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JUN 09 2015

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 2014-000847

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

v.

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

**MEMORANDUM IN SUPPORT OF  
MOTION FOR CERTIFICATION**

Respondent South Carolina State Ports Authority (“Ports Authority”),  
pursuant to Rule 204(b) of the South Carolina Appellate Court Rules  
(“SCACR”), S.C. Code Ann. § 14-8-210(b), and in accordance with Rule 240,  
SCACR, hereby submits this memorandum in support of its motion for

certification of the above-captioned appeal for review by this Honorable Court.

## BACKGROUND

### I. Introduction

This appeal is the result of the administrative challenge to the state critical area permit (“Permit”) issued by Respondent DHEC’s Office of Ocean and Coastal Resource Management (“OCRM”) for the planned renovation of existing facilities and relocation of cruise passenger operations from the southern end to the northern end of Union Pier Terminal (“UPT”). This case is one of three companion cases filed by many of these same Appellants. This Court has already heard one of the companion cases,<sup>1</sup> accepting in its original jurisdiction an action alleging nuisance and zoning claims that attacked this same project and its perceived effects on the Charleston peninsula. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 79, 753 S.E.2d 846, 852-53 (2014). The court found many of these same Appellants had suffered no particularized harm but merely asserted generalized grievances suffered by the public as a whole, and dismissed the action for lack of standing. In the contested case below, the Administrative Law Court (“ALC”) similarly found Appellants lacked standing to challenge the Permit

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<sup>1</sup> The third case was a challenge to the UPT Project filed in United States District Court, C/A No. 2:12-cv-02942-RMG.

and granted the Ports Authority's motion for summary judgment on that ground.

## II. Union Pier Capital Improvement Project

The challenge is to planned and permitted improvements to portions of UPT, involving the renovation of existing buildings and warehouses on the terminal footprint, relocation of certain port operations to other Ports Authority-owned terminals, and the shift of passenger cruise operations less than 600 yards from their current location at the southern end of UPT to the northern end, but still within the existing terminal footprint ("Project"). Exh. 1, (R. pp. 001182; 001184); Exh. 2, (R. pp. 001544-46; 001631).<sup>2</sup>

UPT is a 63-acre property in downtown Charleston located along the Cooper River on the Charleston peninsula and is owned and operated by the Ports Authority as a fully operational marine terminal. Exh. 2, (R. pp. 001544-46; 001631). As currently configured, UPT accommodates upwards of 200 cargo ships annually, in addition to the trains and trucks necessary to service those cargo ships, and has a designated cruise passenger terminal on the southern end of the property. Exh. 3, (R. pp. 001107-1110; 001492-98). UPT accommodates significant roll-on/roll-off cargo facilities used for automobiles, trucks and heavy equipment. *Id.* In addition, UPT has

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<sup>2</sup> As set forth in the Motion, the Record on Appeal in this case has been filed with the Court of Appeals. Because the Record is not immediately available to the Court, the pages of the Record cited herein are attached as

accommodated passenger vessel calls for almost 100 years, including cruise vessels, which have called on the UPT cruise passenger facility every year since 1973, the date of dedication for the existing cruise passenger terminal facility. *Id.*

The planned improvements encompassed by the Project include: the upgrade of cruise facilities to maintain compliance with terminal security requirements mandated by federal law under the oversight of the United States Customs and Border Protection, as well as the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101 *et seq.*; cessation of existing rail operations to UPT through the relocation of cargo operations to other facilities; implementation of an overall traffic management plan that will result in a net neutral, if not reduction in, traffic impact from the renovated cruise terminal on the Charleston peninsula; and the proposed subsequent redevelopment of much of the existing terminal acreage on the southern end. Exh. 3, (R. pp. 001107-1110; 001492-98).

As a result of this relocation and the voluntary traffic management plan, emissions at and around the UPT will decrease, including for the areas represented by Cruise Opponents. Exh. 4, (R. pp. 001230; 001706-1715; 001717-24; 001726-27). In short, the Project will both aid the economic development of the State and improve the environment of Charleston. Exh. 5,

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exhibits to this memorandum for the Court's convenience and review, in accordance with Rule 240, SCACR.

(R. pp. 001186-92). However, should the northern end of the UPT not be renovated and utilized for cruise operations, it will continue to be used for cargo operations, along with the accompanying truck and rail traffic necessary to operate a dynamic and productive terminal facility and promote shipping commerce in Charleston and for the State. Exh. 2, (R. pp. 001544-46; 001631).

### III. Procedural History

Appellants Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Historic Charleston Foundation (collectively “Appellants”) challenged the Permit through the filing of a contested case with the ALC challenging the issuance of the Permit by DHEC. The Appellants initially sought delay of the proceedings through a remand to the DHEC Board arguing that a final review conference by the Board is mandatory under S.C. Code Ann. § 44-1-60(F). The ALC disagreed, and on motion of the Ports Authority found Appellants’ motion to remand was frivolous under Rule 72 of the Rules of Procedure of the Administrative Law Court (“RPALC”) and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-

10. The ALC's Sanctions Order is the first of four orders challenged by Appellants in this appeal.

Thereafter, the parties participated in extensive discovery and motions. In one particular motion, Appellants again sought remand to DHEC through a motion to vacate the Permit on the grounds that the Project no longer had a viable 401 Water Quality Certification<sup>3</sup> as a result of a decision reached in the companion federal case to remand the Project to the United States Army Corps of Engineers, Charleston District ("Corps") for further consideration.<sup>4</sup> After consideration, the ALC denied Appellants' motion to vacate, which Order is the second challenged in this appeal.

Subsequently, Appellants also filed a belated motion to expand discovery,<sup>5</sup> asking to be excused from their failure to notice any depositions or

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<sup>3</sup> 33 U.S.C.A. § 1341.

<sup>4</sup> As stated at the outset, this appeal is one of three companion cases. The Court has already dismissed one of the cases on standing grounds. Many of these same Appellants also filed an action in federal court challenging the Corps' decision authorizing the Project under a Nationwide Permit (NWP 3), which permits certain activities to proceed without an individual dredge and fill permit if they meet the criteria for the issued Nationwide Permit. The federal court disagreed with the Corps' treatment of the Project under NWP 3 and remanded Ports Authority's application to the Corps for further review and consideration under an individual dredge and fill permit. *See* 33 U.S.C.A. § 1344(f). Notably, the Federal District Court does not have jurisdiction over a 401 Water Quality Certification—that is reserved for state courts.

<sup>5</sup> Under Rule 21(A), RPALC, discovery must be completed within 90 days of the receipt by the parties of the notice of assignment of the case to an Administrative Law Judge. The parties served discovery requests within the requisite period, but Appellants did not seek to expand discovery within the 90-day discovery window but waited until more than seven months after the

complete written discovery requests within the time period set forth in the ALC Rules. *See* Rule 21(A), RPALC. The ALC found Appellants' arguments alleging a stay of discovery during the litigation of dispositive motions (by both sides), as well as the practicality and cost effectiveness of conducting such discovery to be "disingenuous" and denied the motion to expand discovery. The ALC's Discovery Order is the third order challenged by this appeal.

Finally, the Ports Authority filed a motion for summary judgment<sup>6</sup> alleging Appellants lacked standing to challenge the Permit. The ALC agreed, finding Appellants had failed to demonstrate any of the elements of constitutional standing<sup>7</sup> (or statutory standing) and granted the Ports Authority's motion. Additionally, in light of its decision that Appellants lacked standing to challenge the Permit, the ALC vacated its previous order denying Appellants' motion to expand discovery.

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time period for discovery had expired, and only after the Ports Authority notified the ALC and parties that it intended to file a motion for summary judgment for lack of standing.

<sup>6</sup> The Ports Authority had previously moved to dismiss the contested case on similar grounds.

<sup>7</sup> *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (holding that a plaintiff must demonstrate (1) an injury-in-fact, (2) a causal connection between the injury and the complained-of conduct, and (3) the redressability of the injury by a favorable decision of the court); *Sea Pines Ass'n for the Prof. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

On April 21, 2014, Appellants filed a Notice of Appeal challenging four orders of the ALC: (1) April 11, 2014 Order Granting Ports Authority's Motion for Summary Judgment (lack of standing); (2) April 11, 2014 Amended Order Granting Sanctions (based on Appellants' frivolous Motion to Remand); (3) March 3, 2014 Order Denying Appellants' Motion to Expand Discovery (vacated by Order Granting Summary Judgment); and (4) December 20, 2013 Order denying Appellants' Motion to Vacate. During briefing before the Court of Appeals, the Ports Authority moved to partially dismiss Appellants' appeal related to the challenges to the ALC's orders denying the motion to expand discovery and to vacate the permit, on the grounds that neither order is appealable.<sup>8</sup> The Court of Appeals declined to dismiss those portions of Appellants' appeal.

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<sup>8</sup> The Ports Authority argued, and still contends, that the motion to vacate the Permit underlying the contested case was, in form and function, the equivalent of a motion for summary judgment, from which an appeal is not permitted. *See Richland Cty. v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 ("It is the substance of the requested relief that matters regardless of the form in which the relief was framed."); Rule 56(b), SCRPC; *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 167-68, 580 S.E.2d 440, 443-44 (2003) ("The denial of summary judgment is not appealable, even after final judgment").

Moreover, an appeal from a discovery order is similarly unappealable in this context, *see Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994), notwithstanding the fact that the ALC's order granting summary judgment for lack of standing unequivocally vacated the order denying the motion to expand discovery, rendering it void and non-justiciable.

The Record on Appeal and the parties' Final Briefs have been filed (as of May 4, 2015); therefore, this appeal is now fully briefed and awaits its addition to the Court of Appeals' roster for oral argument.

### STANDARD

This Court may, in its discretion, certify for its review any case pending before the Court of Appeals prior to its determination. Rule 204(b), SCACR; S.C. Code Ann. § 14-8-210(b). Certification of an appeal for review by the Court is appropriate where a case involves an issue of significant public interest or a legal principle of major importance. *Id.* The Court may also certify a case where it otherwise considers certification to be appropriate. *Id.*

### ARGUMENT

Respondent Ports Authority respectfully submits that this appeal presents appropriate circumstances for the Court to exercise its discretion to certify the case for its immediate review.

#### I. Legal Principles of Major Importance

The issues presented by this appeal contain legal principles of major importance. This administrative challenge to a capital improvement project undertaken by the Ports Authority, and permitted by DHEC, is one of three companion cases that have been filed by many of these same appellants. This Court has already decided the *Carnival* case, in which the Court ruled that many of these same Appellants lacked standing to bring a nuisance and

zoning action against Carnival Corporation, the Ports Authority, and the City of Charleston. 407 S.C. 67, 753 S.E.2d 846. In this case, the allegations of injury-in-fact related to the permitted activity are the same injuries<sup>9</sup> to person and property, verbatim in most instances, as those advanced in the *Carnival* case. Exh. 6, (R. pp. 003797-3803). The ALC found this Court's analysis and reasoning in *Carnival* instructive to its standing analysis, and specifically to Appellants' claims of injury-in-fact. Ultimately, the ALC followed this Court in finding that each of the allegations of injury-in-fact advanced by Appellants (namely, quality of life, effects on property values and businesses, emissions from ships, water pollution) failed to present a concrete and particularized injury that was actual or imminent, rather than conjectural or hypothetical. Exh. 7, (R. pp. 000077-96).

The ALC also went further than this Court in *Carnival* and evaluated whether Appellants had satisfied the traceability and redressability prongs of the constitutional standing analysis. Exh. 7, (R. pp. 000087-89). The ALC found that, even if Appellants were able to demonstrate an injury-in-fact, the alleged injuries were not traceable to the activity for which DHEC issued the

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<sup>9</sup> The similarities include assertions that the cruise vessels: emit noise pollution; burn diesel fuel, which emits visible particulate soot from ship funnels; cause traffic problems related to cruise passengers embarking and debarking ships; and cause pollution to surrounding waters. *See* Exh. 6, (R. pp. 003797-3803), Exh. 36 to Reply in Support of Motion for Summary Judgment (comparison of allegations asserted to this Court vis-à-vis the allegations presented to the ALC in this contested case).

Permit to the Ports Authority (i.e., the placement of five pile clusters). *Id.* The ALC also held that, in any event, Appellants' alleged injuries were not redressable by revoking or remanding the Permit for further consideration. *Id.* (R. p. 000089). The ALC found that Appellants' the alleged injuries were not tied to the UPT capital improvement project and were instead complaints directed at current cruise activity—assuming the allegations to be true—which was beyond the jurisdiction of the ALC in a challenge to specific activity authorized by a permit. *Id.* Thus, the ALC found that Appellants had satisfied none of the three required elements of standing and granted the Ports Authority's motion for summary judgment on that ground.<sup>10</sup> *Id.* (R. pp. 000094-95).

Because this appeal involves the application of this Court's guidance and precedent to many of the same parties, asserting identical generalized grievances of injuries, as those already before the Court in *Carnival*, the Ports Authority respectfully asserts that this appeal presents legal principles of importance that warrant the Court's exercise of its discretion to certify the appeal for its immediate review.

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<sup>10</sup> The ALC also applied this Court's precedent in finding that Appellants could not demonstrate associational standing to bring these generalized grievances on behalf of their memberships. Exh. 7, (R. pp. 000091-93) (relying upon *Georgetown County League of Women Voters v. Smith Land Co., Inc.*, 393 S.C. 350, 358, 713 S.E.2d 287, 292 (2011) (Hearn, J., dissenting, joined by Kittredge, J.); *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001)).

In addition to the issues presented in the ALC's standing decision, Appellants have also appealed other issues that are of importance. First among these is the ALC's ordering of sanctions against Appellants for filing a frivolous motion to remand the contested case to the DHEC Board for a Final Review Conference. Appellants advanced this frivolous motion on the grounds that a Final Review Conference by the DHEC Board is mandatory and a condition precedent under S.C. Code Ann. § 44-1-60(F) to their ability to file a contested case request with the ALC.<sup>11</sup> Appellants' motion relied upon an isolated phrase in § 44-1-60(F), ignoring the plain language of the subsection as a whole. Appellants' motion also ignored clear precedent of both the ALC and this Court recognizing that the plain language of § 44-1-60(F) instilled in the DHEC Board a discretionary standard for hearing Final Review Conferences. Finally, Appellants' motion advanced a position that was directly at odds with a representation made by Appellants' counsel to this Court in their representation of one of the same parties in a different matter.<sup>12</sup> For all of

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<sup>11</sup> Appellants took this position despite the fact that the ALC had accepted their contested case request following the DHEC Board's unanimous vote to decline to hear Appellants' challenge to the Permit in a Final Review Conference.

<sup>12</sup> In the petition for writ of *certiorari* filed in the case of *S.C. Coastal Conservation League v. S.C. State Ports Authority*, Appellate Case No. 2009-113526, the Coastal Conservation League and same counsel who represent Appellants in this case made the following representation:

**The Board has the option of conducting a conference or not after a request for review is made. If the Board does not conduct a conference within 60 days, the staff decision becomes the "final**

these reasons, the ALC found Appellants' motion to remand frivolous and awarded sanctions to the Ports Authority in the amount of attorneys' fees expended in responding to the motion.

The remainder of the legal issues of major importance present the Court with the opportunity to determine the appealability of two types of orders that seldom arise in the context of an appeal from a finding that the appellant lacks standing to assert his or her claims. The first order relates to Appellants' motion to vacate the Permit issued by DHEC on the basis of a collateral order of the federal court, in one of the three companion cases filed by many of these same Appellants, remanding the issue to the Corps for further consideration. Appellants' motion to vacate was, in form and effect, a motion for summary judgment, from which an appeal is not permitted.<sup>13</sup> Moreover, the ALC denied Appellants' motion to vacate in part on the grounds that it had insufficient information at that time to determine the impact of the federal court decision on its analysis and scope of review of the DHEC Permit. Thereafter, of course, the ALC determined Appellants lacked standing to challenge the Permit, in any event. Notwithstanding, if an

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agency decision"; if it does, as here, the Board's written decision becomes the final agency decision. S.C. Code Ann. § 44-1-60(F), (F)(2) (2007).

Exh. 8, (R. p. 000217-219), Exh. C to SPA Resp. to Mot. To Remand (Coastal Conservation League Pet. For Writ of Cert. at 5 n.3 (emphasis added)).

<sup>13</sup> On appeal, Appellants are now asking an appellate court to rule on the merits of their motion to vacate for the first time.

appellate court were to disagree with the ALC and find Appellants have satisfied their burden of demonstrating Constitutional standing, Appellants are free to raise the implications of the federal court order to the ALC again on remand. Thus, the ALC's order denying Appellants' Motion to Vacate is not ripe for this Court's review.

Similarly, the ALC denied Appellants' motion to expand discovery. Aside from the fact that Appellants' motion was untimely and failed to demonstrate good cause existed for the ALC to exercise its discretion and re-open discovery, the Court's decision was also based on Appellants' affirmative representation to the Court that discovery was unnecessary to resolve the then-pending Ports Authority motion for summary judgment for lack of standing. Exh. 7, (R. p. 000095). Appellants represented to the ALC that they sought expansion of discovery in order to prepare for a hearing on the merits, rather than to respond to the motion for summary judgment. *Id.* Consequently, and similar to the motion to vacate, should an appellate court remand this case for a hearing on the merits, Appellants are again free to move to re-open discovery for the purposes of a hearing on the merits. Thus, the ALC's discovery order is likewise unripe<sup>14</sup> for this Court's review.

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<sup>14</sup> In addition, the discovery order may simultaneously be moot, as the ALC vacated its order denying Appellants' motion to expand discovery in the order granting summary judgment for lack of standing. Exh. 7, (R. p. 000095).

## II. Significant Public Interest

In addition to presenting legal issues of major importance, this appeal is of significant public interest in this State and particularly to the Charleston area. UPT is a fully operational marine terminal situated on 63-acres on the Charleston peninsula. Despite the fact that UPT has accommodated passenger ships for over 100 years, and the very fabric and allure of modern-day Charleston is built upon the back of the City's longtime and prosperous maritime industry, some amongst the Appellants would prefer to take UPT for other uses.

The Ports Authority is charged by statute with fostering, stimulating and increasing water-borne commerce, *see* S.C. Code Ann. § 53-3-130, yet its efforts are being thwarted by a vocal and litigious minority of citizens that would like to see their goal of a cruise-free Charleston peninsula come to fruition. Pursuant to its statutory authority, and in making a business decision within its discretion that pursuit of a new cruise terminal at UPT is a sound strategic endeavor, the Ports Authority has expended significant time and resources in planning and developing a \$35 million capital improvement project to modernize and reshape UPT. The UPT Project also has the overwhelming support of local and State government.<sup>15</sup> Having lost the debate

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<sup>15</sup> Exh. 9, (R. pp. 001843-45; 001847-48), Exh. 7 to SPA Mot. Summ. J. (S.968 Concurrent Resolution, 119<sup>th</sup> Session (2011) (General Assembly's declaration of support for the cruise industry and its appreciation for the positive impact Carnival and others bring to the State of South Carolina));

in the court of public opinion, Appellants continue to delay the Project through multi-front litigation. A strategy that has thus far been successful.<sup>16</sup>

Through this motion for certification, Respondents seek a timely resolution to this issue of significant public interest and respectfully submit that this appeal would justify the Court exercising its discretion in certifying the appeal for its immediate review.

### III. Alternative Grounds for Certification

Moreover, S.C. Code Ann. § 14-8-210(b) provides that this Court may certify a case on any other such grounds as it deems appropriate. The Ports Authority respectfully contends that certification of this case under the Court's alternative analysis is also appropriate for a number of alternative reasons.

The Ports Authority is one of the economic drivers of this State's economy and has sought to diversify its business interests through the construction and operation of a modern cruise terminal to satisfy the needs of both the cruise ship operators and cruising public, as well as update and

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Exh. 48 to SPA Mot. Summ. J. (Charleston City Council Resolution (Sept. 14, 2010) ("I, Joseph P. Riley, Jr., Mayor, City of Charleston, and Charleston City Council pledge our support to the [Ports Authority] in their vital role to our City and State's continued economic development which includes 1) plans to redevelop [UPT] including a new passenger cruise terminal ... and 2) management of a cruise business.")).

<sup>16</sup> Exh. 10, (R. pp. 001111-12; 001754; 001756-59; 001761; 001763; 001765; 001767; 001769-70; 001772; 74), SPA Mot. Summ. J. at 10-11, Ex.'s

maintain the stringent public safety and national security measures required of a modern terminal. As provided above, it is not only the Ports Authority's prerogative but also its statutory obligation to pursue meaningful and profitable business opportunities across all sectors of maritime commerce. The continued uncertainty of the UPT Project as a result of this and the companion lawsuits has negatively affected the Ports Authority's ability to fulfill its statutory duties.

Further, given the legal principles of major importance and significant public interest at play, it is all but certain that any opinion of the Court of Appeals would be brought to this Court. Consequently, certification at this stage is both warranted and appropriate. For these reasons, in addition to those discussed above, the Ports Authority respectfully requests this Court to should exercise its discretion under Rule 204(b), SCACR, and S.C. Code Ann. § 14-8-210(b) by certifying the appeal.

#### CONCLUSION

The Ports Authority submits that good cause exists for the Court to certify the instant appeal for review and to assume jurisdiction over same for all purposes.

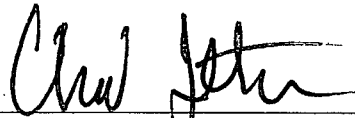
WHEREFORE, having fully set forth this motion, Respondent Ports Authority respectfully requests that the above-captioned appeal be certified

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29-37 (Correspondence of members of Appellants encouraging and reveling in their tactic of delay).

for review by the Court, that the Court assume jurisdiction over same for all purposes, and that the Ports Authority be granted such other and further relief as is just and proper.

Respectfully submitted,



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June 5, 2015  
Columbia, South Carolina

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 2014-000847

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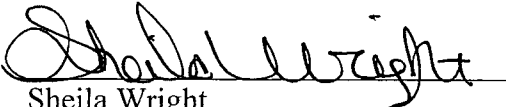
This is to certify that I, a paralegal with the law firm Willoughby & Hoefler, P.A.,  
have caused to be served this day one (1) copy of a **Motion for Certification** and  
**Memorandum in Support of Motion for Certification** by placing same in the care and  
custody of the United States Postal Service with first class postage affixed thereto and  
addressed as follows:

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Sheila Wright

Columbia, South Carolina  
This 5th day of June 2015

**WILLOUGHBY & HOEFER, P.A.**

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JUN 09 2015

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June 5, 2015

**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

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

Dear Mr. Shearouse:

Pursuant to Rules 204(b) and 240, of the South Carolina Appellate Court Rules, enclosed for filing please find the original and seven (7) copies of a **Motion for Certification** and **Memorandum in Support** on behalf of Respondent South Carolina State Ports Authority in the above-captioned matter.

By copy of this letter to counsel, I am serving Appellants Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Historic Charleston Foundation, as well as counsel for co-Respondent South Carolina Department of Health and Environmental Control, with a copy of this Motion and enclose a proof of service to that effect. Also by copy of this letter, as well as by separate letter, I have notified the Clerk of Court of the Court of Appeals and enclose a copy of same for your records. Finally, under the Ports Authority's longstanding interpretation of Rule 240(d), and as an agency of the State, it is exempt from the filing fee requirement for the within motion.

The Honorable Daniel E. Shearouse

June 5, 2015

Page 2

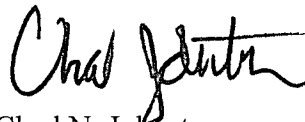
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I would appreciate your acknowledging receipt of the Motion and Memorandum by file stamping the enclosed extra copies of same and returning them to me via our courier.

If you have any questions, or require additional information, please do not hesitate to contact me. With best regards, I am,

Respectfully,

**WILLOUGHBY & HOEFER, P.A.**



Chad N. Johnston

Enclosures

cc: The Honorable Jenny Abbott Kitchings (via U.S. Mail with enclosures)  
Amy Armstrong, Esquire (via U.S. Mail with enclosures)  
Jefferson Leath, Esquire (via U.S. Mail with enclosures)  
J. Blanding Holman, Esquire (via U.S. Mail with enclosures)  
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TO:

Honorable Jenny Abbott Kitchings  
Clerk of Court  
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