 1, 2006.

John H: I move that the documents should be in place by June 1, 2006.

Second

Newt: In favor?

All: Aye

Newt: Approved. Judy Northrup is retiring, so I move that we name Russ Day, a VP at Global Aeronautical to the Board. Does the Board accept? In favor say Aye:

All: Aye.

Newt: Approved.

John H: We'll get a letter from Secretary of Commerce. OCRM Richard Chinnis has retired.

John: Barbara will replace.

Charles: I move that the OCRM can replace the board member with a designee of their choice

Motion to Adjourn

Second

Approved

Meeting Adjourned.

EXHIBIT 18

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CONSERVATION EASEMENT
AND ACCEPTANCE

THIS INDENTURE, is made this 23rd day of October, 2007, by and between Millbrook LLC ("Grantor"), of 4110 Ashley River Road, Charleston, South Carolina, 29414 and WETLANDS AMERICA TRUST, INC., ("Holder"), a non-profit corporation organized under the laws of the District of Columbia, One Waterfowl Way, Memphis, Tennessee 38120.

WHEREAS, Grantor is the owner in fee simple of certain real property [*"real property" includes surface waters and wetlands, any interest in submerged lands, uplands, associated riparian/littoral rights*] located in Charleston County, South Carolina, containing 103.524 acres, more or less, more particularly shown on the map attached as Exhibit A and described in "Exhibit A-1" attached hereto ("Protected Property");

WHEREAS, as compensatory mitigation under Federal and State law for Department of the Army Permit No. 2004-1N-402 ("Permit") issued by the U.S. Army Corps of Engineers, Charleston District ("Corps" or "Charleston District," to include any successor agency), and certifications(s) and/or permit(s) issued by the S.C. Department of Health and Environmental Control ("DHEC," to include any successor agency), and in recognition of the continuing benefit to the permitted property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Grantor has agreed to place certain restrictive covenants on the Property, in order that the Property shall remain substantially in its natural condition forever.

WHEREAS, the Protected Property does not include a sixty (60') foot area located thirty (30') feet on either side of the center line of the existing dirt road shown on Exhibit A;

WHEREAS, Grantor desires to convey to the Holder a conservation easement placing certain limitations and affirmative obligations on the Protected Property for the protection of wetlands, scenic, resource, environmental, and other values, and in order that the Protected Property shall remain substantially in its natural condition forever;

WHEREAS, Holder is qualified to hold a conservation easement, and is either
(a) a governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
(b) a charitable, not-for-profit or educational corporation, association, or trust, qualified under §501(c)(3) and §170(h) of the Internal Revenue Code, the purposes or powers of which include one or more of the purposes (a) - (c) listed below;

WHEREAS, the purposes of this Conservation Easement include, without limitation, one or more of the following:

- (a) retaining or protecting natural, scenic, or open-space aspects of real property;
- (b) ensuring the availability of real property for recreational, educational, or open-space use;
- (c) protecting natural resources;
- (d) maintaining or enhancing air or water quality;
- (e) preserving the historical, architectural, archaeological, or cultural aspects of real property;

WHEREAS, Grantor and Holder agree that third-party rights of enforcement shall be held by the U.S. Army Corps of Engineers, Charleston District and the S.C. Department of Health and Environmental Control ("Third-Parties," to include any successor agencies), and may be exercised through the appropriate enforcement agencies of the United States and the State of South Carolina, and that these rights are in addition to, and do not limit, the rights of enforcement under any permit or certification issued by the Third-Parties;

WHEREAS, the term "natural condition" shall mean the condition of the Protected Property at the time of this grant, and shall be evidenced in part by a map of the Protected Property showing all relevant property lines, all existing man-made improvements and features, and major, distinct natural features such as waters of the United States, which is attached hereto as Exhibit A; however, all existing dirt roads, including that "existing farm road" generally described and designated as such on the plat by H. Exo Hilton recorded in Plat Book Z, Pages 72 and 73, Charleston County RMC Office (which plat is more fully described in Exhibit A-1), running across the Protected Property in a generally southeasterly direction from the "60' Road Reserve" shown on Exhibit A, are not shown on Exhibit A. The natural condition of the Protected Property may also be evidenced by:

(a) a current aerial photograph of the Protected Property at an appropriate scale taken as close as possible to the date the donation is made; and

(b) on-site photographs taken at appropriate locations on the Protected Property, including of major natural features;

NOW THEREFORE, in consideration of one hundred thirty-nine thousand, one hundred and eight dollars and twenty cents (\$139,108.20) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the restrictions, rights, and agreements herein, Grantor hereby conveys to Holder a perpetual conservation easement over the Protected Property consisting of the following:

A. RESTRICTIONS

These Restrictions shall run with the land and be binding on Grantor's heirs, successors, administrators, assigns, lessees, or other occupiers and users, and are subject to the Reserved Rights which follow.

1. **General.** There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials; and, no alteration of the topography in any manner.
2. **Waters and Wetlands.** In addition to the General restrictions above, there shall be no draining, dredging, damming or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and, no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended.
3. **Trees/Vegetation.** There shall be no clearing, burning, cutting or destroying of trees or vegetation, except as expressly authorized in the Reserved Rights; there shall be no planting or introduction of non-native or exotic species of trees or vegetation.
4. **Uses.** No agricultural, industrial, or commercial activity shall be undertaken or allowed.
5. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, nor any additions to existing structures.
6. **New Roads.** There shall be no construction of new roads, trails or walkways without the prior written approval of the Holder and Third-Parties, including of the manner in which they are constructed.
7. **Utilities.** There shall be no construction or placement of utilities or related facilities without the prior written approval of Holder and Third-Parties.
8. **Pest Control.** There shall be no application of pesticides or biological controls, including for problem vegetation, without prior written approval from the Holder and Third-Parties.
9. **Other Prohibitions.** Any other use of, or activity on, the Protected Property which is or may become inconsistent with the purposes of this grant, the preservation of the Protected Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

10. **Division of Property.** The Protected Property shall not be divided into multiple parcels but shall be held as one tract.

B. GRANTOR'S RESERVED RIGHTS

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, its heirs, successors, administrators, and assigns the following Reserved Rights, which may be exercised upon providing prior written notice to Holder and to Third-Parties, except where expressly provided otherwise:

1. **Landscape Management.** Landscaping by the Grantor to prevent severe erosion or damage to the Protected Property or portions thereof, or significant detriment to existing or permitted uses, is allowed, provided that such landscaping is generally consistent with preserving the natural condition of the Protected Property.
2. **Forest Management.** Harvesting and management of timber by Grantor is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects or infectious organisms. Such timber harvest and management shall be carried out in accordance with Best Management Practices approved by the South Carolina Forestry Commission or successor agency, as amended.
3. **Recreation.** Grantor reserves the right to engage in any outdoor recreational activities, including hunting (excluding planting or burning) and fishing, with cumulatively very small impacts, and which are consistent with the continuing natural condition of the Protected Property. No written notice required.
4. **Mineral Interests.** Grantor specifically reserves a qualified mineral interest (as defined in § 170(h)(6) of the Internal Revenue Code) in subsurface oil, gas or other minerals and the right to access such minerals. However, there shall be no extraction or removal of, or exploration for, minerals by any surface mining method, nor by any method which results in subsidence or which otherwise interferes with the continuing natural condition of the Protected Property.
5. **Road Maintenance.** Grantor reserves the right to maintain existing roads, trails or walkways. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel, crushed) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and, maintenance of roadside ditches.
6. **Other Reserved Rights.** Grantor reserves the right to engage in all acts or uses not prohibited by the Restrictions, and which are not inconsistent with the conservation purposes of this grant, the preservation of the Protected Property substantially in its natural condition, and the protection of its environmental systems.

C. GENERAL PROVISIONS

The following General Provisions shall be binding upon, and inure to the benefit of, the Grantor, Holder and Third-Parties, and the heirs, successors, administrators, assigns, lessees, licensees and agents of each:

1. **Rights of Access and Entry.** Holder and Third-Parties shall have the right to enter and go upon the Protected Property for purposes of inspection, and to take actions necessary to verify compliance with the Restrictions. Holder shall also have the rights of visual access and view, and to enter and go upon the Protected Property for purposes of making scientific or educational observations and studies, and taking samples, in such a manner as will not disturb the quiet enjoyment of the Protected Property by Grantor. No right of access or entry by the general public to any portion of the Protected Property is conveyed by this Conservation Easement.
2. **Enforcement.** In the event of a breach of the Restrictions by Grantor or another party, the Holder or one of the Third-Parties must notify the Grantor in writing of the breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to swiftly correct the conditions constituting the breach. If the Grantor fails to take such corrective action within thirty (30) days, or fails to complete

the necessary corrective action, the Holder and/or the Third-Parties may undertake such actions, including legal proceedings, as are necessary to effect such corrective action. Among other relief, Holder and/or Third-Parties shall be entitled to a complete restoration for any breach of the Restrictions. Breaches of General Provisions of this Conservation Easement shall be actionable without notice. The costs of a breach, correction or restoration, including the Holder's expenses, court costs, and attorneys' fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of the Holder and/or Third-Parties, and no omission or delay in acting shall constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification.

3. **Events Beyond Grantor's Control.** Nothing herein shall be construed to authorize the Holder or Third-Parties to institute any proceedings against Grantor for any changes to the Protected Property caused by acts of God or circumstances beyond the Grantor's control such as earthquake, fire, flood, storm, war, civil disturbance, strike, the unauthorized acts of third persons, or similar causes.

4. **Obligations of Ownership.** Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Protected Property. Grantor shall keep the Protected Property free of any liens or other encumbrances for obligations incurred by Grantor. Holder shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Protected Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits which may apply to the exercise of the Reserved Rights.

5. **Extinguishment.** In the event that changed conditions render impossible the continued use of the Protected Property for the conservation purposes, this Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding.

6. **Eminent Domain.** Whenever all or part of the Protected Property is taken in the exercise of eminent domain so as to substantially abrogate the Restrictions imposed by this Conservation Easement, the Grantor and Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

7. **Proceeds.** This Conservation Easement constitutes a real property interest immediately vested in Holder. In the event that all or a portion of this Protected Property is sold, exchanged, or involuntarily converted following an extinguishment or the exercise of eminent domain, Holder shall be entitled to the fair market value of this Conservation Easement. The parties stipulate that the fair market value of this Conservation Easement shall be determined by multiplying the fair market value of the Protected Property unencumbered by this Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of this easement at the time of this grant to the value of the Protected Property (without deduction for the value of this Conservation Easement) at the time of this grant. The values at the time of this grant shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code (whether eligible or ineligible for such a deduction). Holder shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Easement.

8. **Notification.** Any notice, request for approval, or other communication required under this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Grantor: Millbrook LLC
4110 Ashley River Road
Charleston, SC 29414

With Copy to: T. Heyward Carter, Jr.
4110 Ashley River Road
Charleston, SC 29414

To Holder: Wetlands America Trust, Inc.
One Waterfowl Way
Memphis, TN 38120-2351
Attn: Director of Land Protection

Margaret H. Carter
4136 Ashley River Road
Charleston, SC 29414

Grayson C. Jackson
440 Discovery Road
Kershaw, SC 29067

9. **Assignment.** This Conservation Easement is transferable, but only to a qualified holder under S.C. Code Title 7, Chapter 8 approved by Grantor, which approval shall not be unreasonably withheld *and § 170(h) of the Internal Revenue Code*. As a condition of such transfer, the transferee shall agree to all of the restrictions, rights, and provisions herein, and to continue to carry out the purposes of this Conservation Easement. Assignments shall be accomplished by amendment of this Conservation Easement under paragraph 12.

10. **Failure of Holder.** If at any time Holder is unable or fails to enforce this Conservation Easement, or if Holder ceases to be a qualified holder under S.C. Code Title 7, Chapter 8 *and § 170(h) of the Internal Revenue Code*, and if within a reasonable period of time after the occurrence of one of these events the Holder fails to make an assignment pursuant to paragraph 9, then the Holder's interest shall become vested in another qualified holder in accordance with an appropriate (e.g., *cy pres*) proceeding in a court of competent jurisdiction.

11. **Subsequent Transfer.** Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument which transfers any interest in all or a portion of the Protected Property. Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of transfer. The failure of Grantor to comply with this paragraph shall not impair the validity or enforceability of this Conservation Easement.

12. **Amendment.** This Conservation Easement may be amended, but only in a writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Holder under any applicable laws, including S.C. Code Title 7, Chapter 8 *and § 170(h) of the Internal Revenue Code*, and is consistent with the conservation purposes of this grant.

13. **Severability.** Should any separable part of this Conservation Easement be found void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

14. **Warranty.** Grantor warrants that it owns the Protected Property in fee simple, and that Grantor either owns all interests in the Protected Property which may be impaired by the granting of this Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Protected Property which have not been expressly subordinated to this Conservation Easement. Grantor further warrants that Holder shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

15. **Indemnification.** Grantor and Holder "Party" (each and including any associated organization—such as Ducks Unlimited, Inc. in the case of Holder, and specifically not including Third Parties) agree to hold harmless, defend and indemnify the other Party (the "Indemnified Party") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation, reasonable attorney's fees, arising from, or in any way connected with, an act or omission by the Party or the condition of or other matter related to or occurring on or about the Protected Property for which the Party is responsible that causes injury to or the death of any person or physical damage to any property unless the Indemnified Party also causes such injury, death, or damage.

IN WITNESS WHEREOF, Grantor and Holder have executed this Conservation Easement, and the Third Parties have approved this Conservation Easement, on the date written above. By its execution and acceptance of this Conservation Easement, Holder accepts the third-party rights of enforcement herein.

Execution by Grantor

IN THE PRESENCE OF:

Sgt. H. Smyth
H. Smyth

MILLBROOK LLC

By:

T. Heyward Carter, Jr.

Its: Member

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ACKNOWLEDGEMENT

The undersigned Notary Public does hereby certify that T. Heyward Carter, Jr. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 23rd day of October, 2007.

Sgt. H. Smyth
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/13/2016

Execution by Grantor

IN THE PRESENCE OF:

[Signature]
[Signature]

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MILLBROOK LLC

By:

[Signature]
Margaret H. Carter

Its: Member

ACKNOWLEDGEMENT

The undersigned Notary Public does hereby certify that Margaret H. Carter personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessing my hand and seal this 23rd day of October, 2007.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 03/19/2015

EXECUTION BY GRANTOR

IN THE PRESENCE OF:

Morris J. Bowers
Robert H. Bowers

MILLBROOK LLC

By: Grayson C. Jackson
Grayson C. Jackson

Its: Member

STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF KERSHAW

The undersigned Notary Public does hereby certify that Grayson C. Jackson personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessing my hand and seal this 16th day of Oct, 2007.

Bert C. Bowers
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 2/10/2014

EXECUTION BY GRANTOR

IN THE PRESENCE OF:

Clay McCallie
[Signature]

MILLBROOK LLC

By: [Signature]

Eleanor W. Carter

Its: Member

STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF CHARLESTON

The undersigned Notary Public does hereby certify that Eleanor W. Carter personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessing my hand and seal this 23rd day of October, 2007.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 10/19/2009

EXECUTION BY GRANTOR

IN THE PRESENCE OF:

[Handwritten signatures of two witnesses]

MILLBROOK DLC

By: *[Signature]*

T. Heyward Carter, III

Its: Member

STATE OF TEXAS

ACKNOWLEDGEMENT

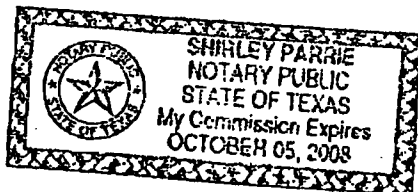
COUNTY OF HOUSTON

The undersigned Notary Public does hereby certify that T. Heyward Carter, III personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessing my hand and seal this 17 day of Oct, 2007.

[Signature]
NOTARY PUBLIC FOR TEXAS

My Commission Expires: _____



Execution by Grantor

IN THE PRESENCE OF:

MILLBROOK LLC

Ethan McGuffee
[Signature]

By: Grayson Carter Hudgins
Grayson Carter Hudgins (f/k/a Jane Grayson Carter)

Its: Member

STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF CHARLESTON

The undersigned Notary Public does hereby certify that Grayson Carter Hudgins (f/k/a Jane Grayson Carter) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessing my hand and seal this 23rd day of October, 2007.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/12/2011

Execution by Grantor

IN THE PRESENCE OF:

Steve M. Smyth

MILLBROOK LLC

By:

T. Heyward Carter, Jr.
as POA for Charles Clinton W. Carter

Its: Member

STATE OF SOUTH CAROLINA
ACKNOWLEDGEMENT COUNTY OF CHARLESTON

The undersigned Notary Public does hereby certify that T. Heyward Carter, Jr., as POA for Charles Clinton W. Carter, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessing my hand and seal this 23rd day of October, 2007.

Steve M. Smyth
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/13/2016

Execution by Grantor

IN THE PRESENCE OF:

Sarah H. Smyth

ADyn

MILLBROOK LLC

By:

T. Heyward Carter, Jr.
as Trustee for Margaret H. Carter

Its: Member

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ACKNOWLEDGEMENT

The undersigned Notary Public does hereby certify that T. Heyward Carter, Jr., as Trustee for Margaret H. Carter, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessing my hand and seal this 23rd day of October, 2007.

Sarah H. Smyth

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 10/13/2016

EXECUTION BY GRANTOR

IN THE PRESENCE OF

Monica J. Bowers

Robert H. Thompson

MILLBROOK LLC

By: Grayson C. Jackson
Grayson C. Jackson, as Trustee for
Margaret H. Carter

Its: Member

STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF KERSHAW

The undersigned Notary Public does hereby certify that Grayson C. Jackson, as Trustee for Margaret H. Carter, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessing my hand and seal this 16th day of Oct, 2007.

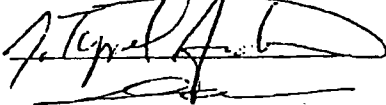
Barbara C. Bowers

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 2/10/2014

Execution by Holder

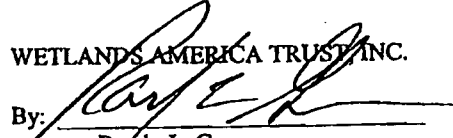
IN THE PRESENCE OF:



David D. Hargrove

WETLANDS AMERICA TRUST, INC.

By:

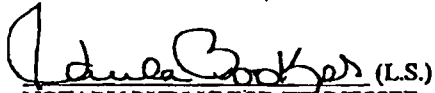

Randy L. Graves
Its: CFO & Assistant Treasurer

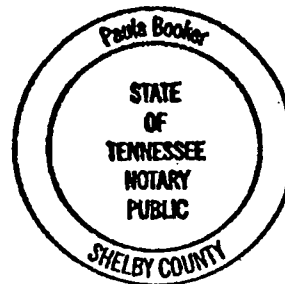
STATE OF TENNESSEE

COUNTY OF SHELBY

I, a Notary Public, do hereby certify that Randy L. Graves, on behalf of Wetlands America Trust, Inc. as its CFO & Assistant Treasurer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 23 day of October, 2007.


(L.S.)
NOTARY PUBLIC FOR TENNESSEE
My Commission Expires: **SEPTEMBER 16, 2009**



Approval by Third-Party

U.S. Army Corps of Engineers,
Charleston District,

By: _____

Title: _____

STATE OF SOUTH CAROLINA

P R O B A T E

COUNTY OF _____

PERSONALLY appeared before me, the undersigned witness, and made oath that he/she saw the within named U.S. Army Corps of Engineers, Charleston District, by _____, its _____, sign, seal and as his/her/its act and deed, deliver the within named Conservation Easement; and that he/she with the other witness named above witnessed the execution thereof.

[type name of witness under signature line]

SWORN to and subscribed before me
this ____ day of _____, 2007.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

Approval by Third-Party

S.C. Department of Health and
Environmental Control

By: _____

Title: _____

STATE OF SOUTH CAROLINA

PROBATE

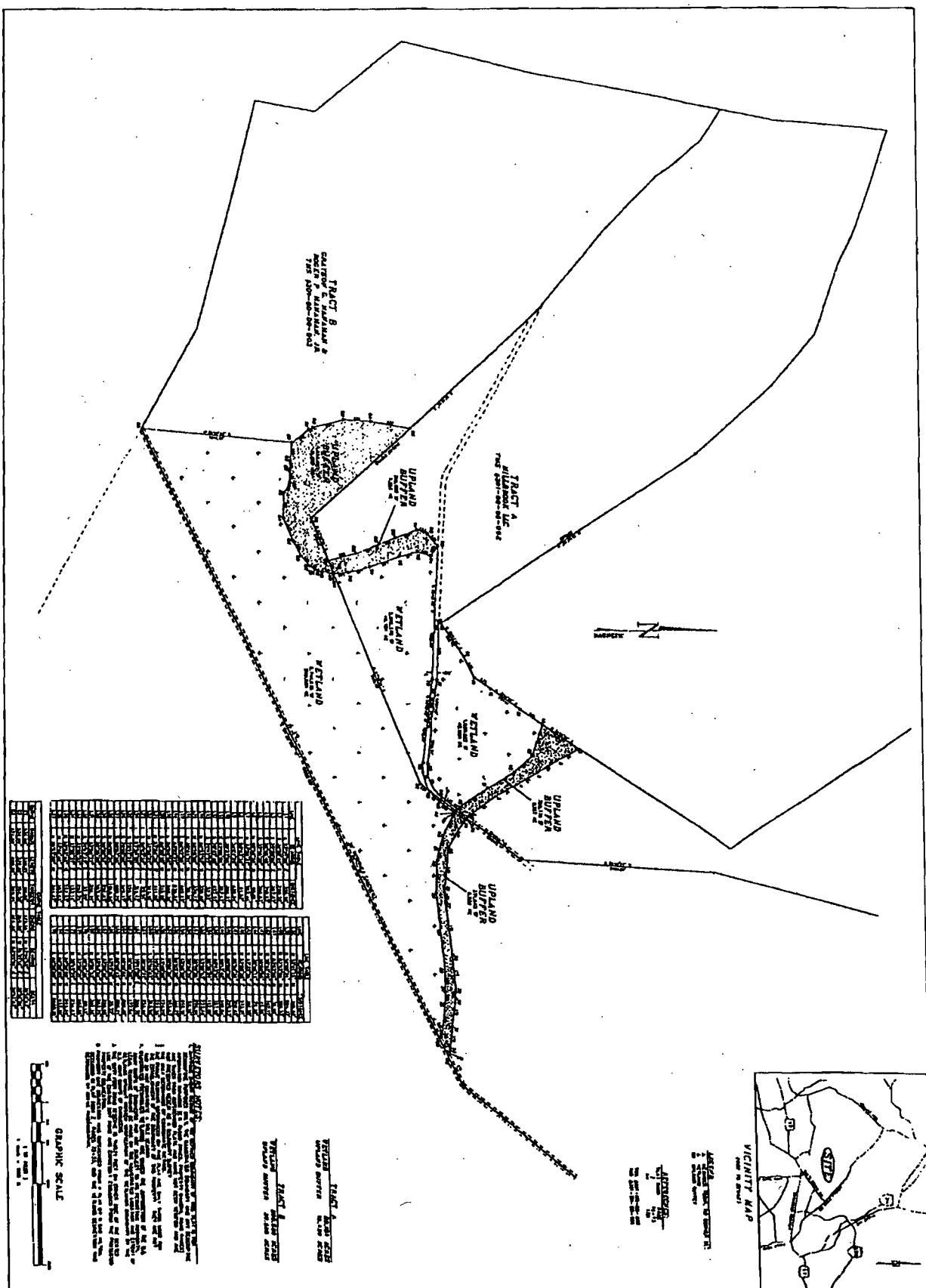
COUNTY OF _____

PERSONALLY appeared before me, the undersigned witness, and made oath that he/she saw the within named S.C. Department of Health and Environmental Control, by _____, its _____, sign, seal and as his/her/its act and deed, deliver the within named Conservation Easement; and that he/she with the other witness named above witnessed the execution thereof.

[type name of witness under signature line]

SWORN to and subscribed before me
this ____ day of _____, 2007.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____



A DELINEATION OF PROTECTED PROPERTY FOR
CONSERVATION EASEMENTS ON
TRACTS A AND B, MILLBROOK PLANTATION
CONTAINING 6,528 ACRES
LOCATED IN ST. ANDREWS PARISH
CHARLESTON COUNTY, SOUTH CAROLINA



EXHIBIT A-1
Description of Protected Property

All that piece, parcel or tract of land, situate, lying and being in Charleston County measuring and containing approximately 88.104 acres of wetlands and approximately 15.42 acres of highland as more fully shown on the Plat by Ecological Mapping Services, LLC dated September 28, 2007 entitled "A Delineation of Protected Property for Conservation Easements on Tracts A and B Millbrook Plantation" attached as Exhibit A (the "Plat") and being a part of Tract A containing 1,487 acres as shown on the plat dated June, 1969 by H. Exo Hilton entitled "Plat of 5,526 Acres, Millbrook Plantation, St. Andrews Parish, Charleston County, S.C." and recorded in Plat Book Z, Pages 72 and 73, in the Charleston County RMC Office, with the said Tract A having such boundaries, metes, courses and distances as are shown on the said plat.

The Protected Property does not include the area described as "60' Road Reserve" on the Plat which is a sixty (60') foot area, located thirty (30) feet on either side of the center line of the existing dirt road shown on Exhibit A; however, Holder and Third Parties shall have the right to use the dirt road located within the 60' Road Reserve to access the Protected Property.

Being a portion of the property conveyed to the Grantor by deed of Millbrook Limited Partnership dated May 13, 2000, and recorded in Book A 366, Page 298, in the RMC Office for Charleston County.

EXHIBIT 19

Deposition of GARY MORRIS

1 the money is spent -- and I'm not interested in tax
2 consequences, but the way money is spent, what
3 limitations in your mind are there on how money
4 generated by an economic development bond can be
5 spent?

6 A. Well, statute describes -- that's the basis
7 for how they can be spent.

8 Q. And what is that limitation?

9 A. I'd have to look back at the statute. I
10 don't recall.

11 Q. Is the purpose for the money set forth in
12 the bond documents themselves?

13 A. Often they are, yes.

14 Q. And if they are, is the expenditure or
15 spending of the money limited to that purpose?

16 A. Yes. If it's -- if that's what it states in
17 the bond documents, yes.

18 Q. Okay. And who is responsible to see -- when
19 the money is put into the hands of a trust like
20 ACRET, who is responsible to see that the money is
21 spent according to those limitations?

22 A. Well, ultimately, I guess the treasurer
23 would be somewhat involved, and then whoever -- I
24 mean, it would be the spending of funds for that
25 purpose, it would ultimately be the State, the

1 treasurer, I guess.

2 Q. The treasurer of the trust, did you say, or
3 the treasurer of the state?

4 A. Treasurer of the state.

5 Q. Okay. What about the treasurer of the
6 trust? Would that person have any obligation to
7 see that the money was spent according to the
8 purpose for which it was generated?

9 A. Well, I would think that -- here, I don't
10 know, but the documents themselves would usually
11 determine -- the trust documents would determine
12 how they're going to be spent.

13 Q. For ACRET, were you familiar with the trust
14 documents in terms of how the money was to be
15 spent?

16 A. No. I may have read it after the fact, and
17 I can't recall, but I was not part of that process.
18 I know Ted set it up, and he and John kind of set
19 up how that would work. I wasn't part of it.

20 Q. Okay. Was there ever any audit done of the
21 money that was spent by ACRET with the view towards
22 determining whether that money was spent consistent
23 with the requirements of the bond?

24 A. There was. It really wasn't a full-blown
25 audit, but there was an accounting firm retained

Deposition of GARY MORRIS

1 and reviewed all expenditures paid by ACRET.

2 Q. Was the accounting firm tasked with
3 determining whether the money was spent consistent
4 with the bond, or were they just tasked to account
5 for how the money was spent?

6 A. They were tasked to account for how the
7 money was spent.

8 Q. Got you. Okay. Let me ask you this. In
9 the list of initial officers and trustees, there is
10 one Timothy N. Hall, who is listed as a field
11 supervisor of the United States Fish and Wildlife
12 Service. Do you -- can you tell me whether he was
13 serving in his capacity as a trustee as an
14 individual, Mr. Timothy Hall, acting as a trustee
15 to spend South Carolina public funds, or was he
16 acting as Timothy Hall, a United States government
17 official?

18 A. I really don't know the answer. I can tell
19 you what I thought at the time.

20 Q. Yeah, okay.

21 A. The purpose -- my understanding was that it
22 had certain regulatory agencies, and the purpose
23 was to have those regulatory agencies involved to
24 kind of oversee the spending of the funds to make
25 sure they would be spent in accordance with

Deposition of GARY MORRIS

1 whatever the documents were for the permit. And
2 that's about all I know about, you know, why the
3 regulatory agency individuals were made part of the
4 board.

5 Q. Okay. In your experience, is that unusual
6 at all to have a federal official sitting on a
7 board appointed by the State Department of Commerce
8 or any other state agency to spend State money?

9 A. I've never seen anything like this done
10 before.

11 Q. Okay. That makes two of us.

12 All right. Document Number 7 is a
13 letter that has your name and presumably your
14 signature, dated September 26th of 2011 addressed
15 to Ms. Tina Hadden, attention Nat Ball. Actually,
16 it does not have Ms. Hadden's full name. It's,
17 attention Nat Ball, and then it says, dear
18 Ms. Hadden, who is, of course, Mr. Ball's
19 supervisor.

20 And then it lists by two categories,
21 distributions to National Audubon Society/Audubon
22 South Carolina, and then distributions to Ducks
23 Unlimited. It lists a variety of expenditures by
24 ACRET. Did you prepare that letter?

25 A. It sounds like it. I remember preparing

Deposition of GARY MORRIS

1 something like that. I don't have the letter in
2 front of me.

3 Q. I know. And I apologize for that. The end
4 of the second page, almost the end, it says, total
5 distributions for mitigation purposes,
6 \$4,998,828.81, which is, of course, a little more
7 than the \$4,750,000 that came from the bond; isn't
8 that correct?

9 A. That's right.

10 Q. What -- how did we get the difference there?

11 A. Interest.

12 Q. Okay. Do you know who picked the bank in
13 which the money was deposited?

14 A. I don't know how the bank was selected.

15 Q. That was done before you got more directly
16 involved?

17 A. Right.

18 Q. Okay. And I will tell you, I was provided
19 pursuant to a third iteration of production by the
20 Department of Commerce pursuant to a subpoena I
21 sent them I think in September of last year, what
22 they describe as the -- you know, I forgot -- the
23 transcript related to the bond issuance.

24 I don't -- I'm not purporting to make
25 you knowledgeable about these documents, but let me

Deposition of GARY MORRIS

1 ask you that question. Have you ever looked at the
2 bond documents that led to the ACRET money?

3 A. At some point, I went back in and read some
4 of the bond documents for another purpose, and I
5 can't recall what that was when I was representing
6 Vought, maybe dealing with our auditors. I can't
7 recall what it was. But I did look at some of
8 the -- some of the bond documents, but I did not
9 participate in the preparation and issuance of the
10 bond.

11 Q. But you are generally familiar with the
12 process and the limitations placed on funds that
13 are generated by economic development bonds. Is
14 that accurate?

15 A. Somewhat familiar. I'm not an expert by any
16 means.

17 Q. Okay. One of the documents that I've had
18 marked -- and I've skipped through several -- is
19 Number 13. This one is entitled, certificate,
20 signed by Grady Patterson, dated December 21st,
21 2005. What is it called? It's called Arbitrage
22 and Tax Compliance Certificate. First of all, do
23 you know what that is? What does that mean?

24 A. My understanding, arbitrage is you can't
25 have too much interest accumulate --

Deposition of GARY MORRIS

1 Q. I see.

2 A. -- before the funds are disbursed.

3 Q. I'm with you. On page 5, paragraph 8,
4 there's a paragraph entitled investment of
5 proceeds. It says, investment earnings in excess
6 of the amounts needed for such purposes -- having
7 described the purpose of the bonds -- shall be
8 deposited into the general fund of the State. What
9 does it mean by investment earnings?

10 A. I'm not real sure.

11 Q. Okay.

12 A. I would think that as the bonds -- several
13 of the bonds were for construction purposes. So
14 I'm sure if there was anything left over, it would
15 go back to State, but I'm not real sure about that.

16 Q. Well, that was going to be my question.
17 Just leaving these documents aside, do you have a
18 general understanding of what should be done with
19 money that is generated by an economic development
20 bond if less money than that is needed to
21 accomplish the purpose set forth in the bond?

22 A. Like I said, I am not -- I'm not an expert
23 on that. I'm not sure how that is handled if there
24 are excess monies. I mean, I would presume that
25 you would be required to follow the bond documents,

Deposition of GARY MORRIS

1 whatever that may be.

2 Q. Okay. Well, when it -- this one, for
3 instance, the certificate by Mr. Patterson, when he
4 says, investment earnings in excess of the amounts
5 needed for such purposes -- which he has just
6 described the bond purpose -- shall be deposited
7 into the general fund of the State and commingled
8 with substantial tax receipts, not later than six
9 months after such earnings are received.

10 So does that mean that money generated
11 by the bond for -- that went to ACRET, if it was in
12 excess of the amount needed to meet the purpose for
13 which the bond was issued, should that excess have
14 been returned to the general fund, if you know?

15 A. I don't know. That's above my pay grade.

16 MR. BARNETT: Well, that's a fair
17 answer. All right. Those are all the questions I
18 have for you, Mr. Morris. Thank you.

19 THE WITNESS: Thank you.

20 MR. GOWDER: I don't have any more.
21 Thank you very much. Appreciate your time.

22 THE WITNESS: Thank you-all.

23 (The deposition was concluded at 10:52
24 a.m.)

25

Project Buffalo Overview

Project Parameters

Project Buffalo is the code name given to the facility that will construct the fuselage for Boeing's new passenger plane, the 7E7 "Dreamliner." There are two parts to the project. One referred to below, as Project Buffalo, is a joint venture between Vought Aircraft and Alenia, of Italy.

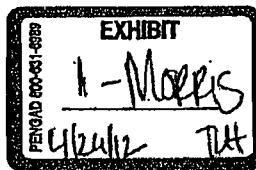
The second piece of the project will be the operations center for the Large Cargo Freighter (LCF). The LCF itself is a retrofit 747 400 series that will haul ready-to-assemble parts from various manufacturing sites around the world to Everett Washington where they will be "snapped" together. Once the fuselage is completed, including seats, wiring, carpet, etc., it will be cut in two pieces and placed in the LCF for shipment to Washington.

The location of the LCF is anticipated to bring other component manufacturers and eventually turn the winning site into a "Supplier Park" for, not only, the 7E7 but future commercial aircraft.

Internally it is speculated the synergies created in this park will one day make this site the site of choice to manufacture commercial and military aircraft.

Project Buffalo

LCF Operations



Site and Infrastructure Support Required

4. **Wetlands Mitigation** – The site as extensive wetlands. With the help of Governor Sanford we arranged an agreement with Dana Beach to support a mitigation plan to purchase \$5 million worth of acreage in pristine wetlands and marsh.

THE VOUCHT AIRCRAFT INDUSTRIES, INC. OUTLINE OF PROPOSED OFF-SITE MITIGATION
ACTIVITIES ASSOCIATED WITH PUBLIC NOTICE 2004-1 N402-C
FEBRUARY 18, 2005
(REVISED, APRIL 6, 2005)

Introduction

As more fully described in the aforementioned Section 404 Permit Application submitted by Vought Aircraft Industries, Inc. ("Vought"), the Applicant is planning to perform off-site mitigation to offset the proposed impact consisting of the fill of approximately 38.33 acres of wetlands at the Project Site. Vought has proposed a creative approach to wetlands mitigation and preservation that involves direct funding for off-site mitigation with the opportunity for nonprofit organizations to obtain matching grants for the express purpose of acquiring title for conservation easement to wetland tracts in the Charleston area. As part of its application process, Vought has demonstrated that it has taken steps to avoid wetland impacts and it has worked on-site to minimize the degree of fill that is required in order to complete its Project.

As more fully stated in the Application and Environmental Assessment ("EA"), the purpose of the Project is to construct the fuselage of the Boeing 787 Dreamliner Aircraft and to expand such production to similar types of other aircraft using high technology, state of the art carbon fiber aircraft structures and install necessary interior system components. The permitted activities will be conducted in three phases, with Phase I commencing in early 2005 with the construction of the 787 product line. Phase I involves manufacturing by Vought and related assembly by Global Aeronautics, a joint venture partner. The Project will use the large cargo freighter ("LCF") which will be a B-747-400 aircraft that is currently being certificated by the Boeing Company and will be used to move large aircraft parts between various global manufacturing sites.

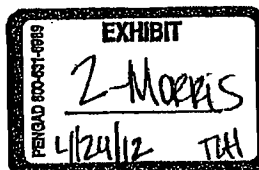
It is envisioned that the Vought facility will be developed in several phases that will, by 2015, result in at least three aircraft product lines being constructed at the Site. The other aircraft product lines have been identified but due to their developmental nature, various contractual approvals have not yet been let.

The purpose of this outline is to provide the Corps of Engineers, the South Carolina Department of Health and Environmental Control, and interested agencies with information regarding the legal instruments and activities that will guide the implementation of the Off-Site Mitigation Plan. A response to agency questions is attached.

Summary of Plan Description

The Off-Site Mitigation for the Vought facilities will involve the incorporation and creation of a Wetlands Mitigation Trust in accordance with a Memorandum of Agreement ("MOA") signed between the South Carolina Department of Commerce, and the Coastal Conservation League, the terms of which will be addressed in the Section 404 Permit. The MOA

COLA 614130 v5



setting forth the mitigation concept provides that within 30 days of approval of the Section 404 Permit, the State of South Carolina will place \$4.75 million in a Trust Account that will be designated and created to administer grants to qualified nonprofits who will apply for such monies solely for the purposes of acquisition of wetlands in the Cooper and Ashley River basins for the purposes of perpetual preservation, enhancement or restoration of such wetlands. The Mitigation MOA allows nonprofits to utilize matching governmental and private funds to best increase the area of wetlands that are to be set aside under the Off-Site Mitigation Plan.

In order to fulfill the obligations of the Memorandum of Agreement, Vought is in the process of establishing a nonprofit corporation that will act on behalf of the Mitigation Trust to hold the \$4.75 million funding as a separate legal entity. A Trustee has agreed to serve to hold such trust funds on behalf of the organization that will be created. It is anticipated that the Mitigation Trust will have a Board that will consist of thirteen (13) persons, including representatives from South Carolina Department of Health and Environmental Control, including one from OCRM, South Carolina Department of Natural Resources, the South Carolina Conservation Bank, the U.S. Fish and Wildlife Service and NOAA Marine Fisheries and three representatives from the Coastal Conservation League and four representatives chosen by Vought. Vought shall select a Chairman of the Board who shall have the authority to call meetings, implement the objectives of this Plan, and other necessary actions to effectuate the goals set forth herein and in a Memorandum of Agreement between the State of South Carolina and the Coastal Conservation League.

Once the Board is created, it will solicit a Request For Proposals (RFP) from nonprofit organizations for the purposes of issuing grants for the purposes of acquiring wetlands in the Low Country pursuant to the criteria set forth herein and in the Memorandum of Agreement. If necessary, the MOA may be revised to resolve any inconsistency between the MOA and this document. The program will be open to all qualified nonprofit organizations, including but not limited to the Audubon Society, Ducks Unlimited, the Nature Conservancy, and others. It is envisioned that the availability of such funding will be promoted through a public notice and by the forwarding of RFPs to known interested nonprofits. The request for proposals will spell out in detail information necessary for consideration for funding. Such information should include but not be limited to:

- The RFP to the nonprofits will provide the names, addresses and contact information for all parties responsible for mitigation and monitoring, and it will also require documentation of baseline conditions of the mitigation site.
- A specific description of the site conditions and appropriate location maps, and delineation maps, if available, will be requested in the RFP.
- Any existing conditions or vegetative communities affected by the proposed mitigation, as well as a narrative discussion of the key element of the proposed Mitigation Plan, will be required by the RFP and should be addressed by applicants for Mitigation Funding.
- In addition, a management plan, if necessary for maintenance of the proposed mitigation or for restoration will be contained in the RFP as a required unit.

- The Mitigation Plan does not preclude participation by any federal, state, or local agency wishing to answer the RFP, provided the agency works in conjunction with an appropriate nonprofit agency meeting all the requirements of the RFP.
- Other information that may be requested by the Board or required under a permit or certification.

The Mitigation Trust funds will be placed in a financial institution chartered and licensed to do business in South Carolina and such funds will be held on a no fee basis while receiving a commercially reasonable rate of interest. The funds shall be primarily for acquisition of wetlands (including upland buffers) and conservation easements and shall not be utilized for related transactional costs of nonprofits. The Board shall meet at least four times a year and will receive proposals from nonprofits consistent with the terms of the Memorandum of Agreement.

The nonprofits who are entitled to receive disbursement from the Mitigation Trust Fund will include nonprofits who are licensed in South Carolina, have a demonstrated fiscal responsibility, who are capable of managing and have managed wetlands and conservation properties in the South Carolina Low Country, and have the ability to leverage such acquisition with matching funds. Nonprofits should include, but are not necessarily limited to, organizations such as the Nature Conservancy of South Carolina, the Audubon Society, and Ducks Unlimited. Entities that would otherwise not qualify for grant funding are encouraged to partner with qualified nonprofit organizations.

The criteria for mitigation sites shall include acquisition of approximately 1,000 acres of wetlands, at a minimum, to be identified and acquired consistent with the terms of this Plan. It is preferable to acquire larger tracts greater than 1,000 acres, but the Board may consider smaller tracts where special ecological or environmental benefits would accrue from such action. Such wetlands may be physically purchased and acquired or obtained through the use of a conservation easement. Such criteria includes:

- a. Acquire or obtain protection for wetlands that are a part of an integrated ecosystem, particularly where adjacent or contiguous properties are already protected, thus consolidating the various protected parcels into larger ecological units.
- b. Such acquisitions and protections would occur exclusively in watershed locations that include the Upper Cooper and Ashley River systems, including the east and west branches of the Cooper River, and the Four-Hole Swamp.
- c. A preference is given to parcels adjacent to existing protected units, parcels of high ecological value, parcels with the potential to leverage other sources of conservation funding leading to matching funds and thus acquisition of larger tracts for the size of a given expenditure, and tracts that would consolidate wildlife corridors and leverage other conservation functions.
- d. The intention of the parties is to distribute the Mitigation Trust funds within two to three years.

As a matter of procedure, the operating agreement for the nonprofit corporation will set forth specific procedures for the Board. It is anticipated that the Board will review proposals submitted by nonprofits which would include written and oral presentations. The Board may request that the nonprofit supply additional information prior to rendering a decision. Because restoration is a criteria to be considered, the applicants should designate and set forth sufficient information to evaluate the restoration potential of each project. In addition, the availability of matching funds and other funds to effectuate restoration activities will be considered by the Board.

The Board may send or otherwise make available the proposals of nonprofits to the participatory resource agencies for timely comment prior to making a decision. Ultimately, the Board will rank the proposals and vote to provide funding to one or more candidate sites meeting the aforementioned criteria. The Board will then deliver its recommendations to Vought who shall communicate such information to the Corps. The Corps shall review the aforementioned information and it may approve disbursements from the Mitigation Trust Fund with appropriate conditions for qualified projects recommended by the Board. Prior to such decision becoming final, it is anticipated that the Corps may allow interested resource agencies to comment on its decision. When the Corps' decision becomes final, the Corps will then advise the Trustee, who shall prepare and deliver a check to the qualified nonprofit to effectuate the mitigation activities.

Every effort will be made to ensure the funding directly benefits the resource. In limited and special circumstances, some funding could, upon Board approval, be applied for restoration activities, but it is preferred that the funding be provided for acquisition and the nonprofit use matching funds or outside funding to accomplish restoration actions. Funding is not available for overhead, administrative costs, consultant's fees, legal fees, etc.

The nonprofit shall be responsible to communicate and document to Vought and the Board that it has complied with its responsibilities with respect to the acquisition and protection of wetlands and associated upland buffers. The nonprofit should create a restoration plan (where appropriate) and provide documentation that it has successfully completed restoration consistent with that contained in its proposal.

Subject Sites

As part of the development of the Mitigation Trust, a number of sites were pre-identified in the subject area that could be recipient of funding to effectuate the purposes of off-site mitigation under the 404 Permit. They are represented graphically by the attached documents.

Potential sites that could be considered include the Poplar Grove and related properties approximately 7-1/2 miles from the Vought facility, Filbin Creek located northeast of the facility, the Four Hole Swamp and upper branches of the Cooper River. A generalized summary of the sizes and acreages of some of the potential properties are attached herein.

Given the typical cost for acquiring such mitigation credits, the Mitigation Trust should greatly exceed the total required credits of 452. In addition, to the extent that the \$4.75 million is combined with matching private and federal monies, the Trust Fund has the ability to leverage additional matching funds towards wetland preservation, and enhancement, and restoration. This

opportunity is in the public interest and will greatly exceed that which would normally be required for a project the size of the Vought Aircraft Industries facility.

An analysis was performed using the Charleston District's SOP for wetland mitigation to evaluate required mitigation credits. The calculations do not include claims for on-site (or near-site) enhancement of wetlands. It was determined that the project would generate 452 required mitigation credits. From an analysis of the Poplar Grove site alone, total preservation credits total 2,373 and total restoration/enhancement credits total 1,248.

Phased Approach

The subject Vought site will only be cleared and wetlands impacted when a specific need arises for each phase of the Project. Accordingly, Phase I will only involve limited site clearing and wetland impacts as indicated on the attached Site Plan. Clearing for Phases II and III will only occur shortly before the commencement of construction activities for the respective parties. At such time, a stormwater permit associated with construction activity will be applied for from DHEC and the details of the exact construction activities will be reviewed and approved by OCRM and DHEC consistent with existing permitting requirements. The stormwater plan will also be sent to the Corps as well as notification that Vought is ready to proceed with additional phases of the permit.

It is anticipated that Aviation Avenue will be left in place until Phase III of the project. Appropriate buffers will be employed to protect wetlands from potential impacts. Due to the phased approach of the project, no impact to wetlands in Phases II or III are expected to occur until the respective Phase is implemented. At the conclusion of Phase III, the remaining wetlands will be placed into a conservation easement.

Duration

It is the goal and objective of the applicant to ensure that the Mitigation Funds are expended within two years of the date of permit approval. The MOU provides a date of two to three years; however, the timing of grant disbursements is dependent upon the amount of time given to nonprofits to prepare proposals and the extent to which such proposals are complete in addressing questions, conditions or concerns of the Board. The comments of resource agencies will also affect the time schedule. It is anticipated that the funds may be expended over two grant cycles in which a notice and request for proposal will be disseminated allowing sufficient time for the respective organizations to prepare and submit proposals for consideration. Under this arrangement, all mitigation for Phases I, II and III would be completed early on, well before construction is anticipated for Phases II and III.

As part of the on-site protection and enhancement of existing wetlands on the Vought site, Vought is intending to preserve wetlands associated with wetlands number five (2.09 acres), wetlands number nine (11.60 acres), wetlands number ten (2.79 acres), wetlands number one (0.41 acres), wetlands number six (0.05 acres), and wetlands number eleven (0.83 acres). The total amount of wetlands on-site totals 56.1 acres with 17.77 preservation acres being preserved through all three phases of this project.

The preservation of wetlands numbers five, nine, and ten are arranged to include multiple crossings with provisions for both low water and high water culverts to aide in the free flow of water during both low occurrence and high occurrence storm events. In addition, an off-site high and low culvert system will be added to a road crossing in the Trident Research Center thus linking additional off-site wetland to this system. The advantage is a more fully linked and better operating system of wetlands throughout the site.

As part of the preservation of the wetlands, the remaining wetlands after full project build-out of phases one through three will be placed in a conservation easement to provide for the future preservation of the created system. Additionally, the preserved wetlands will include protected upland buffers indicated on the attached overall site plan, numbered sheet 15 of 15, dated 3-17-05 and made part of this mitigation plan and the overall permit.

STATE OF SOUTH CAROLINA) AMENDED MEMORANDUM OF AGREEMENT
) REGARDING WETLANDS MITIGATION
COUNTY OF CHARLESTON) FOR PROJECT BUFFALO

WHEREAS, the South Carolina Department of Commerce has undertaken the recruitment of a group of industries to Charleston County, South Carolina, said project is hereby known as "Project Buffalo";

WHEREAS, the development of the site in Charleston County for Project Buffalo will involve approximately 57 acres of fresh water wetlands that are not specifically tied to a riverine system and are thus isolated bogs associated with a former phosphate mining site;

WHEREAS, in order to develop the site, permits and certifications must be obtained from regulatory agencies, including a Clean Water Act ("CWA") Section 404 Permit to be issued by the U.S. Army Corps of Engineers (the "Corps") and a Clean Water Act Section 401 Certification issued by DHEC and related permits. As part of the permitting process, off-site mitigation for wetlands loss will be required by the Corps and DHEC;

WHEREAS, the South Carolina Coastal Conservation League ("SCCCL") has provided assistance in identifying potential mitigation sites and watersheds in need of protection from encroachment or development;

WHEREAS, the SCCCL has assisted in identifying nearby watersheds and wetland sites where preservation is considered to be of critical importance in such watersheds as candidates for mitigation;

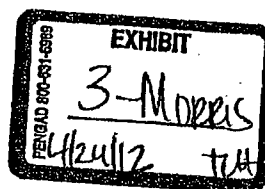
WHEREAS, the parties agree that mitigation is in the best interest of the State of South Carolina to preserve such wetlands, and to satisfy conditions required by the Corps and DHEC; and

WHEREAS, the creation of a Project Buffalo Mitigation Fund for Wetlands is desirable as such funds may be used to preserve wetlands pursuant to the terms of this Agreement and to utilize and leverage available matching funds consistent with the terms of this Agreement and to allow nonprofit entities to acquire wetlands of a size, character and location consistent with the terms of this Agreement. Now, therefore,

IT IS AGREED as follows:

1. Within 30 days of approval of its Mitigation Plan for Project Buffalo, the Department of Commerce shall place into a interest bearing account of an existing or newly created nonprofit to be identified by the SCCCL to fulfill the objectives of this Agreement. The Mitigation Trust Fund shall consist of a lump sum payment of Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) to satisfy compensatory mitigation required by the corps and to fulfill the terms of this Agreement. Such funds shall be held in trust consistent with a Trust Agreement which will be created consistent with the terms of this Agreement and incorporated hereto as an Exhibit. The trust fund shall be referred to as the Project Buffalo Mitigation Fund

#45451 - Amended Memorandum of Agreement
Regarding Wetlands Mitigation for Project Buffalo



for Wetlands ("Mitigation Trust Fund") and shall be used to carry out the obligations under the mitigation obligations imposed by the Corps and DHEC for Project Buffalo.

2. Criteria for mitigation shall include acquisition of approximately 1,000 acres of wetlands, at a minimum, to be identified and acquired consistent with the terms of this Agreement. Said wetlands may be physically purchased and acquired or obtained through the use of a conservation easement. The criteria for such selection shall include:

- a. Acquire or obtain protection for wetlands that are a part of an integrated ecosystem, particularly where adjacent or contiguous properties are already protected, thus consolidating the various protected parcels into larger ecological units.
- b. Such acquisitions and protections would occur exclusively in watershed locations that include the Upper Cooper and Ashley River systems, including the east and west branches of the Cooper River, and the Four-Hole Swamp.
- c. A preference is given to parcels adjacent to existing protected units, parcels of high ecological value, parcels with the potential to leverage other sources of conservation funding leading to matching funds and thus acquisition of larger tracts for the size of a given expenditure, and tracts that would consolidate wildlife corridors and leverage other conservation functions.

3. The Mitigation Trust Fund shall be placed with a bank or financial institution, selected by the SCCCL, that is chartered and licensed to do business in South Carolina and which shall hold such funds at a no fee basis at a commercially reasonable rate of return on interest. Such funds shall be used exclusively for acquisition of wetlands and adjacent upland tracts or conservation easements consistent with the terms of this agreement, and the bank, nonprofit, or other entity handling such funds shall not be entitled to any administrative fee for handling such funds. In addition, all funds shall be used for acquisition and not for related transactional costs. Such transactional costs shall be borne by the seller or nonprofit entities having custodial care over the properties subject to protection.

4. The SCCCL has identified a number of parcels that in the respective drainage basins comprising about four thousand acres of wetlands that could be potential candidates for mitigation. After creation of the Trust, the Board of the Mitigation Trust Fund shall invite proposals for acquisition or permanent protection of properties and shall review the criteria set forth herein as well as the price to ensure that such acquisitions are consistent with this Agreement, in the best interests of the State, and consistent with the mitigation guidelines that have been enacted by the Corps and any Corps permits issued for Project Buffalo.

5. The parties entitled to receive disbursements from the Mitigation Trust Fund include nonprofits who are licensed in South Carolina who have a demonstrated fiscal responsibility, who are capable of managing, have managed wetland and conservation properties in the South Carolina Low Country, and who have the ability to leverage such acquisition with matching funds. Such nonprofits include but are not necessarily limited to the Nature Conservancy of South Carolina, the Audubon Society and Ducks Unlimited.

6. Ben Hagood, Esquire, of Charleston, South Carolina, has agreed to serve as Trustee over such funds. The Trustee shall hold in an interest bearing account and distribute funds in accordance with this Agreement at the direction of the Board of the Mitigation Trust, subject to the approval of the mitigation by the Corps as a condition to the Section 404 Permit. The Corps shall have oversight authority of the decisions made by the Trust's governing board. The Board shall consist of nine (9) persons, including a representative from the Corps of Engineers, the South Carolina Department of Health and Environmental Control, the South Carolina Department of Natural Resources, the South Carolina Conservation Bank, the two representatives from SCCCL, and three representatives chosen by Project Buffalo. The Board shall meet at least four times a year to consider acquisition of properties or conservation easements for the purposes of the mitigation goals in the aforementioned permits and certifications and in this Agreement.

7. It is the intent of the parties that the Trust Fund be used in its entirety for mitigation projects in a two to three year period. After acquisition of mitigation properties and disbursement of funds, the Trust shall be dissolved.

8. The SCCCC agrees to communicate its support of this Mitigation Plan to appropriate environmental agencies as part of the public comment process.

9. The effectiveness and operation of this agreement is contingent on the companies known to the South Carolina Department of Commerce as Project Buffalo in agreeing to locate, or actually locating in Charleston County and applying for a Section 404 Permit from the Corps of Engineers or seeking mitigation. This agreement shall be null and void should Project Buffalo not agree to locate nor locate in Charleston County nor apply for a Section 404 CWA permit as stated herein.

10. Severability. In the event any provision in this Agreement shall be held by a court of competent jurisdiction after final appeal, if any, to be illegal, unenforceable or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force and effect.

11. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of South Carolina.

Dated this 6 day of April, 2005.

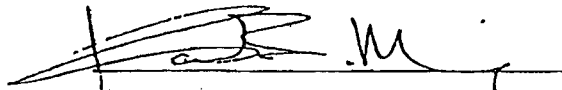
WITNESSES:

THE COASTAL CONSERVATION LEAGUE

Jane E. Larson
Nancy E. Finson

By: Dana Beach
Its: Executive Director

WITNESSES:


Alton D. Young

SOUTH CAROLINA DEPARTMENT
OF COMMERCE

By: Rita A. Smith
Its: Secretary of Commerce

ATTACHMENT TO FORM 1023

August 5, 2005

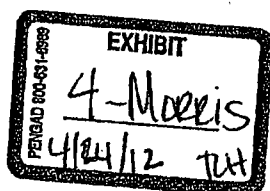
ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

c/o THEODORE J. HOPKINS JR.
HAYNSWORTH SINKLER BOYD, P.A.
Attorneys at Law
P.O. Box 11889
Columbia, SC 29211-1889
(803) 779-3080

BYLAWS

EXHIBIT B

#642868



BYLAWS
OF
ASHLEY-COOPER RIVERS
ENVIRONMENTAL TRUST

Adopted Effective as of May 6, 2005

BYLAWS OF ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

TABLE OF CONTENTS

ARTICLE		PAGE
I.	NAME.....	1
II.	OFFICES.....	1
III.	GENERAL.....	1
	Section III(a). Organization	1
	Section III(b). Fiscal Year	1
	Section III(c). Terminology	1
IV.	PURPOSES, POWERS AND POLICIES	2
	Section IV(a). General Purpose	2
	Section IV(b). Specific Purposes	2
	Section IV(c). Powers.....	4
	Section IV(d). Operating Policies, Procedures and Guidelines	4
V.	MEMBERS AND MEMBERSHIP	4
VI.	BOARD OF TRUSTEES	4
	Section VI(a). General.....	4
	Section VI(b). Composition.....	4
	Section VI(c). Classes, Terms, Vacancies, Resignation, Removal and Replacement	5
	Section VI(d). Chairman and Vice Chairman of the Board	6
	Section VI(e). Committees	7
	Section VI(f). Service Without Compensation	7
	Section VI(g). Conflicts of Interest	7
	Section VI(h). Bond.....	8
	Section VI(i). Books and Records, Accounting.....	8
VII.	MEETINGS OF BOARD AND COMMITTEES OF BOARD	9
	Section VII(a). General.....	9
	Section VII(b). Regular Meetings.....	9
	Section VII(c). Special Meetings.....	9
	Section VII(d). Notice, Waiver of Notice of Meetings	9
	Section VII(e). Quorum, Manner of Acting, Voting.....	9
	Section VII(f). Informal Action by Trustees	10
	Section VII(g). Presence at/Participation in Meetings	10
VIII.	OFFICERS.....	10
	Section VIII(a). General.....	10
	Section VIII(b). Number	10
	Section VIII(c). Election, Terms, Removal.....	10
	Section VIII(d). Resignation and Vacancy.....	11
	Section VIII(e). Duties and Responsibilities	11
	Section VIII(f). Compensation	12

TABLE OF CONTENTS (cont'd)

ARTICLE	PAGE
IX. CONTRACTS, LOANS, CHECKS, PAYMENTS AND DEPOSITS	12
Section IX(a). General.....	12
Section IX(b). Contracts	12
Section IX(c). Loans.....	12
Section IX(d). Checks And Other Payments	12
Section IX(e). Deposits	12
X. LIABILITY, INDEMNIFICATION, INSURANCE	12
Section X(a). Liability.....	12
Section X(b). Indemnification	13
Section X(c). Scope of Indemnification.....	13
Section X(d). Insurance.....	13
XI. REGULATION.....	14
Section XI(a). General.....	14
Section XI(b). Governing Law	14
Section XI(c). Parliamentary Procedure.....	14
XII. AMENDMENTS AND CONFLICTS.....	14
Section XII(a). Amendments.....	14
Section XII(b). Conflicts.....	14
XIII. SEAL	14
XIV. DISSOLUTION	15
Section XIV(a). General.....	15
Section XIV(b). Distribution	15

BYLAWS
OF
ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

ARTICLE I
NAME

The name of this corporation is Ashley-Cooper Rivers Environmental Trust (the "Corporation").

ARTICLE II
OFFICES

The registered and principal offices of the Corporation will be in the County of Richland (the "County"), State of South Carolina (the "State"). The Corporation may have such other offices, within or without the State, as the Board of Trustees of the Corporation may designate and as the activities of the Corporation may require from time to time.

ARTICLE III
GENERAL

Section III(a). Organization. The Corporation is a non-profit organization (i) established and operating in accordance with the provisions of 26 U.S.C. ("Internal Revenue Code") §§ 501(c)(3) and 509(a)(1), (2) or (3) and the regulations thereunder, and §§ 12-6-40 and 12-6-580, Code of Laws of South Carolina, 1976 ("South Carolina Code" or "S.C. Code"), as amended; and (ii) incorporated under the South Carolina Nonprofit Corporation Act of 1994 [Chapter 31, Title 33, S.C. Code (the "Nonprofit Act")]. The Corporation is an independent and autonomous organization.

Section III(b). Fiscal Year. The Corporation will operate on a fiscal ("accounting" or "program") year basis, beginning July 1 and ending June 30. The Corporation's period of duration will be perpetual unless terminated in accordance with Article XIV of these Bylaws.

Section III(c). Terminology. When used in these Bylaws, any male noun or pronoun refers to persons of either sex, and the term "person" means any individual, trust, estate, partnership, association, foundation, company, corporation or governmental body.

ARTICLE IV PURPOSES, POWERS AND POLICIES

Section IV(a). General Purpose. The Corporation is organized and will operate exclusively for charitable, educational and/or scientific purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any future United States Internal Revenue Law); no part of the net earnings of the Corporation will inure to the benefit of any private shareholder or individual; no substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; and the Corporation will not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of a candidate for public office. Notwithstanding any other provisions of these Bylaws, the Corporation will not carry on any activities not permitted to be carried on (i) by an organization described in 26 U.S.C. §§ 501(c)(3) and 509(a)(1), (2) or (3), or (ii) by an organization contributions to which are deductible under the provisions of 26 U.S.C. § 170(c)(2) or any other corresponding provision of any future United States Internal Revenue Law.

Section IV(b). Specific Purposes. The Corporation is organized and will operate as a supporting organization exclusively for the benefit of, to perform the functions of, or to carry out the purposes of, the South Carolina Department of Commerce (the "Department of Commerce" or the "Supported Organization"). The mission of the Corporation will include but will not be limited to the following:

- (i) Furthering the statutory objectives of the Department of Commerce, including: the stimulation of economic activity; the conservation, restoration and development of the natural and physical resources of the State; and the promotion of public interest in the development of the State through cooperation with public agencies, private enterprises, and charitable and social institutions;¹ and
- (ii) Lessening the burdens of the Department of Commerce and other governmental entities in various ways, including but not limited to the following: by assisting in the attracting of new industry or the development of, or retention of, industry in the Ashley and Cooper Rivers basins area; by being an integral part of larger federal and state government programs responsible for developing, coordinating and/or funding programs designed to pair economic development needs with environmental needs; and by maintaining a close interrelationship with

¹ See generally: Section 1-30-25, Code of Laws of South Carolina, 1976, as amended.

and working cooperatively with governmental units in order to carry out wetlands mitigation and related environmental programs, in compliance with federal, state and local law, regulations and oversight requirements.

To this end, the Corporation will further the mission of the Department of Commerce by undertaking and/or engaging in, *inter alia*, activities to effectuate the goals set forth in the following documents: in the April 16, 2005 Amended Memorandum of Agreement (the "Memorandum of Agreement") between the Department of Commerce and South Carolina Coastal Conservation League; in the Vought Aircraft Industries, Inc. February 18, 2005 Outline of Proposed Off-Site Mitigation Activities (the "Mitigation Plan") Associated With Public Notice 2004-1 N402-C; in the Clean Water Act ("CWA") Section 404 Permit (the "CWA Permit") to be issued by the U.S. Army Corps of Engineers (the "Corps"); in the CWA Section 401 Certification (the "CWA Certification"); and in the Coastal Zone Management Certification (the "CZM Certification") – the aforesaid Memorandum of Agreement, Mitigation Plan, CWA Permit, CWA Certification and CZM Certification collectively referred to herein as the "Governing Documents", and collectively incorporated herein, in their entirety, by reference thereto. The activities will include the following:

1. Receiving funds from the Department of Commerce, *et al.*, and holding same in an interest-bearing account (the "Mitigation Trust Fund").
2. Identifying and selecting recipients of disbursements from the Mitigation Trust Fund, which recipients will include nonprofits which are licensed in South Carolina which have a demonstrated fiscal responsibility, which are capable of managing, or have managed, wetland and conservation properties in the South Carolina Low Country, and which have the ability to leverage grants/funds from the Corporation with matching funds. The selection of recipients and criteria for mitigation sites will be in accordance with the Governing Documents.
3. Using, distributing, disbursing amounts and/or issuing grants from the Mitigation Trust Fund solely for the purposes of acquisition of wetlands in The Ashley and Cooper Rivers basins for the purpose of perpetual preservation, enhancement or restoration of such wetlands. Receipt and retention of funds, distributions and disbursements will be made in accordance with the Governing Documents.

In connection with the aforesaid purposes, mission and activities, and in accordance with the Governing Documents, the Corporation may, either directly or indirectly, and either alone or in conjunction or cooperation with others, whether such others be persons or organizations of any kind or nature, such as corporations, firms, associations, trusts, foundations, or units of government, engage in any and all lawful activities necessary or incident to the foregoing purposes, as permitted by the Nonprofit Act, except as may be limited herein.

Section IV(c). Powers. The Corporation will have such powers as are now or may hereafter be granted corporations under the Nonprofit Act, as amended, except as may be limited by the Corporation's Articles of Incorporation or Bylaws.

Section IV(d). Operating Policies, Procedures and Guidelines. The Board of Trustees may adopt, amend, or restate Operating Policies, Procedures and Guidelines from time to time in order to implement the purposes of the Corporation.

ARTICLE V MEMBERS AND MEMBERSHIP

As provided in the Corporation's Articles of Incorporation pursuant to S.C. Code § 33-31-603, the Corporation does not have members within the meaning of S.C. Code § 33-31-140(23). Any use of "member" or "membership" in these Bylaws should be understood in its immediate context, and not to refer to "members" within such statutory definition.

ARTICLE VI BOARD OF TRUSTEES

Section VI(a). General. The Board of Trustees (the "Board") of the Corporation shall be the governing body of the Corporation. The standard of care applicable to the Trustees is that provided in S.C. Code §§ 33-31-830 through 834. All corporate powers will be exercised and all affairs of the Corporation will be managed under the authority and direction of the Board. The intent is that the members of the governing body of the Corporation have a guiding voice in the policies, programs and activities of the Corporation, including the recommending, timing and distribution of grants from the Mitigation Trust Fund, the manner of making them, the selection of recipients, and in otherwise directing the use of the income or assets of the Corporation – all in accordance with the Governing Documents.

Section VI(b). Composition. The Board of Trustees of the Corporation shall consist of thirteen (13) persons, all of whom shall be appointed by the Department of Commerce, as follows:

- One (1) person recommended by the U.S. Fish and Wildlife Service (the "FWS") as a representative of FWS;
- One (1) person recommended by the National Oceanic and Atmospheric Association ("NOAA") as a representative of NOAA;

- Two (2) persons recommended by the South Carolina Department of Health and Environmental Control ("DHEC"), at least one of whom is from the Office of Ocean and Coastal Resource Management, and both of whom are representatives of DHEC;
- One (1) person recommended by the South Carolina Department of Natural Resources ("DNR") as a representative of DNR;
- One (1) person recommended by the South Carolina Conservation Bank (the "Conservation Bank") as a representative of the Conservation Bank;
- Three (3) persons recommended by the South Carolina Coastal Conservation League ("SCCL") as a representative of SCCL; and
- Four (4) persons recommended by Vought Aircraft Industries, Inc. ("Vought") as a representative of Vought.

Members of the Board of Trustees will be appointed by the Department of Commerce in accordance with the following procedure: Following the aforementioned recommendation(s) and after approval and appointment by the Secretary of Commerce of the persons recommended, a duly authorized officer of the Department of Commerce, acting in his official capacity on behalf of the Department, shall provide written notification to the appointees regarding their appointments as Trustees and their respective terms of office.

The number of Trustees may be increased or decreased as may be determined by unanimous vote of the Board, provided, however, in any event, at least a majority of the members of the Board will be appointed by an authorized officer of the Supported Organization, acting in his official capacity.

Section VI(c). Terms, Vacancies, Resignation, Removal and Replacement.

(1) **Terms.** Members of the Board of Trustees will serve at the pleasure of the Secretary of Commerce. A Trustee will hold office for the term prescribed by the Secretary of Commerce; if shorter, until his death, resignation, retirement, removal or disqualification; and if longer, until his successor is appointed. A Trustee may succeed himself in office; *provided, however*, a Trustee will not serve more than two consecutive terms.

(2) **Vacancies.** A vacancy on the Board will occur if a Trustee serves his entire term, dies, resigns, retires, is removed, is disqualified, is otherwise unable to serve, or if

new or additional seats are created. Vacancies will be filled in accordance with the composition and procedure described in Section VI(b) herein.

(3) **Resignation.** A Trustee may resign at any time by delivering written notice to the Chairman of the Board of the Corporation or to the Secretary. A resignation is effective at the earlier of when notice is received, five days after deposit in the U.S. Mail correctly addressed and with first class postage attached, or otherwise as provided in the Nonprofit Act § 33-31-141(d).

(4) **Removal and Replacement.** The Secretary of Commerce may remove a Trustee at any time, with cause. Removal of such Trustee of the Corporation will be implemented by giving written notice of the removal to the removed Trustee and to the Chairman of the Board of the Corporation and the Secretary. Notice of removal is effective at the earlier of when notice is received, five days after deposit in the U.S. Mail correctly addressed and with first class postage attached, or otherwise as provided in the Nonprofit Act § 33-31-141(d).

In the event of such Trustee's removal, any replacement or successor Trustee will be appointed in accordance with the composition and procedure described in Section VI(b) herein.

Section VI(d). Chairman and Vice Chairman of the Board.

(1) **General.** The Chairman of the Board will be appointed by the Department of Commerce in accordance with the following procedure: Following recommendation by Vought and approval and appointment by the Secretary of Commerce of the person recommended, a duly authorized officer of the Department of Commerce, acting in his official capacity on behalf of the Department, shall provide written notification to the appointee regarding his appointment as Chairman of the Board. The Secretary of Commerce may remove the Chairman of the Board at any time, with cause; and in the event of removal, any replacement or successor Chairman will be appointed in accordance with the procedure described in this paragraph. He will serve at the pleasure of the Secretary of Commerce.

(2) **Duties and Responsibilities.** The Chairman will preside at all meetings of the Board, and will exercise general supervision and oversight with respect to the Corporation's policies and purposes as well as the activities of the Board. He will have authority to implement the purposes and objectives of the Memorandum of Agreement and the Mitigation

Plan and to take such action as is necessary to effectuate the goals set forth in the Memorandum of Agreement and the Mitigation Plan. He may call special meetings of the Board as provided in Section VII(c) of these Bylaws, and he will attend meetings of the Board of Trustees and meetings of any Committees of the Board. He will exercise such authority over Committees as prescribed by the Board, including that described in Section VI(e) herein. The Chairman of the Board will also serve as Chief Executive Officer; and, in general, he or his designee will oversee the day-to-day operations of the Corporation. In general, he will perform all duties incident to the office of Board Chair and Chief Executive Officer, as well as such other duties as he may be assigned from time to time by the Board.

(3) Vice Chairman of the Board. In accordance with the procedure described in Section VI(d)(1) herein, a Vice Chairman of the Board may be appointed who will perform the duties of the Chairman in the Chairman's absence.

Section VI(e). Committees. The Board of Trustees may from time to time create one or more Committees of the Board (the "Committees") and appoint members of the Board to serve on them, in accordance with the provisions of S.C. Code Section 33-31-825. Committees may consist of no fewer than three (3) members.

The Board will specify each Committee's authority, and no action may be taken by a Committee without prior authorization by the Board. Committees may not be authorized to approve or recommend extraordinary corporate acts, appoint or remove Trustees or members of Committees, adopt, amend or repeal the Corporation's articles or Bylaws, or otherwise act in contravention of the Nonprofit Act § 33-31-825.

Each Committee may establish its own governing procedures, in accordance with Article VII herein, subject to approval by the Board.

Each Committee will report at the next Board meeting any actions taken by it between meetings of the Board, and minutes of each meeting of the Executive Committee will be mailed to each Trustee as soon as possible after a Committee meeting.

Section VI(f). Service Without Compensation. The Trustees will serve without compensation.

Section VI(g). Conflicts of Interest. In addition to all other remedies, effects or liability provided by law, any Trustee not disclosing any conflict of interest transaction in advance to the Board will be removed from the Board forthwith. The Board of Trustees may

adopt policies (to be included in the Corporation's Operating Policies, Procedures and Guidelines) in connection with the avoidance of conflicts of interest, including those which may violate proscriptions against private inurement, impermissible private benefit and/or excess benefit.

Section VI(h). Bond. The Board of Trustees may by resolution require any or all officers, agents and employees of the Corporation to give bond to the Corporation, with sufficient sureties, conditioned on the faithful performance of the duties of their respective offices or positions, and to comply with such other conditions as may from time to time be required by the Board.

Section VI(i). Books and Records, Accounting.

(1) **General.** The Corporation will maintain appropriate corporate and accounting records and will have its accounts audited at the end of each fiscal year. The Corporation's books and records will be maintained as provided in this Section.

(2) **Financial Reports.** The Corporation will maintain at its principal office its financial reports as of the end of the most recent fiscal year, including at a minimum a balance sheet and a statement of operations of such year, accompanied by the report of the certifying accountant.

(3) **Corporate Records.** The Corporation will maintain at its principal office the following written corporate records: Articles of Incorporation and all amendments thereto which are in effect; Bylaws and all amendments thereto which are in effect; minutes of all Board meetings, Committee meetings and action taken without meeting for the past three years; and a current list of Trustees and officers and their addresses of record; IRS Forms 990, 1023, and such additional tax information as may be required under § 6104 of the Internal Revenue Code.

The Corporation will maintain in writing or in a format convertible into writing the minutes of all other Board and Committee meetings and action without meeting. The Operating Policies, Procedures and Guidelines of the Corporation will contain such provisions, including language addressing conduct of meetings and disclosure of records, as to ensure the Corporation's compliance with IRS disclosure requirements and such other statutes and regulations as may be applicable from time to time. Records of the Corporation will be maintained and provided in accordance with § 6104 of the Internal Revenue Code.

ARTICLE VII
MEETINGS OF BOARD AND COMMITTEES OF BOARD

Section VII(a). General. Meetings of the Board and Committees of the Board will be conducted in accordance with this Article, *Robert's Rules of Order*, and appropriate provisions of S.C. Code of Laws, 1976, as amended. As may be appropriate, the term "Committee" may be used or inserted in place of the term "Board", and the term "Committee Member" may be used or inserted in place of the term "Trustee".

Section VII(b). Regular Meetings. Regular meetings of the Board will be held periodically, at least once every fiscal quarter, at such date and at such time and place as the Board may fix by resolution or otherwise.

Section VII(c). Special Meetings. Special meetings of the Board will be held on the call of or at the request of the Chairman of the Board or on the call in writing of any three Trustees.

Section VII(d). Notice, Waiver of Notice of Meetings. Notice stating the date, time and place of each meeting may be oral or written and will be effective when delivered in accordance with S.C. Code Section 33-31-141. If in writing, notice will be delivered not less than one (1) nor more than thirty (30) days before the date of the meeting either personally or by mail or at the direction of the Chairman of the Board or the Secretary, or the officer or the persons calling the meeting, to each Trustee of record entitled to vote at such meeting.

Notice need not be given to any Trustee who waives notice by a signed writing, either before or after the meeting. Attendance of a Trustee at any meeting constitutes a waiver of notice of the meeting, except where a Trustee attends a meeting solely for the purpose of stating objection, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened, and does not thereafter vote for or assent to the complained-of action.

Section VII(e). Quorum, Manner of Acting, Voting. The Board may conduct any business at regular or special meetings.

At any meeting of the Board, a majority of the number of Trustees prescribed by these Bylaws in office immediately before a meeting begins will constitute a quorum for the transaction of the business of the Corporation. The Trustees present at a meeting may continue

to meet notwithstanding the withdrawal of enough Trustees so that there is less than a quorum (so that business cannot be transacted) but no fewer than two (2) members of the Board.

At any meeting of the Trustees, a Trustee will be entitled to vote on any issue. Each member of the Board present will have one vote. Proxy voting is not permitted for the transaction of any business of the Corporation. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Trustees present is the act of the Board.

A Trustee who is present at a meeting of the Board or a Committee of the Board when corporate action is taken is deemed to have assented to the action taken unless: (a) he objects, at the beginning of the meeting or promptly upon his arrival, to holding the meeting or transacting specified affairs at the meeting; or (b) he votes against or abstains from the action taken.

Section VII(f). Informal Action by Trustees. Action taken without a meeting will be deemed action of the Board if, in accordance with S.C. Code Section 33-31-821, all members of the Board execute a written consent thereto, and the consent is filed with the corporate records of the Corporation.

Section VII(g). Presence at/Participation in Meetings. Any or all Trustees may participate in a meeting of the Board or meeting of any Committee through the use of conference telephone or any means of communication by which all Trustees participating in the meeting may hear each other simultaneously during the meeting, and participation by such means will constitute presence in person at that meeting.

ARTICLE VIII OFFICERS

Section VIII(a). General. The officers of the Corporation will be vested with authority to administer and implement the duties, responsibilities and directives in conformity with their respective offices.

Section VIII(b). Number. The officers of the Corporation will be a Secretary, a Treasurer, and such other officers as the Board may from time to time elect, to the extent provided or allowable by the laws of the State of South Carolina.

Section VIII(c). Election, Terms, Removal. The officers of the Corporation will be elected by the Board of Trustees. Such elections may be held at any regular or special meeting

of the Board. Each officer will hold such office for a period of one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies. An officer may be removed with or without cause by majority vote of the Board.

Section VIII(d). Resignation and Vacancy. An officer may resign at any time by giving written notice to the Board of Trustees. A vacancy will occur in the event of an officer's death, resignation, retirement, removal, disqualification or inability to serve. Any vacancy in an office will be filled temporarily in accordance with appointment(s) by the Executive Committee and permanently at the next regular or special meeting of the Board.

Section VIII(e). Duties and Responsibilities. The duties and responsibilities of the officers are as follows:

(1) **Secretary.** The Secretary will be responsible for (i) maintaining the records of the Corporation, and recording and maintaining in a book provided for that purpose the minutes of all meetings of the Board of Trustees and any Committees of the Board, (ii) coordinating and assuming primary responsibility for the proper procedure in connection with the nomination and appointment of Trustees and the election of officers of the Corporation; (iii) authenticating documents of the corporation and (iv) seeing that all notices of the Corporation are duly given in accordance with the provisions of these Bylaws and as required by law. The Secretary will be responsible for keeping an accurate list of the Trustees and officers of the Corporation, their addresses of record, and the dates of their respective terms and the expiration thereof. The Secretary will be responsible for keeping the seal of the Corporation and will perform such other duties incident to the Office of Secretary and which he may be assigned from time to time by the Board.

(2) **Treasurer.** The Treasurer is the custodian of the funds, moneys and securities belonging to the Corporation and will cause such records and returns to be kept and filed as will be required in conformity with applicable Federal and State laws. He will present a financial report at every meeting of the Board and will see that the Corporation's books of account are reviewed at least once a year by a certified public accountant selected by the Board of Trustees. The Treasurer will have authority to deposit and disburse funds of the Corporation in accordance with the Operating Policies, Procedures and Guidelines of the Corporation. The Treasurer may from time to time, upon approval by the members of the Board, invest portions of the Corporation's funds in accordance with the investment policy of the Corporation. The

Treasurer will perform such other duties incident to the Office of Treasurer and which he may be assigned from time to time by the Board.

Section VIII(f). Compensation. The Officers will serve without compensation.

ARTICLE IX CONTRACTS, LOANS, CHECKS, PAYMENTS AND DEPOSITS

Section IX(a). General. Documents, including contracts, loans, checks, drafts and other payments, deposits, and other transactions, will be executed in accordance with this Article and as may be more fully described in the Operating Policies, Procedures and Guidelines of the Corporations.

Section IX(b). Contracts. The Board of Trustees may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument on behalf of the Corporation and such authority may be general or confined to specific instances.

Section IX(c). Loans. No loans will be contracted on behalf of the Corporation and no other evidences of indebtedness will be issued in its name.

Section IX(d). Checks And Other Payments. All checks, drafts or other orders for the payment of money issued in the name of the Corporation will be signed by the Chairman or by such person(s) as the Chairman and the Board shall authorize, and in such manner as will from time to time be determined by the Board of Trustees. All checks and payments will be authorized and executed in accordance with the provisions and intent expressed in Sections IV(b) and VI(a) herein.

Section IX(e). Deposits. All funds of the Corporation not otherwise employed will be deposited from time to time to the credit of the Corporation in such depositories as the Board of Trustees may select.

ARTICLE X LIABILITY, INDEMNIFICATION, INSURANCE

Section X(a). Liability. To the extent not inconsistent with the South Carolina Code, no Trustee or officer of the Corporation will be liable to the Corporation or to any other person for loss or damage suffered by the Corporation on account of any action taken or omitted to be taken as a Trustee or an officer in good faith and in a manner he reasonably believed to be in the best interests of the Corporation if the Trustee or officer exercised the same degree of care and skill

as an ordinarily prudent person in a like position would have exercised under similar circumstances.

No Trustee or officer of the Corporation will be personally liable for monetary damages for breach of any duty to the Corporation. However, this provision will not eliminate or limit the liability of a Trustee or officer: (1) for any breach of the Trustee's or officer's duty of loyalty to the Corporation; (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (3) for any transaction from which a Trustee or officer derived an improper personal benefit; or (4) under S.C. Code Sections 33-31-831 (conflict of interest), 33-31-832 (loans or guarantees), and 33-31-833 (unlawful distributions).

All Trustees and officers of the Corporation will be immune from suit arising from the conduct of the affairs of the Corporation; provided, however, such immunity will be removed when the conduct amounts to willful, wanton, or gross negligence.

Section X(b). Indemnification. To the extent not inconsistent with the South Carolina Code, every person (and the heirs and personal representatives of such person) who is or was a Trustee or an officer of the Corporation will be indemnified by the Corporation, to the maximum extent permitted by law, against all liability and reasonable expense that may be incurred by him in connection with any claim, action, suit or proceeding (other than a proceeding in which such person will have been adjudged to be liable to the Corporation) by reason of the fact that he is or was a Trustee or an officer of the Corporation.

Section X(c). Scope of Indemnification. The rights of indemnification provided in this Article will be in addition to any rights to which any such Trustee or officer may otherwise be entitled. Irrespective of the provisions of this Article, the Board of Trustees may at any time and from time to time, approve indemnification of Trustees, officers, employees or other persons to the full extent permitted by the State of South Carolina, whether on account of past or future transactions.

Section X(d). Insurance. The Board of Trustees may obtain insurance covering the Corporation's liabilities and obligations under this Article and insurance protecting the Corporation's Trustees, officers and employees.

ARTICLE XI REGULATION

Section XI(a). General. The regulation of the business and conduct of the affairs of the Corporation will conform to federal and state income tax laws and any other applicable federal and state law, including, but not limited to, the Nonprofit Act. In the interpretation of these Bylaws, wherever reference is made to the United States Code (U.S.C.), the United States Internal Revenue Code, Internal Revenue Laws or Treasury Regulations thereunder, the Nonprofit Act, the South Carolina Code or any other statute, or to any section thereof, such reference will be construed to mean such Code, Act, Laws, Statutes, or section thereof, and the regulations thereunder, as the case may be, as heretofore or hereafter amended or supplemented or as superseded by laws or regulations covering equivalent subject matter.

Section XI(b). Governing Law. These Bylaws are executed and delivered in the State of South Carolina and they will be governed by, construed and administered in accordance with the laws of the State of South Carolina.

Section XI(c). Parliamentary Procedure. The provisions of the latest edition of *Robert's Rules of Order* will serve as the basic guide to fair and orderly procedure in meetings of the Corporation. In the event that any of the provisions of *Robert's Rules of Order* conflict with the Bylaws, the provisions of the Bylaws control.

ARTICLE XII AMENDMENTS AND CONFLICTS

Section XII(a). Amendments. The Articles of Incorporation and the Bylaws of the Corporation may be amended or restated from time to time in accordance with the provisions of S.C. Code §§ 33-31-1002 and 33-31-1020.

Section XII(b). Conflicts. In the event that any of the provisions of these Bylaws, as amended, conflict with any of the provisions of prior Bylaws, the provisions of the amended Bylaws control.

ARTICLE XIII SEAL

The seal of the Corporation will be approved from time to time by the Board of Trustees.

ARTICLE XIV DISSOLUTION

Section XIV(a). General. The Corporation may be dissolved and its business and affairs terminated, and such dissolution will be in accordance with the provisions of Chapter 31, Title 33, S.C. Code and § 1.501(c)(3)-1(b)(4) of the United States Treasury Regulations.

Section XIV(b). Distribution. Upon dissolution of the Corporation and after all its liabilities, obligations, debts and expenses have been paid or discharged, all remaining assets of the Corporation will be conveyed or distributed to such of one or more organizations as may be designated and approved by the Board of Trustees of the Corporation and the South Carolina Department of Commerce, as long as the conveyance or distribution is in accordance with the purposes described in Article IV herein and the designated/approved organization at the time of conveyance or distribution qualifies as an organization described in §§ 501(c)(3) and 170(c)(2) of the Internal Revenue Code or any corresponding provision of any future Federal tax code.

ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

CERTIFICATION

I CERTIFY that I am the duly elected, qualified and acting Secretary of Ashley-Cooper Rivers Environmental Trust (the "Corporation"), a South Carolina nonprofit corporation, and that the Bylaws of the Corporation were duly adopted by the Trustees of the Corporation at the Organizational Meeting of the Trustees of the Corporation, and are effective as of the sixth (6th) day of May, 2005.

ASHLEY-COOPER RIVERS
ENVIRONMENTAL TRUST

By: Nancy Elizabeth Vinson
Nancy Elizabeth Vinson
Its Secretary

SWORN TO before me this
25th day of July, 2005.

[Signature] (SEAL)
Notary Public for South Carolina
My Commission expires: Oct 13, 2013

ATTACHMENT TO FORM 1023

August 5, 2005

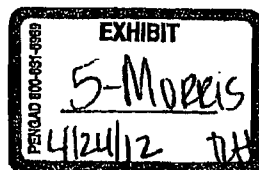
ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

c/o THEODORE J. HOPKINS JR.
HAYNSWORTH SINKLER BOYD, P.A.
Attorneys at Law
P.O. Box 11889
Columbia, SC 29211-1889
(803) 779-3080

INITIAL OFFICERS AND TRUSTEES

EXHIBIT F

#642868



ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

INITIAL OFFICERS AND TRUSTEES

<u>Name, Address</u>	<u>Title and Duties*</u>	<u>Annual Compensation</u>
Charles P. Newton III General Manager, SC Projects Vought Aircraft Industries, Inc. 5300 International, Suite 101 N. Charleston, SC 29418	Chairman and Member, Board of Trustees	\$ <u>-0-</u>
Nancy Elizabeth Vinson Water Quality Program Director SC Coastal Conservation League PO Box 1765 Charleston, SC 29402	Secretary and Trustee	\$ <u>-0-</u>
Edward Dana Beach Executive Director SC Coastal Conservation League PO Box 1765 Charleston, SC 29402	Treasurer and Trustee	\$ <u>-0-</u>
Elizabeth Ann Blackshire Deputy General Counsel Vought Aircraft Industries, Inc. Mail Stop 49L-29 PO Box 655907 Dallas, TX 75265-5907	Trustee	\$ <u>-0-</u>
Richard A. Chinnis Director, Regulatory Programs Division SC Dept. of Health & Environmental Control Ocean & Coastal Resource Management 1362 McMillan Avenue, Suite 400 Charleston, SC 29405	Trustee	\$ <u>-0-</u>

<u>Name, Address</u>	<u>Title and Duties*</u>	<u>Annual Compensation</u>
Kay B. Davy National Marine Fisheries Service 217 Ft. Johnson Road PO Box 12559 (29422) Charleston, SC 29412	Trustee	\$ -0-
Robert Edward Duncan Environmental Programs Director SC Department of Natural Resources 217 Ft. Johnson Road PO Box 12559 Charleston, SC 29422	Trustee	\$ -0-
M. Rheta Geddings Division of Water Quality SC Dept. of Health & Environmental Control 2600 Bull Street Columbia, SC 29201	Trustee	\$ -0-
Timothy N. Hall Field Supervisor Charleston Field Office US Fish and Wildlife Service 176 Croghan Spur Road, Suite 200 Charleston, SC 29407	Trustee	\$ -0-
John Adams Hodge Attorney Haynsworth Sinkler Boyd, P.A. PO Box 11889 Columbia, SC 29211-1889	Trustee	\$ -0-
Charles G. Lane SC Conservation Bank PO Box 668 Charleston, SC 29402	Trustee	\$ -0-

<u>Name, Address</u>	<u>Title and Duties*</u>	<u>Annual Compensation</u>
Judith W. Northrup Vice President Office of the President Vought Aircraft Industries, Inc. Mail Stop 49L-01 PO Box 655907 Dallas, TX 75265-5907	Trustee	\$ <u>-0-</u>
Thomas F. Stubbins Vice President of Human Resources Vought Aircraft Industries, Inc. Mail Stop 49L-01 PO Box 655907 Dallas, TX 75265-5907	Trustee	\$ <u>-0-</u>

* Officers and Trustees will meet on a regular basis to ensure that all funds are distributed to qualified nonprofit organizations in compliance with the intent and provisions of the Organizing and Governing Documents. [See generally, Bylaws, Section IV(b).] The Chairman of the Board will generally supervise and oversee Board activities. [See generally, Bylaws, Section VI(d).] The Secretary and Treasurer will perform the usual duties incident to their respective office [See generally, Bylaws, Section VIII(e).]

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE OF RESOLUTIONS
OF SOUTH CAROLINA
DEPARTMENT OF COMMERCE

I, Robert Faith, Secretary, South Carolina Department of Commerce, do hereby certify that, in accordance with powers vested in me as governing authority of the South Carolina Department of Commerce (the "Department of Commerce")¹, the following resolutions have been adopted by the Department of Commerce.

WHEREAS, the South Carolina Department of Commerce (the "Department of Commerce" or "Department") has undertaken the recruitment of a new industry group to the Ashley-Cooper Rivers basins area in Charleston County, South Carolina (the "Charleston County Site"), which group includes Vought Aircraft Industries, Inc. ("Vought") and which is expected to generate at least 645 new jobs in the Charleston County area;

WHEREAS, the development of the Charleston County Site will involve approximately 38 acres of fresh water wetlands that are not specifically tied to a riverine system and are thus isolated bogs associated with a former phosphate mining site;

WHEREAS, in order to develop the Charleston County Site, permits and certifications and related authorizations must have been obtained from regulatory agencies, including a Clean Water Act ("CWA") Section 404 Permit (the "CWA Permit") issued by the U.S. Army Corps of Engineers (the "Corps"), and a CWA Section 401 Certification (the "CWA Certification") and Coastal Zone Management Certification (the "CZM Certification") issued by the South Carolina Department of Health and Environmental Control ("DHEC"); and as part of the permitting process, off-site mitigation for wetlands loss is required by the Corps and DHEC;

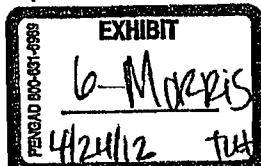
WHEREAS, the Department of Commerce has determined that mitigation is in the best interest of the State of South Carolina to preserve the aforementioned wetlands, and to satisfy the conditions required by the Corps and DHEC in order to develop the Charleston County Site;

WHEREAS, the Department of Commerce has concluded that, in order to address the aforementioned environmental and economic development needs of the State, there should be created an independent, autonomous, tax-exempt, South Carolina public benefit corporation for the purpose of assisting Vought, the Department of Commerce and other governmental and non-governmental organizations in their collaborative initiative to preserve and protect wetlands and other ecologically sensitive properties which may be impacted during development of the Charleston County Site;

NOW, THEREFORE, IT IS

RESOLVED, that, by virtue of the authority vested in me as Secretary, South Carolina Department of Commerce, I do hereby direct Legal Counsel, South Carolina Department of Commerce, or his/her designee, to take such steps as may be necessary to establish Ashley-Cooper Rivers Environmental Trust (the

¹ See generally: Title 1, Chapter 30, and Title 13, Chapter 1, Code of Laws of South Carolina, 1976, as amended.



"Corporation") as an independent, autonomous, South Carolina public benefit corporation, exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, the specific purpose of which Corporation will be to operate as a supporting organization exclusively for the benefit of, to perform the functions of, or to carry out the purposes of, the South Carolina Department of Commerce. The mission of the Corporation will include but will not be limited to the following:

- (i) Furthering the statutory objectives of the Department of Commerce, including: the stimulation of economic activity; the conservation, restoration and development of the natural and physical resources of the State; and the promotion of public interest in the development of the State through cooperation with public agencies, private enterprises, and charitable and social institutions;² and
- (ii) Lessening the burdens of the Department of Commerce and other governmental entities in various ways, including but not limited to the following: by assisting in the attracting of new industry or the development or, or retention of, industry in the Ashley and Cooper Rivers basins area; by being an integral part of larger federal and state government programs responsible for developing, coordinating and/or funding programs designed to pair economic development needs with environmental needs; and by maintaining a close interrelationship with and working cooperatively with governmental units in order to carry out wetlands mitigation and related environmental programs, in compliance with federal, state and local law, regulations and oversight requirements.

To this end, the Corporation will further the mission of the Department of Commerce by undertaking and/or engaging in, *inter alia*, activities to effectuate the goals set forth in the following documents: in the April 16, 2005 Amended Memorandum of Agreement (the "Memorandum of Agreement") between the Department of Commerce and South Carolina Coastal Conservation League; in the Vought Aircraft Industries, Inc. February 18, 2005 Outline of Proposed Off-Site Mitigation Activities (the "Mitigation Plan") Associated With Public Notice 2004-1 N402-C; in the Clean Water Act ("CWA") Section 404 Permit (the "CWA Permit") to be issued by the U.S. Army Corps of Engineers (the "Corps"); in the CWA Section 401 Certification (the "CWA Certification"); and in the Coastal Zone Management Certification (the "CZM Certification") - the aforesaid Memorandum of Agreement, Mitigation Plan, CWA Permit, CWA Certification and CZM Certification collectively referred to herein as the "Governing Documents", and collectively incorporated herein, in their entirety, by reference thereto. The activities will include the following:

- 1. Receiving funds from the Department of Commerce, *et al.*, and holding same in an interest-bearing account (the "Mitigation Trust Fund").

² See generally: Title 1, Chapter 30 and Title 13, Chapter 1, Code of Laws of South Carolina, 1976, as amended.

2. Identifying and selecting recipients of disbursements from the Mitigation Trust Fund, which recipients will include nonprofits which are licensed in South Carolina which have a demonstrated fiscal responsibility, which are capable of managing, or have managed, wetland and conservation properties in the South Carolina Low Country, and which have the ability to leverage grants/funds from the Corporation with matching funds. The selection of recipients and criteria for mitigation sites will be in accordance with the Governing Documents.

3. Using, distributing, disbursing amounts and/or issuing grants from the Mitigation Trust Fund solely for the purposes of acquisition of wetlands in The Ashley and Cooper Rivers basins for the purpose of perpetual preservation, enhancement or restoration of such wetlands. Receipt and retention of funds, distributions and disbursements will be made in accordance with the Governing Documents.

RESOLVED, FURTHER, that subject to oversight authority by its Chairman, the Board of Trustees (the "Board") shall be the governing body of the Corporation. The intent is that Vought and other members of the governing body of the Corporation have a controlling voice in the policies, programs and activities of the Corporation, including the recommendation, timing and distribution of grants from the Mitigation Trust Fund, the manner of making them, the selection of recipients, and in otherwise directing the use of the income or assets of the Corporation – all in accordance with the Governing Documents.

The Board shall consist of thirteen (13) members, all of whom shall be appointed by the Department of Commerce, as follows:

- One (1) person recommended by the U.S. Fish and Wildlife Service (the "FWS") as a representative of the Corps;
- One (1) person recommended by the national Oceanic and Atmospheric Association ("NOAA") as a representative of NOAA;
- Two (2) persons recommended by the South Carolina Department of Health and Environmental Control ("DHEC"), at least one of whom is from the Office of Ocean and Coastal Resource Management, and both of whom are representatives of DHEC;
- One (1) person recommended by the South Carolina Department of Natural Resources ("DNR") as a representative of DNR;
- One (1) person recommended by the South Carolina Conservation Bank (the "Conservation Bank") as a representative of the Conservation Bank;

- Three (3) persons recommended by the South Carolina Coastal Conservation League ("SCCL") as representatives of SCCL; and
- Four (4) persons recommended by Vought Aircraft Industries, Inc. ("Vought"), as representatives of Vought.

RESOLVED, FURTHER, that Legal Counsel of the Department of Commerce and/or his/her designee(s) shall be, and hereby are, authorized (i) to file Articles of Incorporation of the Corporation; (ii) to provide the appointees with notice of their respective appointments as Chairman and members of the Board of Trustees of the Corporation; (iii) to obtain determination(s) in connection with the federal income tax-exempt status of the Corporation; and (iv) to take such additional steps and obtain such other determinations, rulings and opinions as may be necessary and in the best interests of the Department of Commerce and the Corporation in order to complete the organization and establishment of the Corporation.

IN WITNESS WHEREOF, this Certificate of Resolutions has been executed this 6th day of May, 2005.

Witnesses:

SOUTH CAROLINAL DEPARTMENT
OF COMMERCE

Vicki S. Woole

By: Robert Faith
Robert Faith, Secretary

[Signature]

PROBATE

Witness

6 day of May, 2005.

My Commission expires: April 6, 2015

worth
boyd, p.a.
ATTORNEYS AND COUNSELORS AT LAW

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September 26, 2011

Department of the Army
Charleston District, Corps of Engineers
Attn: Nat Ball
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: Department of the Army Permit 2004-1N-402 (the "Permit")
HSB File No: 30387.4

Dear Ms. Hadden:

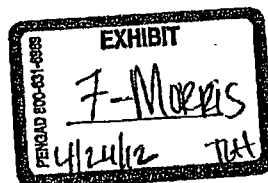
This letter is in regard to the above-referenced Permit, with respect to which Vought Aircraft Industries, Inc. ("Vought") previously requested a transfer to Boeing Commercial Airplanes Charleston, Inc. ("Boeing") by letter dated July 31, 2009.

The Army Corps letter dated October 16, 2009 indicated that Vought was required to satisfy Special Conditions f. and g. of the Permit by identifying one or more appropriate mitigation activities and distributing the remaining mitigation funds. These funds were held by the Ashley-Cooper Rivers Environmental Trust ("ACRET"). At this time, ACRET has distributed the remaining funds in consultation with the Army Corps, and ACRET has been dissolved by its board of directors.

Enclosed for your review are (1) a letter dated August 25, 2011 (erroneously referencing August 25, 2010) from Audubon South Carolina acknowledging the receipt of \$73,573.81 for the purchase of 29.815 mitigation credits from the Beidler Forest Mitigation Bank (the final distribution for mitigation purposes from ACRET), (2) minutes of the meetings of the ACRET board of directors on August 9, 2011 and September 8, 2011, (3) the plan of dissolution for ACRET that the board of directors adopted, and (4) articles of dissolution of ACRET as filed with the South Carolina Secretary of State.

In addition, following is a summary of the distributions that ACRET made for mitigation purposes:

Columbia: 1558634 v.1



L-Department of the Army
September 26, 2011
Page 2

Distributions to National Audubon Society/Audubon South Carolina:

- \$1,000,000 on 9-25-2007 f/b/o Audubon Project re Mims Tract. Paid to Buist, Moore, Smyth and McGee Law Firm for closing.
- \$1,000,000 on 9-25-2008 f/b/o Audubon Project re Grooms-Hoover Tract. Paid to Hagood & Kerr Law Firm for closing.
- \$32,000 on 6-30-2009 f/b/o Audubon Project re Grooms -Hoover Tract. Payment of loan to cover land appreciation between initial agreement and closing.
- \$70,000 on 2-10-2010 f/b/o National Audubon Society for wetlands mitigation re the Pine Haven Tract. Paid to Buist, Moore, Smyth and McGee Law Firm for closing. This distribution was from accrued interest.
- \$73,573.81 on 8-25-2011 f/b/o Beidler Forest Mitigation Bank.

Distributions to Ducks Unlimited:

- \$462,005 on 10-30-2007 f/b/o Ducks Unlimited re Millbrook Plantation. Paid to Barr, Unger & McIntosh Law Firm for closing.
- \$2,000,000 on 11-01-2007 f/b/o Ducks Unlimited re Poplar Grove. Paid to DU account at First Tennessee Bank.
- \$281,250 on 4-30-2008 f/b/o Ducks Unlimited re wetlands mitigation/restoration through Pigeon Pond Mitigation Bank.
- \$80,000 on 12-30-2009 f/b/o Ducks Unlimited for wetlands mitigation RE the Swamp Tract. Paid to Dorcas M. Tuten, Esquire for closing. This distribution was from accrued interest.

TOTAL DISTRIBUTIONS FOR MITIGATION PURPOSES: \$4,998,828.81

Please let me know when you have had an opportunity to review this information, and feel free to contact me with any questions. Otherwise, we respectfully request final approval of the mitigation for the wetlands and the transfer of the Permit from Vought to Boeing.

Haynsworth
Sinkler Boyd, P.A.

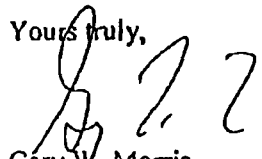
ATTORNEYS AND COUNSELORS AT LAW

L-Department of the Army

September 26, 2011

Page 3

Yours truly,



Gary W. Morris

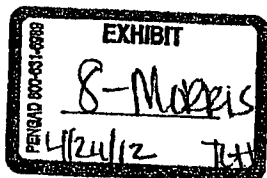
Enclosures

cc: Newt Newton (nnewton@triumphgroup.com) (w/o enclosures)
Nancy Vinson (nancyv@scccl.org) (w/o enclosures)
John Wright (jwright@triumphgroup.com) (w/o enclosures)
Kathryn Musser (kmusser@triumphgroup.com) (w/o enclosures)

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

This document is an evaluation of the application for a Department of the Army permit submitted by Haynesworth, Sinkler, and Boyd, P.A. on behalf of Vought Aircraft Industries, Inc. and constitutes a review for compliance with the 404(b)(1) Guidelines, an Environmental Assessment, a Finding of No Significant Impact (FONSI), and Statement of Findings.

1. Applicant: Vought Aircraft Industries, Inc.
2. Location and Project Description:
 - A. Location: The project site is located on an unnamed tributary of the Ashley River at the intersection of Interstate 526 and International Boulevard in Charleston County, South Carolina (Latitude 32.87438 N, Longitude 80.03212 W).
 - B. Project Description: The work consists of the placement of fill material in waters of the U.S. to develop an aerospace manufacturing and integration facility with room for expansion, growth, and co-location of suppliers. In detail, the work specifically consists of the placement of fill material in 8.33 acres of jurisdictional wetlands to construct the first phase of an aerospace manufacturing facility. The footprint of this phase of development consists of 770,000 square feet of buildings, parking areas, taxiways, and necessary utilities. Since future phases of the manufacturing facility will support the construction of aircraft that are still in the design phase, there is some uncertainty regarding the overall size of future buildings. However, the second phase of the facility is expected to impact 9.25 acres of jurisdictional wetlands, and the third phase of the facility will impact 20.75 acres of jurisdictional wetlands.
 - C. Changes to Project: The revised project consists of reducing the placement of fill material in waters of the United States by 13.51 acres. The applicant reduced the overall footprint of the project by eliminating four small warehouses/buildings and concentrating the overall footprint of the third phase of the development into three large manufacturing warehouses.
3. Project Purpose:
 - A. Basic: The basic project purpose is to place fill material in waters of the U.S. to create the elevations necessary to construct the proposed industrial development.
 - B. Overall: The overall project purpose is to construct an aerospace manufacturing and integration facility with room for expansion, growth, and co-location of suppliers.
4. Scope of Analysis: The scope of analysis is the limits of the footprint of the proposed facility.
5. Statutory Authority: Section 404 of the Clean Water Act of 1972, as amended.
6. Other Federal, State, and Local Authorizations Obtained or Required and Pending:
 - A. State Water Quality Certification (WQC): The WQC was issued on April 8, 2005, with



**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

conditions. A general condition of the Federal permit incorporates the WQC conditions as part of the Department of the Army permit.

- B. Coastal Zone Management (CZM) consistency/permit: The CZM consistency determination was issued on April 8, 2005, with conditions.
- C. Other authorizations: Pursuant to the S.C Storm Water Management and Sediment Reduction Act, a land disturbance permit was issued on February 28, 2005, with conditions.

7. Date of Public Notice and Summary of Comments:

- A. Pre-application meeting(s): The Corps attended two pre-application meetings to discuss the proposed project.
- B. Important dates: The Corps received the application on December 23, 2004. The Corps requested additional information on December 28, 2004, which was received on January 4, 2005. The Corps considered the application complete on January 4, 2005. The Corps issued a public notice on January 7, 2005, and sent this notice to all interested parties including appropriate State and Federal agencies.

- C. Public notice comments: The Corps has reviewed all of the comments submitted in response to the circulation of the public notice. The Corps has summarized these comments below:

- 1) U.S. Environmental Protection Agency (EPA): No comments were received.
- 2) U.S. Fish and Wildlife Service (USFWS): USFWS stated that existing wetland resources were previously impacted by mining. However, the remaining wetlands contribute to the overall integrity of the system and their loss would facilitate the continual degradation of natural resources in the area. USFWS stated that these areas perform important water quality functions that include retention of stormwater runoff, flood water abatement and groundwater recharge. In addition, onsite wetlands and uplands provide habitat for wildlife.

USFWS believes that the majority of the proposed structures are speculative because they are identified for potential or future uses. They expressed concern that the proposed mitigation plan, other than the preservation of the remaining 5.73 acres of onsite wetlands, was not quantified. USFWS recommended that the applicant submit a complete mitigation plan and that they explore redesigning the proposed facility to avoid and minimize wetland impacts.

- 3) National Marine Fisheries Service (NMFS): NMFS stated that direct impacts to EFH are not anticipated. However, the cumulative effect of the proposed work and other similar activities can be expected to diminish the abundance, diversity, and health of federal and state trust fisheries through the elimination of ecological functions and food

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

webs that are supported by wetlands. NMFS also stated that the proposed project has a high public interest component and that the proposed mitigation plan, if properly implemented, would protect a large and ecologically important area within the overall project area that appears destined for development and environmental degradation. NMFS recommended that DA authorization be withheld until the Corps determines that the proposed mitigation plan will be implemented properly and will offset the proposed impacts. No conservation recommendations were offered pursuant to EFH.

4) S.C. Department of Natural Resources (SCDNR): SCDNR stated that the project site has been historically altered by phosphate mining, road construction, ditching, and draining. SCDNR believes that the remaining onsite wetlands will provide little mitigation value because they will be fragmented and will retain few characteristics of their current function and value. They recommended that the applicant submit a detailed mitigation plan to be reviewed and approved by the regulatory and resource agencies. SCDNR stated that it is difficult to show reasonable avoidance and minimization without specific construction proposals. They stated that a worst case scenario can be permitted provided that the permit is conditioned to address avoidance and minimization of wetland impacts from future expansion and growth. They also recommended that the proposed work be phased so that impacts associated with future activities will not occur until specific plans are known.

5) State Historic Preservation Officer (SHPO): No comments were submitted in response to the public notice. However, SHPO met with the permittee to discuss the proposed project and determined that an archeological survey is not required because the majority of the project site was previously impacted by phosphate mining in the late 19th and early 20th century. The remainder of the project site is either wetlands or areas that exhibit relatively low potential for archeological resources. SHPO asked that they be notified immediately if any archeological materials are discovered during construction.

6) Organizations: Two recognized Indian Tribes, Eastern Shawnee Tribe of Oklahoma and Catawba Indian Nation, advised this office that they have no concerns with regard to known cultural properties or sites associated with the proposed work. However, they requested to be notified if Native American archaeological sites and/or human remains are discovered during the construction of the proposed work.

7) Individuals: Ms. Jean Everett of the College of Charleston Biology Department stated that the onsite wetlands include a rare and valuable plant community that typically does not occur on the coastal plain. She stated that the clayey soil found on the project site has high levels of calcium and magnesium and supports a unique plant community, which will be difficult to mitigate offsite because of the unusual soil type. Ms. Everett strongly opposes the filling of any wetlands and volunteered to assist in identifying rare and sensitive plant communities onsite.

8) Others Including Internal Coordination: CESAC-TS-ON and CESAC-PM offered no objections to the proposed work. CESAC-TS-DH stated that onsite wetlands provide stormwater storage and conveyance of offsite stormwater through the project site. In

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

addition, TS-DH stated that the proposed project should be designed to retain any increase in stormwater runoff that results from the alteration of the project site. TS-DH also stated that the proposed project should not increase downstream flows or back water onto adjacent properties.

D. Additional information required by Corps after the Public Notice: The Corps requested additional information on the site selection process and the alternative sites that were evaluated to determine if the proposed site is the least environmentally damaging practicable alternative. The Corps also requested copies of alternate site layouts on the project site that were evaluated to avoid and minimize impacts to waters of the United States. Since future phases of the proposed facility will construct aircraft that are still in the design phase, it may not be possible for the applicant to identify the specific physical requirements of these future facilities. The Corps requested that the applicant provide reasonable assumptions that can be used to evaluate the proposed structures.

The Corps also requested that the applicant revise the Memorandum of Agreement for Wetlands Mitigation for Project Buffalo so that the District Engineer's role is limited to approving or denying the release of funds and/or the purchase of specific tracts of land or easements for mitigation. The Corps requested that the applicant submit a description of existing wetland habitat, mitigation worksheets, and a wetland restoration plan that meets the guidelines outlined in the SOP for Compensatory Mitigation. In addition, the Corps requested that the applicant provide written documentation from SCDOT that they will be allowed to relocate South Aviation Road in the future.

E. Applicant's response to the comments: On February 14, 2005, the Corps coordinated with the applicant the comments received in response to the public notice. The applicant presented their response to agency and public concerns about alternative sites and alternative layouts on the project site at an interagency meeting that was held on February 16, 2005. The applicant also presented a more detailed description of the proposed mitigation plan and requested feedback from the regulatory and resource agencies.

Vought issued a Request for Proposal (RFP) in March 2004 to identify potential sites for the proposed manufacturing and integration facility. The site selection criteria included access to a 9,000 foot long runway, a deep water port, an Interstate Highway, a Class I Railroad, 200-acres of developable land, necessary utilities, and a work force capable of providing at least 1,200 jobs over the life of the project. Based on the responses to the RFP, four potential alternative sites (Tulsa, Oklahoma, Mobile, Alabama, Kinston, North Carolina, and North Charleston, South Carolina) were identified.

Vought evaluated each of these four sites for their ability to meet the project needs. The Mobile, Alabama site is located immediately adjacent to Mobile, Bay. The construction of the proposed facility would require the placement of fill material in a minimum of 50 acres of estuarine waters, demolition of 130 residences and 5 community structures, and the relocation of low-income, minority residents. In addition, sub-surface contamination associated with the previous operation of former Army Air Corps and Air Force bases on this site will likely impact development of this alternative site because stormwater must be

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

discharged directly into Mobile Bay. In addition, the project site is located in a flood prone area where manufacturing could be disrupted by adverse weather conditions.

The Kinston, North Carolina site is located in a rural area that is 44 miles from the nearest deepwater port. Road and rail infrastructure would need to be constructed to access the project site. The construction of the proposed facility would require the placement of fill material in 195 acres of wetlands or the relocation of several public roadways. The permittee also expressed concern about the availability of a technical, manufacturing work force and the support services necessary to operate an industrial facility.

The Tulsa, Oklahoma site is connected to the Mississippi River by barge traffic through a series of locks and dams. However, this river system is subject to extreme droughts and flooding at different times of the year. The construction of the proposed facility would require the construction of a rail spur and some road improvements. The elevation of this site varies from 643 feet to 582 feet and would require significant earthwork and drainage improvements to minimize stormwater impacts on the adjacent city park. The construction of the proposed facility would directly impact 11 acres of wetlands; 5,000 linear feet of perennial streams, and drainage from the airport would be redirected into wetlands located at the adjacent city park where it may cause flooding. In addition, the site is not immediately available because of bankruptcy proceedings associated with previous user of the site.

With regard to minimization of impacts on the project site, the applicant reduced the overall footprint of the project by eliminating four small warehouses/buildings and concentrating the third phase of development into three large manufacturing warehouses and two small office buildings. The revised site layout reduced total wetland impacts by approximately 13 acres. Since the project site is located on the hydrologic divide between the Ashley River and the Cooper River, the applicant has designed the project so that treated stormwater and wastewater flows southeast into the Ashley River. The remaining, undisturbed wetlands onsite will be hydrologically connected to wetlands located on the South Carolina Research facility site and will flow toward the Cooper River.

The applicant described the proposed mitigation plan at the February 16, 2005, interagency meeting. The mitigation plan consists of establishing a committee to evaluate proposals from non-profit organizations to preserve wetlands through the purchase of land or conservation easements. According to the mitigation plan, this committee will consist of 4 representatives appointed by the permittee, 3 representatives appointed by the S.C. Coastal Conservation League, one member each from SCDHEC's Bureau of Water, SCDHEC's OCRM, USFWS, NMFS, SCDNR, and the SC Conservation Bank.

Since the permittee is considered the responsible party for the impacts to waters of the United States and the mitigation plan, the Corps will work directly with the permittee. The permittee will submit specific mitigation proposals to the Corps for their review and approval. The South Carolina Department of Commerce has agreed to provide 4.75 million dollars to fund the mitigation plan once the Department of the Army permit is issued. The permittee is required to obtain authorization from the Corps prior to implementing a specific proposal or committing any of these resources.

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

The permittee provided the Corps with a copy of their February 28, 2005, state stormwater permit, which states that their preliminary landclearing plans meet the requirements of the S.C. Storm Water Management and Sediment Reduction Act. The permittee also provided the Corps with additional information on their stormwater management plan for the entire project site on March 29th, April 4th, and April 6, 2005. This included information on the relocation of the existing East Channel, the construction of stormwater management ponds that will accommodate the increase in onsite runoff and the passage of anticipated flows through the project site.

After researching the issue, the permittee notified the Corps that South Aviation Road is owned and operated by the Airport Authority. Since the existing road and the proposed road corridor are located within the area that will be leased by Vought, they plan to obtain written authorization from the Airport Authority prior to relocating South Aviation Road. The permittee will provide the Corps with detailed plans that include the relocation of South Aviation Road prior to implementing the third phase of the proposed development.

F. Additional Coordination of Project Revisions: The applicant submitted revised permit drawings and a written response to agency and public concerns regarding the mitigation plan on March 16, 2005. On March 18, 2005, the Corps provided USFWS, SCDNR, NMFS, and Ms. Everett a copy of the revised permit drawings and the mitigation plan. The Corps has summarized these comments below:

- 1) U.S. Fish and Wildlife Service (USFWS): In a letter dated, March 30, 2005, USFWS removed their objections to the revised project based on the reduction of wetland impacts and the increase in onsite wetland mitigation. In addition, USFWS stated that their concerns regarding the off-site compensatory mitigation plan have been addressed.
- 2) National Marine Fisheries Service (NMFS): In a letter dated, March 30, 2005, NMFS removed their objections to the revised project. NMFS stated that they support the current plan of action to offset wetland losses and they look forward to participating in the interagency committee that will oversee mitigation planning.
- 3) S.C. Department of Natural Resources (SCDNR): SCDNR removed their objections to the revised project based on the information that was provided in our March 18, 2005, letter. According to SCDNR, this additional information adequately addressed the issues raised in their February 4, 2005, letter.
- 4) Individuals: Ms. Everett continues to object to the revised project based on the loss of the rare plant community that is located on the project site. According to Ms. Everett, southern sugar maple is present on the project site and is often associated with rare and threatened plant species. Ms. Everett has attempted to get permission to survey the project site and has stated that she cannot withdraw her objections, until she can determine whether the project site supports endangered plant species.
- 5) Others Including Internal Coordination: CESAC-TS-DH requested that a permit condition be included in the permit that requires the permittee to implement and maintain

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

appropriate erosion control measures. TS-DH removed their objections to the revised project based on the permit condition and the additional information that was submitted by the permittee.

8. Project Impacts:

- A. **Direct (Primary) Impacts:** Direct project impacts include the placement of fill material in 38.33 acres of waters of the United States and the relocation of an existing jurisdictional ditch. The first phase of development consists of the placement of fill material in 8.33 acres of jurisdictional wetlands. This phase consists of 770,000 square feet of buildings, parking areas, taxiways, and necessary utilities. Since future phases of the facility will support the construction of aircraft that are still in the design phase, there is some uncertainty regarding the overall size of future buildings. The second phase of the facility is expected to impact 9.25 acres of wetlands, and the third phase is expected to impact 20.75 acres of wetlands. Site clearing and grading will be limited to the footprint of the current phase of development.
- B. **Indirect (Secondary) Impacts:** Indirect project impacts include the relocation of the existing rental car facilities on the project site to upland sites located on the opposite side of International Boulevard. Underground storage tanks associated with the rental car facilities onsite will be closed and removed in accordance with SCDHEC regulations. The project site is currently served by water and sewer facilities, and will not require any upgrades offsite.

The permittee has received a stormwater permit to clear and grade approximately 90 acres of uplands on the project site. Erosion control measures such as a temporary sediment pond, silt fences, and rock check dams will be used to prevent the release of sediment into aquatic resources. The development of the project site will result in an overall increase in stormwater from the conversion of forested uplands and wetlands into impervious surfaces. The permittee will be required to obtain an NPDES permit to ensure that the discharge of stormwater does not exceed preconstruction volumes. Stormwater that passes through the project site and onsite stormwater will pass through stormwater management ponds that are designed to slowly release the anticipated 10 year storm event.

The Corps anticipates that the construction of stormwater management ponds may adversely impact two jurisdictional wetlands, WL-1 and WL-12. These two wetlands (a total of 0.75 acres) are located immediately adjacent to stormwater ponds that are planned for future phases of the project. Although neither of these wetlands will be impacted by the first phase of development, the Corps anticipates that they will likely be drained as a result of the excavation and/or expansion of stormwater ponds in the future.

The project site is located immediately adjacent to an existing Interstate and a Class I railroad. The construction and operation of the facility does not require the construction of any new road or rail infrastructure. However, if parts and supplies are delivered to this facility by rail in the future it may be necessary to construct an approximately 1.2 mile rail

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

spur. A rail spur would be primarily located on property that is already owned by the Charleston International Airport and would require approximately 0.75 acres of wetland impacts. In the event that a rail spur is required in the future, Department of the Army authorization will be required and, if issued, appropriate mitigation will be secured.

The construction and operation of the facility will result in a minimal increase in traffic on local roads associated with workers commuting to and from the proposed facility. New turning lanes will likely be required on International Boulevard and South Aviation Avenue to accommodate the flow of vehicle traffic. The operation of the facility will also require the construction of an electrical substation onsite. The substation will be connected to an existing 115 kV line, which is located approximately 0.5 miles from the project site, by a new overhead powerline. The powerline will be constructed parallel to an existing drainage canal and will require the clearing of vegetation within 0.25 acres of jurisdictional wetlands.

The facility is part of a global manufacturing process that includes parts that are made in Japan and Italy, which will be shipped to the North Charleston facility using a modified 747 large cargo freighter (LCF). The LCF will continue its path around the globe and will deliver the assembled fuselage and tail sections to Boeing's facility in Redmond, Washington, before returning to Japan for more parts. At full capacity, the proposed facility will result in an increase of approximately two flights a day at the Charleston International Airport.

The facility is located immediately adjacent to an existing airport and ambient noise and light levels at the project site will be lower than those at the airport. The facility will be designed to comply with local noise ordinances and lighting will be designed to minimize the impact on air traffic and the adjacent community. We anticipate that the proposed project will have minimal impacts on noise and light in the adjacent community.

Air emissions associated with the proposed facility will primarily consist of combustion of natural gas to operate a large autoclave to cure the composite sections of the aircraft, particulates generated by sanding, volatile organic compounds such as solvents used in the painting process, and small quantities industrial lubricants and other materials used in the manufacturing process. Total emissions are expected to be below the threshold requirements of a Title V major source facility. Therefore, the facility is expected to be covered by a minor source permit or a conditional major source permit.

The facility will be considered a large-quantity generator of hazardous waste pursuant to the Resource Conservation and Recovery Act. The primary waste streams are solvents and paints that are used in the manufacturing process that will be stored on site for less than 90 days before being shipped to an appropriate disposal facility. The permittee does not plan to use any underground storage tanks in its operation.

The construction and operation of the proposed facility will require a capital investment of approximately \$300 million into the local economy and will employ more than 600

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

people, at higher than average wages for the area. The facility is expected to have an economic impact of more than \$560 million on the local community.

- C. **Cumulative Impacts:** Consideration of the above-listed direct and indirect project impacts revealed that there would be no significant cumulative impact on the environment resulting from the project when added to other past, present, and reasonably foreseeable future actions regardless of their source.

The facility is located within a developed area, immediately adjacent to the existing Charleston International Airport, the South Carolina Research Park, and Interstate 526. The environmental effects of this project are primarily limited to the project site and do not extend beyond the immediately adjacent properties. As described above, the facility will be designed to comply with the appropriate state or local stormwater, water quality, air quality, noise, and light standards.

Aircraft manufacturing is a relatively clean industry, and this facility will not generate any process wastes. Therefore, domestic wastewater is sufficient to serve the project site. Project wastes are limited to hazardous solid wastes that will be temporarily stored onsite and disposed properly. Relative to other industries in the area, the proposed facility will generate a large number of skilled, manufacturing jobs with above average wages and minimal impacts to the environment.

The original site selection criteria included access to a 9,000 foot long runway, a deep water port, an Interstate Highway, a Class I Railroad. It is our understanding that the facility will primarily be supported by the LCF. Depending upon how parts and supplies are transported to and from the project site in the future, other modes of transportation such as the deepwater port, Interstate Highway, or Class I Railroad may become more or less important over the life of the project. The Corps anticipates that each of these modes of transportation will likely be used to varying degrees by different suppliers. However, the overall contribution of this project to future port, highway, or rail traffic is considered minimal.

9. Mitigative Measures and Alternatives Analysis:

- A. **Avoidance:** The location of the proposed facility on the project site is limited because of existing airspace and radar restrictions. In addition, the logistics associated with transporting relatively large aircraft parts and the assembled aircraft fuselage require that the buildings are located close to the airport runway so that the LCF can reach the facility by taxiway. The proposed impacts to waters of the United States are not considered avoidable because of the logistics of the manufacturing process and the overall site requirements for each phase of development.
- B. **Minimization:** Efforts to minimize impacts to aquatic resources include eliminating four buildings/warehouses that were included in the original proposal and concentrating the overall site plan. In addition, the applicant eliminated the railroad spur because the LCF is expected to carry manufactured parts and the completed fuselage section. The

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

applicant minimized impacts to WL-1 and WL-12 by not incorporating them into the stormwater ponds. However, for the purposes of this evaluation we are assuming that these areas will still be adversely affected by the excavation of the adjacent stormwater ponds in the future.

- C. **Compensatory Mitigation:** Impacts to aquatic resources that could not be avoided or minimized will be mitigated by preserving 17.77 acres of jurisdictional wetlands onsite and 2.53 acres of upland buffers onsite. In addition, the permittee plans to implement an offsite mitigation plan that consists of preserving wetlands and upland buffers, implementing wetland restoration plans, and/or purchasing conservation easements that would protect wetlands from future development. The permittee plans to create a committee that will accept and review proposals to purchase land and/or conservation easements. The South Carolina Department of Commerce has agreed to establish a \$4.75 million fund that will enable the permittee to meet the mitigation requirements for the project. The permittee will obtain authorization from the Corps to implement a specific proposal prior to committing any of these resources. The Corps plans to forward each of the mitigation proposals to the other regulatory and resource agencies that participated in the review of the project for comment prior to making a decision whether to approve or deny a specific mitigation proposal. The Corps' compensatory mitigation SOP suggests that approximately 450 mitigation credits will be required to offset the project impacts. According to the mitigation plan, the fund will enable the permittee to preserve and buffer more than 1,000 acres of wetlands and other aquatic resources. Therefore, the Corps believes that the mitigation plan will generate more than three times the number of mitigation credits that would typically be required for the project impacts.
- D. **Conclusions of Alternatives Analysis:** It has been determined that there are no practicable alternatives to the discharge that would have less adverse impact on the aquatic ecosystem. The basic purpose of the discharge was considered to be non-water dependent (see Item 3A). Based on this determination, this office presumed that practicable alternatives that did not involve a discharge into a special aquatic site were available and would have less adverse impact on the aquatic ecosystem unless clearly demonstrated otherwise. As described above, the applicant has provided additional information on three alternative sites that were considered. One of the alternative sites required the placement of fill material in almost 200 acres of jurisdictional wetlands. In the event that public roads could be relocated to avoid and minimize impacts to waters of the United States, there were additional concerns that the adjacent rural community would not be capable of supporting the operation of an industrial facility or providing a suitable work force. Another alternative site required the placement of fill material in more than 50 acres of jurisdictional wetlands and estuarine waters of the United States and is located in a flood prone area that is subject to flooding. The third alternative site required the placement of fill material in more than 10 acres of jurisdictional wetlands and more than 5,000 linear feet of perennial streams. In addition, this site is not currently available because of bankruptcy proceedings associated with previous user of the site. Based on this information, the proposed site is considered the least environmentally damaging practicable alternative.

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

10. Public interest review:

A. Public interest factors: The Corps reviewed all of the public interest factors including, but not limited to, the effects the work might have on conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership, and in general, the needs and welfare of the people. These public interest factors have been evaluated for their adverse effect, a beneficial effect, a negligible effect, or no effect. It has been determined that there are no adverse effects on these factors unless otherwise addressed below. In addition, other relevant factors as necessary and the interest of the applicant have been evaluated to determine the overall balance of the project with respect to the public interest. Consideration has also been given to the extent of the public and private need for the project and the extent and permanence of the beneficial or detrimental effects the proposed work is likely to have on the private and public uses to which the project site is suited.

B. Threatened or endangered species: A review of the information supplied by the applicant, other pertinent documents and/or information, and comments received in response to the public notice indicates that no aspect of the proposed project is likely to jeopardize the continued existence of threatened or endangered species nor destroy or modify the habitat of these species determined critical in accordance with the Endangered Species Act of 1973.

It has been determined that the project will have no effect on any federally endangered, threatened, or proposed species and will not result in the destruction or adverse modification of designated or proposed critical habitat. USFWS issued a letter dated October 26, 2004, that stated the proposed action is not likely to have an effect on resources that are currently protected under the Endangered Species Act.

C. Corps wetland policy: The proposed wetland alteration is necessary to realize the project purpose. The proposed work should result in minimal adverse environmental impacts. The benefits of the project would outweigh the minimal detrimental impacts. Therefore, the project is in accordance with the Corps wetland policy.

D. Essential Fish Habitat: Under the EFH consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act, it was the determination of this office that the proposed project would impact 38.33 acres of freshwater habitat upstream of estuarine substrates and emergent wetlands utilized by various life stages of species comprising the red drum, shrimp, and snapper-grouper management complexes. However, we further determined that the proposed action would not have a significant individual or cumulative adverse impact on EFH or fisheries managed by the South Atlantic Fishery Management Council and the National Marine Fisheries Service. NMFS made no conservation recommendations regarding EFH.

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

11. Corps Analysis of Comments and Responses: The request by SHPO that they be notified if archeological materials are encountered prior to or during construction is embodied in a general condition of the Federal permit.

The request by Eastern Shawnee Tribe of Oklahoma and Catawba Indian Nation is addressed by a general condition of the federal permit requires that the permittee notify this office immediately in the event that any previously unknown historic or archaeological remains are found and that this office will initiate the Federal and state coordination.

The Corps' review of the project included an evaluation of alternative sites, avoidance and minimization of impacts to waters of the United States onsite, and the proposed mitigation plan. As described above in Section 7E and 9D, the permittee evaluated several alternative sites before selecting the proposed site in North Charleston. The development of each of the alternative sites would result in impacts to waters of the United States. However, the Corps believes that the project site is the least environmentally damaging practicable alternative that meets the permittee's needs as described in their permit application. USFWS, NMFS, and SCDNR were presented additional information on the site selection process during the February 18, 2005, interagency meeting. They indicated that the permittee had addressed their concerns at this meeting and formally withdrew their objections to the proposed project in letters, dated March 30, 2005.

As described above in Section 7D and 9A, the overall development of the project site is dictated by the size and dimensions of the aircraft fuselage that will be produced at this facility and the logistics associated with loading the fuselage onto the LCF. The facility is designed so that the LCF can taxi directly to the joint integration facility, parts can be offloaded into the facility, parts move through the assembly line, and the assembled fuselage is loaded onto the LCF as shown on the process flow diagram, drawing sheet 7 of 15.

The first phase of development consists of two warehouses that are oriented end to end so that aircraft components can be moved directly from one manufacturing warehouse/process into the next process. Future phases of the proposed facility are similarly oriented to facilitate the movement of aircraft components through the manufacturing process. The overall development includes five warehouses that are greater than 330,000 square feet, two that are greater than 250,000 square feet, and one that is greater than 200,000 square feet. Therefore, it is not possible to avoid all impacts to waters of the United States.

Initially the permittee attempted to avoid impacts to depressional wetlands located on the project site. In response to the concerns of the USFWS, NMFS, SCDNR and this office, the permittee evaluated alternate site layouts. Concentrating the overall footprint of the proposed facility, eliminating the railroad spur, eliminating four small buildings/warehouses, and shifting the location of one building so that impacts to aquatic resources are limited to the footprint of an access road reduced overall project impacts from 51.53 acres to 38.33 acres of wetlands. USFWS, NMFS, and SCDNR were presented additional information on alternate site layouts during the February 18, 2005, interagency meeting. They stated that the permittee had addressed their concerns at this meeting and formally withdrew their objections to the proposed project in separate letters, dated March 30, 2005.

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

The development of the project site has also been broken down into three phases to address concerns about the timing of impacts to waters of the United States. The first phase will impact 8.33 acres of jurisdictional wetlands. Since future phases of the facility will support the construction of other aircraft that are still in the design phase, there is still some uncertainty regarding the overall size of the future buildings. The second phase of the facility is expected to impact 9.25 acres of jurisdictional wetlands, and the third phase of the facility will impact 20.75 acres of jurisdictional wetlands.

The phasing of the proposed project ensures that impacts to aquatic resources will not occur until there is some degree of certainty that the next phase of the manufacturing facility will be constructed on the project site. This ensures that avoidance and minimization will continue to be evaluated throughout the development of the project. Therefore, the following special condition will be placed in the federal permit:

That the permittee will submit to the Corps for review and approval a copy of the most recent stormwater management plan and updated construction drawings, prior to initiating each new phase of the proposed project. The permittee must receive written approval from the District Engineer, or his designee, confirming that reasonable efforts have been made to avoid and minimize impacts to waters of the United States prior to proceeding with each new phase of the project.

To address the concerns of USFWS, NMFS, SCDNR and this office, a detailed mitigation plan was submitted by the applicant to offset unavoidable, adverse impacts to aquatic resources. As described above in Section 9C, the permittee plans to preserve the remaining 17.77 acres of jurisdictional wetlands and 2.53 acres of upland buffers onsite. Many of the preserved wetlands are located immediately adjacent to areas that are being filled and developed. Therefore, it is not possible to establish an undisturbed upland buffer in these areas. However, the permittee has agreed to establish at least 10-foot wide upland buffers wherever it is possible.

In addition, the permittee has proposed an offsite mitigation plan that consists of establishing a committee that will accept and review proposals to protect wetlands from future development. The South Carolina Department of Commerce has agreed to establish a \$4.75 million fund that will enable the permittee to preserve wetlands and upland buffers, implement wetland restoration plans, and/or purchase conservation easements. The permittee will obtain authorization from the Corps to implement a specific proposal prior to committing any of these resources.

The permittee submitted worksheets to estimate the number of mitigation credits that would be required for the proposed impacts to waters of the United States. The Corps' compensatory mitigation SOP indicates that approximately 450 mitigation credits will be required to offset the project impacts. According to the mitigation plan, the proposed fund will enable the permittee to preserve and buffer more than 1,000 acres of wetlands and other aquatic resources. The Corps believes that the mitigation plan will generate more than three times the number of mitigation credits that would typically be required for impacts associated with the entire project. Since the permittee will begin implementing the mitigation plan when the permit is issued, all of the

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft industries, Inc.**

mitigation will be accomplished prior to the construction of the second or third phase of development. According to the applicant, the entire mitigation plan will be implemented even if the latter phases are not constructed.

To ensure compliance with the proposed mitigation plan, the following conditions will be included in the permit:

That the permittee recognizes that their commitment to perform and implement the mitigation plan, dated February 18, 2005 (Revised April 6, 2005), was a deciding factor towards the favorable and timely decision on this permit and that the permittee recognizes that a failure on its part to both actively pursue and implement the mitigation plan may be grounds for modification, suspension or revocation of this Department of the Army authorization.

That the permittee will take all appropriate action to ensure that the \$4.75 million mitigation fund is established as described in the mitigation plan and Memorandum of Agreement (MOA). In accordance with the MOA, dated April 6, 2005, this fund must be established within 30 days of permit issuance. The permittee must submit the following: 1) written documentation to the District Engineer that the funds have been deposited in an escrow account or other account acceptable to the government, or 2) an irrevocable letter of credit for the full amount. The fund is to be used for the sole purpose of providing mitigation for the environmental impacts associated with the development of the aircraft manufacturing and integration facility advertised by Public Notice #2004-1N-402, dated January 7, 2005.

Upon establishment, the funds must be immediately available for the acquisition, restoration, and/or enhancement of approved tracts of land for mitigation sites as proposed by the permittee and approved by the District Engineer.

That all proposals submitted by the permittee must include assurances that normal, necessary, and reasonable costs associated with establishing wetland mitigation areas such as wetland surveys, land surveys, legal fees, clearing grading, vegetative planting, preparation and submittal of mitigation monitoring reports, etc. are fully funded. That the permittee will participate in the mitigation committee as outlined in the mitigation plan, and will facilitate the committee's efforts to evaluate proposals to preserve wetlands, enhance wetlands through the preservation of upland buffers, and restore wetlands by implementing approved wetland restoration projects, so that the mitigation plan is implemented in a timely manner. If the permittee is unable to execute the mitigation plan within three years of the date of issuance of this permit, the permittee will actively work with the Corps of Engineers to develop an alternative plan to accomplish the necessary mitigation.

That as compensatory mitigation for impacts to aquatic resources, the permittee will preserve 17.77 acres of unaltered wetlands and 2.53 acres of unaltered upland buffers onsite. Preservation shall be by means of either deed restrictive covenants or conservation easement. The covenants or easement documents and surveyed plat of the

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

mitigation area must be submitted to the District Engineer or his designee for review and approval prior to execution. Sample language for restrictive covenants and easement documents are enclosed for your consideration.

That the permittee must submit evidence of execution and recording of the preservation easements or covenants and surveyed plat of the mitigation area to both the Corps of Engineers and DHEC prior to commencement of the final phase of the authorized work.

The permittee provided the Corps with a copy of their February 28, 2005, state stormwater permit, which states that their preliminary landclearing plans meet the requirements of the S.C. Storm Water Management and Sediment Reduction Act. The permittee began clearing and grading the upland portion of the project site in March. The stormwater permit was conditioned so that the wetlands and a 50-foot upland buffer will not be disturbed until the necessary state certifications and federal permit are issued. The permittee provided TS-DH additional information of the stormwater management plan for the entire project site. This included information on the overall drainage that passes through the project site, the relocation of the East Channel, the anticipated increase in onsite stormwater, and the ability of the stormwater management pond to accommodate a 10 year and 100 year storm event.

The project site is surrounded on three sides by existing roads. The permittee has indicated that very little offsite stormwater passes through the project site. The culverts that pass underneath each of the three roads flows away from the project site, and the primary drainage associated with the existing airport runway is also away from the project site. According to the permittee, the existing culverts are sufficient to handle the anticipated flows.

Although the basic design of the first phase of development has been completed, there are a number of minor adjustments that are being made in the field because of site conditions. In addition, there is some uncertainty how stormwater facilities will be expanded to accommodate future phases of development. Therefore, TS-DH requested that the following permit condition be included in the federal permit:

That the permittee must use appropriate erosion control measures to ensure that sediment does not migrate from the project site into adjacent wetlands or other aquatic resources. The permittee must routinely monitor and maintain these erosion control measures to ensure they are working properly. In the event that there is an accidental release of sediment, the permittee will restore the impacted area and incorporate all necessary measures to prevent any further release of sediment.

Ms. Everett continues to oppose the filling of wetlands and/or the destruction of what she considers to be a rare plant community that is located on the project site. According to Ms. Everett, southern sugar maple can be associated with a number of spring ephemerals that typically do not occur on the coastal plain. She stated that the clayey soil found on the project site has high levels of calcium and magnesium and supports this unique plant community. She believes that it will be difficult to mitigate offsite because of the unusual soil type. Ms. Everett has attempted to get permission to survey the project site and has stated that she cannot

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

withdraw her objections, until she can determine whether the project site supports endangered plant species.

There is some question whether the plant community that Ms. Everett would like to see protected is located in wetlands or uplands on the project site. The species which she considers rare and endangered in the coastal plain of South Carolina are not federally listed species and in some cases these plant species are prolific in the piedmont or other areas of the state. In addition, the calcium and magnesium rich soils (Alfisol) that are located on the project site are fairly common on the coastal plain. However, the calcium and magnesium rich portion of the soil profile is typically located below the soil surface. In this case, the mining of phosphate rock on the project site has transposed the soil profile.

The Corps recognizes that Ms. Everett considers these plant communities to be rare, and they are certainly not a dominant forest type on the coastal plain. However, southern sugar maple and beech forest are located elsewhere in the state and the coastal plain. The permittee has avoided and minimized environmental impacts to the greatest extent practicable, and has clearly demonstrated that the project site is least environmentally damaging practicable alternative for the proposed project.

12. Determinations:

A. Finding of No Significant Impact (FONSI): Consideration has been given to the following criteria: Environmental setting without the project, the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives of the proposed action, relationship between local short-term use of man's environment and enhancement of long-term productivity, any irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented, information obtained by circulation of a public notice to Federal, State and local agencies, conservation groups and interested parties. Based on the information presented above and in consideration of other pertinent documents and/or information, and after considering the purpose of and need for the action, alternatives (as appropriate), the effected environment and the consequences of the action, I have concluded that the proposed project will not result in a significant impact on the human environment. As a result, the preparation of an Environmental Impact Statement (EIS) is not warranted.

B. Evaluation of the 404(b)(1) Guidelines: The Corps has reviewed the proposed project in accordance with the 404 (b)(1) Guidelines. It is our determination that:

- 1). The proposed alternative is the least environmentally damaging and practicable alternative after consideration of cost, existing technology, and logistics in light of overall project purpose.
- 2). The proposed alternative does not;
 - a. Violate any applicable State water quality standard;

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

- b. Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;
 - c. Jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or result in likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended.
 - d. Violate any requirement imposed by the Secretary of Commerce to protect any marine sanctuary designated under title III of the Marine Protection, Research, and Sanctuaries Act of 1972.
- 3). The proposed alternative does not cause or contribute to significant degradation of the water of the United States.
- 4). All appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps.

It is noted that the findings of no significant degradation above were based upon appropriate factual determinations, evaluations, and tests required by subparts B and G, after consideration of subparts C through F, with special emphasis on the persistence and permanence of the effects outlined in those subparts.

C. Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

D. Public Hearing Request: No requests for a public hearing were received.

E. Public Interest Determination: I find that issuance of the Department of the Army permit as prescribed by current Department of the Army regulations for the proposed work in accordance with the drawings attached hereto, is based on a thorough analysis and evaluation of the various factors enumerated above; that the project will not adversely affect any of the public interest factors; that there are no reasonable alternatives available to the applicant that will achieve the purposes for which the work is being constructed; that the proposed work is in accordance with the overall desires of the public as reflected in the comments of State and local agencies and the general public; that the proposed work is deemed to comply with established State and local laws, regulations and codes; that there have been no identified significant adverse environmental effects related to the work and that the proposed work will not significantly affect the quality of the human environment; that the issuance of this permit is consistent with National policy, statutes, and administrative

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

directives; and that on balance, issuance of a Department of the Army permit is not contrary to the public interest.

F. Title III of the Civil Rights Act of 1964 and Executive Order 12898: The proposed permit action has been analyzed pursuant to regulations implementing Title III of the Civil Rights Act of 1964 and Executive Order 12898. It has been determined that the project would not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin nor would it have a disproportionate effect on minority or low-income communities.

G. Other Determinations: A special condition has been included in this permit, which requires that a copy of the permit and drawings be available at the site of the permitted activity during construction.

In light of the special conditions a compliance inspection will be conducted to determine if compliance with the terms and conditions of the permit has occurred. In addition, by special condition, the permittee will be required to submit a self-certification statement of compliance within 60 days of completion of the work authorized herein.

13. Special Conditions:

- a. That the permittee agrees to provide all contractors associated with construction of the authorized activity a copy of the permit and drawings. A copy of the permit will be available at the construction site at all times.
- b. That the permittee shall submit a signed compliance certification to the Corps within 60 days following completion of the authorized work and any required mitigation. The certification will include:
 1. A copy of this permit;
 2. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
 3. A statement that any required mitigation was completed in accordance with the permit conditions;
 4. The signature of the permittee certifying the completion of the work and mitigation.
- c. That the permittee will submit to the Corps for review and approval a copy of the most recent stormwater management plan and updated construction drawings, prior to initiating each new phase of the proposed project. The permittee must receive written approval from the District Engineer, or his designee, confirming that reasonable efforts have been made to avoid and minimize impacts to waters of the United States prior to proceeding with each new phase of the project.
- d. That the permittee will take all appropriate action to ensure that the \$4.75 million mitigation fund is established as described in the mitigation plan and Memorandum of Agreement (MOA). In accordance with the MOA, dated April 6,

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

2005, this fund must be established within 30 days of permit issuance. The permittee must submit the following: 1) written documentation to the District Engineer that the funds have been deposited in an escrow account or other account acceptable to the government, or 2) an irrevocable letter of credit for the full amount. The fund is to be used for the sole purpose of providing mitigation for the environmental impacts associated with the development of the aircraft manufacturing and integration facility advertised by Public Notice #2004-1N-402, dated January 7, 2005.

- e. Upon establishment, the funds must be immediately available for the acquisition, restoration, and/or enhancement of approved tracts of land for mitigation sites as proposed by the permittee and approved by the District Engineer.
- f. That all proposals submitted by the permittee must include assurances that normal, necessary, and reasonable costs associated with establishing wetland mitigation areas such as wetland surveys, land surveys, legal fees, clearing grading, vegetative planting, preparation and submittal of mitigation monitoring reports, etc. are fully funded.
- g. That the permittee will participate in the mitigation committee and will facilitate the committee's efforts to evaluate proposals to preserve wetlands, enhance wetlands through the preservation of upland buffers, and restore wetlands by implementing approved wetland restoration projects, so that the mitigation plan is implemented in a timely manner. If the permittee is unable to execute the mitigation plan within three years of the date of issuance of this permit, the permittee will actively work with the Corps of Engineers to develop an alternative plan to accomplish the necessary mitigation.
- h. That as compensatory mitigation for the impacts to aquatic resources, the permittee will preserve 17.77 acres of unaltered wetlands and 2.53 acres of upland buffers. Preservation shall be by means of either deed restrictive covenants or conservation easement. The covenants or easement documents and surveyed plat of the mitigation area must be submitted to the District Engineer or his designee for review and approval prior to execution. Sample language for restrictive covenants and easement documents are enclosed for your consideration.
- i. That the permittee must submit evidence of execution and recording of the preservation easements or covenants and surveyed plat of the mitigation area to both the Corps of Engineers and DHEC prior to commencement of the final phase of the authorized work.
- j. That the permittee must use appropriate erosion control measures to ensure that sediment does not migrate from the project site into adjacent wetlands or other aquatic resources. The permittee must routinely monitor and maintain these erosion control measures to ensure they are working properly. In the event that

**Decision Document for Department of the Army Permit # 2004-1N-402
Issued to Vought Aircraft Industries, Inc.**

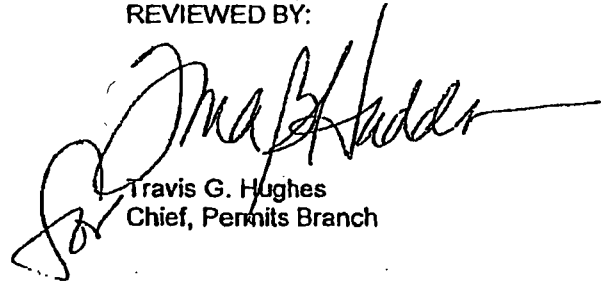
there is an accidental release of sediment, the permittee will restore the impacted area and incorporate all necessary measures to prevent any further release of sediment.

PREPARED BY:



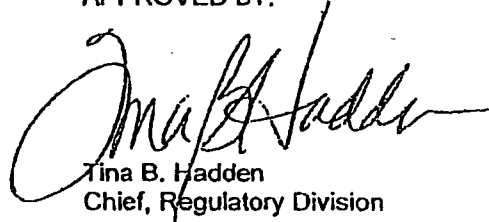
Nathaniel I. Ball
Project Manager
Permits Branch

REVIEWED BY:



Travis G. Hughes
Chief, Permits Branch

APPROVED BY:



Tina B. Hadden
Chief, Regulatory Division

April 8, 2004

For: Alvin B. Lee
Lieutenant Colonel, U.S. Army
District Engineer

A copy of the NAO was attached to the letter.



STATE OF SOUTH CAROLINA
\$5,025,000 GENERAL OBLIGATION STATE ECONOMIC DEVELOPMENT BONDS,
SERIES 2005F

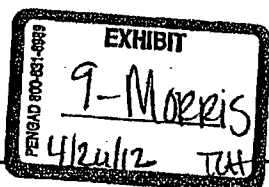
INDEX OF DOCUMENTS

A. Transcript of Proceedings:

1. Certificate of the Secretary of State as to terms of office of State Budget and Control Board.
2. Certificate of the State Auditor Establishing Compliance with the State Constitutional Debt Limitation.
3. Certificate of the State Treasurer Establishing Compliance with the State Constitutional Debt Limitation.
4. Evidence of Approval of the Joint Bond Review Committee of the Issuance of the Series 2005D Bonds, dated December 6, 2004.
5. Resolution of the South Carolina State Budget and Control Board Authorizing the Issuance of the Series 2005D Bonds dated December 14, 2004.
6. Affidavit of Publication of Summary Notice of Sale in *The Bond Buyer* on November 30, 2005.
7. Preliminary Official Statement, Notice of Sale, and Official Bid Form.
8. Official Statement.
9. Copies of letters of Moody's Investors Service, Standard & Poor's and Fitch assigning ratings to the Bonds.
10. Certificate of the Governor and State Treasurer as to Proposals for the Purchase of the Bonds, and Naming of Paying Agent and Registrar for the Bonds.

B. Closing Documents:

11. Certificate of the Secretary of State of South Carolina as to the filing of a transcript of proceedings as required by Section 11-15-20, Code of Laws of South Carolina 1976, as amended.
12. Signature Certificate.
13. Closing Certificate.
14. Payment Instructions from the Office of the State Treasurer to the Purchaser.



15. Cross Receipt for Proceeds and Bonds.
16. Specimen Bonds.
17. Certificate of Authority of Registrar and Paying Agent.
18. Acceptance of Appointment as Registrar and Paying Agent.
19. Registrar and Paying Agent Agreement.
20. Certificate requesting Registrar to authenticate and deliver the Bonds.
21. Issue Price Certificate.
22. Certificate of State Treasurer regarding Official Statement.
23. Arbitrage and Tax Compliance Certificate.
24. IRS Form 8038-G Information Return.
25. DTC Letter of Representations.
26. Continuing Disclosure Undertaking.
27. Opinion of the Attorney General.
28. Opinion of Haynsworth Sinkler Boyd, P.A., Bond Counsel.

STATE OF SOUTH CAROLINA
\$5,025,000 GENERAL OBLIGATION STATE ECONOMIC DEVELOPMENT BONDS,
SERIES 2005F

INDEX OF TRANSCRIPT OF PROCEEDINGS

1. Certificate of the Secretary of State as to terms of office of State Budget and Control Board.
2. Certificate of the State Auditor Establishing Compliance with the State Constitutional Debt Limitation.
3. Certificate of the State Treasurer Establishing Compliance with the State Constitutional Debt Limitation.
4. Evidence of Approval of the Joint Bond Review Committee of the Issuance of the Series 2005D Bonds, dated December 6, 2004.
5. Resolution of the South Carolina State Budget and Control Board Authorizing the Issuance of the Series 2005D Bonds dated December 14, 2004.
6. Affidavit of Publication of Summary Notice of Sale in *The Bond Buyer* on November 30, 2005.
7. Preliminary Official Statement, Notice of Sale, and Official Bid Form.
8. Official Statement.
9. Copies of letters of Moody's Investors Service, Standard & Poor's and Fitch assigning ratings to the Bonds.
10. Certificate of the Governor and State Treasurer as to Proposals for the Purchase of the Bonds, and Naming of Paying Agent and Registrar for the Bonds.

INTRODUCTION

Section A of the Index of Documents is a certified copy of the full record of proceedings relating to the issuance by the State of South Carolina (the "State") of its \$5,025,000 General Obligation State Economic Development Bonds, Series 2005F (the "Bonds").

Section 11-15-20 of the Code of Laws of South Carolina 1976, prescribes that in every instance where the governing board of any State agency (which shall include the State) shall propose to effect the issuance of bonds, it will make a full record of the proceedings relating to the issuance of such bonds and file such record in the Office of the Secretary of State of South Carolina. The Secretary of State of South Carolina is required to file and index this record in a special book furnished therefor.

The record here reflects the action taken by the State Budget and Control Board of South Carolina and other Officers of the State in effectuating the issuance of the Bonds. The record of proceedings filed in the Office of the Secretary of State does not include closing documents reflecting action taken at the Closing, as the statute contemplates the filing of the record prior to the delivery of the Bonds.

The record of proceedings filed in the Office of the Secretary of State of South Carolina includes documents 1 through 10, inclusive, set forth in the Index of Documents. The Certificate of the Secretary of State of South Carolina, document 11 in Section B of the Index of Documents, constitutes the certification of the copy of the record of proceedings by that officer.

ARTICLE III

ISSUANCE OF BONDS

Section 3.01 Direction to Governor and State Treasurer

The Governor of South Carolina and the State Treasurer are hereby directed to effect the issuance of not to exceed \$160,000,000 principal amount of General Obligation State Economic Development Bonds in accordance with the provisions of this Resolution.

Section 3.02 Ordering the Issuance of Bonds

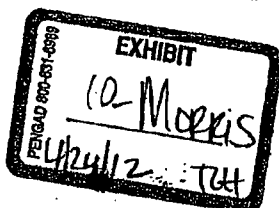
(a) Pursuant to the provisions of the Enabling Act, and for the purpose of obtaining funds to defray the costs of Infrastructure and the costs of issuance, there shall be issued not exceeding One Hundred Sixty Million Dollars (\$160,000,000) aggregate principal amount general obligation bonds of the State, designated General Obligation State Economic Development Bonds. The Bonds may be issued as a single Series or in two or more separate Series as determined by the State Treasurer. Each Series of Bonds issued hereunder shall be given a unique series identifier. Subject to the provisions of paragraph (b) of this Section 3.02, the State Treasurer is hereby authorized to determine the principal amount of the Bonds of each Series and the Dated Date of each Series. References in this Resolution to "Bonds" shall mean, where appropriate, Bonds of a Series.

(b) The State Treasurer has previously been provided with a Confidential Initial Site Development and Incentive Agreement (the "*Site Agreement*") relating to the project for which the Bonds are to be issued. Notwithstanding that the aggregate principal amount of Bonds authorized by the Resolution is not exceeding \$160,000,000, the State Treasurer shall observe the following limitations on the issuance of the Bonds:

(i) Initially, the State Treasurer shall be authorized to issue Bonds in an aggregate principal amount not to exceed \$120,000,000.

(ii) If the South Carolina Secretary of Commerce (the "*Secretary*") delivers a certificate to the State Treasurer specifying that "*Section 41 Integration*" (as such term is defined in the Site Agreement) has been committed to in accordance with the Site Agreement, together with such other documents, certificates, and opinions as the State Treasurer may request, then the State Treasurer shall be authorized to issue Bonds in an aggregate principal amount not to exceed \$135,000,000.

(iii) If the Secretary delivers a certificate to the State Treasurer specifying additional commitments have been made as set forth in Section 2.6 of the Site Agreement, together with such other documents, certificates, or opinions as the State Treasurer may request, then the State Treasurer shall be authorized to issue Bonds in an aggregate principal amount determined as set forth in the Site Agreement, but in no event shall the aggregate principal amount of Bonds issued hereunder exceed \$160,000,000.



Section 3.03 Maturity Schedule of Bonds

The Bonds shall mature in each of the Fiscal Years and in the principal amounts determined by the State Treasurer, provided that the term of a Series of Bonds does not exceed 30 years and the aggregate principal amount of Bonds issued hereunder does not exceed \$160,000,000. The Bonds shall bear interest at rates determined in the manner prescribed by Section 3.16 hereof.

Section 3.04 Provision For Payment of Interest on the Bonds

The Bonds shall be authenticated on such dates as they shall, in each case, be delivered. The Bonds shall bear interest from the Bond Payment Date to which interest has been paid next preceding the authentication date thereof, unless the authentication date thereof is a Bond Payment Date, in which case, from such authentication date, or if authenticated prior to the first Bond Payment Date for the Bonds, then from the Dated Date. The interest to be paid on any Bond Payment Date shall be paid to the Person in whose name such Bond is registered at the close of business on the Record Date next preceding such Bond Payment Date.

Section 3.05 Medium of Payment; Form and Denomination of Bonds; Place of Payment of Principal

(a) The Bonds shall be payable as to Principal Installment, Redemption Price and interest at the rates per annum determined in the manner prescribed by Section 3.16 hereof (on the basis of a 360-day year of twelve 30-day months) in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b) The Bonds shall be issued in the form of fully registered Bonds. The Bonds shall be issued in the denomination of \$5,000 or any whole multiple thereof, not exceeding the principal amount of the Bonds maturing in such year. The Bonds shall be numbered from 1 upwards in such fashion as to maintain a proper record thereof.

(c) The Principal Installment or Redemption Price of Bonds shall be payable at the Corporate Trust Office of the Paying Agent and payment of the interest on each Bond shall be made by the Paying Agent to the Person appearing on each Record Date on the registration books of the State, which books shall be held by the Registrar as provided in Section 3.09 hereof, as the registered owner thereof, by check or draft mailed to such registered owner at his address as it appears on such registration books in sufficient time to reach such registered owner on the Bond Payment Date. Payment of the Principal Installment or Redemption Price of all Bonds shall be made upon the presentation and surrender for cancellation of such Bonds as the same shall become due and payable.

Section 3.06 Agreement to Maintain Registrar and Paying Agent

As long as any of the Bonds of a Series remain Outstanding there shall be a Registrar and a Paying Agent for such Series, each of which shall be a financial institution maintaining Corporate Trust Offices where (i) the Bonds may be presented for registration of transfers and exchanges, (ii) notices and demands to or upon the State in respect of the Bonds may be served, and (iii) the Bonds may be presented for payment, exchange and transfer. The State Treasurer is hereby authorized to determine the institution, pursuant to the results of competitive bid, which shall initially exercise the functions of Registrar and Paying Agent. In the event that the Bonds are issued in two or more Series, references in this Resolution to the Registrar and Paying Agent shall mean the Registrar and Paying Agent for a given Series.

Section 3.07 Execution and Authentication

(a) The Bonds shall be executed in the name and on behalf of the State by the manual or facsimile signature of the Governor of South Carolina and by the State Treasurer with the Great Seal (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon. Bonds bearing the manual or facsimile signature of any Person who shall have been such an Authorized Officer at the time such Bonds were so executed shall bind the State notwithstanding the fact that he may have ceased to be such Authorized Officer prior to the authentication and delivery of such Bonds or was not such Authorized Officer at the date of the authentication and delivery of the Bonds.

(b) No Bond shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder unless there shall be endorsed on such Bond a certificate of authentication in the form set forth in the form of the Bond attached to this Resolution as *Exhibit G*, duly executed by the manual signature of the Registrar and such certificate of authentication upon any Bond executed on behalf of the State shall be conclusive evidence that the Bond so authenticated has been duly issued hereunder and that the Holder thereof is entitled to the benefit of the terms and provisions of the Resolution.

Section 3.08 Exchange of Bonds

Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered Holder or his duly authorized attorney, may, at the option of the registered Holder thereof, be exchanged for an equal aggregate principal amount of Bonds in authorized denominations of the same interest rate and maturity. So long as any of the Bonds remain Outstanding, the State shall make all necessary provisions to permit the exchange of Bonds at the Corporate Trust Office of the Registrar.

Section 3.09 Transferability and Registry

All Bonds shall at all times, when the same are Outstanding, be payable, both as to Principal Installment, Redemption Price and interest to a Person, and shall be transferable, only in accordance with the provisions for registration and transfer contained in the Resolution and in the Bonds. So long as any of the Bonds remain Outstanding, the State shall maintain and keep, at the office of the Registrar, books for the registration and transfer of Bonds, and, upon presentation thereof for such purpose at the Corporate Trust Office of the Registrar, the State shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as it or the Registrar may prescribe, any Bond, except that under no circumstances shall any Bond be registered or transferred to bearer. So long as any of the Bonds remain Outstanding, the State shall make all necessary provisions to permit the transfer of Bonds at the Corporate Trust Office of the Registrar.

Section 3.10 Transfer of Bonds

Each Bond shall be transferable only upon the books of the State, which shall be kept for such purpose at the Corporate Trust Office of the Registrar, upon presentation and surrender thereof by the Holder of such Bond or by his attorney duly authorized in writing, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered Holder or his duly authorized attorney. Upon surrender for transfer of any such Bond, the State shall execute and the Registrar shall authenticate and deliver, in the name of the Person who is the transferee, one or more new Bonds of the same aggregate principal amount and maturity and rate of interest as the surrendered Bond. All action taken by the Registrar pursuant to this section shall be deemed to be the action of the State.

Section 3.11 Regulations with Respect to Exchanges and Transfers

All Bonds surrendered in any exchanges or transfers shall forthwith be cancelled by the Registrar.

For each such exchange or transfer of Bonds, the State or the Registrar may make a charge sufficient to reimburse it or them for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the Holder requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The State shall not be obligated to (i) issue, exchange or transfer any Bond during the 15 days next preceding any Bond Payment Date, (ii) issue, exchange or transfer any Bond during a period beginning at the opening of business 15 days next preceding any selection of Bonds to be redeemed and ending at the close of business on the date of the mailing of notice of such redemption, or (iii) transfer or exchange any Bonds called or being called for redemption in whole or in part.

Section 3.12 Mutilated, Destroyed, Lost and Stolen Bonds

(a) If any mutilated Bond is surrendered to the Registrar and the Registrar or the State receive evidence to their satisfaction of the destruction, loss or theft of any Bond, and there is delivered to the Registrar or the State such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice that such Bond has been acquired by a bona fide purchaser, the State shall execute, and upon State Request, the Registrar shall authenticate and deliver, in exchange for any such mutilated Bond or in lieu of any such destroyed, lost or stolen Bond, a new Bond of like tenor, principal amount and redemption provisions, bearing a number unlike that of a Bond contemporaneously Outstanding. The Registrar shall thereupon cancel any such mutilated Bond so surrendered. In case any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the State in its discretion may, instead of issuing a new Bond, pay such Bond.

(b) Upon the issuance of any new Bond under this Section 3.12, the State may require the payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees or other fees, of the State or the Registrar connected therewith.

(c) Each new Bond issued pursuant to this Section in lieu of any destroyed, lost or stolen Bond shall constitute an additional contractual obligation of the State, whether or not the destroyed, lost or stolen Bond shall at any time be enforceable by anyone, and shall be entitled to all the benefits hereof equally and proportionately with any and all other Bonds duly issued pursuant to the Resolution. All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds.

Section 3.13 Holder As Owner of Bond

The State, the Registrar and any Paying Agent may treat the Holder of any Bond as the absolute owner thereof, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the Principal Installment or Redemption Price of and interest on such Bond and for all other purposes, and payment of the Principal Installment or Redemption Price and interest shall be made only to, or upon the order of, such Holder. All payments to such Holder shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the State nor any Paying Agent shall be affected by any notice to the contrary.

Section 3.14 Cancellation of Bonds

The Registrar shall destroy all Bonds surrendered to it for cancellation and shall deliver a certificate to that effect to the State. No such Bonds shall be deemed Outstanding under the Resolution

and no Bonds shall be issued in lieu thereof.

Section 3.15 Payments Due on Saturdays, Sundays and Holidays

In any case where the Bond Payment Date or Redemption Date shall be a Saturday or Sunday or shall be, at the place designated for payment, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the Redemption Price, interest on or Principal Installment of the Bonds need not be made on such date but may be made on the next succeeding business day not a Saturday, Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close, with the same force and effect as if made on the Bond Payment Date and no interest shall accrue for the period after such date.

Section 3.16 Conditions Relating to Naming of Interest Rates

The Bonds shall bear such rate or rates of interest as shall at the sale of such Bonds reflect the lowest interest cost to the State at a price of not less than par, but:

- (a) all Bonds of the same maturity shall bear the same rate of interest;
- (b) no rate of interest named shall be more than two per centum (2.0%) (or such lesser amount as determined by the State Treasurer prior to the publication of the Notice of Sale described in Section 5.01 herein) higher than the lowest rate of interest named;
- (c) each interest rate named shall be a multiple of one eighth (1/8th) or one twentieth (1/20th) of one per centum (1%); and
- (d) any premium offered must be paid in cash as part of the purchase price for a Series of Bonds.

In addition to the foregoing, the State Treasurer may establish additional terms and conditions for the sale of the Bonds, not inconsistent herewith, prior to the publication of the Notice of Sale.

Section 3.17 Tax Exemption in South Carolina

Both the Principal Installment and interest on said Bonds shall be exempt from all State, county, municipal, school district, and all other taxes or assessments imposed with the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer or certain franchise taxes.

Section 3.18 Pledge of Full Faith, Credit and Taxing Power

For the payment of the Principal Installment and interest on the Bonds as the same respectively mature, the full faith, credit and taxing power of the State are hereby irrevocably pledged, and the General Assembly shall allocate on an annual basis sufficient tax revenues to provide for the punctual payment of Principal Installments of and interest on the Bonds. In accordance with the provisions of Paragraph 4 of §13 of Art. X of the Constitution of the State of South Carolina, as amended, if any time any payment of Principal Installment of or interest on the Bonds shall not be paid as and when the same become due and payable, the State Comptroller General shall forthwith levy and the State Treasurer shall collect an *ad valorem* tax without limit as to rate or amount upon all taxable property within the State sufficient to meet the payment of the Principal Installments of and interest on the Bonds then due.

Section 3.19 Bonds Issued in Book-Entry Only Form

(a) Notwithstanding any provision of this Resolution to the contrary, the Bonds and the BANs, if any, will initially be issued under the DTC Book-Entry Only System in fully registered form, registered in the name of Cede & Co. as the registered owner and securities depository nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as initial securities depository for the Bonds and BANs. Notwithstanding anything to the contrary herein, so long as the Bonds and BANs are being held under a book-entry system of a securities depository, transfers of beneficial ownership of the Bonds and BANs will be effected pursuant to rules and procedures established by such securities depository. DTC and any successor securities depositories are hereinafter referred to as the "Securities Depository." Cede & Co. and successor securities depository nominees are hereinafter referred to as the "Securities Depository Nominee." References in the remainder of this Section 3.19 to "Bonds" shall be applicable to BANs issued hereunder, if any.

(b) Notwithstanding any other provision of this Resolution, as long as a book-entry system is in effect for the Bonds, the Securities Depository Nominee will be recognized as the holder of the Bonds for the purposes of (i) paying the Principal Installment or Redemption Price of and interest on such Bonds, (ii) if Bonds are to be redeemed in part, selecting the portions of such Bonds to be redeemed, (iii) giving any notice permitted or required to be given to Bondholders under the Resolution, (iv) registering the transfer of Bonds, and (v) requesting any consent or other action to be taken by the holders of such Bonds, and for all other purposes whatsoever, and the State shall not be affected by any notice to the contrary.

(c) The State shall not have any responsibility or obligation to any participant, any beneficial owner or any other person claiming a beneficial ownership in any Bonds which are registered to a Securities Depository Nominee under or through the Securities Depository with respect to any action taken by the Securities Depository as holder of such Bonds.

(d) The State shall pay the Principal Installment or Redemption Price of and interest on Bonds issued under a book-entry system only to the Securities Depository or the Securities Depository Nominee, as the case may be, for such Bonds, and all such payments shall be valid and effectual to fully satisfy and discharge the obligations with respect to the Principal Installment or Redemption Price of and interest on such Bonds.

(e) In the event that the Securities Depository for the Bonds discontinues providing its services, the State shall either engage the services of another Securities Depository or the Registrar and Paying Agent shall authenticate, register and deliver physical certificates for the Bonds in exchange for the Bonds registered in the name of the Securities Depository Nominee.

(f) In connection with any notice or other communication to be provided to the holders of Bonds by the State or by the Registrar and Paying Agent with respect to any consent or other action to be taken by the holders of Bonds, the State or the Registrar and Paying Agent, as the case may be, shall establish a record date for such consent or other action and give the Securities Depository Nominee notice of such record date not less than 15 days in advance of such record date to the extent possible.

(g) At the closing of the Bonds and the delivery of the same to the purchaser thereof through the facilities of DTC, the Paying Agent and Registrar may maintain custody of Bond certificates on behalf of DTC in accordance with DTC's "FAST Closing" procedures.

(h) For as long as the Bonds are being held under a book-entry system of a securities depository, the State shall remit to the Paying Agent and Registrar by 1:00 p.m. New York time on each

Bond Payment Date funds for all principal and interest payments due thereupon, or at such earlier time as required by the Paying Agent and Registrar to guarantee that DTC or successor Securities Depository will receive payment in same-day funds by 2:30 p.m. New York time on such Bond Payment Date. In addition, automated payment details receipt shall be provided by the Paying Agent by 12:00 noon New York time of each Bond Payment Date for interest payments and by 2:30 p.m. New York time for redemption and corporate action payments.

Section 3.20 Form of Bonds

The form of the Bonds, and registration provisions to be endorsed thereon shall be substantially as set forth in *Exhibit G* attached hereto and made a part of this Resolution.

Section 3.21 Borrowing in Anticipation of Issuance of Bonds

Pursuant to the BAN Act, there may be issued from time to time at the discretion of the Governor and the State Treasurer BANs in aggregate principal amount not exceeding \$160,000,000 in anticipation of the issuance of Bonds.

(a) The BANs shall be dated and bear interest from the dates of delivery thereof, payable upon the stated maturity thereof and shall mature on such dates as determined by the State Treasurer, provided that no BAN shall mature on a date which is later than one year following the issuance thereof. The BANs may be issued in denominations of \$5,000 and integral multiples thereof. The BANs shall be executed in the name and on behalf of the State by the manual or facsimile signature of the Governor of South Carolina and by the State Treasurer with the Great Seal (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon. BANs bearing the manual or facsimile signature of any Person who shall have been such an Authorized Officer at the time such BANs were so executed shall bind the State notwithstanding the fact that he may have ceased to be such Authorized Officer prior to the authentication and delivery of such BANs or was not such Authorized Officer at the date of the authentication and delivery of the BANs.

(b) The State Treasurer shall appoint a financial institution maintaining corporate trust offices to serve as Registrar/Paying Agent for BANs.

(c) The State Board hereby authorizes the State Treasurer to caused to be prepared and to "deem final" within the meaning of Rule 15c2-12 of the Securities and Exchange Commission a Preliminary Offering Memorandum relating to the BANs and to cause to be prepared and to approve a final Offering Memorandum following the sale of the BANs. The State Board hereby authorizes the use of said Offering Memorandum and Offering Memorandum and the information contained therein in connection with the public offering and sale of the BANs.

(d) The BANs shall be sold at public sale. Bids therefor shall be received until such time and date to be selected by the State Treasurer. Notice of sale of the BANs shall be given in a manner determined by the State Treasurer. Upon receipt of bids for the BANs, the Governor and the State Treasurer shall, and they are hereby authorized to, award the BANs to the bidder offering the lowest interest cost therefor, the method of calculation of which shall be set forth in the Notice of Sale and determined at the State Treasurer's discretion, without further action on the part of the State Board if the Governor and the State Treasurer shall determine that it is in the interest of the State to make such award.

(e) The BANs shall be issued in such form and with such terms and conditions, not inconsistent with this Resolution, as shall be determined by the State Treasurer. No BAN shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder unless there shall be

endorsed on such BAN a certificate of authentication duly executed by the manual signature of the Registrar and such certificate of authentication upon any BAN executed on behalf of the State shall be conclusive evidence that the BAN so authenticated has been duly issued hereunder and that the Holder thereof is entitled to the benefit of the terms and provisions of the Resolution.

(f) Conditions as to ownership, exchange, transfer, replacement and payment of BANs shall be as provided for Bonds in Sections 3.08 through 3.15 herein.

(g) For the payment of the principal of and interest on the BANs as the same shall fall due, the full faith, credit, and taxing power of the State shall be pledged. In addition thereto, so much of the principal proceeds of the Bonds when issued shall and is hereby directed to be applied, to the extent necessary, to the payment of the BANs; and, further, the State covenants and irrevocably pledges to effect the issuance of the Bonds or, in the alternative, to refund or renew outstanding BANs in order that the proceeds thereof will be sufficient to provide for the retirement of any BANs issued pursuant hereto.

(h) Proceeds from the sale of the BANs shall be applied in the manner as provided by Section 6.01 herein for Bonds, provided, however, that any premium shall be applied to the payment of principal of the BANs at the maturity thereof.

(i) Both the principal of and interest on the BANs shall be exempt from all State, county, municipal, school district, and all other taxes or assessments imposed with the State, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer or certain franchise taxes.

ARTICLE VI

DISPOSITION OF PROCEEDS OF SALE OF BONDS

Section 6.01 Disposition of Bond Proceeds Including Temporary Investments

(a) The proceeds derived from the sale of the Bonds shall be applied and disposed of as follows:

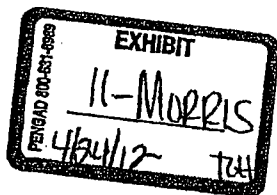
(i) Accrued interest, if any, shall be applied to the payment of the first installment of interest to become due on the Bonds;

(ii) The premium, if any, shall be applied in accordance with the Enabling Act; and

(iii) The principal proceeds shall be deposited with the State Treasurer who, after paying all costs and expenses incident to the issuance of the Bonds, shall apply the proceeds to the payment of costs of Infrastructure.

(b) Pending the use of Bond proceeds as provided in paragraph (a) of this Section, the same shall be invested and reinvested by the State Treasurer in Authorized Investments. The investment earnings therefrom may be used either for any lawful purpose of the State or, if so required by the Code, to make the necessary rebate of arbitrage earnings to the United States Government.

(c) Neither the purchaser of the Bonds nor any Registered Holder of the Bonds shall be liable for the proper application of the proceeds of the Bonds.





Mark Sanford
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE

Robert A. Falth
Secretary

November 29, 2004

State Budget & Control Board
Joint Bond Review Committee
State of South Carolina

As the duly appointed Secretary of Commerce, I am writing to notify you that the Department of Commerce (the "Department") intends to cause the issuance of General Obligation State Economic Development Bonds for the benefit of a consortium of companies involved in the aeronautics industry (which consortium has been assigned, for confidentiality purposes, the code name "*Project Emerald*"). Project Emerald proposes to develop a site in Charleston County for the purpose of manufacturing composite aircraft fuselages for use in the commercial aeronautics industry. This letter is intended to satisfy the requirements of Section 11-41-70, South Carolina Code of Laws of 1976, as amended. That section requires that, prior to requesting the issuance of General Obligation State Economic Development Bonds, the Department notify the Joint Bond Review Committee and the State Budget and Control Board of the following items:

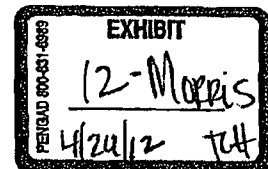
- (1) the amount then required for allocation to the Department to defray the costs of the infrastructure proposed to be financed with General Obligation State Economic Development Bonds;
- (2) a description of the infrastructure for which the General Obligation State Economic Development Bonds are to be issued, including a certification by the Secretary of the Department that each economic development project to benefit from the expenditure of the proceeds of the General Obligation State Economic Development Bonds consists of an investment in the State of not less than four hundred million dollars and creates no fewer than four hundred new jobs;
- (3) a tentative time schedule setting forth the period of time during which the sum requested is to be expended;
- (4) a debt service table showing the annual principal and interest requirements for all bonds then outstanding; and
- (5) the total amount of all bonds issued.

Responsive to the items listed above, the Department makes the following statements:

- (1) the amount being requested to be reserved is not exceeding \$160,000,000;
- (2) a description of the infrastructure is attached hereto as Exhibit A, and the Certificate of the Secretary of the Department is attached hereto as Exhibit B;
- (3) the time schedule is attached hereto as Exhibit C; and

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A - 1



court order, to cause the State to comply with its obligations under this Section 10.08(b). The Continuing Disclosure Undertaking shall be executed by the State Treasurer prior to the delivery of the Bonds and shall be substantially in such form as is set forth in *Exhibit I* hereto, together with such modifications and amendments thereto, including without limitation those necessary in case of the issuance of BANs, as shall be deemed necessary by the State Treasurer upon advice of counsel. The execution of the Continuing Disclosure Undertaking shall constitute conclusive evidence of the approval by the State Treasurer of any and all modifications and amendments thereto.

Section 10.09 Law and Place of Enforcement of the Resolution

This Resolution shall be construed and interpreted in accordance with the laws of the State of South Carolina and all suits and actions arising out of this Resolution shall be instituted in a court of competent jurisdiction in said State.

Section 10.10 Effect of Article and Section Headings and Table of Contents

The heading or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Resolution.

Section 10.11 Repeal of Inconsistent Resolutions

All Resolutions of the State Board, and any part of any resolution, inconsistent with this Resolution are hereby repealed to the extent of such inconsistency.

Section 10.12 Effectiveness of this Resolution

This Resolution shall become effective upon its adoption.

State Budget & Control Board
November 29, 2004
Page 2

(4)-(5) as shown in the Certificate of the Secretary of the Department, the State has previously authorized the issuance of General Obligation State Economic Development Bonds in an aggregate principal amount of \$103,500,000. Of this authorized amount, General Obligation State Economic Development Bonds in an aggregate principal amount of \$27,460,000 have been issued. A debt service schedule for the General Obligation State Economic Development Bonds issued to date is attached as Exhibit D.

If you have additional questions or comments, please let me know.

Sincerely,

Robert A. Faith

Robert A. Faith

RAJ/es/vw

cc: Timothy N (Tim) Dangerfield
Karen Manning
Mandy Kibler
Daniel Young
Jack Ellenberg

Description of Bond-Financed Infrastructure

	<u>Estimated Cost of Min. Required Infrastructure</u>
<u>Baseline Integration</u>	
Site Prep	\$7,500,000
Wetlands	5,000,000
Airport Improvements	2,000,000
Road Improvements	2,000,000
Training Ctr. (Multiple use facility)	2,000,000
Manufacturing facilities	97,500,000
Projects Total:	\$116,000,000.00
	<u>Estimated Cost of Min. Required Infrastructure</u>
<u>Section 41 Integration</u>	
Site Prep	\$7,500,000
Wetlands	5,000,000
Airport Improvements	2,000,000
Road Improvements	2,000,000
Training Ctr. (Multiple use facility)	2,000,000
Manufacturing facilities	112,500,000
Project Total:	\$131,000,000.00
Future Commitment:	\$25,000,000
Costs of Issuance Allowance:	\$4,000,0000
Maximum Bond Proceeds:	\$160,000,000

Description

Baseline Integration

- Site prep - \$7.5 million will be used to clear, grade, and grub the site, as well as bring in fill dirt.
- Wetlands mitigation - the mitigation plan provides that funds be put into a trust fund under the control of the Army Corps of Engineers. The Corps will then use these funds to attract additional

contributions for the express purpose of purchasing and protecting thousands of acres of pristine wetlands.

- **Airport Improvements** - Up to \$2 million will be used to match Federal Aviation Authority funds to build an additional 999 feet of runway and a taxiway from the main concourse to the manufacturing site.
- **Road Improvements** - Improvements will be made to South Aviation Blvd. to allow a better flow of traffic around the site.
- **Training/Multi-use Center** - The facility will be used to train employees of Project Emerald, vendors and suppliers, as well as, act as meeting rooms.
- **Manufacturing Facility** - Pursuant to changes made to the Economic Development General Obligation Bond enabling legislation, \$97.5 million will be used to build the Project Emerald manufacturing facility.

Section 41

Assuming the Project includes the integration of the cockpit, the size of the building will increase by more than 100,000 sq. ft. The additional \$15 million invested by the state will go towards the building.

Future Funding

Project Emerald must commit to an expansion by December 31, 2006, in order to use these funds. These funds will be spent on site prep, infrastructure improvements, and an additional building.

ARBITRAGE AND TAX COMPLIANCE CERTIFICATE

relating to
The Issuance Of

\$5,025,000

GENERAL OBLIGATION STATE ECONOMIC DEVELOPMENT BONDS, SERIES 2005F

and

\$16,480,000

GENERAL OBLIGATION STATE ECONOMIC DEVELOPMENT BONDS, SERIES 2005G

and

\$8,000,000

GENERAL OBLIGATION STATE INSTITUTION BONDS
(ISSUED ON BEHALF OF LANDER UNIVERSITY), SERIES 2005D

OF THE STATE OF SOUTH CAROLINA

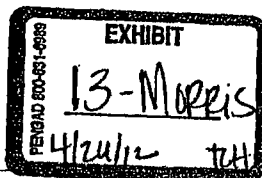
THIS CERTIFICATE is being rendered in connection with the issuance this day by the State of South Carolina (the "State") of (i) \$5,025,000 General Obligation State Economic Development Bonds, Series 2005F (the "Series 2005F Economic Development Bonds"), (ii) \$16,480,000 General Obligation State Economic Development Bonds, Series 2005G (the "Series 2005G Economic Development Bonds"), and (iii) \$8,000,000 General Obligation State Institution Bonds (Issued on Behalf of Lander University), Series 2005D (the "Series 2005D State Institution Bonds"). Each of the three foregoing issues of bonds is referred to herein as a "Series" or "Series of Bonds." The three Series are referred to collectively herein as the "Bonds." This Certificate is being rendered in order to establish within the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations of the Department of the Treasury promulgated thereunder (the "Treasury Regulations"), that the Bonds will not be arbitrage bonds.

I, GRADY L. PATTERSON, JR., State Treasurer of the State of South Carolina, am an officer of the State charged with the sale of the Bonds, and on the basis of my knowledge of the undertakings of the State, do hereby certify and reasonably expect that the following will occur or have occurred with respect to the Bonds:

1. General. The Series 2005F Economic Development Bonds are general obligations of the State and are being issued to provide funds that will be used to defray the cost of a portion of the Vought Project, as described below, and to pay the costs of issuance of the Series 2005F Economic Development Bonds. The Series 2005G Economic Development Bonds are general obligations of the State and are being issued to provide funds that will be used to defray the cost of a portion of the BMW Project, as described below, and to pay the costs of issuance of the Series 2005G Economic Development Bonds. The Series 2005D State Institution Bonds are general obligations of the State and are being issued to provide funds that will be used to defray the cost of a portion of the Lander Project, as described below, and to pay the costs of issuance of the Series 2005D State Institution Bonds.

2. The Series 2005F Economic Development Bonds. The Series 2005F Economic Development Bonds are issued pursuant to Article X, Section 13 of the South Carolina Constitution, and are authorized by the State General Obligation Economic Development Bond Act, Act No. 254 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 2002, presently codified as Sections 11-41-10 through 11-41-180, inclusive, Code of Laws of South Carolina, 1976, as amended (the "Economic Development Bond Act"). Proceeds from bonds issued pursuant to the Economic Development Bond Act must be used to provide infrastructure for economic development projects within the State, including

Coln. 697987 v.1



costs of land acquisition, site preparation, road and highway improvements, rail spur construction, water service, wastewater treatment, employee training, environmental mitigation, training and research facilities and the necessary equipment therefor, and buildings. The State Budget and Control Board is authorized to make provision for the issuance of bonds in order to raise funds for the expenditures authorized by the Economic Development Bond Act.

By resolution adopted December 14, 2004, the State Budget and Control Board made provision for the issuance of not exceeding \$160,000,000 General Obligation State Economic Development Bonds, the proceeds of which must be allocated to the State Department of Commerce in order to finance the development of infrastructure relating to an economic development project being undertaken by the State (the "Vought Project"). To date, \$76,130,000 of the bonds so authorized has been issued.

The Vought Project includes the development, construction, and improvement of an industrial property at the Charleston International Airport to be principally used by Vought Aircraft Industries, Inc. ("Vought"). Proceeds of the sale of the bonds authorized pursuant to the resolution have been or will be spent (i) to purchase land to mitigate the wetlands on the site; (ii) for geo-technical research and clearing and grading the site; and (iii) to purchase steel and develop, construct, and improve a manufacturing facility to be used to build composite airplane fuselages. Simultaneously with the issuance of the Series F Economic Development Bonds, the State is issuing its \$38,845,000 principal amount General Obligation State Economic Development Bonds, Series 2005E (Taxable) (the "Taxable Bonds"). The proceeds of the Taxable Bonds will be used to finance the portions of the Vought Project not eligible for financing with tax exempt obligations. The proceeds of the Series 2005F Economic Development Bonds will be applied to defray a portion of the costs of wetlands mitigation associated with the Vought Project and to pay costs of issuance of the Series 2005E Economic Development Bonds.

3. The Series 2005G Economic Development Bonds. The Series 2005G Economic Development Bonds are issued pursuant to Article X, Section 13 of the South Carolina Constitution, and are authorized by the Economic Development Bond Act. By resolution adopted December 9, 2003 (the "Economic Development Bond Resolution"), the State Budget and Control Board made provision for the issuance of not exceeding \$105,000,000 General Obligation State Economic Development Bonds, the proceeds of which must be allocated to the South Carolina Department of Commerce in order to finance the development of infrastructure relating to an economic development project being undertaken by the State (the "BMW Project"). The BMW Project includes the construction of an interchange and appurtenant road improvements along Interstate Highway 85 in Spartanburg County, South Carolina in order to facilitate the ingress and egress of shipping vehicles at the automobile manufacturing center operated by BMW Manufacturing Co. ("BMW"); the construction of a Graduate Automotive Engineering Center for Clemson University; the construction of an information technology research and development facility to be occupied initially by BMW and other private entities; the construction of an automotive development center and testing facilities adjacent to the present BMW manufacturing center; the purchase of a vacant manufacturing facility and land adjacent to the present BMW manufacturing center; and site preparation at the present BMW manufacturing center. To date, \$86,335,000 in principal amount so authorized has been issued. The Series 2005F Economic Development Bonds will finance a portion of the remaining costs of the BMW Project that qualify for tax exempt financing.

4. The Series 2005D State Institution Bonds. The Series 2005D State Institution Bonds are issued pursuant to Title 59, Chapter 107 of the South Carolina Code, as supplemented by Article X of the South Carolina Constitution, and Section 11-29-30 of the South Carolina Code. On August 9, 2005, the State Budget and Control Board adopted a resolution providing for the issuance of the Series 2005D State Institution Bonds (the "Series 2005D State Institution Bond Resolution") in order to provide funds to be used to pay the costs of the Lander Project (as hereinafter described), and to pay costs of issuance.

The Board of Trustees of Lander has determined to fund various projects, specifically including the construction of Centennial Hall and certain renovations to the Lide Housing Complex (the "Lander Project"). The Lander Project includes the construction of Centennial Hall, a 300-bed residential facility which has been partially funded by General Obligation State Institution Bonds issued in 2004. The Series 2005D State Institution Bonds will provide funds necessary to complete such construction, at an estimated cost of five million dollars (\$5,000,000). The Lide Housing Complex is a five building, 260-bed apartment style residential facility. The remaining proceeds of the Series 2005D State Institution Bonds will provide funds to pay for a renovation project to the Lide Housing Complex, at an estimated cost of three million dollars (\$3,000,000). The estimated total cost of the Lander Project is \$8,000,000.

5. Sale of the Bonds. The Series 2005F Economic Development Bonds, the Series 2005G Economic Development Bonds and the Series 2005D State Institution Bonds are each general obligations of the State and were sold pursuant to a common plan of financing to the lowest responsible bidder by competitive bids received by the undersigned on December 7, 2005. The Bonds bear a fixed interest rate from December 1, 2005 at the rates established pursuant to such sale, payable as provided in the Series 2005F Economic Development Bond Resolution, the Series 2005G Economic Development Bond Resolution, and the Series 2005D State Institution Bond Resolution (together, the "Resolutions").

Series 2005F Economic Development Bonds. The Series 2005F Economic Development Bonds have been purchased through a competitive bid by a syndicate headed by Citigroup Global Markets Inc. (the "Series 2005F Economic Development Bond Purchaser") at a price of par \$5,025,000, plus a premium payable to the State in the amount of \$5,755.10 (the "Sale Proceeds of the Series 2005F Economic Development Bonds") plus accrued interest from December 1, 2005 to the date of issue in the amount of \$11,325.14. The Series 2005F Economic Development Bond Purchaser has certified that it offered the Series 2005F Economic Development Bonds for resale and sold a substantial amount thereof (in excess of ten percent of each maturity) at offering prices to produce sale proceeds of the Series 2005F Economic Development Bonds in the amount of \$5,065,812.74, including pre-issuance accrued interest of \$11,325.14.

Series 2005G Economic Development Bonds. The Series 2005G Economic Development Bonds have been purchased through a competitive bid by a syndicate headed by Citigroup Global Markets Inc. (the "Series 2005G Economic Development Bond Purchaser") at a price of par \$16,480,000, plus a premium payable to the State in the amount of \$14,296.34 (the "Sale Proceeds of the Series 2005G Economic Development Bonds") plus accrued interest from December 1, 2005 to the date of issue in the amount of \$37,090.28. The Series 2005G Economic Development Bond Purchaser has certified that it offered the Series 2005G Economic Development Bonds for resale and sold a substantial amount thereof (in excess of ten percent of each maturity) at offering prices to produce sale proceeds of the Series 2005G Economic Development Bonds in the amount of \$16,601,299.63, including pre-issuance accrued interest of \$37,090.28.

Series 2005D State Institution Bonds. The Series 2005D State Institution Bonds have been purchased through a competitive bid by a syndicate headed by Citigroup Global Markets Inc. (the "Series 2005D State Institution Bond Purchaser") at a price of par \$8,000,000, plus a premium payable to the State in the amount of \$202.40 (the "Sale Proceeds of the Series 2005D State Institution Bonds") plus accrued interest from December 1, 2005 to the date of issue in the amount of \$19,383.68. The Series 2005D State Institution Bond Purchaser has certified that it offered the Series 2005D State Institution Bonds for resale and sold a substantial amount thereof (in excess of ten percent of each maturity) at offering prices to produce sale proceeds of the Series 2005D State Institution Bonds in the amount of \$8,059,479.83, including pre-issuance accrued interest of \$19,383.68.

6. Application of Proceeds of the Bonds. The aggregate offering price of the Bonds, including accrued interest thereon through the date of delivery of the Bonds, is \$29,726,592.20. Such amount is expected to be needed and fully expended as follows:

(i) \$23,732.50 will be retained by the Series 2005F Economic Development Bond Purchaser on the date hereof as its compensation;

(ii) \$69,913.01 will be retained by the Series 2005G Economic Development Bond Purchaser on the date hereof as its compensation;

(iii) \$39,893.75 will be retained by the Series 2005D State Institution Bond Purchaser on the date hereof as its compensation;

(iv) \$11,325.14 will be set aside and applied to the payment of the first interest on the Series 2005F Economic Development Bonds on June 1, 2006;

(v) \$37,090.28 will be set aside and applied to the payment of the first interest on the Series 2005G Economic Development Bonds on June 1, 2006;

(vi) \$19,383.68 will be set aside and applied to the payment of the first interest on the Series 2005D State Institution Bonds on June 1, 2006;

(vi) \$125,000 will be expended to pay costs of issuance of the Bonds (other than purchasers' compensation) within 180 days after the date hereof;

(vii) \$16,444,296.34 will be paid over to the State and used to pay a portion of the costs of the BMW Project as more particularly described below;

(viii) \$5,005,755.10 will be paid over to the State and used to pay a portion of the costs of the Vought Project as more particularly described below; and

(ix) \$7,950,202.40 will be paid over to the State and used to pay a portion of the costs of the Lander Project as more particularly described below.

The Sale Proceeds of the Series 2005F Economic Development Bonds, the Sale Proceeds of the Series 2005G Economic Development Bonds, and the Sale Proceeds of the Series 2005D State Institution Bonds (collectively, the "Sale Proceeds" of the Bonds) and anticipated investment earnings thereon do not exceed the total of the amounts necessary for the purposes described in the Resolutions.

7. Expenditure of Proceeds. The Bonds are issued to pay a portion of the costs of "capital projects" within the meaning of Section 1.148-1(b) of the Regulations. The undersigned reasonably expects that 85% of the Sale Proceeds of the Bonds and investment earnings thereon will be expended to pay the costs of such capital projects within three years after the date hereof. The State expects to incur within 6 months after the date hereof one or more binding obligations to third parties requiring the expenditure of at least five percent (5%) of the proceeds of the Bonds for such capital projects. The State will proceed with due diligence in the completion of such capital projects.

The undersigned expects that proceeds of the Bonds will be exempt from the requirement to rebate excess earnings to the Internal Revenue Service pursuant to Section 148(f)(4)(C) of the Code and Treasury Regulation 1.148-7(c), which requires that at least 75% of the "available construction proceeds" (as defined in

Section 148(f)(4)(C)(vi) of the Code) be allocated to "construction expenditures" (as defined in Treasury Regulation 1.148-7(g)) for property owned by the State, and further requires that at least 10% of the available construction proceeds be spent not later than six months after the date hereof; at least 45% of the available construction proceeds be spent not later than one year after the date hereof; at least 75% of the available construction proceeds be spent not later than eighteen months after the date hereof; and 100% of the available construction proceeds be spent not later than twenty four months after the date hereof. The State elects to use the actual facts of its investments of Bond proceeds for purposes of establishing its compliance with the foregoing thresholds of expenditures. In the event that the expected expenditure schedule is not met, the State does not elect to pay a penalty in lieu of rebate pursuant to Section 148(f)(4)(C)(vii) of the Code. The State has engaged Bond Logistix, LLC as its arbitrage rebate consultant to confirm the satisfaction of such exception or to advise the State whether any arbitrage rebate is owing with respect to the Bonds.

8. Investment of Proceeds. Pending expenditure, the Sale Proceeds of the Bonds shall be invested in Authorized Investments, as defined in the Resolutions. Interest earned on such invested amounts allocated to the accrued interest accounts, the premiums accounts, or the Economic Development Bond proceeds account will be allocated to the State's general fund, commingled with substantial tax receipts and expended within six months of such deposits. Interest earned on such invested amounts allocated to the State Institution Bonds proceeds account will be allocated to such fund and used to pay a portion of the costs of the Vought Project, the BMW Project and the Lander Project, respectively. Investment earnings in excess of the amounts needed for such purposes shall be deposited into the general fund of the State and commingled with substantial tax receipts not later than 6 months after such earnings are received. Amounts derived from the sale of the Bonds may be invested as follows:

(i) Amounts deposited into the State's proceeds accounts to be used to pay the costs of the BMW Project, the Vought Project or the Lander Project (together, the "Capital Projects") and the costs of issuance may be invested at an unrestricted yield for a period not to exceed three years from the date hereof.

(ii) Investment earnings on obligations acquired with amounts described in subparagraph (i) may be invested at an unrestricted yield for a period not to exceed three years from the date hereof or one year from the date of receipt, whichever period is longer;

(iii) The amount representing accrued interest on the Bonds will be set aside and may be invested at an unrestricted yield until used to pay a portion of the interest due on the Bonds on June 1, 2006;

(iv) upon the expiration of the periods described in subparagraphs (i) through (iii), amounts described in said subparagraphs which may be invested at an unrestricted yield pursuant to such paragraphs may be invested at an unrestricted yield to the extent that such amounts do not aggregate in excess of \$100,000;

(v) amounts described in this paragraph that may not be invested at an unrestricted yield pursuant to the foregoing subparagraphs (i) through (iv), and any other amounts constituting "gross proceeds" of the Bonds (as defined in Section 1.148-1(b) of the Regulations), shall be invested in Authorized Investments the interest on which is excluded from gross income for federal income tax purposes and not "specified private activity bonds" under Section 57 of the Code ("Tax Exempt Obligations") or in taxable Authorized Investments at a yield not in excess of the yield on the Bonds.

9. No Sinking Funds. The statutes pursuant to which the Bonds are issued and the Resolutions pledge the full faith and credit and the taxing power of the State to pay the principal and interest on the Bonds and the State allocates on an annual basis sufficient tax revenues to provide for the punctual payment of the principal and interest on the Bonds when due. Except for the temporary accounts established to

hold the accrued interest on the Bonds until the first interest payment date, there has not been established or created, and the State does not expect that there will be created or established, pursuant to the Resolutions or otherwise, any debt service fund, redemption fund, reserve fund, sinking fund, pledged fund or similar fund, including, without limitation, any arrangement under which money, securities or obligations are pledged, directly or indirectly, to secure the Bonds or any arrangement under which any money, securities or obligations are reasonably expected to be used, directly or indirectly, to pay debt service on the Bonds or with respect to which there is a reasonable assurance that amounts will be available to pay debt service on the Bonds if the State encounters financial difficulties. There has not been established or created, and the State does not expect that there will be established or created, any arrangement providing for the maintenance by the State of any amount at a particular level for the direct or indirect benefit of the owners of the Bonds

10. Bond Yield. For the purpose of this Certificate, "yield" shall mean that discount rate that, when used in computing the present value, as of the issue date, of all unconditionally payable payments of principal and interest on the Bonds, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of the Bonds as of the date hereof. For purposes of calculating the yield on the Bonds, the aggregate issue price of the Bonds is the initial offering price to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) of \$29,726,592.20 (the principal amount of the Bonds of \$29,505,000, plus original issue premium of \$153,793.10, plus accrued interest of \$67,799.10). The State has computed the arbitrage yield on the Bonds in accordance with the Regulations to be 4.04347%. The State has not entered into any investment contract which it has identified as a "qualified hedge" with respect to the Bonds, within the meaning of Section 1.148-4(h) of the Regulations.

11. No Replacement Proceeds. No portion of the proceeds of the Bonds will be used as a substitute for other funds which were otherwise to be used to finance any portion of the cost of the Capital Projects and which have been or will be used to acquire directly or indirectly "nonpurpose investments" (as defined in the Regulations) producing a yield in excess of the yield on the Bonds. Any investments acquired with gross proceeds of the Bonds shall be purchased at prevailing market prices in bona fide, arm's length transactions and shall be limited to securities of a type traded on an established securities market, United States Treasury Securities, State and Local Government Series or securities otherwise purchased at "fair market value" (within the meaning of the Regulations).

12. No Transfer. The State does not expect to sell, encumber or otherwise dispose any of the facilities of the Vought Project or of the BMW Project financed by the Bonds, nor does the State expect Lander University to sell, encumber or otherwise dispose of any property comprising the Lander Project, except in each case such minor parts or portions thereof as may be disposed of due to normal wear, obsolescence or depreciation, prior to the final maturity date of the Bonds.

13. Not Private Activity Bonds. The State reasonably expects that not more than 10% of the payment of the principal of, or the interest on, the Bonds is or will be (under the terms of such issue or any underlying arrangement) directly or indirectly (A) secured by any interest in (i) property used or to be used for a private business use, or (ii) payments in respect of such property, or (B) to be derived from payments (whether or not to the State) in respect of property, or borrowed money, used or to be used for a private business use (within the meaning of Section 141(b) of the Code). All payments derived from the State or any of its political subdivisions, agencies and instrumentalities, in respect of the bond financed facilities used in a private trade or business will constitute "generally applicable taxes" as such term is defined in Section 1.141-4(e)(2) of the Regulations. None of the proceeds of the Bonds will be loaned to any non-governmental person. Therefore, the Bonds do not constitute private activity bonds (within the meaning of Section 141(a) of the Code).

14. Non-arbitrage Covenant. In the Resolutions, the State has covenanted that no use of the proceeds of the sale of the Bonds will be made which, if such use had been reasonably expected on the date of issue of the Bonds, would have caused the Bonds to be "arbitrage bonds," as defined in the Code, and that it will comply with the requirements of Section 148 of the Code and Regulations throughout the term of the Bonds.

15. Maturity of Bonds not Unreasonably Long. The weighted average maturity of the Bonds is not more than 9.1066 years. The weighted average maturity of the Bonds does not exceed 120% of the weighted average of the reasonably expected economic lives of the property financed, or refinanced, with the proceeds of the Bonds.

16. Composite Issues. There are no other obligations of the State the interest on which is excluded from gross income for federal income tax purposes which were or will be sold within 15 days of date of sale of the Bonds, pursuant to a common plan of financing and payable from substantially the same source of funds as the Bonds, determined without regard to guarantees from parties unrelated to the State.

17. No Abusive Arbitrage Device. The Bonds are not and will not be part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code and the Regulations (a) enabling the State to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage or (b) overburdening the market for tax-exempt obligations.

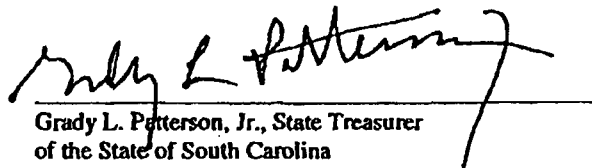
18. Bonds are not Hedge Bonds. The Issuer reasonably expects that at least 85% of the spendable proceeds of the Bonds (as such term is used in Section 149(g) of the Code) will be expended for the governmental purposes of the Bonds by August 25, 2008 and that not more than 50% of the proceeds of the Bonds are being invested in nonpurpose obligations having a substantially guaranteed yield for four years or more.

19. Bonds Not Federally Guaranteed. The Bonds are not and will not be federally guaranteed within the meaning of Section 149(b) of the Code.

20. General. The State has not been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon. The undersigned is not aware of any facts or circumstances that would cause it to question the representations made by the purchasers in their respective closing certificates delivered contemporaneously herewith. To the best of my knowledge, information and belief, the above expectations are reasonable.

[signature appears on following page]

This certificate is being executed and delivered pursuant to Section 1.148-0 through -11 of the Income Tax Regulations promulgated under Sections 103, 141 and 148 of the Code, and the undersigned is one of the officers of the State charged by the Resolutions with the responsibility of issuing the Bonds.



Grady L. Patterson, Jr., State Treasurer
of the State of South Carolina

December 21, 2005

EXHIBIT 22

Deposition of CHRISTOPHER DONATO

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

4 DEPOSITION OF CHRISTOPHER DONATO
5 NORTH PLEASANT, LLC and
6 VANGUARD DEVELOPMENT GROUP, LLC,
7 Plaintiffs,
8 vs. CASE NO. 10-CP-08-1771
9 SOUTH CAROLINA COASTAL CONSERVATION
10 LEAGUE AND EDWARD D. BEACH,
11 Defendants.

12 DEPONENT: CHRISTOPHER DONATO

COPY

13 DATE: MARCH 21, 2012

14 TIME: 2:00 PM

15 LOCATION: PRATT-THOMAS AND WALKER
16 16 Charlotte Street
17 Charleston, South Carolina
18

19 REPORTED BY: DARAH L. NEKOLA, RPR
20 REGISTERED PROFESSIONAL REPORTER
21 CLARK & ASSOCIATES, INC.
22 P.O. Box 73129
23 Charleston, SC 29415
24 843-762-6294
25 WWW.CLARK-ASSOCIATES.COM
 Darah@Clark-Associates.com

Deposition of CHRISTOPHER DONATO

A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

SMITH BUNDY BYBEE & BARNETT
BY: STAN BARNETT
1037 Chuck Dawley Boulevard
Building F
Mount Pleasant, SC 29464

ON BEHALF OF DEFENDANTS:

PRATT-THOMAS WALKER
BY: ANDREW GOWDER, JR.
16 Charlotte Street
Charleston, SC 29403

Y909

Deposition of CHRISTOPHER DONATO

I N D E X

EXAMINATION

By Mr. Gowder

4

Certificate of Reporter

67

E X H I B I T S

Page

EXHIBIT NO. 1

5

EXHIBIT NO. 2

42

Deposition of CHRISTOPHER DONATO

1

2

CHRISTOPHER DONATO,

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having been first duly sworn, was examined and

4

testified as follows:

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EXAMINATION

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BY MR. GOWDER:

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21

A. Yes, sir.

22

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25

Q. And obviously, if we need to take breaks or anything like that, you just let me know?

A. Yes, sir.

Q. I want to start out, if I may --

Deposition of CHRISTOPHER DONATO

1 MR. GOWDER: If you would mark this,
2 please.

3 (Exhibit No. 1 was marked for
4 identification.)

5 Q. I'm showing you what has been marked as
6 Exhibit Number 1, which is an affidavit that I
7 believe you have given in this case. Is that your
8 affidavit?

9 A. It is, sir.

10 Q. I want to ask you how you came to give this
11 affidavit in this case?

12 A. Well, I don't know how much -- I don't know
13 if you want me to start from the beginning or if
14 you --

15 Q. What I'm asking you is, I guess -- and I'm
16 going to ask you about this affidavit in detail,
17 but what I want to know specifically at the out set
18 is how you were first contacted about giving an
19 affidavit and what you were asked and who asked you
20 and things like that.

21 A. The long and the short of it is that a group
22 that I was associated with that wanted to develop
23 some land in Awendaw received our ground
24 disturbance permit from OCRM in November of 2007.
25 And later in November of 2007, the Coastal

1 Conservation League filed suit or whatever you
2 would call it. I think they called it -- I don't
3 have the paperwork in front of me, Mr. Gowder, but
4 I don't know the exact -- I think it's a request
5 for final review conference, which I understand
6 they're entitled to do when a permit has been
7 issued.

8 That lead to us hiring Mr. Ellison Smith to
9 represent us before the administrative law judge in
10 a hearing that unfortunately was scheduled for
11 September of 2008. The long and short of it is the
12 property was sold in November of 2008 to South
13 Carolina Parks and Recreation Commission, and we
14 got out of the deal, and the lawsuit at that point
15 ended.

16 When Mr. Barnett got involved with his
17 lawsuit, at some point in time, there was some kind
18 of -- and I don't understand the legal
19 ramifications and, frankly, I don't even know what
20 their suit is all about, but he asked if I would
21 give an affidavit describing what had happened to
22 our group with respect to the Coastal Conservation
23 League.

24 Q. Okay. So Mr. Barnett asked you to give the
25 affidavit?

Deposition of CHRISTOPHER DONATO

1 A. Well, Mr. Barnett was aware that Mr. Smith
2 was representing us, and we were going through --

3 Q. Sure.

4 A. -- this problem.

5 Q. And it looks like you signed this affidavit
6 in June of 2011. Last year?

7 A. That's correct.

8 Q. Is that right?

9 A. Yes, sir.

10 Q. Did you write the affidavit out and give it
11 to Mr. Barnett to prepare or did he prepare it and
12 let you review it or how did that go?

13 A. I met with Mr. Barnett and Mr. Smith, and I
14 explained again what had happened to our group and
15 the relationship with the Coastal Conservation
16 League. Mr. Barnett made notes, and then he
17 prepared this document, sent it over for my review,
18 and then I signed it.

19 Q. Did you make any changes or anything or did
20 you --

21 A. I don't remember making any substantive
22 changes.

23 Q. So you signed it as he presented it to you?

24 A. Yes.

25 Q. And do you need a minute to look it over

Deposition of CHRISTOPHER DONATO

1 because I'm going to ask you some questions about
2 it. I don't know if you looked at it recently.

3 A. I haven't. But I'm pretty -- maybe.

4 Q. You're familiar with the subject matter?

5 A. Maybe when you get to a specific item. If I
6 have to read it, I will.

7 Q. Have you -- before we get into it, have you
8 been told that you would be a witness in this case?

9 A. Actually, no. I have not. I realized that
10 that might be the case when you sent a subpoena to
11 depose me.

12 Q. Okay. You have not talked to Mr. Barnett or
13 anybody else about testifying in this case beyond
14 giving this affidavit?

15 A. I have not.

16 Q. Well, I want to refer you then to the
17 affidavit, and it says in paragraph three, in 2006
18 you entered into a partnership with Mike -- is the
19 spelling on that, correct? Is it Tawes?

20 A. Yes. That's correct.

21 Q. Mike Tawes for the purpose of purchasing and
22 developing a tract of 60 acres in Awendaw on the
23 intercoastal waterway.

24 Using that as a point of departure, can you
25 tell me about this project and how you got involved

1 in it just from the beginning?

2 A. Sure. Just to give you a little
3 background --

4 Q. Sure.

5 A. -- there were five of us in our office at
6 Atlantic Appraisals, four younger guys and me, who
7 decided that we wanted to get together, form some
8 companies, and maybe try to do some other things in
9 real estate that -- maybe to expand our horizons a
10 little bit. Obviously profit and money was a
11 motivation that we felt like we had learned some
12 things over the years through our appraisal
13 activity and maybe we could put that to use in
14 construction, development, et cetera.

15 Earlier in 2006, we were pretty friendly
16 with a gentlemen named Jay Foreman. Jay owns
17 Colony Construction Company. And Jay was looking
18 at this 60 acres in Awendaw. And his intent was to
19 buy it and flip it because he thought he was
20 getting a pretty good deal on it. And he called
21 us. Actually, he called Mike Tawes. Michael -- I
22 should have corrected that because he doesn't go by
23 Mike. But Michael came to me with it, and we
24 started talking about it trying to figure out what
25 it was -- you know, just some ballpark numbers to

Deposition of CHRISTOPHER DONATO

1 help Jay because he wasn't actually officially
2 hiring us to do an appraisal.

3 Q. Can I stop you just for a minute? Is Mr.
4 Tawes with Atlantic Appraisals?

5 A. Yes. He's a partner in Atlantic Appraisals.

6 Q. Okay.

7 A. So long story short, we got the feeling
8 that, well, maybe it would be something that we
9 would be interested in tackling and buying, and it
10 would be our really sort of first development
11 project. So we conveyed this to Jay, and we had
12 some conversations. And, you know, we told him
13 what we thought -- kind of thought it was worth, et
14 cetera.

15 Well, Jay went ahead and closed and bought
16 the land. And then in early 2006 -- or the spring
17 of 2006, we entered into a contract with Jay to
18 purchase the property. And we had about a 60- to
19 90-day due diligence period. So at that time, we
20 went about doing some due diligence about what we
21 thought we could develop the property for, how we
22 could subdivide it, what we thought lots would sell
23 for, et cetera. Beautiful waterfront on the
24 intercoastal waterway. We knew those lots were
25 worth some money.

Deposition of CHRISTOPHER DONATO

1 So we went and hired an engineer at Seamon
2 and Whiteside, and I will tell you right now the
3 engineer's name is Christopher Daniel Donato, Jr.
4 He's no longer with Seamon Whiteside, but he was at
5 that time.

6 Q. He was someone you knew?

7 A. He was someone I knew, my son -- my only
8 son. And so Chris, he helped us and helped design
9 it, and also got some landscape architects involved
10 over at Seamon Whiteside. And we officially signed
11 the contract with them and hired them to help us.

12 Long and short of it is that we -- if I fail
13 to answer your question properly, please stop me.
14 I'm just --

15 Q. What I'll do is I will listen to you. I
16 will follow up if I have other questions.

17 A. At the end of our due diligence period, we
18 felt like we were fine with the price. We felt
19 like we could develop it into some lots and make
20 some money. And all of that looked good, you know,
21 all of our preliminary studies, our surveys, our
22 preliminary wetland studies, tree surveys,
23 everything looked good, but we really needed some
24 financial help, and we couldn't get it in the time
25 that -- before our due diligence ran out.

Deposition of CHRISTOPHER DONATO

1 So we told Jay we couldn't go through with
2 the deal. Got our earnest money back. Jay later
3 on came to us and said, you know, I would like to
4 be involved in the development. Now, you have to
5 understand, Jay is Colony Construction. He builds
6 roads. So all of a sudden now we're starting to
7 think to ourselves, well, we have got a handle on
8 the real estate aspect of it. Jay can do the hard
9 construction work. We just need a financial
10 backer, and we ended up getting -- becoming
11 friendly with a man named Fowler, Ron Fowler. And
12 he owned a company called the Advisory Group, and
13 they were based out of Charlotte. And they were,
14 from my perspective, a fairly big time developer,
15 and they had good banking relationships. So
16 therein lies the financial aspect of our group.

17 So our group got together, and we formed
18 Bulls Bay Village, LLC. And the groups that
19 comprised that was ARES, LLC, which was my group,
20 which was myself, Jody Bishop, Michael Tawes, Karl
21 Finkelstein, and Mark Petersen. All of those five
22 are also partners of Atlantic Appraisals. We have
23 other Atlantic Appraisal partners that aren't in
24 this group.

25 Q. Okay.

1 A. And then you had Doar Investments, LLC,
2 which was Jay Forman, and he included his son,
3 John. And then you had FTW, LLC, which was Ron
4 Fowler and his partners. And we had 28 percent,
5 Jay had 40, and Ron Fowler and them had 32 percent.
6 So at that point, we -- once we had the contracts
7 nailed down and negotiated, we went to work in
8 earnest. Do you want me to just continue?

9 Q. When you say you went to work, what did you
10 do?

11 A. Well, we got Seaman and Whiteside working
12 diligently on a plan, and we started hiring people
13 to do the necessary studies. We solidified our
14 boundary surveys, our tree survey. We started
15 having a guy come out there to do soil studies
16 because this is rural property. It didn't have
17 sewer, so it would have to be on septic tanks. So
18 we needed to know how many septic tanks we could
19 get. And so we needed to do some endangered
20 species surveys and things of that nature. So we
21 were just gathering all of the data and information
22 that we needed to go and start getting the
23 necessary permits.

24 Q. Right. And about when was this when this
25 work was beginning?

1 A. During the summer of 2006.

2 Q. And as I understand it then, it went from
3 being an acquisition, which didn't work, and you
4 got your earnest money back to essentially a -- the
5 formation of a joint venture, and in essence where
6 the property owner put the property in and your
7 group and the group from Charlotte joined bringing
8 your various expertise. Is that stated okay?

9 A. Not quite. It really wasn't a joint
10 venture. This group was going to buy it from Jay.
11 Jay was going to have to put up his 40 percent
12 share of equity, but he wasn't putting the land in
13 as you would typically think of a joint venture.

14 Q. He was going to sell it to this group in
15 which he was going to be a member?

16 A. That's correct.

17 Q. And when did that happen or did it happen?

18 A. It did happen. It happened in December of
19 2006.

20 Q. Okay. That orients me. If you will then
21 take me from the summer of 2006 to that event.

22 A. Really not much to tell other than we went
23 before the Awendaw Planning and Zoning Commission
24 and got approved for our plan. We had had several
25 meetings with Jody Muldrow up at Awendaw, who was

1 what I would call the staff planning director
2 who -- she worked under Bill Wallace. And then the
3 majority of that time it was -- we were focused on
4 completing these studies and trying to get
5 financing, which we eventually did through Wachovia
6 Bank out of Charlotte.

7 Q. At this stage of the game, in mid to late
8 2006, what approvals did this project need in order
9 to be commenced?

10 A. Basically we needed the approval from
11 Awendaw Planning Commission to approve our plan.
12 And at some --

13 Q. What kind of approval was that specifically?
14 Did you have a plan development plan approved or
15 was it --

16 A. No. It was -- we were zoned agricultural.
17 That allowed a subdivision and the residential lots
18 no less than 30,000 square feet. We had
19 approximately -- so we were fine with that. We
20 felt like this is Awendaw, which we considered to
21 be rural. And when people move into a rural area,
22 they want larger lots and land, estate size lots,
23 so we were fine with the zoning. We didn't have to
24 ask for anything as far as that's concerned. And
25 since we didn't have to ask for anything, this

Deposition of CHRISTOPHER DONATO

1 could be handled at the planning level -- planning
2 and commission level. It didn't have to go before
3 counsel or anything of that nature.

4 Q. So it was not a rezone?

5 A. It was not a rezone.

6 Q. And you were essentially getting, what, your
7 plat essentially or your land plan approved?

8 A. We submitted a land plan. Then we had
9 approximately 60 acres. We submitted a land plan
10 for 46 lots.

11 Q. Okay. What other -- so that's Awendaw
12 Planning and Zoning. What other approvals did you
13 need?

14 A. We needed the wetlands delineation letter
15 from the Corps of Engineers, and then we needed a
16 ground disturbance permit from OCRM.

17 Q. Okay. All right. Did you get those last
18 two approvals?

19 A. We did.

20 Q. All right.

21 A. Ultimately.

22 Q. Do you remember when you got the Planning
23 and Zoning Commission approval, approximately?

24 A. I tried to go back this morning and figure
25 out some dates. Maybe I can do it over time, but

1 it was sometime during the summer of 2006.

2 Q. Okay. That helps me. How about the
3 wetlands letter?

4 A. Wetlands letter came in the first quarter of
5 2007.

6 Q. And how about the ground disturbance permit?

7 A. The ground disturbance permit was issued in
8 November of 2007.

9 Q. Now, was this project going to impact any
10 critical areas? Did you have to get that kind of a
11 permit?

12 A. Well, we were on the intercoastal waterway,
13 but --

14 Q. Were you doing any building on the other
15 side of the critical line?

16 A. No.

17 Q. So you didn't have to get that kind of
18 approval?

19 A. No, sir.

20 Q. And so in terms of the project financing and
21 the close on the transaction, when did that happen
22 and how did that happen?

23 A. I'm sorry. Between which and which?

24 Q. Between the seller and the new entity. You
25 said at some point there was a closing and title

Deposition of CHRISTOPHER DONATO

1 transfer. When did that happen?

2 A. Yes, sir. That happened December 19th,
3 2006.

4 Q. And presumably your financing came in before
5 that?

6 A. Well, we got approved for financing. Of
7 course, then we went to closing, and we received
8 money at that time.

9 Q. What was the purchase price?

10 A. It was 6,300,000.

11 Q. And was the financing from Wachovia for
12 acquisition and development or just acquisition?

13 A. No, sir. It was an A&D loan.

14 Q. So how much was the amount of the loan?

15 A. We put in \$300,000 worth of equity. So I
16 guess the loan was at \$6 million. With an approval
17 for another approximately million dollars in what
18 we estimated our development cost to be.

19 Q. Was the seller going to do some of the
20 infrastructure work basically as part of his equity
21 or was he going to get paid for that?

22 A. He was going to get paid for that.

23 Q. So that was part of the million dollars?

24 A. Yes, sir.

25 Q. You were using septic. Were you using wells

Deposition of CHRISTOPHER DONATO

1 for water?

2 A. No, sir. They were in the process of
3 installing public water on Doar Road, and they were
4 going to stop about a thousand feet away from our
5 property. And so with their -- with Awendaw's
6 permission, we went ahead and engineered to bring
7 that pipe a thousand feet to our property at our
8 expense so that we would serve our development with
9 public water.

10 Q. And the provider was Mount Pleasant
11 Waterworks?

12 A. No. I think it was Awendaw doing their own
13 water.

14 Q. Okay. At the time you closed, did you have
15 all of the approvals you needed to develop?

16 A. No, sir.

17 Q. What else did you need?

18 A. Well, we needed the wetlands delineation
19 letter from the Corps, and we needed the OCRM
20 ground disturbance program.

21 Q. And what was the decision-making around
22 going ahead and closing before you had your
23 approvals?

24 A. Well, first off, Jay Foreman is sitting
25 there owning this property, which he's paying a

Deposition of CHRISTOPHER DONATO

1 good bit of money on a monthly basis. And second
2 off, we didn't see a tremendous amount of risk in
3 not going ahead and -- I mean, the Corps was going
4 to issue a letter, that's what they do. And sooner
5 or later after fighting through the red tape of
6 OCRM, we would get our ground disturbance permit.
7 We thought we would get it a lot earlier than we
8 did, but we didn't see a lot of risk in not
9 receiving those items.

10 Q. And so Mr. Foreman had debt on the property
11 that he was servicing?

12 A. He did.

13 Q. Do you know how much he had?

14 A. I don't, sir.

15 Q. Do you know how much your group paid in to
16 consultants in the due diligence period leading up
17 to closing and thereafter?

18 A. I could get those figures for you. I don't
19 know. And I tell you that we had surveyors, we had
20 our septic tank guy, we had S&ME out there doing
21 endangered species studies. We had Seamon
22 Whiteside Associates -- the bulk of the expense was
23 doing land planning and engineering.

24 During the process of trying to get the
25 wetlands delineation later, we hired Cotton

Deposition of CHRISTOPHER DONATO

1 Harness, who helped us expedite that. So I could
2 -- again, I could get those figures for you. I
3 don't have them off the top of my head.

4 Q. In terms of just ranges, would you say it
5 was \$50,000, \$100,000, \$500,000? How much do you
6 think?

7 A. I would say probably 200 to 250,000. What
8 ended up being a fairly extraordinary expense that
9 we really weren't planning on was the archeological
10 study.

11 Q. Okay.

12 A. Sort of at the last minute, OCRM sort of
13 sprang on us that we needed to have an
14 archeological study, so we hired S&ME to do that.
15 The person that started off doing that study was
16 kind of lax and eventually left S&ME. They had to
17 hire somebody else real quick, so we had some
18 delays there. At any rate, they found some
19 historical areas on the property that we were able
20 to land plan around and map off so that they could
21 be preserved. And then at the last minute, when we
22 went before SHPO, which is the South Carolina
23 Historical Preservation Organization, it turns out
24 that there was an Indian shell ring on the other
25 side of the creek from us because our property was

Deposition of CHRISTOPHER DONATO

1 bounded by the intercoastal waterway and then on
2 the north side was a creek that came up pretty far
3 throughout the property. It was a tidal creek that
4 sort of gave this side of the property some access
5 to the tidal water. On the other side of that was
6 this Indian shell ring.

7 So we ended up having to jump through some
8 hoops in order to make sure that we conformed with
9 all of the items that SHPO wanted us to conform
10 with in order to protect the shell ring. That
11 included that we added buffers to that -- lots on
12 that side of the creek -- on the other side of the
13 shell ring. We agreed to drab colors that wouldn't
14 be bright and could be seen from the shell ring.
15 We had to redo our dock orders so you could be
16 standing on the shell ring, and you wouldn't be
17 able to see a dock, and those types of items.

18 Q. These are requirements that SHPO imposed
19 for --

20 A. Yes.

21 Q. And SHPO's approval was necessary in order
22 to get OCRM approval?

23 A. We had to get a memorandum of understanding
24 with OCRM that SHPO was kind of -- they were -- I
25 guess they had purview over that archeological

1 portion of the memorandum to my understanding.

2 Q. Can you give me just a range from when you
3 first learned there was an archeological issue to
4 when you finally got it resolved? How long did
5 that take and what -- what were those dates
6 roughly?

7 A. I think in the beginning of the summer is
8 when we believed that we had -- that we knew we had
9 to get an archeological study.

10 Q. Of 2006?

11 A. 2007.

12 Q. 2007?

13 A. Yes, sir. We had -- in May -- approximately
14 May of 2007 is when we submitted all of our
15 paperwork and all of our drawings to OCRM for our
16 ground service permit.

17 Q. Okay.

18 A. The memorandum of understanding with OCRM
19 was signed on September 6th, 2007. So that entire
20 summer was involved with making several trips to
21 Columbia, having several meetings with SHPO, and
22 ironing out the details of our development with
23 respect to the shell ring.

24 Q. So what occurred then after September of
25 2007 before you finally received your approval from

Deposition of CHRISTOPHER DONATO

1 OCRM?

2 A. Well, just the pace that OCRM operates.
3 They had minor engineering things that they wanted
4 Chris to do in terms of the retention pond and
5 things of that nature. We sat around and met all
6 of those -- met all of their requirements, and then
7 ultimately we got our permit, you know, in early
8 November of 2007.

9 Q. Okay. So you had closed in the prior
10 December?

11 A. Yes. A year earlier we had closed.

12 Q. So were you servicing the debt during this
13 period of time when you were working to get this
14 approval?

15 A. No. Interest was added to the debt, and
16 they were also -- we were also pulling down draws
17 in order to pay our experts.

18 Q. What was the agreement with the bank on when
19 you had to start paying interest or servicing that
20 debt?

21 A. Well, I don't think that was going to start
22 until we started selling lots.

23 Q. So you were drawing down on the million
24 dollar development line essentially that you had
25 and interest was accruing, but it was not yet due?

Deposition of CHRISTOPHER DONATO

1 A. That's correct.

2 Q. All right. So your affidavit then --
3 directing you to paragraph six says that, shortly
4 after OCRM issued our permit in 2007, I received a
5 call from Jane Lareau, on behalf of the Coastal
6 Conservation League, who asked to meet with myself
7 and Mr. Tawes at the office of our engineer, Seamon
8 and Whitesides in Mount Pleasant. Using that as
9 sort of a starting place, can tell me about that?

10 A. Actually we agreed shortly before.

11 Q. Shortly before. Thank you.

12 A. The reason why it reads like shortly before
13 is because we were fully anticipating that we could
14 get our ground disturbance permit around June of
15 2007. Around late spring -- I want to say end of
16 April of 2007, Jane Lareau called Michael Tawes.
17 She called Michael because she has an
18 acquaintance -- or even a friendly relationship
19 with Michael's mother. And so she asked if she
20 could meet with us, and Michael came to me. And so
21 we decided to meet over in Seamon Whiteside's
22 office. And so it was myself and Michael Tawes and
23 my son.

24 So she started out the conversation by
25 explaining that this had slipped through the

Deposition of CHRISTOPHER DONATO

1 cracks. That she had been sick, and I understand
2 she has had some cancer issues. And that because
3 of her illness, she was unable to be the watchdog
4 that she was supposed to be on developments in
5 Awendaw. I'm kind of talking from hindsight now
6 because I didn't really understand all of this.

7 Q. Okay.

8 A. She said, but she wanted us to know that she
9 doesn't approve of our development. And I said,
10 well, what is your objection to it? She said,
11 well, it's too dense. And I said, well, it
12 conforms to the existing zoning. I mean, we didn't
13 ask for a variance or anything. We took what we
14 had, and we worked with that. And she said, well,
15 they don't know anything up in Awendaw, referring
16 to the city council, and that the zoning on this
17 should be 10 -- 1 to 10 and 1 to 15 acres. In
18 other words, one homesite to 15 acres. And she
19 said, you-all really ought to consider redoing your
20 design on this.

21 I said, Ms. Lareau, it's a little late for
22 that. We have spent a lot of time and money. To
23 this day we are on the verge of submitting our
24 application to OCRM. And she said, well --
25 basically reiterated her distaste for what we were

1 getting ready to do. And said, would you mind
2 talking with Mike Prevost and Noel Thorn at the
3 Nature Conservancy because they are experienced in
4 large acreage type developments that maybe can show
5 you how you can turn this around and make some
6 money. And we said, no, not at all. We don't mind
7 talking to them. So that was the Lareau meeting.

8 Q. Okay. So what happened after that?

9 A. Well, about a month later, I think it was
10 Noel who called and said that he understood we had
11 a meeting with Jane, and she recommended that they
12 talk to us. And we said, that's fine. We set up a
13 meeting. And then Noel and Mike came to our office
14 and sat down. And Michael Tawes and I attended the
15 meeting. We thought that we were going to start
16 having some constructive dialogue as to how we can
17 change our plan and what we can do to conform with
18 what the Conservation League wanted. And at the
19 same time, still -- at least still come out making
20 a little bit of money on this deal.

21 Q. Right.

22 A. That wasn't the conversation at all. It was
23 simply you're not going to get away with this.
24 They're not going to let you develop. You're going
25 to -- they are going to challenge your permit.

Deposition of CHRISTOPHER DONATO

1 They are going to break you. They are going to
2 drag it out until you can't -- you don't have any
3 more money and then -- and I was a little bit taken
4 aback because, number one, I felt like it was a
5 threat.

6 And number two, I still was naive enough to
7 think that we had done everything that I thought we
8 were supposed to do and had done it correctly, and
9 we spent an awful lot of time dealing with the
10 South Carolina Department of Archives and History
11 and SHPO and trying to get things right with them
12 concerning our development and its potential impact
13 on the shell ring. So I just couldn't figure out
14 where he was coming from with they're going to sue
15 you.

16 Q. Who was it that said that?

17 A. Noel Thorn. He was particularly vocal about
18 that. Mike didn't really enter into the threat
19 scenario, but he was supportive, I guess, you can
20 say.

21 Q. So Noel Thorn did most of the talking in the
22 meeting?

23 A. He did.

24 Q. So most of the things that you had said that
25 were said at the meeting came from Noel Thorn?

1 A. That's correct.

2 Q. Now, just so that I'm clear. They were
3 there. They are officers or members of the Nature
4 Conservancy?

5 A. That's my understanding, yes, sir.

6 Q. Did they say anything about what the Nature
7 Conservancy would do or what the Nature
8 Conservancy's position was?

9 A. They didn't. I think we might have asked
10 the question, would the Nature Conservancy be
11 interested in buying this? And they said, no. So
12 I said -- basically the meeting ended by we saying,
13 well, you know -- at the end of the meeting they
14 started talked about, well, what do you think your
15 lots are going to sell for and those things. And
16 we said, we will be glad to show you all of that if
17 you're interested. And they said, well, you can
18 send it to us if you want. Something like that.
19 So at any rate, the meeting sort of ended at that
20 point and they walked out. And Michael Tawes and I
21 kind of just looked at each other and said, what
22 just happened?

23 Q. Right.

24 A. So that was right before we applied to OCRM.
25 When they were in -- I mean, Jane Lareau's meeting

Deposition of CHRISTOPHER DONATO

1 was right before. When they were in our office, we
2 may have already submitted our application to OCRM.

3 Q. Okay.

4 A. And then after that, the problems with the
5 archeological study arose, and we solved that. We
6 got our ground disturbance permit, and I think
7 there was like two weeks after that where somebody
8 can challenge your permit. And sure enough, low
9 and behold on the last day, CCL did so.

10 Q. And that, again, was early November of '07?

11 A. Yes, sir. Their challenge was dated
12 November 16th.

13 Q. Going back a minute to -- going back for a
14 minute to the meeting with Thorn and Prevost. Did
15 you get a clue or have any idea why they were
16 saying what the League would do? Did they tell you
17 why they were there saying what the League would
18 do?

19 A. I got the feeling that they thought -- I
20 don't know what they thought. But I got the
21 feeling that they were trying to be, you know, sort
22 of benevolent providers of information. Look, this
23 is what is getting ready to happen to you. You
24 need to rethink this, restudy this, because you are
25 getting ready to lose a lot of money.

Deposition of CHRISTOPHER DONATO

1 Q. So they were making the observation about
2 what they thought the League could do in this
3 situation; is that fair?

4 A. I guess so, yes, sir.

5 Q. Do you -- did you get any sense that the
6 League told them what to say in the meeting?

7 A. No, I did not.

8 Q. Your affidavit has a phrase I wanted to ask
9 you about. And it -- on paragraph seven. Top of
10 the page it said that -- you used the phrase get
11 into our pockets. Are those words that --

12 A. That was Mr. Thorn.

13 Q. Mr. Thorn used those words?

14 A. Yes.

15 Q. That the League was going to try to get into
16 your pockets?

17 A. Yes, sir.

18 Q. And, again, that was his observation?

19 A. It was his -- he was warning us that this is
20 what was going happen to us if we pursued this
21 permit.

22 Q. Okay. Then, again, in paragraph eight,
23 there's a phrase, this is what they do. Again, is
24 that coming from Mr. Thorn?

25 A. It is, yes, sir.

Deposition of CHRISTOPHER DONATO

1 Q. And, again, Mr. Thorn was observing what his
2 opinion was about what the League might do in this
3 case if they opposed you?

4 A. Well, right. I assume that Mr. Thorn had
5 all of the opportunity in the world to witness the
6 Coastal Conservation League's actions on other
7 developments.

8 Q. After the meeting, did you call Jane Lareau
9 and ask her or comment about the meeting at all?

10 A. No, sir.

11 Q. Did you after this meeting talk to the
12 Conservation League at all?

13 A. No, sir.

14 Q. Did you talk again to Mr. Thorn or Mr.
15 Prevost again?

16 A. No, sir.

17 Q. So fast forward then to November and the
18 filing of the appeal. Was the League entitled to
19 file an appeal?

20 A. As I understand it, they were.

21 Q. All right, sir. Tell me about that process
22 then. What do you remember about it?

23 A. We got a phone call from OCRM that said that
24 the permit had been challenged. The legality of
25 it, I guess, had been challenged, and we ultimately

Deposition of CHRISTOPHER DONATO

1 saw, I guess, that there was a gentleman by the
2 name of Robert Guild, who was an attorney I think
3 from Columbia who was representing the League in
4 this matter against us.

5 And we ultimately saw some paperwork that
6 they submitted, and the paperwork included a letter
7 from an archeology doctor, Ph.D. type, at the
8 University of South Carolina, who was criticizing
9 our archaeological study with respect to the shell
10 ring and caused quite a little built of a chuckle
11 in our office when he actually compared it to the
12 pyramids of Egypt.

13 Q. I saw that in your affidavit. In what way
14 did he compare it? What was the comparison?

15 A. I think it was the shell ring was as
16 important to American history as the pyramids of
17 Egypt were to Egyptian history.

18 Q. Just out of curiosity. What was the age --
19 approximate age of the shell ring? Do you have any
20 idea? I know some of them are 3,000 years old.

21 A. I would not want to say and be absolutely
22 wrong on it, but I can tell you that during our
23 meetings with SHPO, almost always in attendance --
24 and I have to go back to ferret out his name, was a
25 representative of the United States Park Service.

Deposition of CHRISTOPHER DONATO

1 And he was very much in favor of our claim. And he
2 said in fact, I would like you-all to develop an
3 organization with the homeowners that we would call
4 friends of the shell ring because they have so much
5 vandalism down there that maybe they could help
6 watch over the place.

7 Q. All right. So what was the process, as you
8 remember it, for the appeal? How did that go and
9 was there a hearing and were you represented? What
10 do you remember about that?

11 A. We still had a relationship with Cotton
12 Harness at that time. And in talking with Cotton,
13 we decided that it was probably best to go to Mr.
14 Smith. So Cotton boxed up everything we had and
15 sent it over to Ellison, and we started our process
16 of trying to prepare ourselves for a hearing, which
17 had been scheduled in September.

18 Q. September of 2008?

19 A. 2008. So anyway, we started that process,
20 and we met with Ellison on several different
21 occasions. And I know at one time halfway through
22 the process or so, he took a deposition of an
23 individual at the Coastal Conservation League.

24 Q. Do you remember who that was?

25 A. I had to write her name down. It was Lisa

1 Jones Teransky.

2 Q. Okay.

3 A. We also -- at this point in time our
4 relationship with Wachovia started to get a little
5 bit iffy, and we ended up having to put up another
6 \$300,000 in order to calm their fears and help them
7 to -- at least persuade them to continue to support
8 us while we hopefully get this thing cleared up in
9 September.

10 Q. I want to pause there and drill a little bit
11 deeper on that. Tell me what the issue was with
12 Wachovia.

13 A. Well, we initially thought we were going to
14 get a ground disturbance permit in late June, early
15 July of 2007. We got involved in the archeological
16 study, which took us into September of 2007. We
17 took another two months to get OCRM to finally
18 issue the ground disturbance permit. And now we're
19 being -- that is being appealed, and now we have
20 got another nine months before we even have a
21 hearing. And so obviously during this entire time,
22 we are accumulating interest and this debt is
23 getting higher and higher. Higher than what we
24 originally thought we were going to pay back.

25 Q. Right.

Deposition of CHRISTOPHER DONATO

1 A. So they started demanding we put up some
2 more money, which we did.

3 Q. If you recall, what was their basis for
4 asking you to do that? Were they claiming that
5 they had -- were becoming insecure in their
6 collateral or what was the basis for requiring more
7 money?

8 A. I think we had some sort of time line when
9 we were -- there may have been a time line. I will
10 have to go back and look at the mortgage again, but
11 when we would actually start paying back this loan
12 that we -- I think that time line was like June of
13 2008 or maybe even earlier than that when we would
14 actually start making payments.

15 So we had missed that, and I think that's
16 what gave them the authority to come to us and say,
17 you know, we had to put up some more money.

18 Q. Okay. So did you do that?

19 A. Yes, sir.

20 Q. So your group --

21 A. 600,000.

22 Q. -- got together -- so folks I suppose were
23 required to contribute according to their
24 representative ownership interest?

25 A. That's correct.

1 Q. So tell me what happened after that.

2 A. Well, we were preparing for our hearing in
3 September, and Murphy's law, all of the sudden
4 their appeared a hurricane off the coast and during
5 the week of our hearing, and OCRM said they had to
6 deploy their people elsewhere, and that the
7 necessary people that needed to be in Columbia
8 couldn't be there. So they asked for a continuance
9 and that was granted, and so the date was moved to
10 January of 2009.

11 Q. Okay. So what did you do in reaction to
12 that?

13 A. Well, it started to become plainly obvious
14 to us that Noel Thorn was right. We couldn't hold
15 on too much more. I mean, after that news of our
16 postponement of our hearing, Wachovia started to
17 put pressure on us and started to throw out the
18 foreclosure word.

19 So we said --

20 Q. And, again, that was because you were out of
21 whack with your time line?

22 A. Yes.

23 Q. Is that what the default would have been?

24 A. Yeah. We hadn't paid them any money back
25 except for that extra 300,000 we put up.

Deposition of CHRISTOPHER DONATO

1 Q. Well, you weren't required to pay any money
2 back at that point, were you?

3 A. Well, we might have been required to start
4 paying them money sometime in 2008, but I would
5 have to look at the mortgage documents to tell you.

6 Q. Okay.

7 A. We realized that we needed to do something.
8 So we did have some meetings at that time with the
9 Coastal Conservation League. We figured that maybe
10 if they are going to work against us, maybe somehow
11 or another they will work with us. And we asked
12 them if they would help us sell this property and
13 they said they would. So we targeted the South
14 Carolina Parks and Recreation Commission because
15 they had had this 1 percent money that they could
16 buy and preserve property.

17 Q. Green Bill Money?

18 A. Green Bill Money. We were fortunate that we
19 knew some of the members -- some of the
20 commissioners, and so ultimately they went and
21 looked at the property, and they loved it. We are
22 bound on two sides by US Park Service. And I think
23 they might have thought that they could see a way
24 that they could maybe add to their holdings by
25 swapping some land with the US Park Service or

Deposition of CHRISTOPHER DONATO

1 something like that. I don't know exactly what
2 their motivation was, but they liked the property.

3 Q. This would have been Cape Romain, the
4 holdings of the park service?

5 A. Well, our land ran from Doar Road down to
6 the intercoastal water way. On this part adjacent
7 to us on this side was US Forest Service property.
8 Adjacent to it on this side was Federal government
9 property where the shell ring was.

10 Q. I see.

11 A. So what they were hoping with, Park and
12 Recreation Commission, was that they could swap
13 some land and acquire this piece over here as well.
14 Then they would have a fairly decent sized holding
15 and on the intercoastal water way. All of that
16 would be on the intercoastal water way.

17 Q. Okay. So is that what ended up happening?

18 A. That's what happened.

19 Q. What was the price paid for the property?

20 A. 5.7 million.

21 Q. And did that satisfy your debt to the bank?

22 A. It did, sir.

23 Q. And I think you said in your affidavit, you
24 did not though recoup all of the money you had
25 spent out-of-pocket?

Deposition of CHRISTOPHER DONATO

1 A. No. We lost everything that we spent
2 out-of-pocket.

3 Q. You did say that the League assisted in
4 procuring the connections with the Park?

5 A. Well, we just asked if they would put in a
6 good word. They said they would. You know,
7 whether they did, I don't know. We had probably --
8 we had better relationships with members on that
9 commission than they had.

10 Q. Okay. Did the League do anything in
11 opposition to your project other than file an
12 appeal of the ground disturbance permit?

13 A. Not to my knowledge. Other than their vocal
14 opposition to it, and the ground disturbance permit
15 what was stopped it -- I mean, the appeal of the
16 ground disturbance permit.

17 Q. When you say vocal opposition --

18 A. From Jane Lareau and Noel Thorn.

19 Q. Did they speak out at public meetings or --
20 when you say -- I just don't know what you mean by
21 vocal opposition?

22 A. Well, the meetings that I'm referring to in
23 my affidavit that they opposed to it to us, I do
24 remember that in 2006 -- the summer of 2006, and
25 this probably was when Jane Lareau was ill and

Deposition of CHRISTOPHER DONATO

1 could not pay attention to some of the things that
2 were going on in Awendaw, but there was a gentleman
3 there who I remember had red hair who was with the
4 Coastal Conservation League and got up and asked a
5 few questions about our plan that we had put up
6 before the people. We answered the questions, and
7 he seemed satisfied and sat down. And they
8 ultimately voted on it and approved it.

9 Q. This is the town of -- the planning
10 commission?

11 A. The planning commission.

12 Q. Okay. Was there any community opposition to
13 what you were doing?

14 A. None that we knew of.

15 Q. I did look in the archives in the Post and
16 Courier, and I saw a fair amount of opposition to
17 the White tract. Are you aware of that -- what was
18 going on with that at the same time as your
19 project?

20 A. Yes, I was.

21 Q. But I want to show you a couple of -- it
22 wasn't clear to me whether this was your group or
23 not, but I wanted to -- take a look at what I have
24 marked as Exhibit Number 2. It's a short news
25 report from April of 2007. I just wanted to know

Deposition of CHRISTOPHER DONATO

1 if you -- does that look familiar to you, whether
2 that had anything to do with your project?

3 (Exhibit No. 2 was marked for
4 identification.)

5 A. Fenwick at Bulls Bay -- in fact I'm not sure
6 which one that is. I don't even think that's the
7 White tract.

8 Q. It's not the White tract. I knew that. I
9 just didn't know if this was you or not.

10 A. No, sir.

11 Q. It's not. Okay. If you will look on the
12 next page then. There are I think two other
13 reports. There's one in June of 2003, that's
14 Fenwick at Bulls Bay too, so that's not you. The
15 next one appears to be the Fenwick and White tract.
16 So none of these involve your project?

17 A. No, sir. I was not aware of any community
18 opposition. And, again, the Fenwick and Bulls Bay,
19 which I'm really not familiar with, but I am a
20 little familiar the White tract, they went in for a
21 zoning change that would allow suburban densities.
22 We didn't ask for that.

23 Q. At any time during the process, did the
24 League ever ask you or your colleagues for money?

25 A. No, sir.

1 Q. And did you ever talk to Dana Beach or
2 anyone other than Jane Lareau that worked for the
3 League in this process?

4 A. Mr. Beach was at the meeting that -- I
5 guess, the last meeting that we had with the
6 Coastal Conservation League when we come to the
7 decision we needed to get out of this thing.

8 Q. This was the decision when you were talking
9 about selling to the County Parks?

10 A. Right. This was -- when we had our
11 September hearing postponed, we said we have to be
12 proactive and get out of this thing.

13 Q. Just to make sure that I understand. I
14 think you said this at the beginning of your
15 deposition, but do you know anything about the
16 lawsuit that we are here in the context of today
17 involving North Pleasant, LLC, and Keystone Tract?
18 Were you involved in that at all?

19 A. Well, I do know something about the Keystone
20 Tract. It's not particularly -- it's not an
21 in-depth detailed knowledge of what went on there.
22 I asked -- I was asked to be a consultant by -- I'm
23 searching for his name. But he is an attorney with
24 the McNair group, and then there was another
25 attorney, who I do remember his name, and you will

Deposition of CHRISTOPHER DONATO

1 know why when I say it, it's because it was Jack
2 Daniel, and I did consult with them on some of the
3 appraisals that had been done on the Keystone
4 Tract. I had a meeting with them and discussed
5 those appraisals with them. I have not done any
6 appraisal work or anything of that nature.

7 Q. All right. Was this -- when was this
8 approximately?

9 A. And that probably was last year sometime.
10 They were in the process of getting ready to take a
11 deposition of the appraiser who have had done some
12 work on the Keystone tract. I think he was
13 somebody from Summerville, and they were getting
14 ready to take his deposition, and they wanted some
15 of my thoughts on his appraisals before they did
16 so.

17 Q. Do you know what the litigation was that the
18 deposition was going to be taken in?

19 A. My recollection is that it has something to
20 do with the road that was private that they
21 originally thought was public.

22 Q. Okay. So do you know who the parties in the
23 lawsuit were?

24 A. No, sir. But I could find out for you.

25 Q. And just real quickly. I sometimes do this

Deposition of CHRISTOPHER DONATO

1 at the beginning of the deposition, but I will do
2 it here at the end. Can you give me just a minute
3 on your educational and professional background.

4 A. Well, I was born and raised in Charleston.
5 I guess I should say born in Charleston. Raised on
6 the Isle of Palms. Graduate of Moultrie High
7 School, 1967. The College of Charleston in 1973.
8 I went to work for the Charleston County Assessor's
9 Office in 1974. I spent five years there under Bob
10 Reagan. In 1979, I left and went to work for
11 Holcombe and Fair Realtors, which is now Holcombe,
12 Fair, and Lane, and coincidentally Holcombe, Fair,
13 and Lane represented us in selling the property to
14 the Parks and Recreation Commission.

15 Q. Are you still a member of that firm?

16 A. No. I left in 1984 and formed a firm called
17 Moore, Jackson, Donato, and Santos. And after two
18 years of operating with those un-American sounding
19 names, we changed it to Atlantic Appraisals. So we
20 have been operating as Atlantic Appraisals since
21 1986. My original partners are now gone. I have
22 new partners.

23 Some of the things that I have done, I have
24 testified several times -- I guess I can say many
25 times throughout my career mostly in

Deposition of CHRISTOPHER DONATO

1 condemnation-type appraisal work. I am an approved
2 instructor of the Appraisal Institute. I'm an
3 approved instructor of the Appraisal Foundation
4 which teaches USPAP, which is sort of our bible,
5 the Uniform Standards of Professional Appraisal
6 Practices, and I have recently been approved to the
7 South Carolina Appraisers Board.

8 MR. GOWDER: Those are all of the
9 questions I have for you. Mr. Smith may have some
10 questions.

11 MR. SMITH: None.

12 (The deposition was concluded at
13 3:06 p.m.)

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) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-08-1771

) CASE NO.: 2010-CP-08-1771

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**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
ALTER OR AMEND JUDGMENT**

TO: SMITH BUNDY BYBEE & BARNETT and SANTEN & HUGHES, ATTORNEYS
FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that Defendants South Carolina Coastal Conservation League (“SCCCL”) and Edward D. Beach (“Beach”) (collectively “Defendants”), through their undersigned attorneys, hereby move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for an order altering or amending the Order of December 18, 2012 (the “Order”) granting in part and denying in part Defendants’ Motion for Summary Judgment. Specifically, Defendants respectfully request that the Court amend the Order to grant Defendants’ motion for summary judgment as to Plaintiffs’ cause of action for “injurious falsehood” as to both SCCCL and Beach,¹ which was not addressed in the Order, or in the alternative to amend the Order to grant the motion as to Beach.

Plaintiffs' cause of action for injurious falsehood is based upon an allegation that the League made false statements to residents, landowners, and the county concerning the

¹ Defendants' full arguments regarding Plaintiff's injurious falsehood cause of action are found at pages 15-17 of Defendants' Memorandum of Law in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment.

development of the property and such statements were harmful to Plaintiffs as such false statements engendered and aroused opposition to development of the property and that these statements caused Pittenger to abandon plans to purchase the property. Plaintiffs' have indicated that the statements they are referring to have to do with alleged statements by Hamilton Davis to residents that property taxes tend to increase on surrounding properties when high density development is allowed in the area.² However, there is no evidence showing the publication of any false statements. Additionally, there is no evidence that Hamilton Davis knew any statements to be false or that he acted in reckless disregard of truth or falsity. Finally, Plaintiffs' cannot present any evidence showing that any intention by Hamilton Davis or the League that any statements would incite opposition to development such that Pittenger would decide not to purchase the property.

There is no evidence tending to show any causal link between the conduct they allege and the damages they claim. The evidence is clear that the information Mr. Pittenger learned at the meeting with Dan Davis, and not any concern over local opposition to development caused by any statements made by the League or others, caused Pittenger to decide not to purchase the property. Plaintiffs have failed to present even a scintilla of evidence to the contrary.

Therefore, the Court should grant Defendant's Motion for Summary Judgment as to this cause of action.

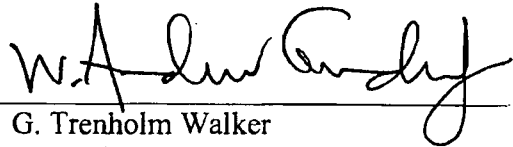
Even if the Court does not amend the Order to grant Defendant's Motion for Summary Judgment as to Plaintiffs' injurious falsehood cause of action, the Court should amend the Order to grant summary judgment as to any liability on the part of Beach. There is no evidence implicating Beach in any of the activity Plaintiffs' have alleged regarding their cause of action

² Obviously there are different opinions as whether such a statement would be true or false.

for injurious falsehood. Therefore, even if the Court does not amend the Order to grant Defendant's Motion for Summary Judgment as to Plaintiffs' injurious falsehood cause of action (as to SCCCL and Beach), the Court should amend the Order to grant Defendant's Motion for Summary Judgment as to any liability on the part of Beach.

Respectfully submitted,

BY:



G. Trenholm Walker

W. Andrew Gowder, Jr.

John P. Linton, Jr.

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ATTORNEYS FOR DEFENDANTS

January 7, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Defendants' Notice of Motion and Motion to Alter or Amend Judgment was served by mailing a copy properly addressed with sufficient postage affixed thereto via United States Mail to:

Stan Barnett
1037 Chuck Dawley Blvd.
Suite 100, Building F
Charleston, SC 29465

Charles E. Reynolds
Santen & Hughes
600 Vine Street, Suite 2700
Cincinnati, Ohio 45202

Done this 7th day of January, 2013

A handwritten signature in cursive script, appearing to read "Amanda B. Brodish", written over a horizontal line.

Amanda B Brodish
Paralegal to W. Andrew Gowder, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

NORTH PLEASANT, LLC AND
VANGUARD DEVELOPMENT
GROUP, LLC,

Plaintiffs,

vs.

SOUTH CAROLINA COASTAL
CONSERVATION LEAGUE and
EDWARD D. BEACH,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-08-1771

**MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFFS'
MOTION TO ALTER OR AMEND
AND IN SUPPORT OF DEFENDANTS'
MOTION TO ALTER OR AMEND**

Defendants South Carolina Coastal Conservation League ("the League") and Edward D. Beach ("Dana Beach" or "Beach") (collectively "Defendants"), through their counsel PRATT-THOMAS WALKER, submit this memorandum of law in opposition to Plaintiffs North Pleasant, LLC ("North Pleasant") and Vanguard Development Group, LLC's ("Vanguard") (collectively "Plaintiffs") Motion to Alter or Amend the Court's Order granting partial summary judgment in favor of Defendants and in support of Defendant's Motion to Alter or Amend that same order.

PROCEDURAL HISTORY:

Plaintiffs brought the instant action against Defendants asserting four causes of action: (1) tortious interference with a contract; (2) intentional interference with contractual relations, (3) violation of the South Carolina Unfair Trade Practices Act; and (4) injurious falsehood. Defendants counterclaimed, asserting abuse of process and frivolous conduct.

Defendants filed a Motion for Summary Judgment and Plaintiffs filed a Motion for Partial Summary Judgment. The Court heard arguments on the motions and on December 18, 2012 issued an Order granting Defendants' motion as to Plaintiffs' cause of action for a violation of the South Carolina Unfair Trade Practices Act; granting Beach's motion as to Plaintiffs' causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations; and denying the League's motion as to Plaintiffs' causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations. The Order did not address Defendant's motion as to Plaintiffs' cause of action for injurious falsehood.

Plaintiffs filed a Motion to Alter or Amend the Order pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure. In their motion, Plaintiffs request that the Court amend the Order to deny Defendants' motion in its entirety. Defendants also filed a timely Motion to Alter or Amend requesting the Court amend its Order to grant Defendants motion as to Plaintiffs' injurious falsehood cause of action.

For the reasons that follow, the Court should deny Plaintiff's Motion to Alter or Amend, grant Defendant's Motion to Alter or Amend; and amend the Order to grant Defendant's motion as to Plaintiff's cause of action for injurious falsehood, or in the alternative grant Defendants motion as to any liability on the part of Beach as to Plaintiff's Cause of Action for injurious falsehood.

STANDARD OF REVIEW

In South Carolina, "[a] party *may* wish to file such a motion [to alter or amend] when [the party] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must*

file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. S. Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphases in original).

DISCUSSION

I. Plaintiffs’ Motion to Alter or Amend should be denied.

Plaintiffs’ motion does not state any issues the Court misunderstood, failed to fully consider, or failed to rule on. Rather, Plaintiffs’ motion simply rehashes the arguments that the Court has already fully considered and addressed. Because the Court fully considered and correctly granted motion in part, the Court should deny Plaintiff’s Motion to Alter or Amend.

a. Plaintiffs’ Motion to Alter or Amend should be denied as to the Court’s ruling on Dana Beach’s Motion for Summary Judgment as to the Plaintiffs’ causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations.

In the Order, the Court correctly concluded that “. . . the record is devoid of any evidence that the Defendant Beach’s actions give rise to him having personal liability for either of these causes of action.” Order, 2. In their attempt to reargue the issues in their Motion to Alter or Amend, Plaintiffs hang their hat on two depositions: one of Charles Lane and the other of Governor Mark Sanford. See Pls.’ Mot. to Alter or Amend, 2. Plaintiffs argue that Charles Lane’s, testimony that Beach directs everything at the League, and Governor Sanford’s account of an isolated conversation with Beach years before the deal that is the subject matter of Plaintiffs’ claims was even contemplated, somehow give rise to an inference that Dana Beach acted in a way that would make him susceptible to personal liability. See id. Plaintiffs have already presented these same losing arguments which are based on illogical assumptions from the content of these depositions. As the Court already found, nothing in the record, including

these two deposition transcripts tends to show any conduct potentially subjecting Dana Beach to any personal liability. For example, the Court correctly stated the following:

The evidence which the Plaintiff argues gives rise to Beach's liability consists of him being the head of the SCCCL and a deposition excerpt that shows Beach directed Davis to contact the contracting party. A close reading of that deposition excerpt shows that Beach did not recall conversing with Davis prior to Davis's contact with the contracting party, but he admits that he likely did talk to Davis prior to Davis's conversation with a representative of the contracting party. However, *there is no evidence* that shows Beach directed Davis to do anything other than contact another party to discuss their potential opposition to a project in their usual course of business, *nor, more importantly, is there any evidence* that shows he directed Davis to make the alleged false statements which caused the contracting party to back out of the deal.

Order, 2-3 (emphasis added).

Because there is no evidence supporting Plaintiffs' argument that Dana Beach is susceptible to personal liability, the Court should deny Plaintiffs' Motion to Alter or Amend the Order as it pertains to Beach for intentional interference with a contractual relationship and intentional interference with prospective contractual relations. See Shuler v. Tuomey Regional Medical Center, Inc., 313 S.C. 225, 227, 437 S.E.2d 128, 130 (S.C. Ct. App. 1993) (stating that in opposing a motion for summary judgment, "[i]t is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." (citing Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984))).

- b. Plaintiffs' Motion to Alter or Amend should be denied to the extent it requests that the Court amend the Order as to Plaintiffs' Unfair Trade Practices Act cause of action.

The Court ruled that the League "is a public advocacy group that is not engaged in trade or commerce as defined by S.C. Code Ann. § 39-5-10 (b)." Order, 3 ("Nothing in the now completed discovery shows that the activities of the SCCCL as shown in the record make its activities as a public advocacy group fall within this definition in subsection (b)"). In reaching

this conclusion the Court reviewed the code's definition of "trade" and "commerce", and determined that "even the most nefarious acts . . . complained of in this lawsuit . . . does not cause a public advocacy group to fall within the definition above." Order, 3.

Plaintiffs present the same failing argument that the Court has already rejected—that the League's public advocacy involved trade or commerce because someone other than the League did not purchase a piece of property offered for sale by someone other than the League. The Court correctly determined that the actions complained of by Plaintiffs are not in the conduct of trade or commerce. The language of the statute is clear that the conduct of any trade or commerce "include[s] the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. code § 39-5-10.

Public advocacy is not the advertising, selling, or distribution of services, property, or article, commodity, or thing of value. Hamilton Davis and the League did not engage in trade or commerce—Defendants did not offer for advertise, offer for sale or distribution, purchase or even consider purchasing anything. Davis simply made a phone call on behalf of a nonprofit organization. Therefore, the Court should deny Plaintiffs' Motion to Alter or Amend because no evidence suggests that the League engaged in any practice in the conduct of any trade or commerce. See Foggie v. CSX Transportation, Inc., 315 S.C. 17, 24, 431 S.E2d 587, 591 (S.C. 1993) (noting that actions not taken in the conduct of trade or commerce are beyond the reach of the SCUTPA).

II. Defendants' Motion to Alter or Amend should be granted because the record is devoid of any evidence tending to support Plaintiffs' cause of action for injurious falsehood.

Plaintiffs' cause of action for injurious falsehood is based upon an allegation that the League made false statements to residents, landowners, and the county concerning the development of property and such statements harmed to Plaintiffs by engendering and arousing opposition to any development of the property, and by causing Pittenger to abandon plans to purchase the property. Plaintiffs' have indicated that the statements they are referring to are alleged statements by Hamilton Davis to residents that property taxes tend to increase on surrounding properties when high density development is allowed in the area.¹

However, there is no evidence showing the publication of any false statements. Additionally, there is no evidence that Hamilton Davis knew any statements to be false or that he acted in reckless disregard of truth or falsity. Finally, Plaintiffs cannot present any evidence showing any intention by Hamilton Davis or the League that any statements would incite opposition to development such that Pittenger would decide not to purchase the property. There is no evidence tending to show any causal link between the conduct Plaintiffs allege and the damages they claim. The evidence is clear that the information Mr. Pittenger learned at the meeting with Dan Davis, and not any concern over local opposition to development caused by any statements made by the League or others, caused Pittenger to decide not to purchase the property. Plaintiffs have failed to present even a scintilla of evidence to the contrary. Therefore, the Court should grant Defendant's Motion for Summary Judgment as to this cause of action for both the League and Dana Beach.

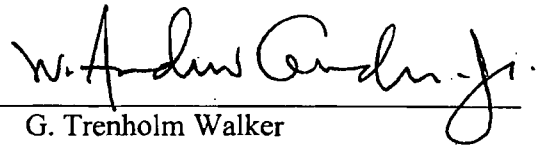
¹ Obviously there are different opinions as whether such a statement would be true or false.

CONCLUSION

For the reasons stated above, the Court should deny Plaintiffs' Motion to Alter or Amend; grant Defendant's Motion to Alter or Amend; and amend the Order to grant Defendant's Motion for Summary Judgment as to Plaintiff's injurious falsehood cause of action.

Respectfully submitted,

BY: _____



G. Trenholm Walker

W. Andrew Gowder, Jr.

John P. Linton, Jr.

PRATT-THOMAS WALKER, P.A.

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Charleston, South Carolina 29413-2247

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wag@p-tw.com

ATTORNEYS FOR DEFENDANTS

January 21 2013
Charleston, South Carolina

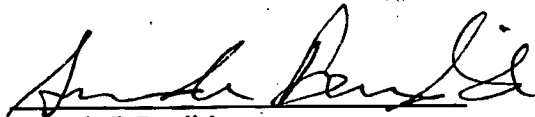
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Defendants' Notice of Motion and Motion to Alter or Amend Judgment was served by mailing a copy properly addressed with sufficient postage affixed thereto via United States Mail to:

Stan Barnett
1037 Chuck Dawley Blvd.
Suite 100, Building F
Charleston, SC 29465

Charles E. Reynolds
Santen & Hughes
600 Vine Street, Suite 2700
Cincinnati, Ohio 45202

Done this 21st day of January, 2013

A handwritten signature in black ink, appearing to read "Amanda B. Brodish", written over a horizontal line.

Amanda B Brodish
Paralegal to W. Andrew Gowder, Jr.

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
BERKELEY COUNTY

NORTH PLEASANT, LLC and
VANGUARD DEVELOPMENT GROUP,
LLC,

Plaintiffs,

v.

SOUTH CAROLINA COASTAL
CONSERVATION LEAGUE AND
EDWARD D. BEACH,

Defendants.

Case No. 10-CP-08-1771

**PLAINTIFF'S MOTION TO
ALTER OR AMEND (RULE 59)**

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED
NOV 18 PM 3:59

TO: W. ANDREW GOWDER, JR., ESQUIRE AND G. TRENHOLM WALKER, JR.
COUNSEL FOR DEFENDANTS

Pursuant to Rule 59(e) of the S.C. Rules of Civil Procedure, Plaintiffs hereby move to alter or amend the Order of this Court granting Defendant a directed verdict as to all causes of action. Specifically, Plaintiffs respectfully request the Court to find:

1. There was sufficient evidence introduced at trial from which a jury could reasonably conclude that Defendant tortiously interfered with the contract between Vanguard Land ("Pittinger") and North Pleasant, LLC in which Pittinger contracted to purchase 2,600 acres of the Keystone Tract from North Pleasant for \$9,200 per acre.

a. The existence of the contract between Pittinger and North Pleasant was not in dispute.

. The jury could reasonably find from the testimony of David Grubbs and from terms of the Pittinger/North Pleasant contract that Vanguard Development Group, LLC had an agreement with Pittinger to share the commission on the Pittinger contract such that Vanguard would receive 3% and Pittinger would receive 3%.

b. The evidence was sufficient to support a jury finding that Defendant knew the contract existed. This evidence was in form of the email by Daniel Burns of May 21, 2007 to Daniel Fogarty, attached hereto, and admitted into evidence as part of Plaintiffs' Exhibit 27 at Bates No. 304, and Plaintiffs' Exhibit 4, the letter from Daniel Burns to Michael Bennett of May 11, 2007. The email recounts that Hamilton Davis, an employee of the Defendant, told Burns he knew the contract existed. The letter to Bennett was in the Defendant's possession and included all the information Davis needed to make the call – the acreage he recited correctly in the call and in the voice mail he left for Burns prior to the call, Exhibit 5, the name of Daniel Burns and the telephone number for the Pittenger company where Burns was Vice President. The letter includes the statement that Pittinger was in the process of acquiring ownership of the 2,600 acres. From this evidence the jury could reasonable conclude that Hamilton Davis knew the contract existed.

The jury could reasonably find from the testimony of Josh Hulen concerning the many contacts he had with Noel Thorn and the testimony that Thorn was working with the Defendant to try and secure purchase of the Keystone Tract by a public entity that Defendant knew a real estate listing agreement existed between North Pleasant and Vanguard Development Group.

c. The evidence was sufficient for a jury to reasonably conclude that Davis' conversation procured the breach of the contract by Pittinger. Davis' statements to Burns were clearly intentional. In the context of this cause of action, the "breach" need not have been a

“breach of contract” in contract law. Pittinger could have had the legal right to terminate the contract, but if his termination was caused by the actions of the Defendant, that is sufficient to satisfy this element of the cause of action. From the testimony of Josh Hulen and the emails between he and Daniel Fogarty as well as the fact established by the May 18, 2007 letter from James M. Reynolds to Daniel Burns and Burns signature acknowledging the correctness of the statements therein, all admitted into evidence, a jury could reasonably find that prior to receiving the call from Hamilton Davis, Pittinger was committed to closing on purchase of the property. Pittinger testified that he made the decision to terminate the contract because he did not want to own a tract of property for which he would have to fight to keep a density allowing economical use of the property – specifically saying he would have to “fight...battles”, would be “in this type of war”, and would “have a tiger by the tail.” He also testified that had the Defendant not made the statements to his Vice President, Burns, purchase of the property would have been a desirable project for him. From the Burns email recounting Davis’ statements to him, the jury could reasonably find that Defendant threatened to fight Pittinger in the same way they claimed to have fought and stopped D.R. Horton so as to halt a development that company had planned for land near to the Keystone Tract. The jury could reasonably find that this threat caused Pittinger to breach the contract. It is not necessary for purposes of proximate causation in a tort claim that the actions of the defendant be the sole cause, only that it be a cause. “In order to maintain a cause of action for interference with a contract that is terminable at will, ‘[t]he plaintiff must show that, but for the interference, the contractual relationship would have continued.’” *Focused Systems, Inc. v. Aeroted*, 2011 U.S. Dist. Lexis 58979, quoting *Bocook Outdoor Media, Inc. v. Summey Outdoor Adver., Inc.*, 294 S.C. 169, 363 S.E.2d 390, 394 (S.C.

Ct. App. 1987). The evidence is sufficient for the jury to reasonably find that but for the actions of the Defendant, the contract would not have been breached.

Termination of the Pittinger contract also terminated the entitlement of Vanguard to its share of the commission pursuant to its agreement with Pittinger.

d. The evidence was sufficient for a jury to reasonably find that the actions of the Defendant were without justification. The Burns email when read in conjunction with the testimony of Mitchell Flannery and the testimony of Hamilton Davis is sufficient for the jury to conclude that Hamilton Davis lied to Burns when he said that the Defendant: (1) was fighting all development along Highway 41; (2) fought D.R. Horton on a proposed project near the Keystone Tract; and (3) stopped D.R. Horton from proceeding with its project on that nearby property. From the testimony of Hamilton Davis and Nancy Vinson, the jury could reasonably conclude that these actions are improper for an organization like the Defendant or for any person or organization. The jury could reasonably find from this evidence and the testimony of Dan Davis that the threats and false statements made by Hamilton Davis to Burns were motivated by a desire to cause Pittinger to terminate the contract for the purpose of preventing a new buyer being able to avail itself of the "vested rights" protection from zoning changes, of placing North Pleasant in a position of financial weakness so as to be unable to resist a push for rezoning, which the testimony from Josh Hulen, Hamilton Davis and Dan Davis shows the Defendant was pushing, and to generally put North Pleasant into a position of political weakness in any fight over rezoning. The jury could reasonably find that there was no other reason for the call by Hamilton Davis to Dan Burns other than to cause Pittinger to terminate the contract as Defendant's employee, Hamilton Davis offered no credible reason for his call.

Alternatively, a reasonable jury could have found that the Hamilton Davis call was a threat. It is uncontested from the League's own employees that issuing a threat is an improper tactic, setting the standard by which the call should be measured. If the jury determined that the call was a threat, then "absence of justification" would be obvious. Further, a reasonable jury could have found that the statements from Hamilton Davis were false, and not even the League contended that giving false information was something it could justify.

e. The jury could reasonably find that both Plaintiffs suffered damages as the result of the actions of Defendant in causing termination of the contract. Jamie Reynolds testified that North Pleasant suffered damages from the lower price it ultimately received from sale of the 2,600 portion of the Keystone Tract -- \$14,381,432 -- as well as in the form of taxes paid between the termination of the Pittinger contract and final sale and interest paid on the loan for its purchase of the property, for a total loss of \$16,506,035.00. From the testimony of David Grubbs, principal of Vanguard Development Group, LLC, the jury could reasonably find that Vanguard suffered damages in the form of a reduced commission received, that Vanguard would have received a 3% commission on the original sales price of the Pittinger contract and instead only received a 6% commission on the much lower sales price of the ultimate sale of the 2,600 acres in 2011.

2. Should the jury conclude that there was not an enforceable contract between Pittinger and North Pleasant or between Vanguard and Pittinger, there was sufficient evidence introduced at trial from which a jury could reasonably conclude that Defendant tortiously interfered with the prospective contractual relations of North Pleasant concerning the sale of 2,600 acres of the Keystone Tract from North Pleasant for \$9,200 per acre to Pittinger.

Similarly, there was sufficient evidence from which the jury could reasonably find that Defendant tortiously interfered with the prospective contractual relations of Vanguard and Pittinger concerning sharing of the commission – 3% for Vanguard – by causing Pittinger not go forward with the purchase of the property and payment of the 3% commission to Vanguard.

The above analysis of the evidence for the elements of causation, lack of justification and damages apply to this cause of action equally so as to constitute sufficient evidence for the jury to reasonably conclude in the alternative that Plaintiffs are entitled to recover under this cause of action.

3. There was sufficient evidence introduced from which the jury could reasonably conclude that the Defendant published falsehoods which were damaging to the business interests and property rights of Plaintiffs.

a. There was sufficient evidence from which the jury could reasonably find that the Defendant in the person of Hamilton Davis published false information to many residents living near the Keystone Tract. From the testimony by Hamilton Davis and Dan Davis and Exhibit 13, the jury could reasonably conclude that at a series of barbecues in the area, Hamilton Davis told residents of the area that if the Keystone Tract was developed, their property taxes might go up and that they might have to contribute to pay the cost of running water and/or sewer service to the development and that these statements were false. Further, the call from Davis, viewed in the light most favorable to Plaintiffs, contained false statements. The email from Burns states that Davis said that the League was attempting to stop all development, that the League fought and stopped the D.R. Horton project, and that the League was attempting to zone the property so that it could not be developed. Each of these statements is false.

b. There was sufficient evidence from which the jury could reasonably conclude that Hamilton Davis intended for publication of the statement to result in harm to the interests of the Plaintiffs' interests in the Keystone Tract, or either recognized or should have recognized that his false statements were likely to do so. The jury could reasonably conclude that Hamilton Davis either knew or should have known that publication of such false statements would likely arouse and inflame residents so as to generate widespread opposition to any development of the Keystone Tract and enable the Defendant to pressure County Council to rezone the property so as to achieve its goal of stopping development and/or forcing North Pleasant to sell the property to a public entity.

c. There was sufficient evidence from which the jury could reasonably conclude that Hamilton Davis either knew his statements to be false or acted in reckless disregard of whether they were true or not. Hamilton Davis testified he did not check with Berkeley County officials to determine if his statements to area residents were true or not. Dan Davis' testimony was sufficient for the jury to reasonably conclude that had Hamilton Davis checked with Berkeley County, he would have learned that his statements were false and that his failure to do so demonstrated reckless disregard of the truth of his statements.

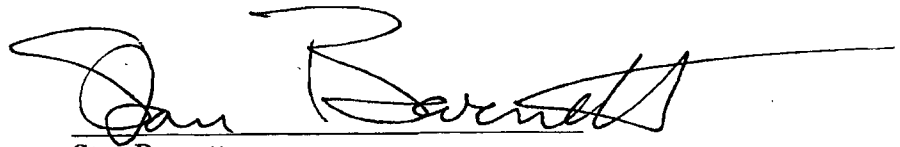
d. There was sufficient evidence from which the jury could reasonably conclude that Plaintiffs suffered damages naturally and proximately flowing from the false statements made by Hamilton Davis. From the evidence of petitions signed by a significant number of residents of the area advocating a change in zoning of the Keystone Tract so as to prevent its development and from the testimony of Dan Davis, Robert Pittinger, Josh Hulen, Jamie Reynolds and Hamilton Davis the jury could reasonably conclude that the opposition of the local residents was significant and that this opposition, which the jury could reasonably conclude was created by the

false statements made to them by Hamilton Davis, was the reason the county was considering a change in zoning and that Pittinger terminated the contract, not wishing to "fight" such opposition as well as having to fight Defendant.

e. As noted above, the evidence of the amount of damages suffered by Plaintiffs was sufficient for the jury to find an amount of damages for each Plaintiff.

For the reasons set forth above, Plaintiffs respectfully request that this Court alter or amend the order of December 11, 2013 granting Defendant a Directed Verdict as to all causes of action and order a new trial in this matter on all causes of action.

Respectfully submitted,



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Ellison D. Smith, IV
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Attorneys for Plaintiffs

December 18, 2013
Mount Pleasant, South Carolina



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

ROGER M. YOUNG
JUDGE

100 BROAD STREET, SUITE 368
CHARLESTON, SOUTH CAROLINA 29401
TELEPHONE: (843) 958-2015
FAX: (843) 958-5108
E-MAIL: ryoung@seccourts.org

December 12, 2013

Clerk of Court, Berkeley County
300-B California Avenue
Moncks Corner, South Carolina 29461

RE: North Pleasant, LLC et al. vs. South Carolina Coastal Conservation
League, 2010-08-1771

Dear Valeric:

Please find enclosed the signed Form 4 for the above-referenced jury trial Judge Young presided over this week. Please let me know if you need anything else from me. Have a good rest of the week!

Sincerely,

A handwritten signature in cursive script, appearing to read "Caroline Niland".

Caroline Niland
Law Clerk to the Honorable Roger Young

Enclosures

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-01771

NORTH PLEASANT, LLC ET AL

SOUTH CAROLINA COASTAL
CONSERVATION LEAGUE

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

Jury Trial was held. At the close of Plaintiffs' case in chief, Defendant made a Motion for Directed Verdict. This Court directed a verdict for the Defendant as to all causes of action.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2134

Judge Code

Date

SCRPC Form 4C (10/2011)

Page 1 of 2

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BERKELEY 2010-CP08-01771

NORTH PLEASANT, LLC, et al.,	)	
	)	
Plaintiffs,	)	TRANSCRIPT OF RECORD
	)	
-vs-	)	December 9-11, 2013
	)	
SOUTH CAROLINA COASTAL	)	Moncks Corner, SC
CONSERVATION LEAGUE, et al.,	)	
	)	
Defendants.	)	

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

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

Stanley Barnett, Esquire
Charles Reynolds, Esquire
Attorneys for the Plaintiffs

Andrew Gowder, Esquire
George Trenholm Walker, Esquire
Ellison D. Smith, IV, Esquire
Attorneys for the Defendants

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

I N D E X

	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS;
1	James Madison				
2	Reynolds, III	57	93	119	131
3					
4	Joshua Needham Hulen	139	182	214	--
5					
6	Thomas Hamilton Davis	223	255	263	--
7					
8	Nancy Vinson	270	--	--	--
9					
10	Daniel Davis	279	291	--	--
11					
12	Earl David Grubs	301	311	--	--
13					
14	Thomas Hartnett	322	--	--	--
15					
16					
17					
18					
19					
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21					
22					
23					
24					
25					

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
Plaintiff's 2	Commission Agreement	153	153
Plaintiff's 4	May 11 letter	137	137
Plaintiff's 5	Transcript of voice mail	227	227
Plaintiff's 27	E-mails	138	138
Plaintiff's 32	List of Studies	158	158
Defendant's 1	Development Agreement	261	261
Defendant's 4	Letter	110	110
Defendant's 5	Letter	112	112
Defendant's 6	Memorandum	114	114
Defendant's 8	Memorandum	184	184
Defendant's 9	Memorandum	188	188
Defendant's 10	Series of Documents	192	192
Defendant's 11	Letter	194	194
Defendant's 12	Correspondence	196	196
Defendant's 14	Composite	218	218
Defendant's 15	Handwritten notes	261	261

1 having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 THE WITNESS: My name is James Madison
5 Reynolds, III.

6 BY MR. BARNETT:

7 Q. Good afternoon, Jamie.

8 A. Chuck.

9 Q. Where do you live, Jamie?

10 A. I was raised in Green County, Georgia my whole
11 life until the time I went off school. It's halfway
12 between Atlanta and August.

13 Q. Do you still live there?

14 A. Yes, I do.

15 Q. You said you went to school. Where did you go to
16 school?

17 A. Went straight to college. I graduated from the
18 University of Georgia in 1974 with business
19 administration.

20 Q. What did you do after college?

21 A. Well, I don't know who was alive in 1974, but
22 there wasn't a lot going on in 1974. I wanted to come
23 home and live. A lot of pine trees in Green County, so I
24 decided I would get into the wood business, or logging
25 business. I met a guy from Union Camp Corporation and

1 told him I would work for free if he would teach me the
2 business of estimating volumes of wood on tracts of land,
3 and then I got into the logging business.

4 Q. Did you get into the real estate business at some
5 point?

6 A. Yeah. I stayed in the wood business, still got a
7 little sawdust in my veins too. I loved it, and then I
8 met a gentleman named Dudley Horton, and we formed
9 American Real Estate, which was a company we formed, a
10 LLC, to purchase property.

11 Q. When was that?

12 A. 1984.

13 Q. And did you work in the real estate business from
14 that point forward?

15 A. Pretty much, yes. In the real estate business,
16 that's right.

17 Q. How many transactions have you been involved in
18 either as a buyer or a seller, roughly?

19 A. Well, that's a good question. I've been doing
20 this for about 30 years, so I guess about -- if I did ten
21 transactions a year, which that would be way low, that
22 would be 300, so in the hundreds, maybe way more than
23 that.

24 Q. You've heard mentioned North Pleasant, LLC. What
25 is that?

1 A. That was an entity formed to purchase the Keystone
2 tract.

3 Q. Who were the primary members of North Pleasant?

4 A. Mercer Reynolds. At that time Pete and Bob were
5 members, Bailey, Pete and Bob Bailey, and then my brother
6 and I had a company named Vintage Land, which was also
7 part owner.

8 Q. You said Pete and Bob. Is that Bob Rogers or --

9 A. Yeah, Bob Rogers and Pete Bailey. So it was the
10 Reynolds family, represented by Mercer Reynolds, that
11 owned close to 60 percent of that organization, that
12 entity, and Vintage Land, which my brother Harold and
13 myself owned, about 28 percent, and Pete and Bob owned
14 the balance.

15 Q. So did Vintage Land own that 28.1 percent of the
16 land along with North Pleasant?

17 A. We owned -- yeah. We had undivided interest in
18 the land, yes.

19 Q. Were you also a partner in North Pleasant, LLC?

20 A. Yes.

21 Q. You said it was formed for the purchase of buying
22 the Keystone tract, right?

23 A. North Pleasant, yes.

24 Q. And did North Pleasant, in fact, acquire the
25 Keystone property?

1 A. Yes, we did.

2 Q. Do you recall when that was?

3 A. Yeah. We looked at it in late 2004, and went
4 through the process and we closed on that tract, I
5 believe, in February of 2005.

6 Q. What happened with the property after North
7 Pleasant purchased it?

8 A. Well, we didn't do anything right off the bat, but
9 we did some studies. We intended to hold it for a while,
10 and then -- but we did do some capacity studies on it to
11 see, you know, what was there. We were really interested
12 in doing some type of mitigation or some conservation
13 easements at that time.

14 Q. Did those plans pan out?

15 A. Well, we spent a lot of money, figured out what we
16 could do there, and our plan at that point was to go to
17 people who wanted to buy property and said, Look, if you
18 can get these conservation easement credits, and rather
19 than paying X for this land that we're going to sell, you
20 could pay one half X, just so they could write it off on
21 their taxes.

22 It was a tax benefit to them, but that was very
23 complicated and cumbersome, and it really didn't take
24 off.

25 Q. Did that result in any conservation easements

1 being granted?

2 A. Not that I recall.

3 Q. At some point did you decide to market the
4 property?

5 A. We started selling property in what I call many
6 forms, and I think here in South Carolina we probably
7 call them horse farms, ten acres to 200 acres, and we
8 started that in 2007.

9 Q. Did you sell any of that property in that way?

10 A. Yeah, we did. We sold about 720 acres for a
11 little over \$6 million.

12 Q. At some point did you attempt to market a bigger
13 piece of the Keystone property?

14 A. Well, yeah, I guess -- yeah, I guess we did.
15 Like, we had real estate agents that were there, and they
16 certainly knew they could bring us an offer on the whole
17 tract or the parcels that we divided up.

18 Q. Real estate agents, does that mean Vanguard
19 Realty?

20 A. Yeah, which is kind of confusing. Vanguard is
21 part of the Pittinger Group, and then also Vanguard is
22 the realty company that is representing us, and you can
23 get confused, along with the name Jamie, as you'll see
24 later on.

25 Q. And is a representative of Vanguard Realty here?

1 A. David Grubbs.

2 Q. David Grubbs. Was interest eventually generated
3 in sale of a large portion of the Keystone tract?

4 A. Yes.

5 Q. Did you have an agreement with Vanguard Realty
6 regarding paying a commission if such a sale took place?

7 A. Yes.

8 Q. And did they generate a lead in that regard?

9 A. Yes, they did.

10 Q. Who was that?

11 A. Pittinger Group.

12 Q. They also are called Vanguard Properties of the
13 Carolinas, I believe?

14 A. Yeah. I just stuck on the Pittinger Group so I
15 don't get confused on the Vanguard names.

16 MR. REYNOLDS: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. REYNOLDS:

19 Q. Jamie, I've handed you a couple of pages from
20 Exhibit 27 of the plaintiff's exhibits.

21 A. Yep.

22 MR. BARNETT: Your Honor, would you like a
23 copy of the exhibits?

24 THE COURT: Sure.

25 BY MR. REYNOLDS:

1 Q. Have you had a chance to take a look at that,
2 Jamie?

3 A. Yes.

4 Q. What is that?

5 A. It's a letter of intent to purchase 2,600 acres of
6 the Keystone tract of the Pittinger Group.

7 Q. What is the date of that letter?

8 A. March 1, 2007.

9 Q. Who signed it?

10 A. Bob Rogers as an authorized agent for North
11 Pleasant and agreed and accepted by Daniel Burns for
12 Vanguard Properties.

13 Q. Is it your understanding that that Daniel Burns is
14 the Daniel Burns who just testified by deposition?

15 A. That's my understanding.

16 Q. What is a letter of intent?

17 A. It's a term sheet, I guess, that the parties try
18 to agree to before they waste a lot of time. I kind of
19 call it a road map where you use a road map to get to an
20 enforceable contract because these letters of intent --
21 I've never had one that was binding.

22 Maybe these people have, but I haven't, so it's a
23 really good tool to get to an enforceable contract.

24 Q. Let's look at some of the terms in this road map.
25 How many acres were being sold?

1 A. 2,600.

2 Q. And what was the purchase price?

3 A. 9,200 an acre, which would -- I guess it is -- I
4 don't know if it says in here or not, but it was probably
5 23 million.

6 Q. Is the purchase agreement discussed right below
7 the purchase price?

8 A. Yeah. Purchaser will draft a first screen
9 settlement view. Both parties should negotiate in good
10 faith and execute purchase agreement within 14 days of
11 purchaser's acceptance of this LLI.

12 Q. What is the difference between a letter of intent,
13 or an LLI, and a purchase agreement?

14 A. Well, this is, like I said, a road map to get to
15 the purchase agreement and a helpful tool, and the
16 purchase agreement is a signed, enforceable contract.

17 Q. Earnest money is also discussed in a letter of
18 intent, isn't it?

19 A. Yes.

20 Q. How much money is proposed that the buyer put down
21 as earnest money?

22 A. I just read 50,000 within five days of execution
23 of the contract and \$450,000 before the money goes, hard
24 as we say, nonrefundable.

25 Q. To be clear, going hard means it becomes

1 nonrefundable?

2 A. Yes.

3 Q. There's an inspection period discussed below
4 that -- in general, what is an inspection period, also
5 called due diligence period; is that correct?

6 A. Yeah. It allows the purchaser of a property or
7 whatever to go in and investigate the property and see if
8 it meets the criteria that he needs to close.

9 Q. During that period, that due diligence period, is
10 the money, earnest money, typically refundable?

11 A. During the due diligence period?

12 Q. Yes.

13 A. Typically, yes. I've seen it where it wasn't, but
14 that's very unusual.

15 Q. Was there an additional amount to be put into the
16 earnest money escrow account at the end of the 60-day
17 period?

18 A. Before the end of the due diligence period, which
19 is 60 days, there was another 450,000 due in the escrow
20 account, yes.

21 Q. And closing is discussed as well, isn't it?

22 A. Closing will occur within 60 days of the
23 inspection period.

24 MR. REYNOLDS: Your Honor, do you care if I
25 approach?

1 THE COURT: You don't have to ask permission.

2 BY MR. REYNOLDS:

3 Q. Let me swap that with you, Jamie. Would you look
4 at the heading at the top right of that? See where it
5 says Vanguard?

6 A. Yeah, three zeros and three ones.

7 Q. So it's page 111 of the Vanguard documents?

8 A. Yes.

9 Q. You understand that to be Vanguard Realty or
10 Vanguard --

11 A. It's called the Pittinger Group, yes.

12 Q. What is the document that I just handed you?

13 A. Attached is the executed contract where the
14 surveyors working from Josh Hulen to Dan Fogarty, excuse
15 me, they're working on a new survey, and we should get
16 started on due diligence items tomorrow.

17 Q. Who is Josh Hulen?

18 A. He worked for Vanguard, the realty company, and he
19 was our representative.

20 Q. He was the broker on the deal?

21 A. Yeah. Even more than the broker, he, along with
22 Bob Rogers -- as a matter of fact, they negotiated this
23 contract.

24 Q. And who is Daniel Fogarty? I believe he was
25 mentioned in the Burns deposition.

1 A. Well, he works for the Pittinger Group.

2 Q. Was he involved in the due diligence?

3 A. Not to my knowledge.

4 Q. Look to the next page, if you would, please. What
5 is that?

6 A. The contract?

7 Q. Yes. What's the first page there?

8 A. Three zeros 112.

9 Q. And what does that appear to be?

10 A. It's a contract for the purchase of the property,
11 the 2,600 acres, by the Pittinger Group from North
12 Pleasant.

13 Q. Who is the seller in this contract?

14 A. North Pleasant.

15 Q. Who is the buyer?

16 A. The Pittinger Group.

17 Q. And what is that specifically referenced as there?

18 A. Vanguard Properties of the Carolinas, LLC.

19 Q. We're having some technical problems.

20 A. What do you mean?

21 Q. No, I don't think we actually need this. Why
22 don't we move on, Jamie.

23 A. I could use the light.

24 Q. If you'll look -- still on the first page of that
25 document -- and that's document 112, right?

1 A. Yes.

2 Q. You'll see the purchase price listed at the bottom
3 of page one, correct?

4 A. The purchase price, item two, yeah.

5 Q. Is that the same as in the LLI?

6 A. Yeah.

7 Q. Earnest money is listed right below that?

8 A. Yes.

9 Q. Is that the same as the letter of intent?

10 A. Exactly.

11 Q. So 50,000 initially?

12 A. That's right.

13 Q. And another 450 later?

14 A. Yeah. Next page, item B, yes.

15 Q. When was the \$450,000 supposed to be paid?

16 A. Before the end of -- before or at the end of the
17 due diligence period.

18 Q. Was the 50,000 paid?

19 A. Yes.

20 Q. And was the 450,000 paid?

21 A. It was because it was returned, so I know it was
22 in escrow account.

23 Q. If you look at paragraph C on page two, that's
24 page 113, it says payment at closing?

25 A. Yes.

1 Q. Does that list the gross amount of the purchase
2 price?

3 A. Yes, it does.

4 Q. What is that?

5 A. \$23,920,000.

6 Q. If you look at the bottom of page two, paragraph
7 three --

8 A. Okay.

9 Q. That says closing?

10 A. Yeah, closing date.

11 Q. When is the closing date supposed to take place?

12 A. On or about the date that is 60 days after the
13 expiration of due diligence period, inspection period is
14 what they call it, same thing.

15 Q. So there are two 60 days periods?

16 A. Yes.

17 Q. One for the due diligence and another period to
18 close; is that right?

19 A. Yes.

20 Q. And would you look to the end of that document,
21 Vanguard 123. Who signed that?

22 A. I'll be right with you. Bob Rogers. It's
23 authorized agent for the seller, which is North Pleasant,
24 and for Vanguard Properties of the Carolinas, Daniel
25 Burns, dated 3/15/07.

1 Q. Let's start out with the heading at the top of
2 that page.

3 A. Vanguard 000157.

4 Q. What is the top page?

5 A. It's a communication fax from Carol Jones to James
6 D. Reynolds. It just basically says that Jamie, being
7 me, signed for both because that was the easiest way to
8 do it.

9 Q. And what's the next page?

10 A. Well, that's where I signed for both.
11 Inadvertently, the Vintage land had been left out of the
12 agreement, so we had to go back and do an addendum to
13 make sure they were on board in the contract which we
14 did.

15 Q. And that is the purchase of this addendum to the
16 purchase agreement?

17 A. That's correct.

18 Q. And when was this signed by everybody well?

19 A. 3/21/07 by Burns; by Reynolds, 3/21/07.

20 Q. Is that the date the due diligence period began to
21 run?

22 A. Yes. Would have been earlier if we had not missed
23 that point.

24 Q. And when is 60 days from March 21, 2007?

25 A. May the 21st.

1 Q. And do you recall what day of the week that was?

2 A. I do. It was a Monday.

3 Q. But I want to focus on this timeline again. This
4 contract is signed 3/21; is that right?

5 A. Yes.

6 Q. And then the due diligence period begins?

7 A. That's correct.

8 Q. Was there anything unusual about the due diligence
9 period?

10 A. No.

11 Q. Was the project or the transaction on track to
12 close?

13 A. I got reports from Bob Rogers and Josh Hulen that
14 everything was on tract to close. Every time they called
15 me it was good news.

16 Q. This has been marked Plaintiff's Exhibit 4. Have
17 you seen that before?

18 A. I've seen it before.

19 Q. What is it?

20 A. It's a letter from the Pittinger Group, apparently
21 trying to attract investors, by the Keystone, the 2,600
22 acres. I guess it's Mr. Burns, and that one here
23 describes after the due diligence period they felt
24 comfortable closing. They would go to investors and
25 start raising the money.

1 Q. So this is the same Mr. Burns we heard from
2 earlier?

3 A. Daniel J. Burns, vice-president, yes.

4 Q. Did you hear him saying during his deposition he
5 went back involved when he decided to go hard, or words
6 to that effect?

7 A. Oh, yeah. I read it in his deposition. I just
8 heard it.

9 Q. And is this an indication he was raising money?

10 A. I would assume so. I sent him a letter, and I
11 assume he got back in the program because they felt
12 pretty certain he was going to close.

13 MR. WALKER: Objection, Your Honor. He's
14 speculating at this point. He didn't write it. We've
15 agreed that the letter can come in, but that's far
16 different from this witness speculating about what
17 Mr. Burns was thinking or what his intentions were.

18 THE COURT: Sustained. You can't speculate
19 what somebody else was thinking about.

20 BY MR. REYNOLDS:

21 Q. This is Vanguard 291, Exhibit 27. Let's swap this
22 page with you, Jamie. Have you seen that before?

23 A. Yes.

24 Q. What is it?

25 A. It's from Daniel Fogarty to Josh Hulen, saying

1 basically -- to Daniel from Josh. Josh is saying, We're
2 taking the master plan of Keystone and currently, pretty
3 soon, to get recorded and then --

4 Q. Let me back you up. There are two e-mails on that
5 page?

6 A. Oh, yeah.

7 Q. Who is the first one from?

8 A. How is everything going with you?

9 Q. And who's it from?

10 A. Josh Hulen to Daniel Fogarty.

11 Q. And he's asking what?

12 A. It says, How is everything going with you? I
13 believe the DD, due diligence, expires on Monday, and I
14 guess this is on Wednesday -- yeah. This is on
15 Wednesday. Give me an update when you can. Thanks.

16 Q. And was there a response to that e-mail?

17 A. Yeah, the same day, and it says we are on track
18 for Monday.

19 Q. Do you remember what date that Monday was?

20 A. The 21st.

21 Q. And you expected that earnest money would go hard
22 on the 21st?

23 A. That's correct.

24 Q. Based on everything that had happened to that
25 point?

1 A. Yes.

2 Q. Did it, in fact, go hard?

3 A. No.

4 Q. What happened from your perspective right before
5 the money went hard?

6 A. Well, that was Friday that Dan Burns received a
7 call from Hamilton Davis.

8 MR. WALKER: Objection, Your Honor. This
9 witness has no personal knowledge of that. He just
10 learned that well after the fact. A witness must have
11 personal knowledge of the matters he's testifying to.
12 He's venturing into what was going on somewhere else that
13 he was not a party to. It's hearsay per se.

14 THE COURT: You can lay a foundation for the
15 question.

16 MR. REYNOLDS: I'm happy to ask a different
17 question. Thank you, Your Honor.

18 BY MR. REYNOLDS:

19 Q. We're talking about your perspective, Jamie, from
20 Sunday the 20th. Did you find out there was a problem
21 with the earnest money going hard?

22 A. Yes.

23 Q. How did you find that out?

24 A. Bob Rogers, who had drafted a contract, and Josh
25 had been keeping me informed. Bob called me and said

1 that the deal -- I believe the term the deal is going
2 south, and it's really a crisis.

3 MR. WALKER: Objection, Your Honor. This is
4 all hearsay. He's characterizing what they said, saying
5 what they say, all hearsay, and we would ask that it be
6 stricken.

7 MR. REYNOLDS: Your Honor, he's in the
8 business doing land deals. This is part of his regular
9 day-to-day business.

10 THE COURT: Yeah, but he's wanting to testify
11 what somebody else said, so you would have to get that
12 person to come in here and tell you what they say.

13 He can't, so sustained. The jury will
14 disregard the last statement of the witness.

15 BY MR. REYNOLDS:

16 Q. Were you presented with an option regarding the
17 earnest money going hard on that Sunday?

18 A. Yes, either grant an extension or we want or
19 earnest money back.

20 Q. Which option did you choose?

21 A. The extension.

22 Q. And did you actually sign an extension or grant an
23 extension?

24 A. Authorized -- I can't remember if I signed it or
25 not. Yes, we did grant the extension.

1 Q. What happened after the extension was granted?

2 A. Well, we heard back from someone in Mr.
3 Pittinger's group, it might have been his attorney, that
4 he wanted the earnest money refunded.

5 Q. And that was done?

6 A. I think that was on the 25th.

7 Q. Was the earnest money refunded?

8 A. Yes.

9 Q. Who made that decision?

10 A. I did.

11 Q. In your mind was the Pittinger company entitled to
12 have a return the money?

13 A. I sent it back, yes.

14 Q. Let me backtrack a little bit on you. These are
15 Vanguard 378 and 381. What are those, Jamie?

16 A. May the 30th, 2007 contract for purchase of
17 property dated March 7, 2007 with Vanguard Properties and
18 Carolina, LLC, modified in affidavits March the 21st.

19 Q. And what is the effect of that?

20 A. We granted him an extension till June the 5th.

21 Q. Did the Pittinger Group take until June the 5th to
22 make up their mind?

23 A. No. We got a letter. I'm real sure it's dated
24 the 25th of May.

25 Q. This says 388 and 389, Your Honor. What's that,

1 Jamie?

2 A. It's basically saying we'll accept this. If
3 they're entitled to the money, we'll send it back.

4 Q. So you agreed to send it back. What's the date of
5 that?

6 A. May the 29th, 2007.

7 MR. REYNOLDS: Your Honor, I would like to
8 play the voice mail messages at issue, if that's okay
9 with Your Honor.

10 THE COURT: Do you want to be heard on that?

11 MR. WALKER: Objection.

12 THE COURT: Why?

13 MR. WALKER: He has no knowledge of the voice
14 mail.

15 THE COURT: Well, Mr. Gowder read it to the
16 jury in the opening, so I don't really think it matters
17 at this point what order it's in. Mr. Gowder published
18 it for the jury, so he can publish it now.

19 MR. WALKER: All right.

20 (Whereupon the voice mail was played for the
21 jury.)

22 BY MR. REYNOLDS:

23 Q. Have you heard that before, Jamie?

24 A. Yes, I have.

25 Q. This is Exhibit 5, Jamie. Is that a transcription

1 of what you just heard?

2 A. Yes, it appears to be, yes.

3 MR. REYNOLDS: Your Honor, I would like to
4 play the other voice mail message now, the one that was
5 left after that voice mail message. Any objection?

6 MR. GOWDER: I'm not aware of what that is.

7 MR. REYNOLDS: That was the one that was
8 played at Ms. Derosiers' deposition.

9 THE WITNESS: I'm not familiar with this at
10 all.

11 THE COURT: Let's send the jury back for a
12 couple minutes while we discuss this. Again, don't begin
13 deliberations or discussions.

14 (In open court, jury not present.)

15 MR. GOWDER: It's Mr. Burns forwarding this
16 e-mail to his partners, and he describes what it is, or
17 gives a description of it, and says, Listen to this, and
18 we would object to that. Mr. Burns never testified about
19 it in his deposition, and it just -- you know, we object
20 to it for a whole lot of reasons. It's irrelevant; it's
21 hearsay; no foundation has been laid for it.

22 THE COURT: What's the purpose of playing it?

23 MR. REYNOLDS: It is to provide corroboration
24 as to the reason Mr. Davis made the call. This is the
25 actual message from Mr. Burns made contemporaneously,

1 saying essentially what is in that document 304 that
2 we've been discussing, so it's Coastal Conservation of
3 that --

4 THE COURT: Why wouldn't you have gotten it
5 in during Mr. Burns to say did you say this and -- he's
6 not here, so it's hearsay, on your side. So if you can't
7 get it in as an admission as a party opponent, so what is
8 it that he says in it that you're trying to get in and
9 trying to prove by it?

10 MR. REYNOLDS: We're corroborating the e-mail
11 message that Mr. Burns sent shortly after this voice mail
12 message. Your Honor, this has been played before.

13 THE COURT: It doesn't matter that it's been
14 played before. It's whether or not it's admissible.

15 MR. REYNOLDS: It's been played before
16 without objection, Your Honor.

17 THE COURT: That doesn't matter either,
18 unless they stipulated that it was coming in. It doesn't
19 just come in just because it got played in a deposition.
20 It comes in if it meets one of the rules of evidence, so
21 if it's just this guy saying, Here is this, I don't
22 understand why you didn't ask Mr. Burns about it in his
23 deposition and get it in through him.

24 MR. REYNOLDS: That would have been a better
25 course of action perhaps, Your Honor.

1 THE COURT: It might have been a successful
2 course of action. I don't see where it meets the
3 definition of hearsay. It's an out of court statement.
4 He could have come in and said what it is. He's not
5 here, and it doesn't matter whether it's for
6 corroboration purposes.

7 MR. REYNOLDS: I understand, Your Honor.
8 Thank you.

9 THE COURT: Is there anything else?

10 MR. WALKER: Nothing, Your Honor.

11 THE COURT: All right. Bring the jury back
12 in.

13 Where are you going with document 304?

14 MR. REYNOLDS: The document that was the
15 subject of Mr. Gowder's motion in limine, which was the
16 e-mail from Burns to Fogarty.

17 THE COURT: You can ask him about it, sure.
18 You can ask him about that.

19 MR. REYNOLDS: And can I read it out loud --
20 since it's not going to be an exhibit, read it out loud
21 or have him read it out loud?

22 THE COURT: Yeah. I think that's in accord
23 with my ruling, and it's over your objection.

24 MR. WALKER: All right. Well, this is for
25 another reason, and that is that this witness has no

1 personal knowledge of it. When we looked at the motion
2 in limine, it was whether Mr. Burns had sufficient
3 recollection or not, and it came in, as to him, as a past
4 recollection recorded as to him. Here, they're going to
5 present a statement that was not made by this witness who
6 was not in his presence that he has no personal knowledge
7 of and under --

8 THE COURT: What do you want to ask him about
9 it?

10 MR. REYNOLDS: I want his reaction to the
11 e-mail, not whether it's true or not.

12 THE COURT: Did he ever see it?

13 MR. REYNOLDS: He has never seen it, no, but
14 his business decision was made based on the information
15 that's contained in that e-mail.

16 THE COURT: But if he didn't see it, how was
17 it made on that?

18 MR. WALKER: Because the basis of it, the
19 substance of it was presented to him by Josh Hulen and
20 others.

21 THE COURT: Ask him what you want to ask him.
22 I'm a little bit confused how he could make a decision
23 based on something he didn't have presented to him.

24 MR. REYNOLDS: I would ask him to read it,
25 and then I would ask if that's essentially what he was

1 told by Mr. Hulen and if that was the basis for his
2 decision to grant the extension.

3 THE COURT: And Mr. Hulen is who?

4 MR. REYNOLDS: He's the broker representing
5 North Pleasant.

6 THE COURT: All right. Go ahead. Ask him
7 that question.

8 BY MR. REYNOLDS:

9 Q. Jamie, you've seen this before. Do you know what
10 I'm talking about?

11 A. You'll have to show that to me, Chuck.

12 Q. Is that consistent with what you heard that
13 Sunday?

14 A. Yes.

15 MR. REYNOLDS: And then I would follow up,
16 asking him about the D.R. Horton reference and the
17 conservation easement reference. Those are the three
18 questions I would ask him with regard to that document.

19 THE WITNESS: Ask it again, Chuck. I'm
20 sorry.

21 MR. REYNOLDS: Do you want to hear his
22 answer, Your Honor?

23 THE COURT: Sure.

24 BY MR. REYNOLDS:

25 Q. Is that consistent with what you heard that Sunday

1 when you got the call from Josh Hulen?

2 A. It's consistent. It's a little more information
3 in here than I heard on that Sunday.

4 Q. Did Josh mention D.R. Horton?

5 A. No, he didn't.

6 Q. And did he mention the conservation concerns?

7 A. Oh, yeah.

8 Q. I thought he mentioned Horton?

9 A. Actually, it was not Josh. I have a question
10 that's way off the table. I've been sitting here
11 thinking about some testimony I made. Can you redirect
12 the question to me? I just thought of something early on
13 in your questions that I need to --

14 Q. Is it a correction?

15 A. It's a correction.

16 Q. Why don't we save that for cross-examination,
17 okay, if it comes up?

18 THE COURT: You want to change your answer
19 from something you gave earlier?

20 THE WITNESS: Not change my answer, but
21 something I neglected to think of until I've just been
22 sitting here for the last five minutes.

23 BY MR. REYNOLDS:

24 Q. What is it?

25 A. It was early on when you asked me what happened

1 right after we closed the property and what happened
2 then, and I, by accident, skipped some things that
3 actually -- the first thing that happened is we had a
4 meeting with people in the governor's office and tried to
5 work out a deal with them, and they tried to work out a
6 deal with us, so that's the first thing that happened,
7 and it went over my head and -- you know, and there were
8 several parties involved in that conversation.

9 So it was an effort to try to reach an agreement
10 with the State, or the powers to be, and I just neglected
11 to say that.

12 MR. REYNOLDS: Do you mind if I ask him that,
13 Your Honor, once the jury comes back, if he wants to
14 amend one of his answers?

15 THE COURT: This was after they purchased the
16 property?

17 THE WITNESS: Can I say it? He asked me what
18 happened to me after we purchased the property, and I
19 went straight to -- I skipped over something, which was
20 we tried and the state tried to work with us and we tried
21 to work with the state, so I neglected to say that, and I
22 wanted -- I guess that's the correction.

23 MR. REYNOLDS: Yeah.

24 THE COURT: I don't know that it adds
25 anything.

1 MR. WALKER: We have no objection to
2 Mr. Reynolds asking Mr. Reynolds about what went on. I
3 don't think it's an amended answer, he's just testifying
4 to a little more information.

5 But to get back to where we started this,
6 before we went on the detour, what this witness is
7 getting ready to testify to is what somebody else told
8 him, I think he said it was Bob Rogers or Josh Hulen,
9 both of whom are his agents. That's hearsay.

10 The document he has before him, he didn't see
11 because it wasn't in the hands of anybody other than the
12 Pittinger company until four years after the events
13 occurred when the deposition was taken September 2011.
14 He has no knowledge of it.

15 If he's going to testify as to why he granted
16 the extension, he should say, Here are the reasons I
17 granted the extension.

18 THE COURT: And that would not be hearsay.

19 MR. WALKER: That would not be hearsay.

20 THE COURT: But he could say what somebody
21 told him on Sunday afternoon, even if it was not one of
22 his people. If he's not offering to prove the truth of
23 the matter asserted, that is, whatever Hamilton Davis
24 said in that as to why he agreed to grant an extension.

25 MR. WALKER: And I agree with that, but it's

1 his reading something else that was not the reason at the
2 time.

3 THE COURT: I would agree. You can ask him
4 what these people said to him. If they didn't read or
5 play the thing for him at that time -- it wasn't the
6 basis for his decision, so it's not exactly putting it in
7 the context, but I'll allow you to ask him about he got a
8 conversation from some of the people that worked for him
9 or their agents, I gather, and he can say, This is what
10 they told me and this is what I did as a result of that,
11 which is grant the extension, I gather, is where we're
12 going with that.

13 MR. REYNOLDS: That is where we're going.

14 MR. WALKER: We're fine with that. We also
15 point out this e-mail was the day after the
16 conversations, so -- anyway, we're where we need to be.
17 Thank you.

18 MR. SMITH: Your Honor, could I have a minute
19 to visit the men's room?

20 THE COURT: Be quiet when you come back. All
21 right. Bring the jury back in now. So take that off the
22 screen.

23 (In open court, jury present.)

24 THE COURT: All right. You may resume with
25 your examination of the witness.

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BY MR. REYNOLDS:

Q. Thank you, Your Honor. We're back on May 20, that Sunday, okay?

A. Okay.

Q. And you said you received a call, I believe it was from Bob Rogers?

A. Yes.

Q. And I think you said the purpose of that was to give you an option either to terminate the contract or grant an extension; is that right?

A. Yes.

Q. And what was the reason that you were given as to why the buyer was at this point getting cold feet?

A. Basically, Bob called and say either grant the extension or they're going to walk, and he said there's a threat to put a conservation easement on the property so it can't be developed, and so I said, Well, let's grant the extension.

Q. Did you have any indication at that point from that call where that threat came from?

A. Yes. You mean he told me where -- well, he told me that's where it came from.

Q. Where did he say it came from?

A. That the Coastal Conservancy had left a message

1 with the Pittinger Group?

2 Q. And that is where the threat was contained?

3 A. Yes.

4 Q. We heard in opening that there were different
5 stories about the reason that contract was terminated.
6 In your opinion, why was the contract terminated by the
7 Pittinger Group?

8 MR. WALKER: Objection. He can't testify as
9 to why Mr. Pittinger terminated the contact. He can't
10 render an opinion. He's a lay witness. He can only
11 testify as to what he knows, but he can't speculate about
12 why Pittinger terminated the agreement.

13 THE COURT: He can testify as to what they
14 told him. He couldn't speculate, but he could testify as
15 to what they told him, why he was backing out of the
16 contract or not going forward with it.

17 Go ahead.

18 MR. REYNOLDS: You want to try another
19 question, Your Honor?

20 THE COURT: You may.

21 BY MR. REYNOLDS:

22 Q. Were you told why the Pittinger Group terminated
23 the contract?

24 A. Not by the Pittinger Group. I was told by Bob
25 Rogers.

1 Q. And why was that?

2 MR. WALKER: Objection, Your Honor. Goes to
3 the truth of the matter asserted. He was not speaking to
4 the Pittinger Group. He spoke to Bob Rogers.

5 THE COURT: Somebody else can ask the
6 question, but not you.

7 MR. REYNOLDS: Let's backtrack a little bit.

8 BY MR. REYNOLDS:

9 Q. Earlier, we talked about what happened with the
10 property immediately after the purchase. Did you list
11 everything that North Pleasant did, or would you like to
12 add something?

13 A. I would say immediately after the purchase we did
14 meet with the state and the Department of Natural
15 Resources there at the capital, and it was a meeting that
16 we tried to reach an agreement with the powers to be to
17 sell them a tract, so that was kind of the first thing
18 that happened, and there were offers made from -- I
19 forget the institute, whether it's DNR, to try to put a
20 deal together. So I neglected to say that, and I just
21 wanted to go back and correct it.

22 Q. Thank you. Back to the termination of the
23 contract. I believe it was terminated on the 25th of
24 May?

25 A. That's when we received written notice.

1 Q. And we've established that the phone call was made
2 on the 18th of May?

3 A. Yes.

4 Q. Do you take the proximity between that call and
5 the termination of the contract to be coincidence?

6 A. No.

7 Q. What do you take it as?

8 MR. WALKER: Objection, Your Honor. He is
9 rendering opinions now. He's not testifying there's
10 something he knows. He's speculating about why the
11 purchaser did not close. He's just trying to do
12 indirectly what he couldn't do through the hearsay
13 question a minute ago.

14 MR. REYNOLDS: I'm not asking him what
15 anybody said. I'm not asking him what Pittinger thought.
16 I'm asking him, as a real estate person who's been in the
17 business for 30 years, whether he thinks it's merely
18 coincidence that this call happened on one Friday and the
19 contract was terminated the next Friday.

20 THE COURT: Well, that would just be pure
21 speculation.

22 MR. REYNOLDS: It would be based on his
23 knowledge, being in a buyer's situation, like Pittinger
24 was.

25 THE COURT: He can't say why somebody told

1 him they backed out of it. It would just be him
2 speculating.

3 MR. REYNOLDS: Well, I'm asking him if
4 there's a connection in his mind, beyond just
5 speculation, between the call and the backing out, and --

6 THE COURT: I don't know how you get beyond
7 just mere speculation. You only can go on what somebody
8 told you, and that would be why the buyer said they
9 backed out. Anything else is just bringing things up.

10 MR. REYNOLDS: Thank you, Your Honor.

11 BY MR. REYNOLDS:

12 Q. Would you tell us why the buyer backed out?

13 MR. WALKER: Objection, Your Honor.

14 THE COURT: Did anybody from the buyer tell
15 him that?

16 MR. REYNOLDS: He's had no contact with the
17 buyer, but he still received information that would form
18 the basis of that opinion.

19 THE COURT: Yeah, but here is the deal: I
20 assume you got somebody else who is going to be able to
21 come in and say, This is why we have done this.

22 It's just not coming in through him. Okay?

23 MR. REYNOLDS: Very well, Your Honor.

24 BY MR. REYNOLDS:

25 Q. Had the extra \$450,000 been deposited in the

1 escrow account?

2 A. Had it been?

3 Q. Yes.

4 A. At what time?

5 Q. On the 18th, that Friday before it was to go hard.

6 A. I don't know.

7 Q. Was -- was the 450 eventually --

8 A. Yes, because it was returned.

9 Q. In your experience, does a potential buyer
10 typically post a second piece of the earnest money unless
11 they're ready to go to contract?

12 A. In my experience, I've never had anybody post it,
13 you know, that late in the date or in the deal that
14 didn't -- I can't think of anybody that didn't go through
15 the deal with that sum of money. I've had, you know,
16 people who walked from a contract and smaller sums, but
17 not \$500,000.

18 Q. Prior to that Friday, the 18th, did you have any
19 reason to think that there was a problem with the
20 Pittinger due diligence?

21 A. No, I did not.

22 MR. REYNOLDS: Thank you. That's all I have.
23 Thank you, Your Honor.

24 THE COURT: Cross?

25 MR. WALKER: I have a half hour. You want me

1 to start, Your Honor?

2 THE WITNESS: Please.

3 THE COURT: Well, if that's all you got,
4 we'll go ahead and finish with this witness.

5 MR. WALKER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. WALKER:

8 Q. Mr. Reynolds, I'm Trenholm Walker. Good
9 afternoon. We haven't met before.

10 Now, we were just talking a minute ago about the
11 events of May 25, 2007 when Mr. Pittinger's company
12 decided they weren't going to proceed with a contract to
13 purchase 2,600 acres, correct?

14 A. Yes.

15 Q. And today we're in court because you're claiming
16 that our client, the Coastal Conservation League, owes
17 you how many millions of dollars?

18 A. About 17.

19 Q. So you're saying today they owe you \$17 million
20 dollars, and after Mr. Pittinger terminated that
21 contract, it would have been a very easy thing to get
22 ahold of the Conservation League, wouldn't it, and say,
23 Guys, you messed up a deal. Where is my money?

24 You didn't do that?

25 A. No. I was hoping to sell the property so it

1 wouldn't come to this.

2 Q. You didn't put them on notice at all. You didn't
3 go to them and say, We think you're responsible for
4 losing \$17 million. That's a lot of money.

5 A. Yes, it's a lot of money, but I was hoping I could
6 sell the property.

7 Q. You didn't call them to say, Boo, that y'all got
8 in the way of my deal then, did you?

9 A. I did not personally.

10 Q. Nobody with your company did that either?

11 A. Not that I know of.

12 Q. And when you refunded the \$500,000, I think you
13 testified you agreed he was entitled to that money,
14 correct?

15 A. Yes, sir. I sent it back.

16 Q. He didn't breach his agreement, did you?

17 A. I'm not a lawyer, but no, I don't think he
18 breached his agreement.

19 Q. Did you send an e-mail saying you think he was
20 fully entitled?

21 A. Yes, I did.

22 Q. And Josh -- and just to refresh your recollection,
23 May the 29th, 2007, that's Josh Hulen, your real estate
24 agent?

25 A. Yes.

1 Q. Please notify all relevant parties that we, the
2 seller, acknowledge that the buyer is entitled to the
3 full refund of the deposit. Furthermore, the seller
4 agrees to release the deposit to the buyer. You said
5 that, did you not, at the time?

6 A. That I signed? Just curious. That's not my
7 document, but that's James D. Reynolds.

8 Q. And who are you?

9 A. I'm James M. Reynolds.

10 Q. Who is Jamie D. Reynolds?

11 A. He's my cousin's son.

12 Q. How did he get involved in this? Well, I take
13 that back. We don't need to go into this.

14 A. They just ran out of names in the family.

15 Q. Another Jamie?

16 A. Another Jamie. I got one too.

17 Q. All right. Well, we're going to stick on just one
18 Jamie, okay?

19 A. All right.

20 Q. In October 2007, you went before Berkeley County
21 Council to seek a development permit for your property,
22 did you not?

23 A. No, sir, I didn't.

24 Q. Did your company go before Berkeley County
25 Council?

1 A. I'm not sure of the date, but yeah, the company
2 did go before the council at some point, but I wouldn't
3 know exactly the date.

4 Q. We heard a little bit about a development
5 agreement. A development agreement is where a property
6 owner that has a tract gets together with the government
7 that has the zoning on that tract and reaches an
8 agreement with the government, in this case Berkeley
9 County, on how that piece of land, in this case Keystone
10 tract, can be developed, correct?

11 A. Yes.

12 Q. And, in fact, what it does is it prevents the
13 county from changing your zoning and changing the rules
14 over the period you owned the property, correct?

15 A. That's one of the things it does, I'm sure.

16 Q. It's a pretty good thing, isn't it?

17 A. I'm sure it is.

18 Q. And we got that right. Not only the right to you,
19 you can give that right to the person that buys the
20 property from you, right?

21 A. Yes.

22 Q. Oh, that's pretty good, isn't it?

23 A. Yes, sir.

24 Q. And that development agreement was beneficial to
25 you because it inoculated you and insulated you against

1 later changes in zoning, isn't it?

2 A. It was something we had to do after the threat.

3 Q. When you went to this development agreement, you
4 were represented by some lawyers in Charleston, the firm
5 of Nexsen Pruet, weren't you?

6 A. I don't remember the names.

7 Q. Do you recall George Bullwinkel and Neil Robinson?

8 A. I don't remember the names but -- I couldn't
9 forget that. Come on.

10 Q. George and Neil represented you with the county,
11 right?

12 A. I'm sure you're right, yeah.

13 Q. Okay.

14 A. I'm just saying I never met them.

15 Q. All right. Well, I'll represent to you that they
16 represented before council -- they represented North
17 Pleasant and Vintage. Isn't it also true that those two
18 lawyers, Neil Robinson and George Bullwinkel, acting on
19 your company's behalf, were looking into the conservation
20 league to support the presentation of the development of
21 the Berkeley County Council so that there would be a
22 greater chance of Berkeley County Council giving you this
23 vested right?

24 A. I do not know.

25 Q. I'm handing you what has been marked as

1 Defendant's Exhibit 1, and it is an e-mail from George
2 Bullwinkel, the lawyer we were talking about, to Hamilton
3 Davis, the voice mail man, October 8, 2007.

4 Subject: Revised Keystone DA, short for
5 development agreement, and it says, Hamilton, please find
6 the revised DA attached per our conversation. Let me
7 know your thoughts.

8 Does this appear to be accurate?

9 A. I don't think I've ever seen this document before,
10 but I've seen the final development agreement.

11 Q. What is attached to it is either the final draft
12 or close to the final draft of the development agreement,
13 isn't it?

14 A. I'll say it's accurate.

15 Q. All right. Good enough. And that night did you
16 go to the meeting before Berkeley County Council on
17 October 8, 2007 when they were going to scratch their
18 heads and say, Are we going to approve this development
19 agreement? Let's see what the community has to say?

20 Did you go to that meeting.

21 A. No, sir.

22 Q. Are you aware that Hamilton Davis, who is now the
23 main culprit, you say, in this case, that he stood up at
24 your lawyer's request and he supported your development
25 agreement?

1 A. I don't know if I can say it. I read it in a
2 deposition.

3 Q. You have no reason to doubt that, do you?

4 A. No. I don't have any reason to doubt it because I
5 don't think he put it -- somebody put it in a deposition
6 that I read. I would, and I guess I'll get interrupted,
7 but speculate why he did it.

8 Q. I'm not asking you why he did it. I'm asking you,
9 you don't have any reason to contest that he actually
10 spoke in favor of your company's development?

11 A. I answered that. Yes, sir.

12 Q. And during that time, nobody said, By the way,
13 Hamilton, nice job, but we're going to be suing for you
14 15 mill?

15 Y'all didn't give him any notice that you were
16 going to turn around and sue the league for 15 million,
17 did you?

18 A. I didn't.

19 Q. And nobody on your behalf did that either, did
20 they?

21 A. Not to my knowledge.

22 Q. If you believed at that time your company had a
23 \$15 million claim, if you believed that at that time,
24 wouldn't it have been fair to tell Mr. Davis, tell
25 Mr. Beach, write something to the league and say, We're

1 coming after you, if you were going to did --

2 A. I guess I'm a broken record, but what we hoped to
3 do was to replace that buyer with another buyer, at the
4 same price or greater price or something in the proximity
5 to that price, and then none of us would be sitting here
6 today. So I wanted to give that an opportunity to
7 unfold, to see if that could happen.

8 Q. You thought you could do that, didn't you?

9 A. I hoped that I could.

10 Q. In fact, the first time you let the conservation
11 league know you were going to look to them to pay
12 multiple millions of dollars is when you authorized your
13 lawyers to file suit against them on May 20th, 2010,
14 three years later. That's the first time that you or
15 your company gave any notice to the conservation league
16 that you were going to ask them to write you a check for
17 this money because of what they did back in 2007, isn't
18 it?

19 A. Here goes the broken record again. We gave it
20 every opportunity to try to sell the property. The
21 window was closing. We had a statute of limitations. On
22 advice of counsel, we realized we had to either move
23 forward or drop it, but we wanted to give it every
24 opportunity to try to move the property to somebody else.

25 Q. And there were much greater events happening

1 property. We couldn't sell it. The statute of
2 limitations was running out. We had to either fish or
3 cut bait.

4 Q. And you could have fished any time in that three
5 years up to then too, right?

6 A. Yes, sir.

7 Q. All right. Now, let's talk about North Pleasant.
8 North Pleasant is an Ohio company?

9 A. I believe that's right, yes.

10 Q. And North Pleasant owns about, what 62, 61, 62
11 percent of this land, undivided interest?

12 A. It might be more than that.

13 Q. 72?

14 A. Like 70, or --

15 Q. 71, 70?

16 A. In the 70 range, yeah.

17 Q. And Vintage Land owns about 28, 29?

18 A. Yeah, the balance.

19 Q. And one of the owners in North Pleasant is
20 Mr. Chuck Reynolds, your lawyer, correct?

21 A. That's correct.

22 Q. And so if there is a big recovery in this case, he
23 gets a piece of it, right, as an owner?

24 A. I hope so.

25 Q. All right. Now, you paid something like \$19

1 million to International Paper to buy this property?

2 A. Yeah, just shy of \$20 million.

3 Q. And at the time you bought that, I think you
4 mentioned this, one of the first things you did was you
5 went to Columbia to meet with folks about the possibility
6 of a state entity coordinating the acquisition of your
7 property, correct?

8 A. Yeah. They called us, and we went to meet with
9 them.

10 Q. Who called you, was it DNR --

11 A. Actually, they didn't call me, they called Mercer
12 Reynolds.

13 Q. Are you aware that the state had approached your
14 group about coming to Columbia because there were people
15 up there that wanted to preserve this property, correct?

16 A. I was aware that we would have a meeting at the
17 governor's office. I really didn't know who was going to
18 attend, yes.

19 Q. When you got there, was governor Mark Sanford
20 there?

21 A. Yes.

22 Q. Were representative of the Department of Natural
23 Resources, DNR --

24 A. Was that a Mr. Frampton.

25 Q. John Frampton?

1 A. Yes, he was there.

2 Q. John Frampton, the head of the South Carolina
3 Department of Natural Resources, he was there, correct?

4 A. That's my recollection. I remembered his name.

5 Q. And the upshot of that meeting was that these
6 individuals at the top of state government were very
7 interested in seeing that you preserved the Keystone
8 tract or working with you so that the state could buy it
9 for the people of South Carolina, wasn't it?

10 A. That's what I took from the meeting.

11 Q. They want it protected for all the people, and
12 they wanted to talk to you about doing that, correct?

13 A. Well, they didn't want us to own it, I can tell
14 you that for sure.

15 Q. Now, we mentioned these people out there, Governor
16 Sanford, and he was fairly vocal about conservation of
17 this land, wasn't he?

18 A. You mean in the past or in the -- I mean --

19 Q. At that meeting, he was an advocate for
20 conservation of that land, Governor Sanford?

21 A. Yeah. I think that's fair to say, yeah.

22 Q. And John Frampton, head of DNR, he wanted this
23 land preserved too, didn't he?

24 A. Yeah. They didn't want us to have it, yes.

25 Q. And those are two people, very big in government,

1 A. I don't know if I received a copy of this letter
2 or not, but what I was aware that there was an offer from
3 some agency in South Carolina, but I couldn't tell you
4 that I received this letter.

5 Q. You were aware that the South Carolina Department
6 of Natural Resources and conservation partners including
7 several landowners located adjacent to the Keystone tract
8 were pleased to present an offer to purchase the Keystone
9 property, were you not?

10 A. I would be speculating again, but I'm sure
11 something of that magnitude would have been brought to my
12 attention.

13 Q. All right. And do you remember having a letter
14 exchanged in the fall of 2005 with Mr. Frampton?

15 A. Me?

16 Q. Yes, sir.

17 A. No, sir.

18 Q. You do not?

19 A. No.

20 Q. Did you draft letters in response to Mr. Frampton?

21 A. Not to my recollection.

22 Q. I'm going to hand you Defendant's Exhibit 3, which
23 is a draft of the letter of James Reynolds to John E.
24 Frampton, director. Are you familiar with that letter?

25 A. I am now.

1 Q. Did you prepare this letter, James Reynolds?

2 A. No.

3 Q. You did not?

4 A. No. You got the wrong Jamie again.

5 Q. Were -- did you review this letter?

6 A. Not that -- I don't think so.

7 Q. All right. Well, let me ask you this, to speed
8 things along, for the benefit of the jury. The South
9 Carolina Department of Natural Resources ended up making
10 a proposal in writing in December to purchase the
11 Keystone tract from you for \$26 million, did it not?

12 A. I remember that, yes, sir.

13 Q. Marked as Defendant's Exhibit 4. Let's see if you
14 remember that, a letter from John Frampton, Mercer
15 Reynolds. You do remember they offered 26 million,
16 correct?

17 A. I'm reading it right now, yes, sir.

18 Q. Sorry?

19 A. This would -- yeah, a letter went off with no
20 details on contingencies or any kind of contract, even
21 when they consider the letter of intent.

22 Q. All right. You are familiar with this letter,
23 though. It went around your group, did it not?

24 A. I'm sure it did, yes, sir.

25 Q. And you would have been one of many people to get

1 was more a formal offer that was generated.

2 Q. All right. And if you had done the \$26 million
3 offer that was suggested there, and you paid \$19 million
4 for it ten months earlier, you would have made over --
5 made \$6 million, plus or minus, right?

6 A. Well, you wouldn't have made that much. You would
7 have to pay taxes. As far as I know, there might have
8 been commission involved. I can't remember, but, no, you
9 would never have made \$6 million. You got a basis in the
10 land, you don't even have long term capital gains, so no,
11 you wouldn't make \$6 million.

12 Q. The offer was more than \$6 million over what you
13 paid for it back in February, correct, the offer?

14 A. This letter here?

15 Q. The offer of 26 million.

16 A. I don't really consider this, you know. It's not
17 even a letter of intent, but yes, this letter says \$26
18 million.

19 MR. WALKER: Your Honor, we would offer
20 Defendant Exhibit 4 into evidence.

21 MR. REYNOLDS: No objection, Your Honor.

22 THE COURT: Admitted.

23 (Defendant's Exhibit No. 4 was marked for
24 identification and admitted into evidence.)

25 BY MR. WALKER:

1 Q. Now, shortly before this, your group had taken out
2 a mortgage on the property, and when you got a loan for
3 it, you had to have an appraisal, didn't you?

4 A. I'm sure we did.

5 Q. And do you recall there was an appraisal prepared
6 October 17, 2005 of the entirety of the land we're
7 talking about for \$25 million?

8 A. You would have to show it to me.

9 Q. I marked as Defendant's Exhibit 5 appraisal of the
10 North Pleasant and Vintage Land Keystone tract being
11 4,478.28 acres dated October 17, 2005.

12 A. Yeah, that is correct.

13 Q. And what is the value that that appraiser said all
14 the land was worth two months before DNR offered 26
15 million?

16 A. \$25,200,000.

17 Q. So when Mr. Frampton says he questions whether
18 they are -- we have serious concerns an appraised value
19 would support a higher offer, in fact, the appraisal you
20 got two months earlier was lower than what DNR was
21 offering, correct?

22 A. According to this appraisal. We have a big
23 difference between -- you need to show me an offer,
24 rather than just a letter.

25 MR. WALKER: We would offer Defendant's

1 Exhibit 5 into evidence, Your Honor.

2 MR. REYNOLDS: No objection, Your Honor.

3 THE COURT: Admitted.

4 (Defendant's Exhibit No. 5 was marked for
5 identification and admitted into evidence.)

6 BY MR. WALKER:

7 Q. Well, your company got back to Mr. Frampton, did
8 it not, to officially reject DNR's offer of 26 million
9 and to tell DNR that you were unwilling to -- that you
10 wanted \$35 million for it?

11 A. That wouldn't have come from me.

12 Q. Are you aware that the other James Reynolds got
13 back to Mr. Frampton and said that the 26 million was
14 unacceptable and that it would take 35 million if they
15 wanted to buy the property outright?

16 A. I'm sure you're right. You're looking at the
17 letter.

18 Q. I am.

19 A. So I'll go with it.

20 Q. Who is Carol Jones?

21 A. She's my assistant. She's been for 36 years.

22 Q. And did she or does she occasionally prepare
23 reports to go to all the partners in Keystone, in your
24 group, about what was going on?

25 A. Yes.

1 Q. And would she be the one to deliver the bad news
2 of, We need a little more money from you, partners?

3 A. That would be her job.

4 Q. So she looked after the books and she sort of
5 oversaw the financial side of things, did she not? Not
6 day-to-day, but --

7 A. I would say that's correct, yes.

8 Q. Okay. I've marked as Defendant's Exhibit 6 a memo
9 from Carol Jones to Mercer, Jamie, and Chuck dated July
10 15, 2009. I would ask you if you can identify that.

11 A. Yeah, that's from her. Like you said, bad news.

12 Q. In this memo, does she go over incoming money and
13 what the expenses are, sort of give you a snapshot of
14 what's going on financially?

15 A. That's right.

16 Q. And attached to that, on page three is something
17 that she calls Keystone project summary of cash activity
18 from inception to June 29, 2009. Do you see that?

19 A. Yes, sir.

20 Q. Now, Ms. Jones, she's relatively good at these
21 bookkeeping type things, is looks like, is she?

22 A. Yes, sir.

23 Q. Would her figures on this page three be accurate
24 about the incoming revenues as well as the outgoing funds
25 and costs that were associated by your group on this

1 property?

2 A. I would say yes.

3 Q. Okay.

4 MR. WALKER: Your Honor, we would offer
5 Defendant's Exhibit 6 into evidence.

6 MR. REYNOLDS: No objection, Your Honor.

7 THE COURT: Admitted.

8 (Defendant's Exhibit No. 6 was marked for
9 identification and admitted into evidence.)

10 BY MR. WALKER:

11 Q. And going back to the different entities that were
12 concerned about the development of the Keystone projects,
13 one of those groups that was concerned was the United
14 States Forest Service, was it not?

15 A. I'm sure that they would have been one of the
16 groups.

17 Q. And if you go back and you look at Defendant's
18 Exhibit No. -- I believe it was 4, which is the -- is
19 that the letter of December from John Frampton?

20 A. I'm sorry. Yes, that's right.

21 Q. If you go down to the fourth paragraph, he says,
22 We are still very interested in the conservation of
23 Keystone and sincerely hope you will reconsider our
24 offer. If you're not familiar with the conservation
25 efforts being initiated by local officials, I encourage

1 you agree with that?

2 A. Cause you say I was speculating.

3 Q. You would be, wouldn't you?

4 A. Well, not in my mind, and in yours, I'm certain.

5 Q. But you did not seek any written confirmation from
6 Mr. Pittinger before you brought this lawsuit to confirm
7 one way or another the reasons he decided not to --

8 A. You would be correct, yes.

9 MR. WALKER: One moment, Your Honor.

10 That's all I have at this time, Your Honor.

11 THE COURT: Redirect?

12 MR. REYNOLDS: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. REYNOLDS:

15 Q. Let's talk about those millions of dollars, Jamie.
16 This is plaintiff's 30. Do you have a copy of it?

17 MR. WALKER: May we see a copy of it?

18 MR. REYNOLDS: Sure.

19 MR. WALKER: We object to this, Your Honor.

20 THE COURT: Why is that?

21 MR. WALKER: Well, number one, it's hearsay;
22 number two, it's not relevant, and it's not accurate, by
23 any means, for admissible calculation what their loss
24 would be.

25 THE COURT: What is it?

1 MR. BARNETT: Yes.

2 THE COURT: She's your witness?

3 MR. BARNETT: Well, yes. She's under
4 subpoena.

5 (In open court, jury present.)

6 THE COURT: We're going to resume where we
7 left off yesterday, and that is with the redirect of
8 Mr. Reynolds.

9 The bailiff said you wanted to have notepads
10 which is fine. Let me just tell you, for those that take
11 notes, don't let it distract from the testimony. I
12 really don't allow those notes to go back when you are
13 deliberating because you run the risk of somebody saying,
14 Look, this is what I wrote down versus what you wrote
15 down, and I'm right. If you have some kind of conflict
16 between memories, we have the ability to play back the
17 testimony, so I'll let you take notes during the trial,
18 but they won't be allowed back in the jury room during
19 deliberations. All right?

20 So I'll remind you, sir, you are still under
21 oath. If you're ready, you may begin.

22 MR. REYNOLDS: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. REYNOLDS:

25 Q. Good morning, Jamie.

1 A. Good morning.

2 MR. REYNOLDS: Your Honor, I'm going to give
3 Exhibit 30 to the witness. I've already given a copy to
4 you, Andy? That's this?

5 MR. GOWDER: Yes.

6 BY MR. REYNOLDS:

7 Q. Jamie, take a look at this. See if you can
8 identify it.

9 A. Yes. This is a damage summary for North Pleasant,
10 LLC that asks Carol Jones to generate and provide me this
11 information. Then I reviewed it and approved it.

12 Q. Did this memo come from you?

13 A. Yes.

14 Q. Let's go through line by line, but let's start out
15 with the total damage number. Then we can figure out how
16 we got there. What is the total damage there?

17 A. \$16,506,035.

18 Q. And as I look at it, there are three components.
19 Let's talk about the lost profit component. Do you see
20 those first four entries, the contract price?

21 A. Yeah, I see them, contract price 23,920,000.

22 Q. And then what is the deduction from the contract
23 price?

24 A. Well, we deducted the 6 percent commission due
25 Vanguard Development, LLC.

1 Q. How much was that?

2 A. \$1,435,200.

3 Q. So what was the total expected from the Pittinger
4 contract?

5 A. \$23,930,000.

6 Q. What was the total net of the --

7 A. Less the commission, \$22,484,800.

8 Q. And North Pleasant ultimately sold the property;
9 is that right?

10 A. Yes.

11 Q. How much did North Pleasant receive per acre on
12 the sale of this property?

13 A. \$3,116.

14 Q. What is the total of that number times the 2,600
15 acres?

16 A. \$8,103,368.

17 Q. What is the difference of the net number from the
18 Pittinger contract and the amount you received?

19 A. \$14,381,432.

20 Q. So that's one element of damages; is that correct?

21 A. Yes.

22 Q. Move down to the next entry. What is that?

23 A. That taxes were incurred from 2007 to 2011, which
24 is 28,946.

25 Q. What's the next entry?

1 A. Interest paid for the same period, \$2,095,657.

2 Q. Would the taxes have been paid had the Pittinger
3 contract closed?

4 A. Not on the 2,600 acres, no.

5 Q. And would the interest have been paid if the
6 contract had been closed?

7 A. No.

8 Q. Let's talk about that supposed offer of \$26
9 million that we heard about yesterday. You're familiar
10 with the --

11 A. The letter?

12 Q. The letter? Was there ever an offer made?

13 A. I recollect an offer from Noel Thorn, and I
14 believe he's with the Nature Conservancy, but the letter,
15 I didn't ever consider that an offer. You know, I
16 mentioned that several times yesterday.

17 It was -- it wasn't even a letter of intent. It
18 wasn't a road map to any kind of closing. As a matter of
19 fact, when I looked at the letter, I only saw two terms
20 on it. One was we'll pay you \$26 million for the
21 property, and the second term I saw in reading it was
22 some kind of -- maybe not even two veiled threat, we'll
23 take the 26 million, or, you know, you're going to be
24 fighting an uphill battle, so, you know, to me, that was
25 not an offer. It was just a letter.

1 Q. That price was \$26 million; is that correct?

2 A. That's what the letter said.

3 Q. How many acres would that have been for?

4 A. 4,478.

5 Q. I can pull out a calculator, but do you have an
6 estimate what that is on a price per acre basis?

7 A. You would have to do that on a calculator for me.

8 Q. Do you mind, Your Honor?

9 A. I might do it if I wasn't sitting in front of all
10 these people, but --

11 Q. So we would take \$26 million and divide it by
12 4,478. That comes out to be \$5,806 per acre. Does that
13 look right to you?

14 A. Yeah. Sounds right.

15 Q. Did you think the property might be worth more
16 money than that at that time?

17 A. Yes, I did.

18 Q. Did you ultimately enter into a contract at \$9,200
19 an acre?

20 A. Yes.

21 Q. Mr. Walker asked you if you contacted the
22 Pittinger Group before filing suit, and what was your
23 answer?

24 A. I did not.

25 Q. Did anyone else have information from the

1 Pittinger Group that served as the basis for your
2 decision to file the lawsuit?

3 A. I don't understand the question.

4 Q. All right. Did any of the agents or attorneys
5 have information that you were aware of that supported
6 filing the lawsuit?

7 A. Well, yeah, because I wouldn't have filed it if
8 they did.

9 Q. And did some of that information come from the
10 Pittinger Group?

11 A. Yes.

12 Q. And have you learned anything through the three
13 plus years this case has been going on that has changed
14 your mind about filing the lawsuit?

15 A. No.

16 Q. To the best of your knowledge, did North Pleasant
17 disclose everything it was required to under the
18 contract?

19 MR. WALKER: Objection. Leading.

20 THE COURT: It doesn't suggest the answer one
21 way or the other. Overruled. Go ahead.

22 THE WITNESS: We supplied them everything
23 that we had to supply them, that was in our possession to
24 supply them.

25 MR. REYNOLDS: And, Your Honor, at this point

1 I would move for the admission of Exhibit 30.

2 MR. WALKER: Objection, Your Honor. Hearsay
3 if he didn't prepare it.

4 THE COURT: That's the document that he
5 created that we just went over?

6 MR. REYNOLDS: That's correct, Your Honor.

7 THE COURT: It's overruled. It's admitted.

8 MR. WALKER: Carol Jones created it, not him.
9 He didn't create it.

10 THE COURT: I thought when we were talking a
11 few minutes ago you said you did create it.

12 MR. WALKER: No. They said he was going to
13 testify he created it, but he said Carol Jones created it
14 and gave it to him to look over.

15 MR. REYNOLDS: He used her to pull the total
16 numbers, Your Honor, but it's his memo.

17 THE COURT: And he has testified as to the
18 numbers, but if he didn't create the document and
19 somebody else did, it's hearsay, so sustained. Bring in
20 the fellow that created it.

21 MR. REYNOLDS: And next, Your Honor, we move
22 the admission of Exhibit 4, which is the May 11 letter
23 that Mr. Reynolds testified to yesterday.

24 MR. WALKER: Without objection.

25 THE COURT: Admitted.

1 (Plaintiff's Exhibit No. 4 marked for
2 identification and admitted into.)

3 MR. REYNOLDS: And finally, Your Honor, we
4 used Exhibit 27 for a number of things yesterday, but
5 this thing has pages that were pulled out for various
6 reasons. We went over those pages that were pulled with
7 Mr. Gowder this morning, and I submit Exhibit 27 without
8 the pages that are originally contained into evidence.

9 MR. WALKER: Well, we have no objection to
10 the entirety of 27 coming in. 27 was a whole series of
11 different e-mails and things. Are you suggesting you're
12 going to do selective excerpts from 27?

13 MR. REYNOLDS: We pulled eight or ten pages,
14 I believe, from that exhibit and made this exhibit and
15 went over those.

16 MR. WALKER: And we have no problem with
17 those coming in subject to confirming we've got the same
18 pages they've got. That's fine. No objection, Your
19 Honor.

20 THE COURT: All right. Well, don't publish
21 it to the jury until y'all have a chance to make sure
22 that all the things you told them you pulled out are, in
23 fact, out.

24 MR. REYNOLDS: And may I give it to the
25 Court, Your Honor?

1 (Plaintiff's Exhibit No. 27 was marked for
2 identification and admitted into evidence.)

3 BY MR. REYNOLDS:

4 Q. Final question, Jamie. Does the fact I'm a small
5 owner have anything to do with you bringing the lawsuit?

6 A. No.

7 MR. REYNOLDS: Thank you.

8 THE COURT: Recross.

9 RECROSS-EXAMINATION

10 BY MR. WALKER:

11 Q. Mr. Reynolds, there was a mention of the sale of
12 the land. That sale was of all your residual acres, some
13 3,000 something acres, in May of 2011, correct?

14 A. To the French Quarter Group, it would be the
15 remaining land at 3,700 plus acres, yes.

16 Q. So roughly four years after Mr. Pittinger's group
17 decided not to proceed in May or early June or late May
18 of 2007?

19 A. Yes.

20 Q. And that would have been after the great recession
21 that affected the real estate market dramatically, wasn't
22 it?

23 A. It certainly -- the real estate market did
24 decline.

25 MR. WALKER: Thank you.

1 THE COURT: All right. You may step down.

2 MR. BARNETT: Thank you.

3 THE COURT: All right. Next witness.

4 MR. BARNETT: The plaintiff will call Josh
5 Hulen.

6 JOSHUA NEEDHAM HULEN,
7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 MR. BARNETT:

11 Q. Good morning, Mr. Hulen.

12 A. Good morning.

13 Q. Are you here under subpoena?

14 A. I am.

15 Q. And did it come from me?

16 A. Yes.

17 Q. If you could just tell the jury, where are you
18 from originally?

19 A. Originally, Amarillo, Texas, originally.

20 Q. Where did you go to school after high school?

21 A. Don't hold this against me if you're a Gamecock
22 fan. Texas A&M. I graduated in 1996 with a degree in
23 agricultural economics and stayed there. In 1998, I got
24 a degree in -- a master's degree in land economics and
25 real estate.

1 Q. Okay. And have you worked in the real estate
2 field for some time?

3 A. Since 1998.

4 Q. Okay. What all have you done in the real estate
5 business?

6 A. When I graduated from A&M, I moved down to Houston
7 and went to work for Arthur Anderson in their real estate
8 consulting practice, stayed there for a year. Then I
9 went to a firm, a real estate investment banking firm,
10 called Granite Partners based out of New York with an
11 office in Houston, stayed there for a couple years, and
12 then moved to Charleston in 2003 and went to work for a
13 firm based out of Greenville called Realty Corp. It was
14 a land investment fund. That's where I began working for
15 David Grubbs.

16 Realty Corp, we stayed involved with Realty Corp
17 for several years, and David decided to break off and
18 form another company called Vanguard Development Group.
19 I believe that was in maybe '04, '05.

20 Q. All right. Are you still with Mr. Grubbs?

21 A. No.

22 Q. Okay. And when did you leave Mr. Grubbs?

23 A. Officially, the end of 2009.

24 Q. Okay. And what are you doing now?

25 A. A little bit different than what I was doing when

1 I was here doing brokerage and development. I'm now the
2 East Coast director for a company called Sullivan Land
3 Services based out of Galveston, Texas. We are a
4 disaster relief housing company that, you know, after a
5 natural disaster hits a certain area of the country,
6 after the cleanup is done, we go in and rehab or rebuild
7 the houses that were destroyed by the storm.

8 Q. Are you doing that someplace now?

9 A. I am. I'm doing it in New York and New Jersey,
10 helping them recover from Hurricane Sandy.

11 Q. Which was last Halloween of last year, I believe?

12 A. It was the end of 2011 {sic}.

13 Q. Okay. Now, when you were involved in the real
14 estate field, what were you actually doing? Tell the
15 jury what you were doing.

16 A. Starting out of school or here?

17 Q. In your experience, you said you have experience
18 in the real estate field. What did you actually do?

19 A. Throughout my career, I've done a little bit of
20 everything. I've raised money for investment. I have
21 done brokerage. I've done development. So I've -- you
22 know, kind of Jack of all trades but master of none.

23 I've done quite a bit, seen quite a bit. I have a
24 fair amount of experience, I think.

25 Q. Now, when you were with Mr. Grubbs, did you have

1 some connection with the Keystone property?

2 A. Certainly, yes.

3 Q. I want to somehow, without blocking people's
4 views, but this is a plat of the Charleston metropolitan
5 area and Highway 41. Can you identify where the Keystone
6 property is on here.

7 A. It would be that big red piece of property at the
8 upper right-hand corner of the map.

9 Q. Right here where I'm pointing?

10 A. Correct.

11 Q. Okay. And as we go up Highway 41 from Mount
12 Pleasant, we cross the Wando River?

13 A. Yes.

14 Q. Here, is that correct?

15 A. That's correct.

16 Q. And we go up 41. Here is the Keystone tract, and
17 this intersection here is what?

18 A. That is United Drive and Highway 41.

19 Q. Well, the community --

20 A. Actually, I'm sorry. That is not United Drive.
21 United Drive is a little bit further south, Huger.

22 Q. I could have brought it closer, but this is the
23 community of Huger?

24 A. Yes.

25 Q. And 41 will go on up to Jamestown and so forth.

1 A. Correct.

2 Q. But the Keystone tract is here then, some of it to
3 the west of Highway 41 and most of it to the east of
4 Highway 41?

5 A. 425 acres to be exact on the west side of Highway
6 41 and the balance -- the Keystone tract was actually
7 4,478.02 acres, I believe, so the balance, a little over
8 4,000 acres, was on the east side.

9 Q. All right, sir. And the Cooper River winds its
10 way up here, of course comes onto Moncks Corner, and then
11 there is the east branch of the Cooper River. Is this
12 the east branch of the Cooper River here?

13 A. I believe it is.

14 Q. And what -- which is very close to the Keystone
15 tract, right?

16 A. Yes.

17 Q. What kinds of properties are along the east branch
18 of the Cooper River?

19 A. Well, you have a good amount of national forest to
20 the east, but right there along Highway 41, you would
21 have, I guess, what people refer to around here as
22 plantations.

23 Q. All right. Do you know any of them by name?

24 A. Halidon Hill, Rice Hope. You know, they're owned
25 by people from -- or in and around Charleston, Catos,

1 Cohens, Bennetts, Royals, those type folks.

2 Q. Okay, sir. All right. And the national forest,
3 you said, is to the east of Keystone. Is there a
4 particular way that's identified on this particular plat,
5 just for the jury's edification?

6 A. Just that big old dark green area is the national
7 forest.

8 Q. Where my hand is now?

9 A. Correct.

10 Q. Okay. All right. Now, how did you become
11 involved with the Keystone tract?

12 A. We got involved with the Keystone tract probably,
13 I want to say, some time in 2005. David had a
14 relationship with International Paper. One of David's
15 roles as the regional partner for Realty Corp was to
16 identify land investment opportunities for development in
17 and around the Lowcountry, all the way down to coastal
18 Georgia, up to, you know, the Greenville area, and prior
19 to getting involved with Keystone, he had done a land
20 deal with International Paper down in Savannah where
21 Realty Corp had purchased a property from International
22 Paper which was eventually developed into a shopping
23 center type thing.

24 So through that relationship with, IP, International
25 Paper, through that relationship with IP, we got a phone

1 call one day from International Paper that they were going
2 to bring out -- or they had decided to sell some assets
3 that they had formerly used as timber property, and one
4 of them was the Keystone tract.

5 That was the name they had actually given it, was
6 Keystone, and they had used that -- well, through
7 different ownership chains, it had been used as a timber
8 property for probably 50 or 60 years.

9 So we looked at -- as being still part of Realty
10 Corp, we looked at the property for our own investment
11 but judged that it was -- for whatever reason, investment
12 reasons, judged that it was not something that we were
13 interested in, in doing on our own account, or for Realty
14 Corp.

15 We had a relationship with some people in Atlanta
16 who were in the same business of acquiring land, and, you
17 know, made a phone call to one of those folks, and they
18 came over and looked at it, and that's kind of where the
19 ball started rolling.

20 Q. All right, sir. Now, when International Paper
21 Company owned it, do you know what they were doing with
22 it? Do you have personal knowledge what they were doing
23 with the property?

24 A. As I said, they were formerly using it as a timber
25 property. They were cutting timber and either selling it

1 or using it, taking it down to the mill for wood
2 products, but I believe for probably a good decade they
3 had not cut any timber off the property, so it was just
4 sitting there. There was nothing going on.

5 Q. Were there roads in that property, both on the
6 east side of 41 and the west side of 41?

7 A. Well, it was actually pretty convenient about how
8 you access the property because Highway 41 ran through --
9 you know, since there were 425 acres on the west side,
10 Highway 41 went through the left side -- the western side
11 of the property in a northern southern situation to --
12 the northern end of the property was, or is, a road
13 called United Drive, which hits 41 and then wraps all the
14 way around to -- well, it wrapped around the way around
15 to -- I mean, it kind of does a big horseshoe.

16 Q. Are you able to find it just on this plat?

17 A. Yeah. So everybody can see, this is Highway 41
18 coming up. United Drive is right here at this
19 intersection. Can you find it -- there is an old
20 convenience store called J.W.'s right there. This is
21 United Drive that comes through the property, so there is
22 a little bit of residual property on the northern side.
23 This wraps around here and runs into -- which one is
24 that? They're all called creek, Halfway Creek Road,
25 which is an extenuation, really, of Clements Ferry Road

1 that crosses Highway 41.

2 There's another road in here that's a public road
3 called Charity Church Road, which crosses Highway 41, and
4 it runs right here through the southern end of the
5 property into the national forest and also connects with
6 United Drive, and then, of course, Clements Ferry -- I'm
7 sorry, Charity Church runs over here over to the Nucor
8 Steel plant and BP, like you see on the map, BP, and it
9 connects back here to Clements Ferry.

10 Those are the main roads that access property.
11 Within the property there are a series of timber roads.
12 They're not public roads, they're private, and they
13 basically were created by IP, or whomever developed the
14 property, to internally access the timber stands.

15 Q. All right, sir. Let me ask you this: At the time
16 that North Pleasant acquired property from IP, was there
17 water service to the Keystone tract?

18 A. Do you mean as in public water service?

19 Q. Yes.

20 A. Yes. I mean, it runs on Highway 41 right here.
21 There's a big water line, I want to say maybe a 13, 14
22 inch water line that runs all the way down Highway 41 to
23 Clements Ferry Road, and you know that because you can
24 drive in front of the property and see fire hydrants.

25 Q. All right, sir. Was there sewer?

1 A. No.

2 Q. Do you know where the nearest sewer line was that
3 would have to be extended to Keystone?

4 A. It was further down charity Church Road. Let me
5 get my bearing again. It was further down Charity Church
6 Road to the west. I'd say a couple miles down the road.

7 Q. All right, sir.

8 A. That was the closest sewer line.

9 Q. Thank you, sir. I'll unburden you.

10 When North Pleasant purchased property, was there
11 some reaction?

12 A. I was happy about it.

13 Q. Was there some reaction from other than you and
14 Mr. Grubbs and people like that?

15 A. Oh, yeah, there was. There was a little public
16 curiosity, I would say.

17 Q. Were you approached by anybody who was not
18 involved with Vanguard or North Pleasant?

19 A. Approached, you mean phone calls or just wanting
20 to know what was going on with the property or wanting to
21 find out more about it? Certainly, yes.

22 Q. Did anybody come and see you and talk to you about
23 preserving the property?

24 A. Yes, yes.

25 Q. Who was that person?

1 A. The main person was a guy named Noel Thorn from
2 the Nature Conservancy.

3 Q. Did he identify himself as working for the Nature
4 Conservancy?

5 A. Yes. Well, yes and no. I mean, sometimes he
6 would represent himself as part of the Nature
7 Conservancy, and sometimes he would say he was part of
8 another little conservation group is that was interested
9 in conservation development.

10 Q. Did he represent himself as working with the
11 Coastal Conservation League?

12 A. He represented himself as working with a large
13 group of conservation minded organizations and
14 individuals.

15 Q. Did Mr. Thorn have any particular goal that he
16 presented to you, or proposal?

17 A. I wouldn't say a specific proposal, but his goal
18 was to act as a conduit for his conservation minded
19 friends or associates to acquire the Keystone tract.

20 Q. How often did you hear from Mr. Thorn?

21 A. Via phone call or maybe an occasional lunch or an
22 e-mail, probably, you know, I would say it would kind of
23 ebb and flow, but on average maybe a couple times per
24 month.

25 Q. All right, sir. Over what period of time?

1 A. The whole period that North Pleasant owned it
2 until I was no longer involved.

3 Q. This would have been in 2007 then?

4 A. It would have been from 2005 all the way --

5 Q. So it was early 2005 then?

6 A. Actually, before they even bought property.

7 Q. So even before 2005 purchase through 2007,
8 Mr. Thorn was contacting you maybe a couple times a
9 month?

10 A. Uh-huh.

11 Q. To talk about some conservation effort for this
12 property?

13 A. Yeah. Just, you know, a fair way to describe it,
14 Noel, you know, wanted to -- Noel always treated me like
15 I was his grandson that he was trying to teach lessons,
16 educate about the Charleston market, educate about what
17 conservation development was, what should and should not
18 be done in Charleston.

19 Q. All right. Was there -- so far as you know, were
20 you ever made aware of some sort of proposal by whatever
21 term where the property would be purchased by the state?

22 A. Well, there were several conversations that Noel
23 had brought to my attention about the state and some
24 other organizations acquiring the property, the first of
25 which was when International Paper originally sold the

1 property.

2 It was a bidding process. IP just didn't put the
3 land out on the market and say it's for sale, stick a
4 sign in the ground. It was actually a bidding process
5 where more than 20 offerers made proposals to buy the
6 property.

7 Q. Okay.

8 A. One of those offers was from a consortium of
9 people involving Noel Thorn and some other landowners and
10 some other groups.

11 Q. Okay.

12 A. That was the original one, but later on, yes,
13 there were some other discussions about the state buying
14 the property.

15 Q. Now, you're a realtor. What does an offer in the
16 world of real estate for -- particularly for selling a
17 large, expensive piece of property like even part of
18 Keystone, what does that offer consist of? What does an
19 offer -- what do you have to have to have an offer?

20 A. Well, put in real simple terms, you have to have a
21 buyer, you have to have a seller, and you have to have
22 some consideration.

23 Q. Did the state ever come to you as a realtor and
24 say, Here's our proposal?

25 A. No.

1 Q. Do you have any knowledge that the State ever
2 said, Okay. We'll put down this much earnest money if we
3 sign a interest?

4 A. No. I was -- you know, well, not I, but Vanguard
5 was the exclusive listing agent for the property, meaning
6 in the world of real estate, you had different kind of
7 agency relationships. You could be exclusive, or it
8 could be an open agency or something like that, but
9 exclusive means that you are the exclusive agent of the
10 property, so if an offer is to be brought to you or is to
11 be mailed on the property, it is supposed to come
12 through -- come through, in this case, me or Vanguard.

13 So if anybody that has a -- if anybody that has a
14 brokerage license or a real estate license is aware that
15 there's an exclusive agency relationship between the
16 seller and his agent, they're supposed to come through
17 you.

18 Q. You mentioned an exclusive listing agreement,
19 Mr. Hulen. I want to hand you what is not yet marked but
20 ask you if you can identify that document.

21 A. It says here at the top, make it easier for me,
22 exclusive right to sell agreement.

23 Q. And be more specific.

24 A. This is the agreement, this looks like the
25 original agreement between Vanguard Development Group,

1 VG, LLC, which I was a part of, and North Pleasant
2 Vintage Land. It's the agreement that stipulates that
3 Vanguard is the exclusive listing agent for the Keystone
4 tract.

5 Q. Thank you, sir.

6 MR. BARNETT: Would you go ahead and have
7 this marked? We would now offer Plaintiff's Exhibit
8 No. 2 into evidence.

9 MR. GOWDER: No objection.

10 THE COURT: Admitted.

11 (Plaintiff's Exhibit No. 2 was marked for
12 identification and admitted into evidence.)

13 BY MR. BARNETT:

14 Q. If you would look at that, please, and tell me
15 what commission -- what is a commission agreement, first
16 of all? Tell me what that means in a listing agreement.

17 A. A commission agreement is basically the
18 compensation to the broker if a sale is consummated.
19 It's basically the fee that you get for selling the
20 property.

21 Q. All right. And what was the fee that your
22 company, Mr. Grubbs, Vanguard Development, what fee would
23 they get if they sold part of the Keystone property?

24 A. Well, there were two structures. The sale in
25 whole, like it says right here, in paragraph three,

1 subsection A, sale in whole, if the property is sold in
2 one transaction, meaning the whole Keystone tract, the
3 whole 4,470 acres, there would be a two and a half
4 commission on that sale.

5 If it were sold in anything less than whole,
6 in pieces, there would be a 6 percent commission paid on
7 the sale.

8 Q. All right, sir. Now, you said that the State
9 never came to you, as the realtor, and made you an offer;
10 is that right?

11 A. No -- yes, I did say that. They never came to me
12 and made me an offer.

13 Q. Now, ultimately, did somebody come to you, your
14 company, to Vanguard, as realtors and discuss actually
15 buying the property?

16 A. Well, there were a lot of discussions, but yes,
17 there was one -- yes, there was, a legitimate buyer that
18 followed protocol and came to us and made an offer.

19 Q. And who was that?

20 A. That would be, as they're commonly known now, the
21 Pittinger Group.

22 Q. Mr. Robert Pittinger's firm?

23 A. Robert Pittinger's company, yes.

24 Q. Who specifically from that firm contacted you?

25 A. Daniel Fogarty.

1 Q. Okay. Tell the jury about that. Tell the jury
2 about the initial contact that you had with these folks.

3 A. Daniel Fogarty was, I guess for lack of a better
4 terms, the bird dog for these guy. He would -- his
5 territory, I learned, was coastal Carolina, and they
6 decided they wanted to get into the Charleston market.

7 So, you know, we had the property listed publicly,
8 and he called me and wanted to start talking about the
9 Keystone tract.

10 Q. All right, sir. Did y'all just talk about it?

11 A. Yeah. We talked about it quite a bit, but it
12 ended up becoming a legitimate offer to purchase the
13 property.

14 Q. Did they want to see the property?

15 A. Did they want to see the property?

16 Q. Yeah.

17 A. Yes.

18 Q. Was --

19 A. In great detail.

20 Q. How many times, one time?

21 A. I would say during the initial stages of their
22 interest, Daniel was down here probably once a week, once
23 every two weeks, quite frequently on the property. I
24 drove him around, burned a lot of gas driving him around
25 that property, multiple times.

1 Q. Was this before or after a contract was signed?

2 A. This was before.

3 Q. Okay. All right. And was there then an actual
4 contract signed?

5 A. Yes, there was.

6 Q. Okay. I'm going to show you what has been marked
7 as part of Exhibit 27, just for the record, and ask you
8 if you can identify what that is.

9 A. It is a sales contract labelled contract for
10 purchase of property between North Pleasant, LLC and
11 Vanguard Properties of the Carolinas, which is the
12 Pittinger Group, dated the 15th day of March 2007.

13 Q. All right, sir. And, for the record, that's
14 within Exhibit 27. That's Bates number 112 on the upper
15 right-hand corner.

16 What was the price that was to be paid for the
17 property?

18 A. It was roughly \$9,200 an acre for 2,600 acres, so
19 23 million and change, I believe.

20 Q. All right, sir. What is the due diligence period?

21 A. Due diligence period is inspection period. It's
22 sort of -- I mean, to could put it or explain it to my
23 children, it would be like you're dating somebody before
24 you marry them. You get to take some time and figure out
25 what it's all about before you make a commitment.

1 Q. All right, sir. How long -- if you know, or if
2 you need to look at the document -- how long did the
3 Pittinger folks have to do their due diligence?

4 A. They had a initial period of 60 days with a 60-day
5 close. The initial due diligence was 60 days, you know,
6 roughly two months, where the earnest money, you know,
7 their good faith deposit, would then become nonrefundable
8 and then another 60 days to close. I believe they had
9 another couple of extensions they could purchase for
10 nonrefundable money for maybe two of them for 30 days
11 each.

12 Q. All right, sir. How much money earnest money did
13 the Pittinger folks put down?

14 A. They initially put down \$50,000, and at the end of
15 the inspection period, they were required to put down
16 another \$450,000 to bring the total sum to half a
17 million.

18 Q. All right. Now, do you recall when the due
19 diligence period was going to run out?

20 A. Yes. It would have been May 21st.

21 Q. You don't remember what day of the week that was?

22 A. That would have been a Monday.

23 Q. Monday, May the 21st. What year?

24 A. 2007.

25 Q. 2007. All right, sir.

1 All right, Mr. Hulen I'm showing you what has
2 been marked as Plaintiff's Exhibit 32 and ask if you can
3 identify that.

4 A. Yes. This is an e-mail from Daniel Fogarty, who I
5 previously described, to me, dated March 15, 2007, a
6 Thursday. It is a list of items --

7 MR. BARNETT: We would offer Plaintiff's 32
8 into evidence.

9 MR. GOWDER: No objection.

10 THE COURT: Admitted.

11 (Plaintiff's Exhibit No. 32 marked for
12 identification and admitted into evidence.)

13 BY MR. BARNETT:

14 Q. How about telling the jury what this is.

15 A. It's basically a laundry list of things they
16 wanted to see before they got married. I mean, it's the
17 things they wanted to see to confirm that the property is
18 what they expected it to be.

19 Q. All right, sir. And what kind of stuff is on that
20 list?

21 A. Well, it's pretty comprehensive. There is a Phase
22 I environmental study, endangered species. They want to
23 see a wetlands study. Archeological study, topography,
24 soils, any previous site planning that had been done on
25 the property, any traffic studies, easements or

1 right-of-ways, cultural resources, any private -- excuse
2 me, prior appraisals, and this being a former timber
3 property, any timber stands or maps, you know, signifying
4 or describing the timber volumes and types on the
5 property and any title documents that Reynolds had.

6 Q. All right, sir. Did you all have some information
7 like this in your possession?

8 A. Well, not in my possession, but the seller did,
9 yes. I would say probably, you know, roughly half of
10 this stuff they had in their possession.

11 Q. Was all that provided to Mr. Pittinger's group?

12 A. Yes.

13 Q. Do you know whether Mr. Pittinger's people did
14 some work on their own?

15 A. Yes. In fact, it was one thing that always kind
16 of confused me. We gave them a good bit of information,
17 but, you know, they looked at it, and anything that was
18 basically over six months old, they went and performed
19 themselves again at their expense.

20 Q. All right. How often did you have communications
21 with Mr. Fogarty?

22 A. Oh, very frequently. I mean, once every couple
23 days.

24 Q. All right, sir. Did Mr. Fogarty ever express to
25 you, or anybody with the Pittinger Group, any concern

1 about endangered species?

2 A. No.

3 MR. GOWDER: Objection, Your Honor. Hearsay.

4 MR. BARNETT: I don't think it's offered for
5 the truth of the matter asserted, just whether or not a
6 concern was expressed.

7 THE COURT: Overruled. Go ahead.

8 THE WITNESS: No.

9 BY MR. BARNETT:

10 Q. Anybody express to you any concern over wetlands
11 on the property?

12 A. No.

13 Q. And were there wetlands on the property?

14 A. Oh, yes.

15 Q. We're in Berkeley County, right?

16 A. Yes.

17 Q. There are wetlands on the property?

18 A. Oh, yeah.

19 Q. How about archeological? Is there archeological
20 sites on the property? Any concerns expressed about
21 that?

22 A. No concern. They certainly studied it.

23 Q. And people have been living in Berkeley County for
24 white a while, so everybody knew there might be some
25 relics or something?

1 A. Of course. Just -- that's one of the biggest
2 things in land development around here is, you know,
3 finding things like that, but that was never an issue on
4 Keystone.

5 Q. Any concern expressed to you about the nature of
6 the soil on the property?

7 A. No.

8 Q. Okay.

9 A. I can expand on that a little bit and help you
10 understand. You have to understand that the Keystone
11 tract was a timbered piece of property for almost a
12 century, and anything like that was virtually
13 nonexistent.

14 It had served -- the whole thing had served as a
15 timber tract, so timber had been cut on that thing for --
16 you couldn't even call it a virgin piece of property that
17 had never been touched before. It had been combed over
18 hundreds of times during timber cycles.

19 Q. All right, sir. Were there concerns expressed why
20 somebody in the Pittinger Group to you?

21 A. As far as the due diligence items?

22 Q. Yes, sir.

23 A. There were. There were some things. Typically,
24 there are always going to be some sort of title concerns,
25 you know, title companies, especially when they issue

1 title insurance on a property of this size are always
2 going to have a pretty strong eagle eye about anything
3 that doesn't look normal. That could be an easement, it
4 could be -- an easement meaning a road, power line, gas
5 line, anything that a third party could have on the
6 property.

7 Those were some issues that they wanted to work
8 out in title searches and things like that. The biggest
9 issue, which was, you know, a pretty pleasant surprise to
10 me, was that all they were really concerned about was the
11 timber roads in the property and whether those timber
12 roads were or had ever been used or dedicated as public
13 roads.

14 They were just concerned that since those timber
15 roads connected to United and 41, Highway 41 and Charity
16 Church that people couldn't just get on that property and
17 drive through it and do whatever they wanted to.

18 That was the only real due diligence item that
19 came up during the inspection period.

20 Q. All right, sir. And due diligence, I believe you
21 said, was going to be -- had to be over by May the 21st.

22 A. Monday, May 21st.

23 Q. Okay. I'm going to show you -- this is two pages
24 that are in Plaintiff's Exhibit 27, and I've tabbed them
25 both for you there.

1 If you would, look at the first one that's a tab,
2 which is Bates number 291, and tell the jury what that
3 is.

4 A. This is -- well, it's a -- it's two e-mails. It's
5 an e-mail from me to Daniel Fogarty on Wednesday, May the
6 16, 2007, and a respond to him about four or five hours
7 later on the same day.

8 Q. Okay. Now, this was four a week before the due
9 diligence period was to be ended, correct?

10 A. Yeah. I mean, if it's Monday the 21st and this is
11 Wednesday the 16th, what is that, five days --

12 Q. All right. And I assume you, as the point of
13 contact for the realtor and the agent for North Pleasant,
14 were going to be looking for another 450,000 deposit of
15 earnest money, I think you said?

16 A. Yes. It had to be funded by the end of due
17 diligence or they would be in breach of the contract.

18 Q. And what does Mr. Fogarty say here to you on May
19 the 16th, Wednesday May the 16th, in response to your
20 question?

21 A. Well, I wrote just to be specific. I wrote to
22 Daniel -- it is my e-mail to him said, We are taking the
23 master plat of Keystone to the county pretty soon to get
24 recorded, and then we will begin putting together your
25 title company's survey for their requirements.

1 I got the response letter this morning and our
2 attorney should have it today if Paul Fed Ex'd it to him,
3 I believe Paul Smith being their attorney. It looks like
4 everything should get worked out on that side. How is
5 everything going with you guys? I believe due -- it says
6 I believe DD, which I believe means due diligence,
7 expires on Monday. Give me an update when you can.
8 Thanks, J.N.H., Joshua Needham Hulen. That was my
9 initials.

10 Q. And what was Mr. Fogarty's response to you?

11 A. It says six words: We are on track for Monday.

12 Q. All right, sir. If you would go to the second
13 tab?

14 A. Number nine?

15 Q. That's what is written there. Disregard it. It's
16 in Plaintiff's Exhibit 27. It's Bates number 365.

17 A. Okay.

18 Q. What is this document?

19 A. Could I have a second to read it?

20 Q. Yes, sir.

21 A. Are you ready for my answer?

22 Q. Yes, sir. You're ready to give it?

23 A. I am. It's a letter from James -- there is a
24 little confusion, James M. Reynolds.

25 Q. And who is that?

1 A. The man who is sitting right behind you.

2 Q. The gentleman that testified?

3 A. Not his son or his nephew or --

4 Q. All right. To?

5 A. Daniel Burns at Vanguard Properties. The Vanguard
6 Properties, the Pittinger Group, dated May 18, 2007.

7 Q. Yes, sir.

8 A. It is a letter from Jamie to Daniel. It is
9 anticipated that you will put up the additional earnest
10 money deposit either today or Monday, May 21, 2007 by 5
11 p.m. We want to clarify that all title objection issues
12 have been resolved other than the requested statements
13 and affidavit concerning the logging roads, as set forth
14 in paragraph seven of your attorney's letter dated May
15 13, 2007. Seller hereby agrees that it will deliver on
16 or by June 1st, 2007 the requested statements and
17 affidavit. If the statements and affidavit are not
18 delivered, buyer may request a return of the deposit or
19 waive the delivery of those documents and proceed to
20 closing.

21 Seller shall remain obligated to deliver good and
22 marketable title and keep the property free from any
23 title objection arising subsequent to the date of this
24 letter. If this is acceptable, please sign a copy of
25 this letter and return it to me.

1 Sincerely, James M. Reynolds, III, with his
2 signature just below it. Accepted, Vanguard Properties
3 of the Carolinas, LLC by Daniel Burns, its manager.

4 Q. All right. Was the additional \$450,000 earnest
5 money then deposited by the Pittinger Group?

6 A. Yes, I believe it was.

7 Q. Okay. Let me show you what has been introduced as
8 Plaintiff's Exhibit No. 4. Have you ever seen a letter
9 like that before?

10 A. Yes, I have.

11 Q. Have you ever seen that letter before?

12 A. Yes, I have.

13 Q. What is the date of that letter?

14 A. May 11, 2007, which would have been, what, a
15 Friday?

16 Q. Who signed it?

17 A. It was -- the letter is from Daniel Burns, but the
18 Daniel Burns is -- I mean, the letterhead says Robert
19 Pittinger Company.

20 Q. Okay. All right. I direct your attention to the
21 last sentence in there. What does Mr. Burns -- it's to
22 Mike Bennett?

23 A. The last sentence or last paragraph?

24 MR. GOWDER: Your Honor, I would object.

25 He's not a recipient or an author of this letter. He

1 can't testify about this letter.

2 THE COURT: Well --

3 MR. BARNETT: I withdraw it. That's true. I
4 withdraw it.

5 BY MR. BARNETT:

6 Q. Have you read the letter?

7 A. Yeah.

8 Q. Are you familiar with processes like what is
9 reflected in this letter?

10 MR. GOWDER: Object. Same objection.

11 THE COURT: I don't understand what that
12 question means.

13 MR. BARNETT: He's testified he has had long
14 years of experience in real estate.

15 THE WITNESS: It's very --

16 MR. BARNETT: Hold on. I just want to see if
17 he can explain to them whether this is a common practice
18 or unusual or --

19 THE COURT: Well, you got to get the letter
20 in first in order to tell what it's like. Is it in?

21 MR. GOWDER: It's in. He's not a recipient
22 or author of it. There is no indication that he has any
23 knowledge of it.

24 THE COURT: If the letter is in evidence,
25 then he can talk about it. I'm sorry.

1 MR. BARNETT: Yes, sir.

2 THE COURT: I thought you were objecting to
3 the admissibility.

4 MR. GOWDER: I wasn't, Your Honor. Just his
5 testifying about it.

6 BY MR. BARNETT:

7 Q. All right.

8 A. You want me to read the letter?

9 Q. I want you to repeat -- trial is not a memory
10 test, or any of us, certainly for the jury. What is
11 Mr. Burns telling Mr. Bennett there in that last
12 paragraph?

13 A. That they're acquiring a very attractive 26 acre
14 piece of property in the Charleston region and he would
15 be pleased to present him with a strategy regarding the
16 property and its future acquisition.

17 Q. And that sort of approach, is that uncommon in the
18 real estate business with these types of transactions, if
19 you know?

20 A. It's very common. I mean, I used to do that.

21 Q. You have done things like that before?

22 A. Yes.

23 Q. When you were doing them, what would you be trying
24 to do?

25 A. Raise acquisition capital.

1 Q. Would you have done that before you made a
2 decision to buy a piece of property?

3 A. Typically, we started early on in the process, in
4 the acquisition process, and continued all the way
5 through acquisition.

6 Q. All right. Would you tell somebody that you're in
7 the process of acquiring a piece of property if you
8 weren't?

9 A. No.

10 Q. All right. And is that letter consistent with
11 what Mr. Fogarty told you on May the 16th?

12 MR. GOWDER: I'll object.

13 THE COURT: On what grounds?

14 MR. GOWDER: It's hearsay, Your Honor.

15 MR. BARNETT: Mr. Fogarty's e-mail is in
16 evidence.

17 THE COURT: Overruled. Go ahead.

18 THE WITNESS: Yes.

19 BY MR. BARNETT:

20 Q. Mr. Fogarty told you, We're on track. That letter
21 says we're acquiring the property.

22 A. It actually says we're on track for Monday.

23 Q. Which would have been May the 21?

24 A. May the 21st, and yes, this letter is consistent
25 with what he told me.

1 Q. Did Mr. Pittinger buy the piece of property?

2 A. No.

3 Q. Was there -- did there come a time when you became
4 aware that there was a problem that -- such that this
5 property might not close?

6 A. Yes.

7 Q. Tell the jury about how you learned about that.

8 A. It was Sunday, May the 20th, in the afternoon,
9 which typically for me and my family is a day I never did
10 business, didn't ever call anybody or really expect calls
11 on Sunday, but I got a phone call in the afternoon.

12 I had actually just finished washing my wife's car
13 and I was upstairs changing my second son's diaper when I
14 got the phone call.

15 It was Daniel Fogarty, and the first thing out of
16 his mouth was, We have a problem.

17 And, of course, my reaction, or my question to him
18 was, What are you talking about?

19 Well, we received a phone call from the Coastal
20 Conservation League about Keystone.

21 And at first he was a little vague on things. I
22 mean, it was almost a sheepish call. I think he knew --
23 well, it was a sheepish tone, but as I kept asking
24 questions, he kept giving answers and getting more into
25 it.

1 He said that Daniel Burns had gotten a phone call
2 from the conservation league, and I said who at the
3 conservation league? And he asked me if I knew of
4 somebody named Hamilton Davis, and my response was, No,
5 I've never met anybody by the name of Hamilton Davis.

6 Q. Did he forward you anything that reflected any
7 conversations that Mr. Davis had with anybody in their
8 office?

9 A. Not that day, but several days later, yes.

10 Q. Okay. Let me show you what has been discussed.
11 I'm going to ask you, were you in the courtroom when a
12 voice mail message was played yesterday?

13 A. Yes, yes.

14 Q. Was that voice mail message sent to you?

15 A. Yes, it was, in two separate forms, actually.

16 Q. All right. And that was, you said, just a few
17 days after you got this phone call on Sunday the 20th?

18 A. Yeah. The phone call came Sunday -- that
19 afternoon, which I said was -- I didn't know if I said it
20 or thought it.

21 It was a big shock and surprise. I immediately
22 called Bob Rogers, who was one of the partners of the
23 seller. I mean, he was -- he was like my point in
24 contact with the Reynolds Group. I called him, told him
25 what was going on, and apparently he called Jamie and

1 told him what was going on.

2 The language Jamie used was a little bit different
3 than the language I used, and then I immediately got back
4 with Daniel and said, Can you give me any information
5 about what's going on? I mean, this is like being blind
6 sided.

7 So he told me that they had actually a voice mail
8 from Hamilton Davis, and my first thing was, Well, can I
9 hear it? Not a couple days later did I get a -- I guess
10 a wav file, w-a-v file over the computer of the voice
11 mail, and a couple days later they sent an actual tape of
12 the voice mail to me, which I then forwarded on to Bob,
13 and I guess it made its way up the channels.

14 Q. And that's the voice mail made we heard in court
15 yesterday?

16 A. Yes.

17 Q. You heard again in Court yesterday?

18 A. Yes, it is.

19 Q. Did they forward you anything else related to
20 discussions with Mr. Davis, Hamilton Davis?

21 A. You got to be more specific than that because --
22 like I said, this was being like, you know, just blind
23 sided, so there were a lot of things forwarded and talked
24 about.

25 Q. Let me ask you to look at this. It is not in

1 evidence, ask you to just take a look at that and ask
2 you, was that forwarded to you?

3 A. Yes.

4 Q. Okay. All right. When? Do you remember when,
5 which time period?

6 A. It would have been -- it actually was a couple
7 days after that phone call came on Sunday that week, the
8 week of the 21st.

9 Q. Okay. Do you remember when Mr. Pittinger -- did
10 Mr. Pittinger terminate the contract?

11 A. Yes, he did.

12 Q. Do you remember when he did that?

13 A. Yeah. It was funny because it seems like
14 everything happens on Friday. I guess maybe people think
15 bad news is best on Friday, but, yes, he terminated on
16 that Friday of that week. I guess that would be the
17 25th.

18 Q. All right. I'll show you again -- this is
19 Plaintiff's Exhibit 27, and this is Bates 377, ask you if
20 that's the letter.

21 A. Yes. This is the letter I received via e-mail,
22 uh-huh.

23 Q. All right, sir.

24 A. May 25, 2007.

25 Q. So that's one week after May the 18th?

1 A. Yes.

2 Q. All right. Sir, I believe you were copied on that
3 letter?

4 A. Yes, I was, I was.

5 Q. Does this letter give any reasons why the contract
6 is being terminated?

7 A. Not specifically.

8 Q. Just terminating?

9 A. Just terminating.

10 Q. Okay. All right, sir. Did you hear -- the
11 document that you said you were forwarded, that e-mail,
12 that you said was forwarded to you, were you in the
13 courtroom when that was read yesterday?

14 A. Yes.

15 Q. Okay. Did you read that e-mail when you received
16 it?

17 A. Yes.

18 Q. Okay. What was your reaction?

19 A. To the e-mail?

20 Q. Yes.

21 MR. GOWDER: Your Honor, I'm going to object.
22 The evidence that he is being asked about is in the form
23 of oral testimony, essentially. It's not an exhibit. So
24 he's being asked to comment on the testimony of another
25 witness, which is not proper. We would object on that

1 basis.

2 MR. BARNETT: I'm asking him to comment on an
3 e-mail that he received at a time when --

4 THE COURT: Since I haven't seen it, let's
5 take a break, talk about it. It's time for a rest room
6 break, so we'll take ten minutes and we'll work this out
7 and we'll see y'all in about ten minutes. Don't talk
8 about the case or witness demeanor or anything.

9 (In open court, jury not present.)

10 THE COURT: What is this e-mail you're
11 wanting to have them talk about it?

12 MR. BARNETT: This is the famous e-mail that
13 we had such a long discussion about yesterday that was
14 created by Mr. Burns, and we read it -- pursuant to your
15 order, we read it to the jury. Your decision, we read it
16 to the jury as opposed to handing it to them -- or
17 putting it into evidence, I beg your pardon.

18 THE COURT: All right. And he said he got a
19 copy of this. What's your purpose in asking him about
20 it?

21 MR. BARNETT: Well, I would like to ask him
22 to read it. I guess I could take that up now.

23 THE COURT: It's already been read, hasn't
24 it?

25 MR. BARNETT: Yes, sir.

1 THE COURT: So why do you need him to read it
2 again?

3 MR. BARNETT: Well, again, the trial is not a
4 memory test. I'm not sure they would remember what all
5 is in it.

6 THE COURT: It's in; it's been read. What's
7 your purpose in doing this, other than to just have
8 him --

9 MR. BARNETT: Well, beyond that, I would like
10 for them to hear it again, obviously, but if I'm not
11 doing that, I do think it's appropriate because to have
12 him talk about this, because this begins a process, a
13 fairly short process, but begins a process where this
14 contract ended and he was --

15 THE COURT: I think it's proper for you to
16 say you got a copy of this, and then what did you do?
17 Okay?

18 MR. BARNETT: All right. I'll leave out your
19 reaction.

20 THE COURT: You got these problems all the
21 time, you know, and then you have to bring people in, one
22 at a time, to say what they said, what they saw, they
23 touched, they felt, they smelt. Sometimes you can get
24 them with one expert, but sometimes you have to do this
25 through a bunch of people.

1 But you say, You got a copy of that. After
2 that, what did you do?

3 Okay? All right. Let's take five.

4 (In open court, jury present.)

5 THE COURT: All right, folks. We'll resume
6 with the direct examination.

7 Go ahead, Mr. Barnett.

8 MR. BARNETT: Thank you, sir.

9 BY MR. BARNETT:

10 Q. I'm just going to put this here just so you are
11 sure what I'm asking you about. I'm not going to ask you
12 to read from that at all.

13 The e-mail we talked about earlier, what I just
14 placed in front of you, Mr. Hulen, you remember receiving
15 that, correct?

16 A. Yes.

17 Q. What happened after that e-mail was received?

18 A. When I received it?

19 Q. What happened?

20 A. I got pretty upset.

21 Q. Well, aside from you're being upset, what
22 happened?

23 A. A flurry of -- when I say a flurry of, a lot of
24 activity started with, you know, going back and forth
25 with Pittinger, the Pittinger Group, but ultimately the

1 contract was terminated.

2 Q. All right, sir. So there was a lot of discussion
3 with the Pittinger Group and yourself?

4 A. With Daniel, Daniel Fogarty. He was, again, my
5 point of contact.

6 Q. Okay. All right. All right. Let me ask you
7 this: On May 25th, when that letter came in, the week
8 after the contact that's been talked by about Mr. Davis,
9 Hamilton Davis of the league, with the buyer, and the
10 contract was terminated, on that date what was the zoning
11 of the Keystone tract?

12 A. Flex one.

13 Q. What did flex one allow?

14 A. Flex one was an agricultural zoning, a rural
15 agricultural zoning in Berkeley County that allowed
16 for -- I think the most significant thing it allowed for
17 were 30,000 square foot lots, which would roughly be -- I
18 think, their counsel said one-and-a-half lots per acre.
19 That's a little overstated. It's about 1. -- maybe 1.1
20 lots per acre, just over one lot an acre.

21 Q. Was there pending before Berkeley County Council,
22 to your knowledge, any proposal to change that zoning on
23 May the 25th, 2007?

24 A. No, there was not.

25 Q. Okay. Did you participate in a process after May

1 the 25th, 2007 that resulted in a change of zoning?

2 A. Participated, yes.

3 Q. Did you attend a hearing?

4 A. I attended several hearings.

5 Q. And when did those occur?

6 A. They were the readings in front of the Berkeley
7 County Council, I believe, during the summer months of
8 '07.

9 Q. All right. So the zoning -- when did the zoning
10 change, do you remember?

11 A. Well, the zoning officially changed when the
12 development agreement was executed by the county and -- I
13 don't -- instead of saying North Pleasant, I'm going to
14 say the Reynolds Group, when they executed -- when they
15 mutually executed the agreement.

16 Q. And how long was that after May the 25th of 2007?

17 A. I believe the development agreement was formalized
18 towards the end of '07, maybe September, August,
19 October -- I mean, just towards the end of year, after a
20 process.

21 Q. Were you involved in the process of coming up with
22 this development agreement?

23 A. I was asked for advice on certain terms that were
24 being proposed on the development agreement, but I never
25 stood up in front of county council and made a speech or

1 anything, no.

2 Q. To your knowledge, did the South Carolina Coastal
3 Conservation League assist North Pleasant in any way in
4 developing -- or coming up with creating, writing this
5 development agreement?

6 A. No.

7 Q. Did they assist the owners of North Pleasant,
8 Reynolds as you called them, in any way in getting this
9 agreement approved, to your knowledge?

10 A. No.

11 Q. Before the termination of the contract by
12 Mr. Pittinger on May the 25th, 2007, had you been
13 contacted by anyone from the South Carolina Coastal
14 Conservation League?

15 A. Let me be real specific about what you're asking
16 me. From the time that that property was purchased by
17 the Reynolds Group in 2005, from the time that that
18 property closed -- I'm sorry, that contract went away in
19 2007, I had never -- I did not meet or talk to any member
20 of the South Carolina Coastal Conservation League about
21 the Keystone tract.

22 In fact, I put a time limit on that to the time
23 the contract was dropped. I never had a discussion with
24 them after that. The only time I even heard a voice from
25 the conservation league was when Hamilton Davis stood up

1 at a reading, several readings, in front of county
2 council and made some statements.

3 Q. Do you remember what the statements were?

4 A. Well, the first reading was about the rezoning of
5 the property to a conservation zone. That was the first
6 time I heard it. That was the actual second reading for
7 the rezoning.

8 When he -- and this is all public record. It can
9 be looked up in the minutes. He stood up and spoke about
10 the importance of the Keystone tract and the whole
11 Highway 41 corridor and the Francis Marion National
12 Forest and why they were in support of limiting
13 development up there.

14 The second time I heard him speak was when the
15 development agreement was going to be passed or was up in
16 front of council to be passed and he said the Coastal
17 Conservation League did not have any problem with the
18 terms of the development agreement.

19 Q. All right. Thank you, sir. Bear with me.

20 MR. BARNETT: Mr. Hulen, that is all I have
21 for you. Please answer whatever questions opposing
22 counsel or the Court has for you.

23 THE COURT: Mr. Gowder?

24 MR. GOWDER: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 MR. BARNETT: No objection.

2 THE COURT: Admitted.

3 (Defendant's Exhibit No. 11 was marked for
4 identification and admitted into evidence.)

5 BY MR. GOWDER:

6 Q. I'm showing you Defendant's Exhibit 12, Mr. Hulen.

7 A. Okay.

8 Q. Was this addressed to you?

9 A. It was.

10 Q. All right. And is it a correspondence from
11 lawyers for the Pittinger Group with the initial title
12 policy binder?

13 A. It looks like it is, yes.

14 Q. And this was dated April 17th. There was ongoing
15 conversation, was there not, about the terms of what the
16 title binder would be from the title insurance company?
17 Is that right?

18 A. Yes.

19 Q. And, in fact, those title policy issues never
20 really actually got resolved before the contract was
21 terminated by Mr. Pittinger, right?

22 A. Yes, they did, to the satisfaction of the buyer.

23 Q. Is that right? Do you recall that the gravel
24 roads issue had been resolved as of May 25, 2007?

25 A. It was resolved -- I don't know the date. I mean,

1 I honestly don't know the date, but I do know the gravel
2 road issue was resolved, via an affidavit from
3 International Paper answering all the questions that they
4 had -- answering -- satisfying the concerns the title
5 company had with the issue.

6 Q. Are you aware of any correspondence that came from
7 Pittinger to the Reynolds Group that you saw in which
8 Mr. Smith or Pittinger accepted the affidavits from
9 Reynolds or International Paper resolving that issue?
10 Because I'm not.

11 Had you seen some document from Reynolds or from
12 your office to Paul Smith in which Paul Smith agreed you
13 had satisfied the title issues?

14 A. I know they deposited \$450,000, and Daniel Fogarty
15 never brought that to my attention at the end the
16 inspection period.

17 Q. Isn't there something in evidence that came in
18 through you a few minutes ago that was a letter dated may
19 the 18th which there was an agreement that \$500,000 would
20 be held but would be returnable until the gravel road
21 title issue was resolved?

22 A. Sure. I saw that in the letter, right yes.

23 Q. Right. And are you telling us that that issue was
24 resolved?

25 A. I'm telling you that -- I mean, I know where

1 you're going with this, and I'm telling you --

2 Q. No, sir. You need to answer my question.

3 A. It wasn't an issue. It was not brought to my
4 attention at the end of the inspection period by Daniel
5 Fogarty when he said we're on track for Monday.

6 Q. Do you ever remember that issue being resolved
7 past May the 18th of 2007?

8 A. Well, it really didn't matter because they dropped
9 the contract.

10 Q. The answer then is no, right?

11 A. Correct, no.

12 Q. Do you agree the answer is no, it was not
13 resolved?

14 A. Okay. Yes, yes, I do.

15 Q. Now, there was also an issue about endangered
16 species, right?

17 A. You're going to have to refresh my memory on the
18 endangered species.

19 MR. GOWDER: I would move Defendant's Exhibit
20 12 into evidence.

21 MR. BARNETT: No objection.

22 THE COURT: Admitted.

23 (Defendant's Exhibit No. 12 was marked for
24 identification and admitted into evidence.)

25 BY MR. GOWDER:

1 forward, right?

2 A. I assume so, yes.

3 Q. Yes. And you said I think you knew that decision
4 was made on Friday, right?

5 A. The following Friday?

6 Q. The 25th.

7 A. Well, that's when the letter of termination was
8 sent, yes.

9 Q. All right. Do you know when the decision was made
10 to terminate? Was it not made that day?

11 A. I don't know when it was made.

12 Q. Okay. So you were not aware that on that Friday,
13 Mr. Pittinger was meeting with Dan Davis, with the
14 Berkeley County supervisor?

15 A. I was not privy to that meeting.

16 Q. Did you know it was happening?

17 A. I knew there was -- there had been a discussion
18 about him meeting with somebody at the county, but I
19 don't know who it was or when they were supposed to meet
20 or anything like that.

21 Q. Okay. Earlier, your agreement for your commission
22 structure was put into evidence, I think it's Plaintiff's
23 No. 2; is that right?

24 A. Yes.

25 Q. Right. And that contract is with North Pleasant;

1 is that right?

2 A. You mean the commission agreement?

3 Q. The commission agreement, yes.

4 A. And Vintage Land, yeah.

5 Q. Your company did not have an agreement with
6 Vanguard Properties of the Carolinas, the Pittinger
7 Group, did you?

8 A. A commission agreement?

9 Q. You had no agreement with the Pittinger Group,
10 your company?

11 A. Like Vanguard Development?

12 Q. Vanguard Development agreement -- there are too
13 many Vanguards.

14 A. No, we did not have a direct -- we were parties to
15 the contract because we were both named in the sales
16 contract. They were to receive half the commission per
17 the sales contract.

18 Q. All right.

19 A. But no, to answer your question specifically,
20 there was no agreement between Vanguard and Vanguard.

21 Q. Right. Your agreement was with the Reynolds
22 people to be paid a certain commission on the closing of
23 a property depending on what kind of a sale it was,
24 whether it was a bulk sale or sale and parcels; is that
25 right? That's what you described?

1 A. Yes.

2 Q. And that's the only contract you had that's
3 relevant to this transaction, right?

4 A. With -- yes, yes.

5 Q. Right. So if Pittinger had closed, you would have
6 been paid a 3 percent commission, correct?

7 A. Well, Vanguard would have been paid a 3 percent
8 commission.

9 Q. All right. Fair enough.

10 A. Actually both Vanguards.

11 Q. Right. Your company would have shared a
12 commission, 3 percent each, with the Pittinger Company,
13 if you had closed?

14 A. Yes.

15 Q. Right. You did not receive a commission because
16 you did not -- the transaction did not close, right?

17 A. Correct.

18 Q. All right. Now, ultimately, the property did
19 sell, right? All of the Keystone property sold?

20 A. Yes.

21 Q. And your company, Vanguard company, was paid a
22 commission on each of those sales, was it not?

23 A. Well, let me be specific on that. When I was at
24 Vanguard prior to 2009, Vanguard was paid commissions on
25 sales that I was involved in, but when the sale that

1 you're referring to, I guess, in 2011; is that correct, I
2 assume there was a commission paid but I was no longer at
3 the company, so I don't know --

4 Q. You don't know?

5 A. I don't know what was paid.

6 Q. Okay. That's fair enough. The league, the South
7 Carolina Coastal Conservation League, never interfered
8 with your contract to be paid a commission, did it?

9 A. I would say they did.

10 Q. What did they do to interfere with your contract
11 between Vanguard and North Pleasant?

12 A. Are you seriously asking me that question? I
13 mean, really?

14 Q. I'm seriously asking you what the conservation
15 league did that had anything to do with your contract
16 between North Pleasant and your company.

17 A. Because when the contract was dropped between
18 Pittinger and the Reynolds me, being -- Vanguard, being a
19 party to that contract, by virtue of that contract being
20 dropped, we lost our commission, so yes, they had a
21 direct effect on the commission being paid.

22 Q. The contract that you're talking about, though, is
23 a contract between North Pleasant and Pittinger; isn't
24 that right? You would only be --

25 A. But we were a party to the contract. So by

1 essence, I'm a party to the contract, or Vanguard is.

2 Q. Let's look at the contract.

3 A. I mean, they're tied together.

4 Q. The contract for the purchase and sale of that
5 property is between North Pleasant and Vintage Land and
6 the Pittinger Company, Vanguard Properties of the
7 Carolinas, correct?

8 A. Let me just explain it so the jury can understand.

9 Q. No, sir. Answer my question. The contract for
10 the purchase and sale of the property is between North
11 Pleasant and Vintage Land and the Vanguard Properties of
12 the Carolinas, the Pittinger Company, correct?

13 A. That's correct.

14 Q. All right, sir. Now, you had said that you were
15 not aware of any involvement, or any help, that the
16 conservation league had given North Pleasant in getting
17 their development agreement; is that correct?

18 A. That's correct.

19 Q. All right. So you're not aware of any of the work
20 that Hamilton Davis did with the lawyers from North
21 Pleasant in drafting the development agreement; is that
22 right?

23 A. I'm aware of correspondence, but I'm not aware of
24 his, you know, sitting down and rolling his sleeves up
25 and saying, This is what we ought to do. I think it was

1 THE COURT: Redirect?

2 MR. BARNETT: Yes, Your Honor. Briefly.

3 REDIRECT EXAMINATION

4 BY MR. BARNETT:

5 Q. I'm handing you Plaintiff's Exhibit 27, and I've
6 turned it to Bates page 116. Take a look at that,
7 Mr. Hulen.

8 I suggest to you that that is part of the
9 contract, and you can go to the first page, which is
10 Bates page 112, if you like, but that's the contract that
11 has been testified to by you and by Mr. Reynolds.

12 A. Uh-huh.

13 Q. Between the Reynolds, as you call them, and
14 Pittinger, the Pittinger Group. Okay? And take a look
15 at paragraph nine, brokerage commission.

16 A. Yes.

17 Q. Would you read the -- it's a long sentence. The
18 first sentence beginning seller and ending with seller,
19 the word seller.

20 A. Paragraph nine. Brokerage commission. Seller and
21 buyer mutually acknowledge and represent that they have
22 dealt with no brokers in connection with this transaction
23 except Robert Pittinger Company, Incorporated, for which
24 seller should be exclusively responsible for paying a
25 commission at closing equal to 3 percent of the purchase

1 price and Vanguard Development Group, LLC, in caps
2 Vanguard, for which seller should be exclusively
3 responsible to pay a commission under the terms and
4 conditions of a separate agreement between Vanguard and
5 seller.

6 Q. Thank you. Now, Mr. Gowder asked you some
7 questions about whether you had an agreement with the
8 Pittinger Company. Did you have an agreement with the
9 Pittinger Company to split the 6 percent commission with
10 them?

11 A. No.

12 Q. Okay. Did this contract require that that
13 commission be split between you and the Pittinger
14 Company?

15 A. It did.

16 Q. All right. Mr. Gowder asked you about zoning
17 issues. On the day that the Pittinger Group terminated
18 the contract, I'll ask you again, what was the zoning of
19 the property?

20 A. Flex one.

21 Q. It was still that zoning, flex one?

22 A. Yes, it was.

23 Q. Until when?

24 A. Until it was changed by the development agreement
25 later on in the year.

1 Q. All right.

2 MR. BARNETT: That's all I have.

3 MR. GOWDER: Nothing further.

4 THE COURT: You can step down. And could I
5 see y'all at sidebar a second?

6 Let me send y'all out for a second.

7 (In open court, jury present.)

8 THE COURT: All right, folks. We got one
9 more witness that we're going to squeeze in before lunch
10 that we're going to do by deposition the way we did
11 yesterday, where this gentleman is going to read the
12 answers of a witness named Mitchell Flannery, and the two
13 lawyers will, again, read their questions and this
14 gentleman will read the answers, again, taken outside of
15 the courtroom but in the presence of a court reporter.
16 The witness was placed under oath.

17 Again, you don't give this any extra credit,
18 nor do you take away from it just because it's in this
19 format. You decide how much weight to give the witness's
20 testimony based on all of the evidence you'll hear
21 throughout the trial.

22 Mr. Barnett?

23 MR. BARNETT: Thank you, Your Honor. We'll
24 say this was taken on May the 30th of last year, 2012.
25 Mr. Flannery was in Washington, DC and he was questioned

1 THE COURT: Yes.

2 (Discussion held at sidebar.)

3 THE COURT: Call your next witness.

4 MR. REYNOLDS: We call Hamilton Davis.

5 THOMAS HAMILTON DAVIS,

6 having been first duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. REYNOLDS:

10 Q. Good afternoon, Mr. Davis.

11 A. Good afternoon.

12 Q. Go ahead and get some water. You went to law
13 school, didn't you, Mr. Davis?

14 A. I did.

15 Q. When did you graduate?

16 A. I finished in 2005.

17 Q. What did you do after that?

18 A. I was down in Costa Rica for about eight months,
19 working down there, and then I came up to Charleston in
20 2008.

21 Q. Is that when you joined the conservation league?

22 A. I did. I started working for CCL in May of 2006.

23 Q. So about a year before the time we're talking
24 about?

25 A. Before the project or Keystone issues came up,

1 yeah.

2 Q. We talked about the leagues mission with Ms.
3 Derosiers. Would you tell us what your understanding of
4 the league's mission is?

5 A. Well, worked on a number of different program
6 related issues, work on energy related things, energy
7 efficiency, solar. We do a good bit of land use work on
8 the coast. We work on infrastructure issues, sustainable
9 agriculture, and so in all these instances, we're working
10 with communities, working with businesses working with
11 government to promote values, ideals, that our partners
12 in our organization think are good for South Carolina.

13 Q. So the league promotes its interests; is that
14 fair?

15 A. We have an opinion on the projects we work on, so
16 yeah, we try to steer them in that direction.

17 Q. And that's promoting the league's interest, I
18 would say, would you agree with that?

19 A. Yes.

20 Q. Would you also agree that there are limits as to
21 what the league can do in promoting its interests?

22 A. Definitely.

23 Q. So the league would not -- it would not be proper
24 for the league to threaten; is that correct?

25 A. I don't think threatening people is part of our --

1 Q. That would not be proper, would it?

2 A. It would be improper.

3 Q. It would be improper to bully the developer?

4 A. It would be.

5 Q. It would be improper to disseminate all this
6 information, right?

7 A. We try to be very accurate in the information we
8 disseminate.

9 Q. You reported to Ms. Derosiers?

10 A. I did, for a while.

11 Q. May of 2007 did you report to her?

12 A. Yes. She was who I reported to.

13 Q. Did you finish?

14 A. I said yes, that's who I would have reported to at
15 that time.

16 Q. She remembered talking to you prior to the call
17 you made to Dan Burns. Do you remember that
18 conversation?

19 A. I only -- I assumed that I would have had the
20 conversation with Ms. Derosiers because we worked in a
21 small office and so we can talk about what was going on,
22 but I don't remember actually talking to her. I don't
23 doubt that I did, but her deposition was accurate.

24 Q. Okay. Do you recall calling Mr. Burns?

25 A. I do remember calling.

1 Q. What prompted that call?

2 A. We had someone -- I had been working up in this 41
3 corridor on a couple of different projects, things going
4 on with D.R. Horton, and then the Keystone tract was --
5 had shifted from this position. We thought it was going
6 to be protected or thought the Reynolds Group was going
7 to put some kind of -- taking some kind of conservation
8 approach with it, and that had changed, and someone, and
9 I'm not sure who the phone call came from, was someone
10 said there's a developer out of Charlotte that's
11 interested in that property.

12 Q. How long between the time you received that call
13 was it before you called Mr. Burns?

14 A. I don't know.

15 Q. Was it months.

16 A. No. I would guess it was within that week or so.

17 Q. And you don't recall who it was you spoke with; is
18 that correct?

19 A. I don't remember the conversation. I just
20 remember that -- I didn't have any knowledge of this --
21 what ended up being the somebody I knew who they were. I
22 was told that by someone.

23 Q. You knew that they were interested in buying a
24 specific piece of the Keystone tract, right?

25 A. Someone had informed me that they were interested

1 in Keystone, yeah. I didn't know if it was a piece or
2 all of it or what.

3 Q. This is Exhibit 5. I made a mark on it
4 inadvertently. Is that okay with you? This is Exhibit
5 5, Mr. Davis. If you would look at that, please. You
6 were here yesterday when the voice mail message was
7 played, right?

8 A. Right.

9 Q. Is that an accurate transcription, to the best of
10 your knowledge, of that voice mail?

11 A. Yeah. I mean, I think so, and it says here that I
12 had mentioned the 26 acre parcel so I guess I was aware
13 of the 2,600 acres. I don't today remember having that
14 knowledge, but yeah, I mean, I'm sure this is accurate.

15 MR. REYNOLDS: Move for admission of Exhibit
16 5, Your Honor.

17 THE COURT: The transcript?

18 MR. REYNOLDS: The transcript.

19 MR. GOWDER: I guess it's fine. The audio
20 recording, I think, is already in.

21 MR. REYNOLDS: It's been played, but this is
22 an actual physical exhibit.

23 MR. GOWDER: We don't have any objection.

24 (Plaintiff's Exhibit No. 5 marked for
25 identification and admitted into evidence.)

1 BY MR. REYNOLDS:

2 Q. Let's get back to what you were just talking
3 about, Mr. Davis. You did know that 2,600 acres were
4 being pursued by the Pittinger company, didn't you?

5 A. Yeah.

6 Q. You also said not purchased but interest in.

7 A. Uh-huh.

8 Q. What does that mean to you?

9 A. Well, there's no indication that they had bought
10 the property. I think my information was that this is a
11 potential -- this is a group that's interested in this
12 property and might end up being the owner.

13 Q. Might end up being the buyer, right?

14 A. Yeah, yes, so it was represented that they could
15 be the next owner maybe.

16 Q. And you knew that it was a specific piece of that
17 property, right?

18 A. Yeah. Based on this e-mail, I had the 2,600
19 acre -- but I don't know today if that's accurate or not.
20 I obviously had 2,600 acres in my head as a piece of
21 information.

22 Q. Is there any way -- it wasn't just a lucky guess
23 that you came up with 2,600. Can we agree to that?

24 A. Yes.

25 Q. So you had some information that there was

1 interest in a 2,600 parcel of property in the Keystone
2 tract; is that fair?

3 A. Yeah. I clearly knew that.

4 Q. And you say I wanted to give you information about
5 what's going on in the area right now that you would
6 probably be interested in; is that right?

7 A. That's right.

8 Q. Okay. Mr. Burns subsequently called you back; is
9 that right?

10 A. Yes. We ended up speaking on the phone.

11 Q. There was some concern as to whether he called you
12 back.

13 A. Yeah, I remembered that I spoke with him, yeah.

14 Q. So it wasn't just trading voice mail messages?

15 A. No. I remember having a conversation.

16 Q. Do you recall specifically what you discussed?

17 A. I don't remember the specific details of the
18 conversation.

19 Q. Exhibit 27 is in front of you, below Exhibit 5, I
20 believe. Could you pick that up?

21 A. Yes, sir.

22 Q. Look back at probably 20 pages. The Bates number
23 is 304.

24 A. I've got it.

25 Q. Do you see that?

1 THE COURT: This is under the tab 27.

2 MR. BARNETT: It's under tab 27.

3 THE COURT: What is the Bates number again?

4 MR. REYNOLDS: 304.

5 THE COURT: Okay.

6 BY MR. REYNOLDS:

7 Q. Have you had a chance to look at it?

8 A. Yes, sir.

9 Q. Let me ask you some questions then. First of all,
10 the third line, you say you called him back, right?

11 A. It says -- well, this isn't written by me. It
12 says Daniel Burns called me.

13 Q. Meaning you?

14 A. Right.

15 Q. Which is your understanding as well?

16 A. Right.

17 Q. The next sentence is, Hamilton stated that he was
18 aware that we had the Keystone tract under contract.

19 Do you see that?

20 A. I do.

21 Q. Does that refresh your recollection as to whether
22 you knew that the piece was under contract?

23 A. No, I didn't know that it was under contract. I
24 didn't know the details of what Daniel Burns' company was
25 doing.

1 Q. So in the voice mail, you said I guess not
2 purchased but interest in. That's the way you described
3 your knowledge, right?

4 A. Uh-huh.

5 Q. And according to Burns, you told him that we,
6 meaning Pittinger, had the Keystone tract under contract,
7 right? That's what Burns says.

8 A. That's what Burns wrote in this e-mail, yes, sir.

9 Q. And you believe that not to be accurate?

10 A. I didn't know the proper reason for the contract,
11 so I don't think that's an accurate recounting of the
12 conversation.

13 Q. But you knew that there was a \$2,600 acre parcel
14 involved?

15 A. Apparently.

16 Q. And you didn't remember that before today, right?

17 A. No, I don't remember -- no, I do not remember that
18 before today.

19 Q. Moving down a little bit, would like to know that
20 his group -- that means the conservation league, I
21 assume; is that right?

22 A. Yes, sir.

23 Q. -- coupled with the efforts of large plantation
24 owners is trying to stop development in the Highway 41
25 corridor. You see? Did I read that correctly?

1 A. You did.

2 Q. So this is Mr. Burns telling Fogarty that you told
3 him that the league was trying to stop development on the
4 Highway 41 corridor, right? That what you get from this
5 e-mail?

6 A. That's what the e-mail says, yes, sir.

7 Q. That's not accurate, is it?

8 A. No. We were not trying to stop all development,
9 or stop development. We were working with the community
10 and the forest service and DNR, some of the lawyers
11 property owners, we were working towards a type of
12 development, those consistent in that area, the type of
13 thing we had done with D.R. Horton.

14 Q. So you were not trying to stop development on the
15 Highway 41 corridor, right?

16 A. No, we were not. Well, I mean, there's different
17 kinds of development. We were not attempting to prevent
18 any development from taking place on 41. We were working
19 in that area the way we worked with D.R. Horton in the
20 sense that you know different ideas about what a
21 development could, should look like and working towards
22 an area of consensus.

23 Q. So it would be incorrect in May of 2007 to say
24 that the league was trying to stop development in the
25 Highway 41 corridor? That's all I'm getting at.

1 A. Again, I mean, we weren't trying to -- if you're
2 asking me were we trying to stop all development in the
3 41 corridor, you're correct, that's an incorrect
4 statement.

5 Q. Moving on, he said they are particularly targeting
6 the Keystone property. Do you see that?

7 A. I do.

8 Q. Was that accurate in May of 2007?

9 A. We were work -- well, I don't know what he means
10 by targeting the Keystone property.

11 Q. Well, these words are attributed to you.

12 A. Oh, this is -- yeah. This is Mr. Burns's summary
13 of -- these aren't quotes from me. This is Mr. Burns's
14 summary of, I guess, what he took away from that
15 conversation. So you're asking me if I actually -- are
16 these quotations from me?

17 Q. No, I'm not asking that. Let me read them, the
18 beginning, he said, and that's you, right?

19 A. Uh-huh.

20 Q. Said they are particularly targeting the Keystone
21 property. My question to you is in May 2007, was that
22 accurate?

23 A. We were working on -- yeah. We were working on --
24 the Keystone property was in this 41 corridor where I was
25 actively engaged on projects with D.R. Horton

1 communities, et cetera, so it falls within -- I don't
2 know if I would use those words, but I would say that we
3 were working on issues related to Keystone at the time,
4 at this time.

5 Q. But would it have been accurate to say you are
6 particularly targeting the Keystone property?

7 A. I guess I don't know what that means, targeting it
8 for what?

9 Q. If you don't know the answer to that question, say
10 I don't know.

11 A. Yeah. I don't know what Mr. Burns meant when he
12 said that, in this e-mail.

13 Q. And you don't know whether you said that to him,
14 right?

15 A. Did I do -- do I remember -- do I remember if I
16 used the word targeting?

17 Q. Do you remember --

18 A. That I said we were targeting Keystone -- I don't
19 remember the conversation with that amount of
20 specificity.

21 Q. Exactly.

22 A. Right.

23 Q. Moving on, he mentioned that D.R. Horton has a
24 property just south of ours and that the conservation
25 league has bumped. Let me stop at that juncture. Is it

1 accurate to say that the league had fought D.R. Horton?

2 A. No, we worked with D.R. Horton.

3 Q. So that's inaccurate?

4 A. It's a inaccurate characterization of our
5 activities there.

6 Q. The next paragraph, the scariest thing, do you see
7 that?

8 A. I do.

9 Q. The scariest thing mentioned is that they are
10 working with the county to get rezoning for the Keystone
11 tract to a conservation easement so it can't be a
12 development.

13 You don't remember saying that, I believe, is what
14 I'm hearing from your testimony, right?

15 A. Yeah. I wouldn't have said that, because that
16 doesn't -- the county doesn't rezone things for
17 conservation easements.

18 Q. Well, let me get to that, but first, that's not an
19 accurate statement, is it?

20 A. It's not.

21 Q. Do you have any reason to know how Mr. Burns came
22 to that information, or attributed that statement to you,
23 other than having a conversation with you?

24 A. My guess is that -- no. I mean, I don't. The
25 conversation had to do with what was happening in that

1 corridor. Part of what was going on was Berkeley County
2 was considering rezoning a large portion of the 41
3 corridor to a rural land designation. It wasn't a
4 conservation easement, and it wouldn't have prevented
5 vet, it would have changed the density on properties like
6 Keystone.

7 Q. Just so we're all clear, you just don't have a
8 recollection of that conversation sitting here today; is
9 that correct?

10 A. I have a recollection of having a conversation,
11 and I didn't have a recollection of what we were -- and I
12 know what we were working on in the 41 corridor at that
13 time and it was -- and the rezoning was part of it, but
14 it wasn't a rezoning for conservation easement. I mean,
15 that doesn't even make sense because you can't rezone to
16 a conservation easement.

17 Q. Let me make sure I understood your testimony. You
18 have a recollection of talking to Mr. Burns, right? And
19 you have a separate recollection of what the league was
20 working on at that time, correct?

21 A. Right.

22 Q. But you're not saying that you conveyed what the
23 league was working on to Burns in that conversation
24 because you just don't remember.

25 A. No, I remember having -- the purpose of calling

1 Mr. Burns was to talk with him about the interests around
2 this property and the opportunity, the potential for
3 doing conservation stuff on the property. I mean, that
4 was the reason for picking up the funds, that is correct.

5 There might be a new landowner down the road that
6 we would be working with, the same way we, you know,
7 worked with D. R. Horton, in the same way the state and
8 others had been working with the Reynolds to try to do
9 something different with the property as well.

10 Q. Back a couple of questions ago, I asked you
11 whether you had any information or any explanation of how
12 Dan Burns attributed all these statements to you other
13 than his conversation with you. Do you have any
14 explanation of that?

15 A. Well, I think he's recapping the conversation, you
16 know, his memory, I guess, of the conversation.

17 Q. So you think he misremembered the conversation?

18 A. Well, yes, based on the mistakes like the
19 conservation easement description. I mean, those are
20 just things that -- again, I was working full time on
21 these type projects, and that's not the language. It's
22 not accurate. It is nothing that would ever come out of
23 my mouth.

24 Q. It wasn't an accurate statement of what you were
25 doing. I believe you testified to that, right?

1 A. Yes, nor it is it like an accurate -- nor is it a
2 possibility because the county can't rezone for
3 conservation easement.

4 Q. But you don't remember the conversation in enough
5 detail to absolutely say you didn't say these words,
6 right?

7 A. I don't remember. Again, I know how we -- I
8 worked on these issues for a long time so I know how we
9 talk about these issues, and I know how we communicate
10 all in the projects that we work on, and this doesn't
11 represent the type of communication that I would have had
12 with anyone on this project.

13 Q. I understand -- I'm sorry. Were you finished,
14 Mr. Davis?

15 A. I'm sorry. Yeah.

16 Q. Were you finished?

17 A. Yeah.

18 Q. I understand your testimony is that is something
19 you would not accept; is that fair?

20 A. That is.

21 Q. But you don't remember one way or the other, other
22 than for that reason; is that fair also?

23 A. Yeah. That's my basis for saying that.

24 Q. And let's finish up on this wording. Senator, do
25 you know if the Coastal Conservation League can get the

1 county to rezone a property to a conservation easement
2 without the owner's consent? Do you see that?

3 A. I do.

4 Q. So he references twice a conservation easement in
5 zoning, right?

6 A. Uh-huh.

7 Q. And you think he must have just misunderstood what
8 you told him during that call?

9 A. I have to assume that.

10 Q. There are some items that are not in this, this
11 communication, I'd like to ask you about.

12 A. Okay.

13 Q. Do you need some water?

14 A. Yes. I'll get some more. Thanks.

15 Q. Assuming that this e-mail is from Burns to Fogarty
16 and a true recap of your conversation, with that
17 assumption, does this contain any indication that you
18 asked Mr. Burns what its development plans were?

19 MR. GOWDER: Objection, Your Honor. He's
20 asking him to assume something that's not in evidence.
21 He's asking him to assume that it's accurate.

22 MR. REYNOLDS: It is in evidence, Your Honor.

23 THE COURT: What is your question again?

24 MR. REYNOLDS: Assuming this is accurate,
25 does it contain any reference to -- I forget where I

1 started.

2 THE COURT: Rephrase your question.

3 BY MR. REYNOLDS:

4 Q. Assuming this e-mail is accurate, does it contain
5 any reference -- well, let me just start over again.
6 Maybe this will clear it up.

7 Is there any reference in that document in front
8 of you to your asking Mr. Burns what his development
9 plans were?

10 A. I don't see any reference to that.

11 Q. Is there any reference to you asking Mr. Burns to
12 get together to get to know each other?

13 A. There is no reference to that.

14 Q. Overall, is this information, -- based on this
15 e-mail, is this information positive or negative
16 information?

17 A. I'm not sure I understand what the question is.

18 Q. Well, if I'm saying something about a piece of
19 property, I can say something good about it or something
20 bad about it. Using that analysis, is the information
21 overall in the e-mail good information or bad information
22 about the Keystone tract?

23 A. I guess it just depends on where you're coming
24 from, what your perspective is.

25 Q. From the owners perspective.

1 A. Because there hasn't been a lot of information
2 about the Keystone tract in that e-mail.

3 Q. I'm sorry. What was your last testimony?

4 A. There is not a lot of information about the actual
5 Keystone tract in that e-mail.

6 Q. But there's a lot of information about what
7 opposition there is for the Keystone Tract development?

8 A. Yeah, but the references in here are to what might
9 development meant on the property.

10 Q. And from a potential purchaser's point of view, is
11 that good information or bad information?

12 A. Again, that depends on the developer we work with.
13 There are a lot of developers that didn't want to go do
14 the conservation type developments, and they're not
15 looking for something that they can do a lot of --
16 they're looking for property that allows them to do a lot
17 of units, and now this part of why we engage with
18 developers to talk about the possibility for the
19 property.

20 Q. So you can't answer the question whether it's good
21 information or bad information with respect to
22 the development of the Keystone tract; is that true?

23 MR. GOWDER: Objection. He answered the
24 question.

25 MR. REYNOLDS: I just wanted it cleared up,

1 Your Honor.

2 THE COURT: Overruled. Go ahead.

3 THE WITNESS: Yes. Again, I think it depends
4 on what you -- as a developer, what you want to do with
5 the property will depend on whether or not these
6 activities were positive or negative.

7 BY MR. BARNETT:

8 Q. I'm handing you what has been marked Exhibit 19.

9 A. Yes.

10 Q. Have you seen that before?

11 A. I have.

12 Q. What is it?

13 A. It is a flyer that was, I guess, used for a
14 community cook-out meeting up in the Cainhoy area on the
15 41 corridor.

16 Q. What was the purpose of the meeting?

17 A. There were a number of -- I call them community
18 leaders, folks that lived in Huger, Cainhoy, and that
19 area that were concerned about what was happening with
20 some of the development proposals that were out there,
21 and --

22 Q. Go ahead.

23 A. There was concern for the community, and there are
24 community leaders. There were a number of names on here
25 of folks that we used to have -- or, I guess we still do,

1 I don't work out there anymore -- but used to have
2 relationships with that would call us, let us know when
3 stuff was going on that they were worried about.

4 So this is one of those meetings where we were
5 discussing -- I don't recall what all the topics of
6 conversation were, but I know it was in this time frame
7 when the rezoning was being considered. There was a
8 petition that was circulating for communities to move
9 forward with the conservation rezoning, and the R-15 is
10 what Berkeley calls it in their regulations, and so that
11 was, I guess, the impetus for this meeting.

12 Q. I have a number of questions in response to that.
13 Let me start with, what is the conservation zoning, is it
14 R-15 you said?

15 A. R-15 is what the county was looking at for this
16 corridor.

17 Q. What are the terms of R-15 zoning?

18 A. I don't remember off the top of my head. I know
19 that it reduced the amount, the number of homes, that
20 could go in a certain amount of acreage.

21 Q. It reduced the density of any potential
22 development, right?

23 A. Right.

24 Q. And it substantially reduced the density, right?

25 A. It went from -- I think it was an acre or so under

1 current zoning and we moved it to, like, 15, one unit per
2 15 acres. I think that's what it was, one unit.

3 Q. It was 30,000 square foot zoning at the time of
4 May 2007. Does that sound right to you?

5 A. I think that's what the flex one zoning is, yes,
6 sir.

7 Q. So it's flex one and the attempt was to move it to
8 R-15?

9 A. That's what was being considered by the county.

10 Q. Which would have reduced the zoning, the density,
11 by a factor of more than 15.

12 A. Yeah. It would have reduced the number of homes
13 that could have been put -- you know, it wasn't just
14 Keystone. There are a lot of properties that fell
15 underneath this conversation, or this set of
16 considerations that the county had in front of them.

17 Q. And was the league working on that project at the
18 time you called Mr. Burns, which was May 18, 2007?

19 A. I think that we were in -- I'm fairly certain that
20 we were -- the county had already set the wheels in
21 motion for the rezoning.

22 Q. So that conservation easement rezoning was in the
23 works when you called in; isn't that correct?

24 A. It was not conservation easement rezoning. An
25 easement is something that a property owner puts on their

1 property voluntarily.

2 Q. I misused the term. It's conservation rezoning
3 without the easement, right?

4 A. Right.

5 Q. So conservation zoning was in the works when you
6 called Mr. Burns, right?

7 A. Yes, I believe so.

8 Q. And had you ever called anyone at North Pleasant
9 about anything at this time?

10 A. No. I hadn't talked with any of the folks there.
11 Like I said, I had been working, like we said, for about
12 a year on -- with CCL on land use issues, and my
13 impression, once things kind of -- my awareness of the
14 Keystone tract was when the property was put on the
15 market, and then I was told the back story about the
16 Department of Natural Resources and the state and others
17 attempting to buy this property, and so I wasn't really
18 aware of that situation until, I guess, things changed
19 with what the Reynolds intended to do with it.

20 And so that was -- part of the zoning conversation
21 was you had a number of different properties that were --
22 that looked like they might go toward a suburban style
23 development instead of staying in the rural kind of
24 context of the economy we're in, and so you had a budget
25 concern from various -- from the state, from the forest,

1 from the communities as to what that would mean for their
2 quality of life.

3 Q. Did you ever call anyone from the Reynolds Group
4 and ask them what their development plans were?

5 A. Okay. I'm sorry. That's what the original
6 question was. I'm sorry. No.

7 So the point of that roundabout answer was that I
8 had -- I did not call the Reynolds Group. Our partners,
9 conservation partners, other groups that would also work
10 with that, actually purchase property and result in the
11 kind of deals that were offered to the Reynolds Group,
12 that was -- you know, we consider ourselves to be part of
13 that community, I guess, the part of -- a member of those
14 partners, but we're not a point person on negotiating
15 that.

16 So I wouldn't have been the person at that stage
17 of the game that was talking to the Reynolds, so no, that
18 was -- I never had those conversations. It wasn't me
19 that would have been doing that.

20 Q. So you never had direct information from that
21 group as to what their plans were, did you?

22 A. No. I never talked to Reynolds Group.

23 Q. Let me talk about the cook-out. I believe we were
24 at the point that you said development along the 41
25 corridor was discussed; is that right?

1 A. Uh-huh.

2 Q. You have to say yes.

3 A. Yes, sir. I apologize.

4 Q. That's okay. And what do you remember about those
5 discussions of development along the 41 corridor?

6 A. Generally or at that --

7 Q. At that cook-out.

8 A. Again, I think it was -- the concerns were
9 properties moving from -- there were a number of large
10 properties there that were zoned for this suburban style
11 higher development, the flexible -- and Keystone was one
12 of those properties, and so the concern was those
13 properties would end up getting developed, and the
14 opportunity was to rezone this area to keep it in its --
15 or to make sure the order came in and was consistent with
16 rural land use options, hunting, fishing, agriculture.

17 Q. Were the expenses associated with development
18 discussed at the cook-out meeting first?

19 A. What do you mean, expenses?

20 Q. Was it ever discussed that the landowners might
21 have increased expenses because of the development along
22 Highway 41?

23 A. I think part of it -- typically, what we would
24 have talked about --

25 Q. Let me stop you there, Mr. Davis. I'm not asking

1 typically. I might ask that in a moment, but right now
2 I'm asking you if you were a member of such discussions?

3 A. I would say typically because I don't remember
4 specifically what -- yeah, I don't remember specifically
5 what was discussed at that meeting, but, again, I know
6 how this typical set of concerns and the way we would
7 communicate and how the properties and others would think
8 about these issues?

9 Q. In general terms, did you have communications with
10 property owners in that area apart from that cook-out?

11 A. Yes. I was right there in communication with
12 Coastal Conservation with the community.

13 Q. Did you discuss the risks of development along the
14 41 corridor with them in one-on-one discussions?

15 A. Yes, I'm sure -- yes.

16 Q. And was the issue of whether the expense of the
17 development would be passed on to them?

18 A. Uh-huh.

19 Q. In the form of higher taxes, for example, was that
20 ever discussed?

21 A. I am confident that we talked about the cost
22 associated with new development.

23 Q. And you informed them that their taxes might go up
24 because of the new development, right?

25 A. We talked about how -- yeah, the value of land

1 changes and the services required to service new
2 development can be passed off to the whole community.
3 It's not always just borne by just the development.

4 Q. And you remember being asked this question at your
5 deposition, I assume.

6 A. I remember having this general line of
7 conversation.

8 Q. Do you remember discussing whether you had any
9 support for that proposition?

10 A. I remember talking about why I think why we think
11 that, or why we would think that.

12 Q. Do you have a written report substantiating that,
13 that view or costs of development might get passed on
14 through higher taxes?

15 A. Specifically for Keystone?

16 Q. No, just in general.

17 A. There's a lot of information on how property
18 choices impact taxes and costs of service studies
19 associated with new development.

20 Q. So it would have been easy for you to provide us
21 with one of the written studies; is that right?

22 A. Provide you with one?

23 Q. Yeah.

24 A. Yeah. I don't know that that was requested.

25 MR. REYNOLDS: If I could have a moment, Your

1 Honor.

2 BY MR. REYNOLDS:

3 Q. I'm looking at page 62, line -- 61, line 24.

4 Question: You mentioned research. This is my
5 only question about impact on property taxes from
6 residential development.

7 You answered: Uh-huh.

8 THE COURT: What page are you on?

9 MR. REYNOLDS: At the end of 61, line 24.

10 BY MR. REYNOLDS:

11 Q. This was taken April 10, 2012 by Mr. Barnett.
12 Line 24: You mentioned research. This is my only
13 question about impact on property taxes from residential
14 development.

15 You say: Uh-huh.

16 What form is that in? Is it in written form
17 or other words?

18 It was at one point. I would have to see if
19 I could dig it up.

20 Okay. It still exists in written form, I
21 would ask, and it's up to your lawyer, of course, but
22 assuming he concurs, don't send it to me directly. Don't
23 do anything like that, but if it exists, I would ask that
24 you give them a copy of it, if it's all right with you.

25 Uh-huh.

1 Did I read that correctly?

2 A. You did.

3 Q. So at the deposition Mr. Barnett requested a
4 written report that supported your conclusion; is that
5 right?

6 A. Yeah. I think he was looking for an example of
7 research we'd done on that topic.

8 Q. And you didn't provide it?

9 A. I don't think I ever thought about that request
10 since I walked out. We can still do that.

11 Q. But in any event, it's not been provided at this
12 point.

13 A. I don't remember ever going back and actually
14 digging up research. But, you know, we have those
15 things, so that's not a problem.

16 Q. Let me move on to the support you gave to North
17 Pleasant during the development agreement process. You
18 heard that testimony this morning?

19 A. Yes, sir.

20 Q. And you stood up, I believe, at the final reading
21 and supported the development agreement; is that right?

22 A. I remember speaking at the public hearing.

23 Q. So you supported it?

24 A. We did. We were in support of it.

25 Q. And I'm asking specifically about you at this

1 point. Did you speak in favor of passing the development
2 agreement ordinance?

3 A. Yes.

4 Q. Were you in support of that agreement all through
5 the process?

6 A. We worked with Neil Robinson and George
7 Bullwinkel, who were the attorneys for the group, and Dan
8 Beach and I went over to their offices on numerous
9 occasions to work up what the parameters of that
10 agreement would be, looking at wetlands, looking at
11 setbacks looking at a lot of other details as to how you
12 would structure the development agreement, how you
13 designate the number of units.

14 There are a lot of details involved with that
15 development agreement as to how the property -- we worked
16 on that to get to the development agreement that we were
17 supportive of.

18 Q. I just want to make sure I understand. It's not
19 like you and North Pleasant suddenly were on the same
20 side lobbying the county for this specific proposal.
21 This was a negotiated settlement, if I understand; is
22 that correct?

23 A. No, it wasn't a settlement. It was the -- I guess
24 the Reynolds decided they wanted to do a development
25 agreement and they reached out to us to work on something

1 that was going to be acceptable to all the parties that
2 were involved in or were concerned about what was going
3 to happen to that property.

4 Q. What was the league's position at the beginning of
5 the discussion of the development agreement from North
6 Pleasant? It was R-15, wasn't it?

7 A. That is what we had supported -- so the county was
8 moving forward with R-15, and we were supportive of that
9 being the county, the zoning, so it's not -- we
10 wouldn't -- R-15 isn't -- R-15 is kind of like a blanket
11 category. For development reasons, you would get into
12 the specifics and you would do something that, you know,
13 had a lot more detail, a lot more direction as to what
14 would happen with the property.

15 Q. If I understand correctly, the R-15 proposal was
16 something that the league supported, right?

17 A. We supported R-15.

18 Q. And you supported it up until the development
19 agreement was entered into, right?

20 A. Yeah. I mean, I don't really remember the timing
21 of how all that played out, but we supported the
22 developer in that.

23 Q. And had the development agreement not been entered
24 into, R-15 zoning was a potential for North Pleasant; is
25 that right?

1 A. Yes, it was.

2 Q. So at some point, it sounds like you and North
3 Pleasant reached an agreement and came up with a
4 development agreement; is that fair?

5 A. Yes. We were open to them doing -- I mean, they
6 got more units through the development agreement, and
7 we -- that's a good mechanism, in our view, generally, to
8 know what's going to happen with the piece of property in
9 the long term, and then zoning doesn't really do that.

10 Q. But what I'm getting at, is absent that
11 development agreement, the league would have pushed R-15
12 zoning, right, and that would have been bad for North
13 Pleasant, right?

14 A. Well, we would have continued to support R-15. If
15 North Pleasant wanted to do more units than R-15 allowed,
16 then I guess they wouldn't do more units based on the
17 development agreement, so it's a better deal to do the
18 development agreement.

19 Q. Than to face R-15?

20 A. Yeah, then have it resume.

21 Q. And I'm just getting at -- the idea that North
22 Pleasant and you were working hand in hand with the
23 government from day one of this development agreement,
24 that's not an accurate idea, is it?

25 A. Well, no. I mean, the idea is that there was --

1 the county was looking at doing one thing with the
2 property, which we were supportive of because that was
3 the only option on the table when the development
4 agreement option was there, then we worked with the
5 Reynolds attorneys to get it to a place where we would be
6 supportive of it.

7 MR. REYNOLDS: Thank you, Mr. Davis.
8 That's -- unless you have anything, that's all I have.

9 THE WITNESS: Thank you.

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MR. GOWDER:

13 Q. Good afternoon, Mr. Davis. Mr. Davis, on May the
14 18th, 2007, the day that you had the phone call with
15 Daniel Burns, were you aware of the existence of a
16 contract between North Pleasant, LLC and Vanguard
17 Properties of the Carolinas, LLC?

18 A. I wasn't.

19 Q. Did you at any time have an intention to interfere
20 in any way with the contract between North Pleasant,
21 LLC and Vanguard Properties of the Carolinas, LLC?

22 A. No, sir.

23 Q. Did you have any involvement in May 2007 with
24 Vanguard Properties of the Carolinas' decision not to
25 proceed to close a contract they had with North Pleasant?

1 desire to see the property remain in some type of rural
2 state, and that that's what we were interested in working
3 towards.

4 Q. Okay. And just to keep -- or to make it -- to be
5 clear, you called and didn't get him. You got his voice
6 mail so you left a voice mail?

7 A. Right.

8 Q. And that's the one that's in evidence and that
9 we've all heard; is that right?

10 A. Yes, sir.

11 Q. And in that you basically said, This is who I am,
12 and I would like to talk to you, right? Is that
13 accurate?

14 A. I think so.

15 Q. And did -- and as a result of that, Mr. Burns
16 called you back?

17 A. He did.

18 Q. That same afternoon?

19 A. I think it was. I think it was that afternoon.
20 I'm not positive.

21 Q. Now, the conversation with him that you just
22 described, how long did that conversation take?

23 A. I remember it being brief, inside of five minutes
24 maybe.

25 Q. About five minutes?

1 A. Around.

2 Q. And how did you leave things, if you remember?

3 A. My recollection, again, it was a brief
4 conversation. It was cordial. It wasn't -- brief and
5 cordial, is my recollection of the -- of how it went
6 down.

7 Q. Was it your intention in calling him to discourage
8 Mr. Burns or his company from buying the property?

9 A. No. That wasn't my intention.

10 Q. Okay. And, in fact, would you have done something
11 like that?

12 A. No. I mean -- no.

13 Q. Okay. And would you have minded, in fact, or
14 would the league have minded another owner of this
15 property? Would they have minded somebody buying the
16 property?

17 A. No. I mean, the Reynolds Group had kind of ceased
18 with their attempts to do conservation, take a
19 conservation-type approach to the property, so a new
20 buyer represented an opportunity to do something
21 different.

22 Q. So, in fact, you saw that as an opportunity?

23 A. Yes, I did.

24 Q. That somebody else was looking after it?

25 A. It was, yes.

1 2007?

2 A. I did not.

3 Q. Did you ever hear that from anybody until you
4 received a copy of the lawsuit that was filed in 2010?

5 A. That was the first time it was brought to my
6 attention.

7 MR. GOWDER: Thank you, Mr. Davis. One more,
8 please. That's all. Thank you.

9 THE WITNESS: Okay.

10 THE COURT: Redirect?

11 MR. REYNOLDS: Yes. All right. Thank you,
12 Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. REYNOLDS:

15 Q. Mr. Davis, you're a lawyer, right?

16 A. I graduated from law school. I'm not a member of
17 the South Carolina bar.

18 Q. You're graduated from law school. Was there any
19 reason that North Pleasant had to contact you prior to
20 filing a lawsuit? You just know they didn't, but the
21 implication is that they should have done it. Can you
22 tell us why they should have done that?

23 A. I don't think there is a legal implication. They
24 should have. I think the question is, is just had a --
25 hearing a conversation that I ever had with the Reynolds

1 guys about phone call and there wasn't.

2 Q. I just want to make sure there is no implication
3 that North Pleasant did anything wrong by not informing
4 you that they were going to sue you.

5 A. I feel sure that you attorneys can pinpoint any
6 issues related to that.

7 Q. Do you have Exhibit 4 in front of you?

8 A. Can you tell me what it is?

9 Q. It says 4 at the bottom. It's one page. That's
10 5. You should be getting close. Did I put one over
11 here? It's back here, Mr. Davis. My apologies.

12 Would you take a look at that, please.

13 A. Uh-huh.

14 Q. You heard that described earlier, I believe?

15 A. May I look at this?

16 Q. Sure. Take your time.

17 A. I guess I don't remember it being referenced,
18 but --

19 Q. That's okay. What does it look like to you?

20 A. It is a letter from Daniel Burns to Michael
21 Bennett.

22 Q. What's the date?

23 A. It's May 11, 2007.

24 Q. Do you see the annotation at the bottom the, Bates
25 number, SCCL0100, do you see that?

- 1 A. Yes.
- 2 Q. Does SCCL stand for the Conservation League?
- 3 A. Yes, it does.
- 4 Q. This was a copy that was in your files, right?
- 5 A. I don't know.
- 6 Q. It's a document that was produced by the
- 7 Conservation League; is that right?
- 8 A. Is that what SCCL means?
- 9 Q. Yeah.
- 10 A. Yes, I guess so.
- 11 Q. Have you ever seen this before?
- 12 A. It does not ring a bell.
- 13 Q. Who is Michael Bennett?
- 14 A. Mike Bennett is one of -- I believe he's one of
- 15 the larger property owners up in the 41 corridor.
- 16 Q. Have you ever talked to him?
- 17 A. I have had conversations with him.
- 18 Q. And he's the recipient of this letter, right?
- 19 A. He is.
- 20 Q. And at some point he presented this letter to the
- 21 Conservation League, right?
- 22 A. I don't know.
- 23 Q. If it was produced by the Conservation League,
- 24 that would make sense, wouldn't it?
- 25 A. It would.

1 Q. On cross, you were asked if you were aware of the
2 contract, and you said no, right?

3 A. Right.

4 Q. Let me look at the last paragraph of the Bennett
5 letter. We are presently acquiring a very attractive
6 2,600 acre parcel in the Charleston region. Do you see
7 that?

8 A. I do.

9 Q. First of all, it references 2,600 acres, right?

10 A. Right.

11 Q. And that's the number you referenced in your voice
12 mail to Burns on the 18th, right?

13 A. Right.

14 Q. And that was one week after the date of this
15 letter, right?

16 A. When was that, May 18th?

17 Q. May 18th, one week after the date of this letter;
18 is that right?

19 A. Yes, yes, sir.

20 Q. And the first part of that sentence is we are
21 presently acquiring a very attractive 2,600 acre parcel,
22 that to you, being a graduate from law school, means
23 you're in the process of buying it, right?

24 A. I don't know what the legal terminology requiring
25 it. I guess it looks like going through the process of

1 the buying.

2 Q. Going through the process of buying that property,
3 right? Would you agree with that?

4 A. Yeah. I mean, I don't know what the legal -- I
5 don't know what presently acquired, like the before and
6 after of buying a piece of property.

7 Q. Acquiring means buying, doesn't it?

8 A. Yeah. It's not going through the process of
9 buying the property.

10 Q. And that typically involves a contract, doesn't
11 it?

12 A. I would assume so.

13 Q. So if you had this letter prior to the call to
14 Mr. Burns, you would have had that information, right?

15 A. I wouldn't have known -- well, I don't know. It
16 doesn't say there's a contract, so I don't know that I
17 would have interpreted this as being contract.

18 Q. But my question was, had this letter that came
19 from the Conservation League been made available to you
20 prior to the call to Burns, you would have seen that
21 language, right?

22 A. Yeah. Well, if I had read the letter, I would
23 have seen all the language, yes, sir.

24 Q. And that could be where you got the 2,600 acres,
25 isn't it?

1 A. Again, I don't remember where I got the 2,600
2 acres.

3 Q. You don't know where or when, right?

4 A. I don't know where the 126 number came from.

5 Q. You also testified that you didn't cause the
6 termination of the Pittinger contract. Was that your
7 testimony? Do you have an opinion as to whether you
8 caused the termination of Pittinger contract one way or
9 the other?

10 A. No, I don't think I did. My understanding of how
11 events transpired that I did not.

12 Q. And you've been here for most of the trial, I
13 believe?

14 A. I have.

15 Q. And you called on the 18th, right?

16 A. I did.

17 Q. And you heard a whole lot of testimony about a
18 flurry of calls on the 20th, right?

19 A. Right.

20 Q. And you heard that Pittinger gave an option on the
21 20th, either extend the due diligence period, or I'm
22 terminating agreement. You heard that testimony?

23 A. I had.

24 Q. Do you have any reason to think Pittinger would
25 have made that ultimatum had you not called him?

1 A. I never talked to Mr. Pittinger and I don't
2 know -- I don't know all the details and circumstances of
3 what transpired outside of my conversation.

4 Q. Your answer might be that you don't have any
5 information, but my question is, do you have any
6 information for this jury that would lead them to believe
7 that there wasn't direct relationship between your phone
8 call and the threat to terminate the agreement two days
9 later?

10 A. No. I don't have any additional information about
11 it, other than what's been testified to today, what I
12 heard from previous witnesses as to what happened that
13 weekend.

14 MR. REYNOLDS: That's all I have, Your Honor.

15 MR. GOWDER: Nothing further, Your Honor.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you.

18 THE COURT: Okay. Why don't we go ahead and
19 take a ten-minute rest room break. And, again, don't
20 talk about the case or discuss witness demeanor or
21 anything like that.

22 See you back in about ten minutes.

23 (Recess taken.)

24 THE COURT: All right. We'll resume now with
25 the plaintiffs calling their next witness.

1 MR. BARNETT: The plaintiff calls Nancy
2 Vinson, Your Honor.

3 NANCY ELIZABETH VINSON,
4 having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BARNETT:

8 Q. Good afternoon, Ms. Vinson. You are here subject
9 to a subpoena; is that correct?

10 A. Correct.

11 Q. Even though you got subpoenaed, I'll thank you for
12 coming anyway. Now, you live where?

13 A. I live on James Island.

14 Q. You've lived there for a while?

15 A. Yes, since 1994.

16 Q. Did you previously work for the South Carolina
17 Coastal Conservation League?

18 A. Yes, I did.

19 Q. Okay. What years did you work for them?

20 A. From April of '94 until December of 2010.

21 Q. Okay. And what position or positions did you hold
22 there?

23 A. I was the water quality program director, and
24 later that included air and public health.

25 Q. And you retired in 2010, you said?

1 A. Yes.

2 Q. Any particular reason you retired?

3 A. I was tired and burned out.

4 Q. You gave me a particular reason when I took your
5 deposition. Do you remember what that was?

6 A. Well, if you're kind of -- leading the charge on
7 controversial conservation issues, it can be stressful
8 and tiring.

9 Q. You said that you were -- see if you can recall
10 this. Did you not say you were burned out from head
11 butting?

12 A. Yes.

13 Q. And I asked you to explain that. I'll ask you to
14 explain that to the jury. What did you mean by that?

15 A. Well, for example, when a factory hog farm
16 operator wants to come and put a large factory hog
17 slaughtering house in your state, you understand that
18 factory hog farms are going to pop up all around and so
19 you really want some environmental protection to make
20 sure our air and water aren't polluted like they have
21 been in North Carolina and other states and sometimes,
22 that gets controversial when you're up against money
23 special interests.

24 Q. So is it true sometimes in your role as Coastal
25 Conservation League you chose to be somewhat

1 confrontational?

2 A. I tried not to be confrontational. I tried to be
3 more collaborative, but sometimes it ended up on opposing
4 opinions and no common ground couldn't be reached.

5 Q. Sometimes you just couldn't agree on something?

6 A. Correct.

7 Q. And in those instances, then the league would do
8 what? I don't want to put words in your mouth. You tell
9 me. What would the league do?

10 A. We would use all legal means to protect the
11 environment.

12 Q. Okay. Now, let me ask you this: In your work
13 with the league, did you believe that the end justified
14 the means?

15 A. No.

16 Q. Okay. And do you believe that there were proper
17 limitations on the type of tactics or practices that the
18 league would employ to accomplish its goals?

19 A. Certainly.

20 Q. Okay. Do you believe that it would be
21 inappropriate for the league to be dishonest with some
22 party, like a developer or an applicant for a permit?

23 A. Yes.

24 Q. Do you believe it would be improper for the league
25 to be misleading to an applicant or to a developer?

1 A. Certainly.

2 Q. Do you believe that when the league presents
3 information to a developer, to an applicant, or to
4 residents of some area where a project is proposed that
5 it is important for the league to be sure that the
6 information it tells these people is accurate?

7 A. Yes, absolutely.

8 Q. Okay. Do you believe that it is inappropriate for
9 the league threaten a developer or a permit applicant?

10 A. I'm not sure what you mean by threaten.

11 Q. Well, tell me what the word means to you.

12 A. It sounds like sort of a stern, emotional kind of
13 a an action. It seems appropriate to explain to someone
14 what might happen under certain circumstances.

15 Q. Okay. And what are the circumstances that would
16 lead you to explain to them what might happen? What are
17 you talking about? Be more specific for the jury.

18 A. If someone wanted to, say, put a factory hog farm
19 within 50 feet of a river, you would explain that that's
20 inappropriate. That will damage the environment. It's
21 against the law. We will appeal your permit, and we will
22 likely win.

23 Q. So if something is against the law, that someone
24 is proposing to do, you think it would be appropriate for
25 the league to say, If you attempt to do that thing, which

1 we think is against the law, we will fight you?

2 A. We'll appeal your permit, yes.

3 Q. Is it appropriate to use the word fight in that
4 context, do you think?

5 A. Well, that's not the best word to use, no.

6 Q. What if the developer, a developer, is proposing
7 to do something which is legal, is entirely legal? Is it
8 appropriate to tell that developer that if he goes
9 forward with some project that the league does not think,
10 for whatever reason, is a good thing that you would
11 pursue legal processes to stop him then?

12 A. Would you repeat the question?

13 Q. Sure. What if what the developer or the permit
14 applicant -- in your role, you dealt mainly with permit
15 applicants; isn't that right?

16 A. Yes.

17 Q. Not so much land developers, but for the purposes
18 of my question, I'm treating them the same. It's the
19 same thing.

20 If somebody was proposing to do something, either
21 land development or put in some facility that was legal,
22 there wasn't anything illegal about it, like the hog farm
23 scenario you mentioned, but the league thought it was a
24 bad idea, for whatever reasons you might have public
25 policy reasons, is it appropriate then to tell that

1 person, If you try to go forward, we will try to stop
2 you?

3 A. It's always appropriate for us to talk with people
4 on the front end of projects which may harm the
5 environment and explain to them, you know, our position
6 and why it may harm the environment and that we would be
7 very concerned and we might try to raise some public
8 support to either change the law or seek some other
9 alternative.

10 Q. And you said on the front end. Going to somebody
11 that you knew was proposing something and talk to them
12 about what they were doing?

13 A. Yes.

14 Q. And did you do that a lot?

15 A. I did that on occasion, and more often developers
16 would come to us and sit down and ask if we had
17 particular concerns and might make some suggestions to
18 improve projects.

19 Q. Okay. All right. Do you believe it is
20 appropriate for the league to approach not the owner of
21 the property but someone who is -- who maybe has a
22 contract to buy property?

23 A. I don't know. I normally dealt with projects
24 after an owner was seeking to get a permit for approval
25 of a specific activity on a project or sometimes worked

1 on state laws where there was a lack of law and one was
2 needed to protect the environment.

3 Q. Okay.

4 A. I had to work a lot with contracts for
5 developments in that regard.

6 Q. And you and I have been involved usually in the
7 other side to be in full disclosure for a long time, but
8 the jury does not know the things we know, and I should
9 have asked you, when you say permits, you're talking
10 about things like maybe a water line permit; is that
11 right?

12 A. Yes.

13 Q. Verbalize, of course, your answers. Make a storm
14 water permit?

15 A. Yes.

16 Q. Maybe a wetlands permit?

17 A. Yes.

18 Q. Okay. Those types of -- and any other permits
19 that might have environmental consequences?

20 A. Correct.

21 Q. Those are the things you worked with?

22 A. Correct.

23 Q. So your testimony is you don't really have an
24 opinion about the appropriateness of the league going to
25 someone in a land development context, a prospective

1 buyer, and communicating with that person?

2 A. I've not been involved in situations like that at
3 the league.

4 Q. Okay. When you were at the league, were you aware
5 that the -- you worked for Mr. Beach, did you not?

6 A. Correct.

7 Q. Sitting here at the defense table. Was he your
8 direct boss?

9 A. Yes.

10 Q. Okay. And was he and was the league generally
11 concerned about the Keystone tract? Do you remember
12 where that was and what I'm talking about?

13 A. I remember it was like an in-holding in the
14 Francis Marion Forest area, and I think the conservation
15 community at large was concerned about developments that
16 far away from town that may be on the market for
17 development.

18 Q. Okay.

19 A. And sensitive environmental areas.

20 Q. Were you aware that the Keystone property was
21 proposed as an area that could be acquired as mitigation
22 for various large project permits?

23 A. I don't remember that discussion.

24 Q. Okay. Do you remember being -- I believe you were
25 the secretary of an organization called the Ashley Cooper

1 River Environmental Trust?

2 A. Yes.

3 Q. Usually referred to by its acronym, ACRET?

4 A. Yes.

5 Q. And you were the secretary; is that right?

6 A. Yes.

7 Q. And Mr. Beach was also on the board?

8 A. Yes.

9 Q. And Charles Lane was on the board?

10 A. Correct.

11 Q. And some agency representatives. Do you recall
12 whether or not Keystone property was proposed by Ducks
13 Unlimited as a potential mitigation site for the plant
14 that is now the Boeing plant?

15 A. I don't recall that, but it's been probably almost
16 ten years so I might just not remember. I know we did
17 most of the acquisition for wetlands mitigation
18 properties in Four Hole Swamp and Ashley River area, not
19 that far over.

20 Q. And this was for the airplane plant that in North
21 Charleston?

22 A. Correct, for Boeing.

23 Q. All right.

24 MR. BARNETT: That's all the questions I
25 have.

1 MR. GOWDER: We have no questions for Ms.
2 Vinson. Thank you.

3 THE COURT: You may step down.

4 MR. BARNETT: Your Honor, we discussed the
5 other day, I did subpoena her. I can't in this context
6 ask that she be excused.

7 THE COURT: You're free to go, but you're
8 subject to being called back, so don't leave the state
9 all right? We'll see you back here later. Who's next?

10 MR. BARNETT: Daniel Davis.

11 DANIEL DAVIS,
12 having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BARNETT:

16 Q. Good afternoon, Mr. Davis. You too are here under
17 subpoena; is that correct?

18 A. That's correct.

19 Q. Thank you for coming anyway, even though you are
20 under subpoena. You are currently the elected county
21 supervisor of Berkeley County?

22 A. Correct.

23 Q. In Berkeley County? And how long have you held
24 that position?

25 A. About seven years now.

1 Q. All right, sir. Are you originally from Berkeley
2 County?

3 A. No. Williamsburg County.

4 Q. All right. And how long have you lived in
5 Berkeley County?

6 A. Thirty-five years, I think.

7 Q. Okay. All right. Have you held any positions in
8 Berkeley County government before the position you
9 currently hold?

10 A. In Berkeley County government?

11 Q. Yes, in Berkeley County.

12 A. I was chairman of the aeronautics commission for a
13 number of years. I served on a number of committees, but
14 I just can't recall them right now, but I've been
15 generally active.

16 Q. All right. These people are all your constituents
17 over here in the jury and they may already know this, but
18 if you would tell them what does your job as their county
19 supervisor entail; that is, the whole county's
20 supervisor? What does that entail?

21 A. It's actually two-fold. I serve as the chief
22 executive officer of the county. I run the day-to-day
23 operations, and I also serve as county council chairman.

24 Q. All right, sir. In that role, are you familiar
25 with how Berkeley County zones land?

1 A. Yes.

2 Q. Would you tell us very briefly, because I guess
3 somebody could talk about this for a while, very briefly
4 what is zoning, county zoning land?

5 A. Well, it provides restrictions for what folks can
6 do with the property. It's land protection kind of
7 initiative and a people protection kind of initiative,
8 but you zone property, and zoning is fairly new in South
9 Carolina as far as counties are concerned.

10 It's only been within like the last 20 years or so
11 we've done that, but it's to provide -- you tell what can
12 take place in a certain area, like, they have industrial
13 zones. You can build industries there, you have
14 residential zones, you can build residences there, but
15 most of the zones are exclusive in that once you zone --
16 if it's zoned residential, you cannot do something else
17 in that area that's not residential.

18 Q. All right. Are you generally familiar with the
19 zoning classifications that Berkeley County has?

20 A. Pretty much.

21 Q. What is flex one zone?

22 A. Well, flex one is probably our most liberal zone.
23 It allows a number of things to be done, and that's
24 because there's generally transition areas. They may be
25 moving from one to -- one type of construction or one

1 type of buildings to another, or uses to another.

2 Q. All right, sir. And what about R-15 zoning?

3 A. That is a residential zone, I believe, with a
4 minimum of 15 acres.

5 Q. When you say a minimum of 15 acres, what do you
6 mean by that?

7 A. Well, one -- each lot must be a minimum of 15
8 acres, and I'm not sure about that, but I believe that's
9 it.

10 Q. All right.

11 A. We have a zoning administrator who handles all
12 that stuff.

13 Q. And who is that person currently?

14 A. Harry Greenway.

15 Q. Was there a man by the name of Tyndall who was in
16 that job?

17 A. Jeff Tyndall was the previous planning director.

18 Q. Now, are you familiar with the process by which
19 zoning on a particular piece of property can be changed?

20 A. Yes.

21 Q. What is required before the zoning on a piece of
22 property can be changed?

23 A. Well, by law, we have a planning commission that
24 hears the original requests to rezone a piece of
25 property. They hear it, make a recommendation to county

1 council, and county council actually is the one that
2 makes the decision.

3 Q. All right, sir. How many times -- is there a
4 required number of times the county council has to hear
5 and make a vote on a particular change?

6 A. Between the planning commission and the county
7 council, each item is heard about seven times.

8 Q. Okay.

9 A. It's a very cumbersome process.

10 Q. How many times does county council have --

11 A. Three readings. Let me correct that. Actually,
12 it's four because the -- we have a committee, a
13 subcommittee, that hears it first. Then it's referred to
14 county council. Once they make a decision on it, it's
15 referred to county council, and it takes three readings
16 by county council.

17 Q. Can the county change zoning on any piece of
18 property any time it wants?

19 A. I suppose it could.

20 Q. Okay. What if somebody has started building
21 something that is now inconsistent with the proposed new
22 zoning does that cause a problem for the county?

23 A. Yeah, a lot of problems.

24 Q. Is that called vested rights?

25 A. No -- well, I don't know.

1 Q. Okay. But are there certain things that
2 landowner -- if the landowner has started to do certain
3 things that could prevent zoning from taking place,
4 rezoning?

5 A. Well, it could impact it, but if someone started
6 building something that wasn't approved for that zone,
7 then they would be forced to stop.

8 Q. Okay. Are you familiar with something called spot
9 zoning?

10 A. Yes.

11 Q. What is spot zoning?

12 A. Well, I don't know that -- it's argued a good bit.
13 I don't know if there is a legal definition, but it's the
14 concept that -- and giving an example, if you have a
15 residential community and there are nothing but just
16 single family residences in that area and then you rezone
17 something for a commercial use, for example, then that
18 would be considered spot zoning because it doesn't --
19 it's not separated by a natural boundary or any logical
20 barrier, it's just -- it's a change in the zoning in a
21 predominantly -- in the area that is predominantly zoned
22 for something else.

23 Q. And is that the problem that I once heard someone
24 else from Williamsburg County say, not feeding everybody
25 out of the same spoon?

1 A. Yes.

2 Q. So the idea there is people should be treated --

3 A. Right.

4 Q. -- equally, the same?

5 A. Right.

6 Q. Okay. Do you know what a development agreement is
7 with respect to zoning?

8 A. Yes.

9 Q. What is that?

10 A. A development agreement is a written document that
11 lays out all the development rights before the developer,
12 restrictions on part of the county, but it just lays out
13 all the rules that will apply for the development.

14 Q. All right, sir. And what is the process for the
15 development agreement being adopted?

16 A. Well, it's an ordinance that's approved by
17 council. It takes three readings.

18 Q. So it's like a change in zones?

19 A. In some instances, yes.

20 Q. All right, sir. Let me ask you this: While you
21 are have running Berkeley County in ways that you have
22 described, have there been developments which have been
23 constructed in Berkeley County?

24 A. Quite a few.

25 Q. Okay. When a tract of property is developed into

1 a residential subdivision, like those that have come
2 about in the years that you have been in office, and
3 water and sewer has to be run through that subdivision, do
4 the people that live nearby the subdivision have to help
5 pay the developer to run that water and sewer?

6 A. No, no.

7 Q. Who pays to run that water and sewer?

8 A. Well, in some cases, it could be a joint project
9 between the county and the developer. If we don't have
10 a -- we don't have a line extending to the property and
11 we could benefit from that, or it's a part of our plan,
12 then we may pay for some of it, but typically the
13 developer pays for all the distribution lines in a
14 subdivision.

15 Q. Okay. All right. So the county is not out there,
16 giving out bills to people that might live along the
17 line?

18 MR. GOWDER: Object to that, Your Honor. I
19 mean, Mr. Barnett is either testifying or leading, one or
20 another.

21 MR. BARNETT: Well, I suppose I was leading.
22 I think he's right about that. I'll try not to lead you,
23 and I think you've answered my question.

24 Thank you.

25 BY MR. BARNETT:

1 Q. Is it true to say that people who might live near
2 a new subdivision that is built where there was just
3 woodland before, is it true to say that their property
4 taxes that are charged them by Berkeley County would go
5 up as a result of that subdivision?

6 A. No.

7 Q. Okay. Why is that not true?

8 A. Well, it hasn't been the case in seven years
9 because we've not had a property increase -- property tax
10 increase, but I think you just had to slip that in.

11 It's election year. Sorry about that. I mean,
12 typically, you know, we operate on the theory that as the
13 county grows and the tax base gets larger that
14 development would actually either hold taxes level or
15 allow you to decrease them.

16 Q. Okay. So is it possible that those people living
17 near a subdivision that goes up where there was once
18 woodland, that their property taxes could go down as a
19 result of that subdivision?

20 A. It could.

21 Q. And what would be the mechanism for that
22 happening? How would that happen?

23 A. Reassessment is probably -- well, there are two
24 ways you can do it. One way, you could just lower the
25 millage but as the value of the property goes up in the

1 county, the total assessed value goes up in the county,
2 by law, once you reassess, you have to adjust the millage
3 downward to equate to what the tax -- the effective tax
4 rate was previously.

5 Q. All right, sir.

6 A. It's like in the last -- the last reassessment, we
7 actually cut the -- reduced the millage by about two
8 mills and that has an impact on everybody, and if you
9 were at a higher assessment previously, then you would
10 actually get a tax decrease.

11 Q. All right, sir. All right, sir. Are you familiar
12 with the Keystone property, Keystone tract?

13 A. I'm familiar with it.

14 Q. Did you recall having a meeting with a man named
15 Robert Pittinger?

16 A. I do.

17 Q. Tell me what you remember about that.

18 A. Well, it was a very short meeting. He was -- as I
19 understood it, he was interested in purchasing that tract
20 of land, and he would just ask me a number of questions
21 about what I foresaw as far as development potential for
22 it.

23 Q. All right, sir. And do you remember what you told
24 him?

25 A. Well, you know, we have a comprehensive plan for

1 the county, and it lays out areas where we consider
2 growth areas. That is not a growth area. Number one, we
3 don't have utilities in that area. We have, just on the
4 fringes right near the river where BP and BP is located,
5 but we don't have interior utility lines, water or sewer,
6 so that's just not considered a growth area.

7 So in the immediate future, I don't see that
8 that's going to have a lot of growth.

9 Q. So the county, if somebody were to -- had been
10 before -- of course, it's a development agreement on that
11 property now, correct, but before that, it was flex one;
12 isn't that correct?

13 A. Right.

14 Q. And if somebody had put some kind of development
15 up there, the county wasn't going to be running water and
16 sewer up 41?

17 A. No.

18 Q. And you told them that; is that correct?

19 A. Right.

20 Q. All right. Okay. All right. Let me ask you a
21 couple more questions. With respect to what you told me
22 about who would pay for water and sewer, if somebody was
23 concerned about that, or had a question about that issue,
24 is there somebody in the Berkeley County government that
25 could answer that question for me?

1 A. Yeah.

2 Q. Okay. What would they do if they wanted an answer
3 what would they do?

4 A. Well, we have a director of water and sanitation.
5 I assume they would come talk to them and their engineers
6 and determine whether it's even feasible to do it, and,
7 typically, in areas like that, it's just not even
8 possible to provide those services because we don't have
9 the connectivity to the treatment plant.

10 Berkeley County doesn't have a sewer treatment
11 plan east of the Cooper, so any -- so for sewer service,
12 that's going to have to be piped under the river and over
13 to the treatment plant.

14 Q. All right. If somebody had a question about
15 property taxes and whether some particular development or
16 change in use was going to cause their taxes to go up, is
17 there a place they could go and get those questions
18 answered?

19 A. Out county assessor, I think, could answer that as
20 well as anybody, but even I would, you know, might get a
21 question like that.

22 Q. All right, sir. And with respect to zoning, if
23 some proposal had been made to change the zoning, that
24 process had begun, is that information that somebody
25 could find out by asking Berkeley County government?

1 A. Sure.

2 Q. Now, you remember when you met with Mr. Pittinger?
3 Do you remember when that was?

4 A. It's been several years ago. I remember it just
5 because it was kind of an unusual circumstances, but it's
6 been a while.

7 Q. Okay. Do you remember, if you remember, at that
8 time whether or not there was a proposal to change zoning
9 for the Keystone tract?

10 A. I don't remember that there was.

11 Q. Okay.

12 MR. BARNETT: That's all I have for you,
13 Mr. Davis. Please answer whatever questions opposing
14 counsel has.

15 CROSS-EXAMINATION

16 BY MR. GOWDER:

17 Q. Good afternoon, Mr. Davis. My name is Andy
18 Gowder. I represent the Coastal Conservation League.

19 A. Right.

20 Q. How are you?

21 A. Good. How are you?

22 Q. Mr. Davis, when you met with Mr. Pittinger on that
23 day, I'll tell you that we believed that was on May 25th,
24 2007, so it was a few years ago. Do you remember what
25 day of the week it was?

1 Q. Right. And, in fact, I would like to ask you
2 about that a little bit.

3 Mr. Davis, I'm going to show you what has been
4 marked for identification as Defendant's Exhibit 16 and
5 ask whether you have seen that before.

6 A. It's addressed to me, so I probably did, but it's
7 several years old.

8 Q. All right, sir. Well, take your time to refresh
9 your memory, if you would like to.

10 A. Okay.

11 Q. All right, sir. Who was it written by?

12 A. Orlando Sutton, I think, yeah.

13 Q. And who is Orlando Sutton with?

14 A. The Department of Agriculture. He's associated
15 with the national forest.

16 Q. All right, sir. Do you recall at this time in
17 March of 2007 the United States Department of Agriculture
18 Forest Service having an opinion about dense development
19 in this area of Berkeley County?

20 MR. BARNETT: Your Honor, I object. It would
21 be hearsay. I'm not sure he also knows what their
22 opinion is unless the opinion is based on hearsay, and
23 this letter is clearly hearsay.

24 MR. GOWDER: Your Honor, we are offering the
25 letter to show Mr. Davis has talked about opposition in

1 the community about this area, or the opinion of folks,
2 what was going on in the area at the time.

3 We wanted to ask him whether or not he knew
4 the opinion of the forest service at the time, not being
5 offered for the truth of the matter asserted.

6 THE COURT: I'll allow it. Go ahead.

7 BY MR. GOWDER:

8 Q. Do you need me to ask the question again?

9 A. Yeah, I do.

10 Q. Mr. Davis, were you aware whether the forest
11 service had an opinion about development in this area of
12 the county?

13 A. Well, it -- based on this letter -- and I'm not
14 sure what I'm going to answer, but there was -- there was
15 another development that was being discussed, and I think
16 the folks at Coastal Conservation League are well aware
17 of that.

18 There was an attempt to swap some land, and one of
19 the big reasons that they want to swap the land for a
20 piece -- the property owners were nestled up next to the
21 national forest, and there was concern about the
22 development there and the threat to the national forest,
23 so there was a land swap that was being considered. And
24 this seemed like a letter that came about that time,
25 trying to -- encouraging us to try to help that land

1 swap, and, to be honest, I don't remember whatever
2 happened with it, but --

3 Q. Could that have been D.R. Horton?

4 A. I think it was, yes, yes.

5 Q. Do you recall or do you believe you received this
6 letter?

7 A. Yes, it looks -- yes.

8 MR. GOWDER: I would move this document into
9 evidence.

10 THE COURT: Do we actually need the document
11 in? I mean, you wanted to get from the witness stand if
12 he had knowledge of any concerns of other people in the
13 area. That's what he testified to.

14 MR. GOWDER: Yes, sir.

15 THE COURT: So I think that document itself
16 would be hearsay, but he can state if he had -- he can
17 say what he said, that he had knowledge that there were
18 people that had concerns.

19 MR. GOWDER: I understand.

20 BY MR. GOWDER:

21 Q. Mr. Davis, you were asked -- I'm sorry. You were
22 asked on direct examination about rezoning in this area,
23 showing you what's been marked as Defendant's Exhibit 17.
24 What is this?

25 A. It's a letter from then Mark Sanford, governor.

1 MR. REYNOLDS: We call David Grubbs, Your
2 Honor.

3 EARL DAVID GRUBBS, JR.,
4 having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. REYNOLDS:

8 Q. Good afternoon, Mr. Grubbs. Tell us a little bit
9 about yourself. Where did you go to college?

10 A. Hampton City College in Virginia.

11 Q. What did you do after that?

12 A. For two years I lived in Colorado, and then I got
13 into the real estate business in Atlanta in '93.

14 Q. What were you doing in Atlanta at that time?

15 A. Mainly property management and office leasing.

16 Q. And when did you move back to the Charlotte area?

17 A. Charleston?

18 Q. Sorry. Charleston area. Thank you.

19 A. Officially, probably in '95.

20 Q. What brought you back?

21 A. My wife's from Charleston. I actually grew up in
22 Greenville, but she's from here, so --

23 Q. What did you do when you came to Charleston?

24 A. Originally, I was with a land fund out of
25 Greenville that was looking for sites in and around malls

1 or shopping areas, to redevelop.

2 Q. How long did you do that?

3 A. About ten years.

4 Q. What did you do after that?

5 A. I formed Vanguard Development Group which is a
6 small sort of -- I don't want to say boutique real estate
7 firm, but I wanted a platform to do medical office
8 development, which I had started doing, and also doing
9 selective brokerage and investment deals.

10 Q. When did you form Vanguard?

11 A. About 2005.

12 Q. And is that one of the two plaintiffs in this
13 lawsuit?

14 A. Yes.

15 Q. So it's not Vanguard Properties of the Carolinas?

16 A. Correct, it is not.

17 Q. And there is no relationship between the two?

18 A. None whatsoever.

19 Q. And I believe you said you did select brokerage
20 deals; is that correct?

21 A. Correct.

22 Q. Tell me what that means.

23 A. At that time, again, starting in about 2005, I was
24 focussing principally on development of medical office
25 space and physician space. I had a couple other brokers,

1 Josh Hulen, who you all met, and Thomas Boulware, who
2 were primarily buying and selling for individuals who
3 were looking to invest.

4 Q. Just so we have a clear record, could you spell
5 Thomas's name?

6 A. It's pronounced Bowler, but it's spelled
7 B-o-u-l-w-a-r-e.

8 Q. Was one of those relationships with North
9 Pleasant?

10 A. Yes.

11 Q. During that time, were you head of the Vanguard
12 Company?

13 A. Yes. I would have been the sole principal and the
14 broker in charge.

15 Q. You say broker in charge. What does that mean
16 specifically?

17 A. In the State of South Carolina, if you're a
18 licensed real estate broker, you have to have a quote,
19 end quote, broker in charge, who is responsible for the
20 agency and the agents.

21 Q. What does the broker in charge do? What is he
22 responsible for?

23 A. Typically, LLR, which is licensing, law, and
24 regulation. The State of South Carolina has guidelines.
25 You have to keep certain documents, records, things like

1 that, and then obviously conduct business as license law
2 is read.

3 Q. So does that involve supervision of the brokers
4 who were out selling property or buying property?

5 A. It does. I mean, in terms of the day-to-day,
6 things like that, particularly an experienced broker, I'm
7 not expecting to oversee and micromanage every project
8 they're involved in, but in terms of keeping files and
9 things like that, yes, I would be accountable to that.

10 Q. About did you keep files in the North Pleasant
11 transaction?

12 A. Yes, and to clarify, I would primarily, as the
13 broker in charge, keep things like contracts, listing
14 agreements, amendments, but the agent's notes or
15 conversation, things like that, that would be his
16 responsibility.

17 Q. So you were aware of the contract between North
18 Pleasant and Vintage Land and the Pittinger Group; is
19 that correct?

20 A. Correct.

21 Q. Did you have a listing agreement with North
22 Pleasant at that time?

23 A. We did.

24 Q. Let me show you what's been marked as Plaintiff's
25 2. Please identify that.

1 A. This the is original listing agreement in February
2 of 2007.

3 Q. What was the commission to be paid under that
4 agreement?

5 A. In this particular one, there were a couple of
6 scenarios. One would be if the entire 4,400 acres were
7 sold in bulk to one purchaser. That would be
8 two-and-a-half percent of the gross sales price.

9 If we sold individual tracts, which we eventually
10 did do, the total commission was 6 percent, gross sales
11 price with us offering half of that if the purchaser had
12 a buyer's broker.

13 Q. Was that agreement in effect at the time of the
14 North Pleasant-Pittinger contract?

15 A. Yes. We -- to be specific, we had several
16 extensions, so it was in effect during that time.

17 Q. Let me ask you to look at that contract. It's on
18 the 27th, previously been admitted.

19 Would you look at -- it starts there on Vanguard
20 112. Do you see that?

21 A. Yes.

22 Q. You've seen it before?

23 A. Yes.

24 Q. There was some confusion about whether you were
25 part of this contract. Could you turn to paragraph nine

1 and tell us what that says.

2 A. This is the Berger's Commission paragraph, which
3 we would always want a purchase and sale agreement where
4 we have the exclusive listing.

5 Q. Are you referenced -- by you, I mean, Vanguard --
6 is Vanguard referenced in that paragraph?

7 A. Yes, we are.

8 Q. Is the seller referenced in this paragraph?

9 A. Yes.

10 Q. And the seller is -- you might have to look back
11 to the front page of the contract, but do you know who
12 the seller is in that case?

13 A. Yes, but what I would refer to by answering your
14 question is first sentence says seller and buyer mutually
15 acknowledge, so I'm assuming --

16 Q. Who were you going to split the commission with?

17 A. The buyer's broker, which was Robert Pittinger
18 Company, Inc.

19 Q. Okay. So it was the Pittinger Company that you
20 were going to split the agreement with; is that fair?

21 A. Correct. Split the commission with, yes.

22 Q. Do you have an agreement or did you have an
23 agreement with the Pittinger Company about the splitting
24 of that agreement?

25 A. Most likely, we would have had some form of

1 commission agreement. Sometimes, particularly if it's a
2 listed property that we've placed in the last -- and I
3 just can't recall at this point, but we would be offering
4 a cooperating broker percentage in that, and that
5 constitutes an agreement with the cooperating broker.

6 So I assume that that was the case here and/or it
7 was in the letter of intent, if not an outside commission
8 agreement.

9 Q. So was there at least an informal agreement
10 between you and the Pittinger Company?

11 A. Yeah. I would be willing to bet that was one of
12 their first questions, how much would they get paid.

13 Q. How much was that?

14 A. It would have been 3 percent of the guess sales
15 price.

16 Q. Which was?

17 A. Would have been, had they closed, about \$700,000.

18 Q. It's 3 percent of \$23,920,000?

19 A. Correct.

20 Q. Let me ask you about the due diligence period.
21 What was your role in the transaction after the signing
22 of that agreement until its termination?

23 A. In regards to this purchase and sale group?

24 Q. In regard to the North Pleasant-Pittinger
25 agreement, correct.

1 A. In this particular transaction, because Josh Hulen
2 and Thomas Boulware were involved in it, I was concerned
3 about being involved in the day-to-day.
4 in fact, I was not, but I had consistent check-ins with
5 both of them, relative to where is the transaction going,
6 what's going on, and I was keenly aware and wanted to
7 know, so I probably asked daily.

8 My recollection is that they were doing property
9 diligence, as Josh shared with you earlier. I mean, that
10 was pretty much his sole time was following up on that
11 during this time, and they were motoring along. I used
12 to have a spread sheet so I could help, and they would
13 put on their transactions and the probability, which is
14 obviously very subjective on whether it was going to
15 close and where it stood, and I recall in May they were,
16 meaning the brokers, very optimistic.

17 Q. Did they put a percentage on at that time?

18 A. I was looking for the spread sheet. That was like
19 three servers ago and I haven't been able to put my hands
20 on it, but I would say it's certainly better than 50
21 percent.

22 MR. WALKER: Objection, Your Honor. He
23 doesn't know. He's guessing at this point.

24 MR. REYNOLDS: I'll move on, Your Honor.

25 BY MR. REYNOLDS:

1 Q. So to recap, you checked in with Josh and Thomas
2 on roughly a daily basis about the progress of this
3 transaction?

4 A. Correct.

5 Q. Was this a big transaction for the company?

6 A. Yes.

7 Q. Do you remember hearing of any problems with the
8 due diligence from either of them?

9 A. Yes. I remember hearing something about that --
10 the phone calls and the e-mails that we've been talking
11 about earlier.

12 Q. During the 60-day period, would you check in
13 periodically on the progress of the due diligence?

14 A. Yes.

15 Q. Was there anything that gave you concern during
16 that -- the entire 60-day period, not including that
17 Friday, the 18th, that caused you concern?

18 A. Not that I recall.

19 Q. But something happened at the end of the due
20 diligence period. I believe that's what you were
21 mentioning; is that correct?

22 A. Correct.

23 Q. What happened?

24 A. My understanding is that the Pittinger folks
25 didn't --

1 MR. WALKER: Objection, Your Honor. Hearsay.
2 He said he wasn't involved and went day-to-day. All this
3 is second, third, fourth-hand.

4 THE COURT: Sustained.

5 BY MR. REYNOLDS:

6 Q. Did the transaction fall apart on or about -- let
7 me back up. Let me ask you a different question.

8 Were you involved in any of the phone
9 conversations on Sunday, May 20, 2007 that we've all
10 heard a lot about?

11 A. No.

12 Q. You didn't talk to Josh or Thomas or Bob Rogers
13 that day?

14 A. I don't recall that. I don't think so.

15 Q. Did you find out the next day that that there had
16 been a problem with the due diligence?

17 A. Yes. Most likely it would have been Monday.

18 Q. Do you recall if the contract was terminated
19 shortly thereafter or not?

20 A. My first recollection was they asked for an
21 extension because, you know, we're right there at the
22 end, and then it was terminated at some point fairly
23 shortly thereafter.

24 Q. Do you know if the Pittinger Group had put up the
25 additional earnest money deposit?

1 A. I believe they did.

2 MR. REYNOLDS: That's all I have.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

5 BY MR. WALKER:

6 Q. Mr. Grubbs, do you remember when my partner, Andy
7 Gowder here, took your deposition back on March 8 of
8 2012?

9 A. I do.

10 Q. He asked you a number of questions, and at some
11 point he said when did it occur to you that you had a
12 claim where you wanted to file a lawsuit against the
13 league or against Mr. Beach?

14 And I'll ask you that same question. When did it
15 occur to you?

16 A. Probably shortly before it was filed.

17 Q. And didn't you answer that question in the
18 deposition by saying, Gosh, I don't know. Maybe last
19 summer?

20 A. Yes.

21 Q. So it hadn't even occurred to you to file a suit
22 until the summer before your deposition was taken,
23 correct?

24 A. That's correct.

25 Q. And you were asked by that lawyer right there for

1 give it, because it's just your opinion, and it's really
2 not a legal opinion.

3 I have great respect for you, and you are an
4 expert witness your field, but your area of expertise and
5 what they want to offer you to give your opinion on, in
6 my opinion, is not relevant in this case.

7 THE WITNESS: In this case, yours is the only
8 opinion that matters.

9 THE COURT: Well, there are people that grade
10 my paper.

11 THE WITNESS: Can I step down?

12 THE COURT: Unless these folks want to ask
13 some questions.

14 MR. WALKER: No, Your Honor.

15 THE COURT: All right. Thank you.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Okay. Anybody else you're going
18 to call?

19 MR. BARNETT: No, Your Honor.

20 THE COURT: Then you folks have motions that
21 you would like to make, I'm sure.

22 MR. WALKER: Your Honor, at this time the
23 defendant would move for a directed verdict on the
24 grounds that taken the light in most favorable to the
25 defendants, there is no reasonable inference to sustain

1 the essential elements of their causes of action, and
2 we'll start with the intentional interference with a
3 contract, tortious interference with a contract.

4 There are several elements that claim the
5 existence of a valid contract, the defendant's knowledge
6 of the contract, defendant's intentional procurement of
7 its breach, the absence of justification and resulting
8 damages.

9 The failure to raise a reasonable inference
10 as to any of those elements would mean that the claim
11 fails, and, in this case, taken in the light most
12 favorable to the plaintiff, there's no proof, conclusive
13 proof, that Mr. Davis knew about the contract.

14 But, more important than that, there is no
15 proof that Mr. Davis, on behalf of the league,
16 intentionally interfered in an effort to procure a breach
17 of any contract. He testified that he called to
18 introduce himself to talk about what was going on and to
19 open the door for an opportunity to discuss with them
20 various alternative ways to proceed with the property.

21 Nowhere did he say that he was trying to
22 procure the breach, and, in fact, his testimony was that
23 it may have been much better to have the new purchaser.
24 The Reynolds Group had rejected a conservation collusion,
25 and they actually might have been much better. They had

1 no reason, no incentive, to procure a breach of the
2 purchase contract had they known about it.

3 Justification, he had every justification.
4 He worked for a public advocacy organization, and what he
5 spoke was basically the truth, that what he said is that
6 there is broad -- as Dan Davis and as Mr. Pittinger said,
7 broad opposition to intense development of the Keystone
8 tract. One of the missions of the Coastal Conservation
9 League is to work collaboratively with owners and local
10 governments and others to come up with solutions that
11 make sense for the owner, make sense for the developer,
12 and make sense in the terms of the solution that is used.

13 I think that's what he used, or the term that
14 he used, coming up with a solution, so he had
15 justification, but the clearest, just no way they could
16 say that they proved this element is resulting damages.
17 We have to have procured the breach, and here, there was
18 no breach, and according to Mr. Pittinger's testimony, we
19 just heard it, the reason that he terminated was because
20 of Dan Davis's very frank conversation with him.

21 Mr. Davis told him that there was broad
22 opposition, that he never saw getting a unit per acre,
23 that it could be as much as 15 acres per unit. He told
24 him that there were a number of conservation easements on
25 property between this property and the river, which meant

1 that those properties would never be developed and he
2 would have to pay, he, the purchaser, Pittinger, would
3 have to pay to bring water and sewer and that it was cost
4 prohibitive.

5 The league wasn't mentioned once in that
6 conversation with Dan Davis. The league had nothing to
7 do with that. Pittinger said again and again in his
8 deposition. Why he did it, and it had to do with what
9 Mr. Davis told him at that lunch.

10 So we would submit to the Court that with
11 respect to the cause of action of the -- of North
12 Pleasant that there was no proof, and there is no
13 reasonable proof, of Hamilton Davis's knowledge of the
14 contract, his intentional procurement of its breach, of a
15 breach.

16 There's no reasonable inference of an absence
17 of justification, and iron clad, there's no proof that
18 the contract was terminated and that Pittinger did not
19 proceed for reasons that had nothing to do with the call
20 from Hamilton Davis.

21 We, also, Your Honor, are dealing with a
22 second plaintiff, which is Vanguard Development, the
23 broker. As we cited in our pretrial brief, the broker is
24 not a party to the contract. The contract is now in
25 evidence. The contract is between the purchaser and the

1 seller.

2 Because they're not a party to the contract,
3 they cannot maintain a claim for tortious interference
4 with that contract. We have cited also the Helms case
5 that with respect to a real estate contract, even if the
6 broker is noted as receiving a commission, they are
7 simply an incidental party to the contract and the Court
8 has held they are not a third party beneficiary with any
9 enforceable rights.

10 It's also undisputed that there is no proof
11 at all that Mr. Davis, Hamilton Davis, knew anything
12 about the broker or brokerage contract or a commission
13 that was going to be paid.

14 All of the reasons that we've given the Court
15 why we maintain we're entitled to a directed verdict as
16 to North Pleasant would apply with equal application to
17 Vanguard Development, and, in addition to that, the only
18 contract that Vanguard had was its listing agreement with
19 North Pleasant, and that was not breached.

20 We also will later talk in a few minutes
21 about damages, that they haven't proved damages, but I
22 want to first do the causes of action, the main elements.

23 They have both asserted claims for
24 interference with prospective advantage. The Courts of
25 South Carolina have ruled, or at least the United States

1 District Court, that you cannot have a claim for tortious
2 interference with prospective and mandatory -- either you
3 have the contract or you don't have the contract.

4 We cite for that proposition Eagles Point
5 Town Homes Property Owners Association vs. Fairfield
6 Communities, which is a District Court case, and it makes
7 sense. They have a contract, and it was terminated
8 according to its terms. There is no breach.

9 It was a contract at will. They would have
10 to show that it would have continued, but the proof is
11 that once Mr. Pittinger talked to Dan Davis, he was out.
12 He said that was it. He called up his folks and he said,
13 It's over. Get the money back. One house per 15 acres,
14 too many conservation easements. Water and sewer cost
15 prohibitive.

16 So both as to the owner-plaintiff and also as
17 to the broker-plaintiff, we would be entitled to a
18 directed verdict on the causes of action for tortious
19 interference and interference with prospective advantage.

20 As to injurious falsehood, that one never
21 came together. Not even the theory came together on that
22 one. They alleged in their complaint that the
23 Conservation League made damaging statements about the
24 development plan of Mr. Pittinger, and that is in
25 paragraph 45 of their complaint, but there's no proof at

1 all that the Conservation League said anything about the
2 development plan of Mr. Pittinger, much less anything
3 false about the development plan of Mr. Pittinger.

4 There's no proof that he said anything false
5 about these good people over here, the Reynolds. They
6 didn't say anything about North Pleasant that was false.
7 They certainly didn't say anything about the Vanguard
8 Development that was false. In fact, they didn't say
9 anything about either one.

10 Then there's this separate theory that we
11 heard a lot about in the questioning that dealt with the
12 suggestion that the Conservation League had talked to
13 communities and told communities that their taxes would
14 go up if this place -- in their development generally and
15 that sometimes citizens have to pay for the cost of new
16 development.

17 Well, there was no proof in the record of the
18 plaintiff's case of those statements ever being made by
19 the Conservation League. They just said whether that's
20 true or not. They didn't put up the proof, any proof, to
21 say the conservation league went out in Berkeley County
22 and said that to anybody. That's not in their case.

23 So there's no -- I don't see where there's
24 anything to talk about in injurious falsehood, and there
25 were no comments related to this property, nothing

1 related to the property, nothing related to these
2 paragraphs.

3 We're absolutely puzzled about this whole
4 thing, but they cannot establish the elements of that
5 claim because there's no proof of it. Nothing you even
6 have to infer because there was no proof. And with
7 respect to those opinions, which there was no testimony
8 of today, or yesterday, or the day before, those are just
9 opinions, not statements of fact.

10 That someone believes that taxes will go up
11 or that existing owners may have to pay in part for new
12 development, that's a misstatement of the payment. It's
13 not a statement of fact.

14 Also, that cause of action causes -- requires
15 reliance. There was no reliance, and, again, back to
16 where we were with the tortious interference. There is
17 no proof it caused any injury. There's no showing that
18 Mr. Pittinger terminated his contract because of anything
19 that was said to the community, none whatsoever.

20 And there's no proof at all about anything
21 said about Vanguard Development. So we think that we're
22 entitled to a direct verdict on that.

23 We would also raise, with respect to that
24 claim the privilege issue, that whatever Mr. Davis said
25 was qualified be privileged because he was speaking on

1 behalf of the organization to bring to the purchaser's
2 attention that there were things going on in the Highway
3 41 corridor and to open the door to discussion.

4 We'd also bring up the first amendment in
5 response to these claims, that this environmental
6 advocacy organization was not doing anything exceptional
7 other than exercising its First Amendment right in a
8 private setting and in a public setting to speak on the
9 issues, which is what they did.

10 We also raise, Your Honor, the statute of
11 limitations. There is a two-year statute of limitations
12 for libel and slander. Injurious falsehood, in our
13 estimation, is a form of defamation that would be
14 governed by the two-year statute of limitations.

15 We still don't know when these alleged
16 statements were made because there's no proof of them,
17 but assuming it had something to do with the termination,
18 which seems to be their theory that there's no proof of,
19 that would have been more than three years before the
20 suit was filed.

21 As to the tortious interference, there is a
22 three-year statute of limitations. Mr. Davis's call that
23 it is the source of this claim was on May 18, 2007. This
24 case was filed May 20th, 2010. So if there was an
25 interference, it would have occurred on May 18, and for

1 that reason, we would submit that the three-year statute
2 has run, in addition to the other defenses we have.

3 We would also point out that there is no
4 probative proof of any damages. The only thing we heard
5 was Jamie Reynolds reading a damage estimate from the
6 witness stand that is not probative. He read a damage
7 estimate that compared what the contract price was with
8 what they were able to sell it for four years later after
9 the recession.

10 There was no other proof of damages. What
11 happened after four years, or the effective value
12 diminishment by the recession, can't be attributed to the
13 defendant, was not foreseeable. The damages, if any,
14 would be the difference between what the contract price
15 was at the time Mr. Pittinger decided not to proceed,
16 what the market value was at that time because they still
17 held that real estate.

18 As Mr. Reynolds said, they thought it was
19 worth a lot of money. They apparently didn't think they
20 lost money on the deal. They knew they lost a
21 purchaser, but at the time they thought they could
22 replace that purchaser.

23 We cite a date in our brief, In Re: Devotion
24 Associates Limited, Fourth Circuit case, 1996, where the
25 Fourth Circuit said that the seller property doesn't have

1 available to it the benefit of the bargain theory of
2 damages. In that case, the Fourth Circuit specifically
3 rejected the same argument being made here that the
4 plaintiff could recover \$300,000 because the contract
5 price was \$1.7 million, and it ultimately sold for 1.4.

6 We also would submit to the Court that the
7 damages claims are not foreseeable and that the
8 comparison method three years -- with a sale four years
9 later is a comparison with a sale that's totally remote
10 in time.

11 We would reiterate the arguments we made
12 yesterday in opposition to allowing proof of those
13 damages, and, finally, North Pleasant only owns 71.875
14 percent of the property.

15 There was some statement by Chuck Reynolds
16 that within their operating agreement, there was some
17 hocus pocus going on where the money goes over to North
18 Pleasant even though it only owns 71.875, but that would
19 be within the North Pleasant operating agreement.

20 Vintage Land still owns 28.125 percent, and
21 even if there were some funny provisions in those
22 operating agreements, or some other agreement for
23 transferring the money, they didn't put that in evidence.
24 They didn't put any of that in evidence.

25 We just heard statements about what the

1 internal workings were without any proof of it. Jamie
2 Reynolds didn't testify to it. No documents were put in
3 evidence, and there's no proof as to what that 71.875
4 percent would be.

5 The last thing we would bring up is that --
6 and it may be unnecessary, but I don't want to waive this
7 by not raising it this time, but it's undisputed that the
8 Conservation League is a 50123 charitable organization
9 and therefore entitled to the protection of the
10 Charitable Immunity Act of this state without a cap of
11 \$300,000 on actual damages.

12 Now, if the Court -- we can take that up
13 later if the Court denies the directed verdict. I just
14 didn't want to waive it by not bringing it up now.

15 THE COURT: All right.

16 MR. WALKER: Thank you, Your Honor.

17 THE COURT: Who's arguing on the other side?

18 MR. REYNOLDS: We'll split it up, if that
19 pleases Your Honor. I'll do the tortious interference
20 claims and Mr. Barnett will do the injurious falsehood
21 claims.

22 Taking the arguments in the order presented
23 by Mr. Walker, we agree on the elements of tortious
24 interference with the contract. That's existence of a
25 contract. I don't think anybody can argue with that.

1 Knowledge of that existence, there's
2 certainly evidence in the record that Mr. Davis knew of
3 the contract when he called. His voice mail mentioned
4 2,600 acres. It's unlikely that he knew that without
5 knowing that there was a contract for 2,600 acres, or at
6 least a prospective contract. In the Burns e-mail from
7 May 21, Mr. Burns says, quote, Hamilton stated that he
8 was aware that we have the Keystone tract under contract
9 to purchase.

10 That in and of itself is evidence of the
11 second element. It's evidence that can be considered by
12 the jury, and they can certainly believe that Mr. Burns's
13 recollection from a couple of days after a call with
14 Mr. Davis was accurate. If they do, that satisfies the
15 second element.

16 Intentional procurement of breach, there's no
17 argument that he intentionally called -- I understand
18 that's not enough, but he did intentionally call. There
19 is evidence that he called with negative information,
20 exclusively negative information, and called for an
21 improper purpose. He wanted to put a Pittinger Group on
22 notice of all the negative things associated with the
23 property.

24 Your Honor, absolutely, he had called, the
25 way Mr. Walker described it, to introduce himself, then

1 that would be a different matter, and we would not be
2 here.

3 THE COURT: What's the operative bad act, the
4 telephone call from Mr. Davis to Mr. Burns?

5 MR. REYNOLDS: Yes, yes, Your Honor.

6 THE COURT: That's the operative bad act, in
7 your opinion?

8 MR. REYNOLDS: That's the operative bad act.
9 That's the but for cause that led to the termination.

10 THE COURT: What about to Mr. Pittinger's
11 statements that the reasons why they backed out of the
12 contract were information that he later discerned from
13 Mr. Dan Davis?

14 MR. REYNOLDS: Mr. Pittinger also said that
15 he would not have had that lunch had it not been for the
16 call. So we're talking about a but for call here, Your
17 Honor.

18 If Mr. Davis called and gave false
19 information to Pittinger that led them to conduct a
20 further inquiry and terminate the contract, it's --

21 THE COURT: What was the information that he
22 gave them that was false in the telephone conversation?

23 MR. REYNOLDS: Trying to stop development in
24 the Highway 41 corridor.

25 THE COURT: Well, that's true. They were.