

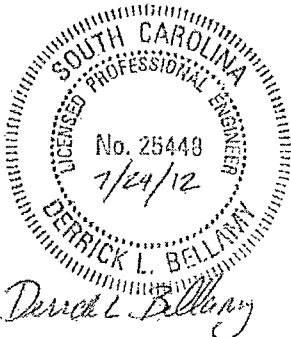
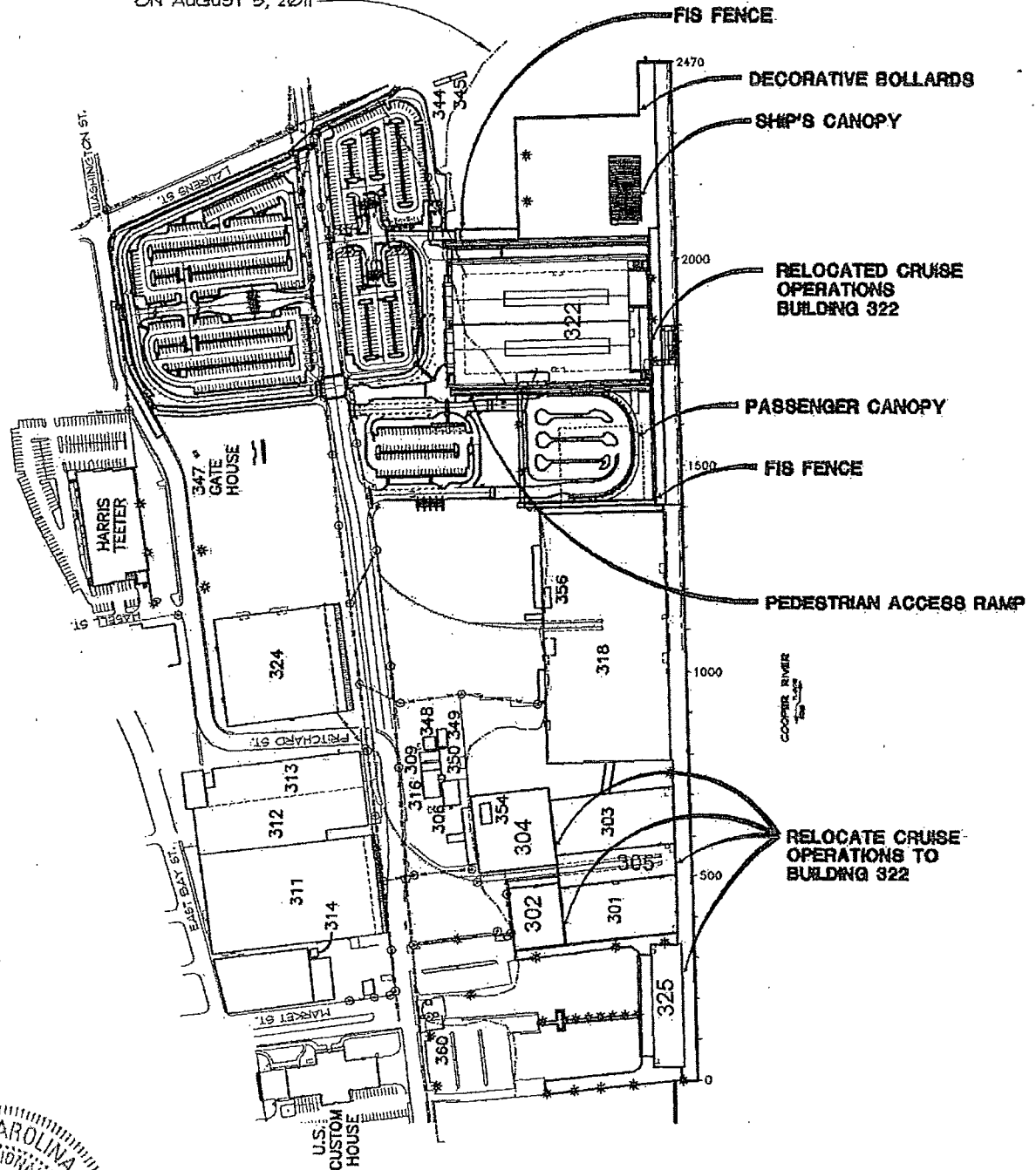
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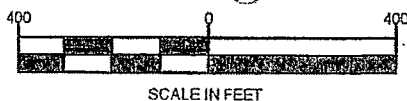
SC Court of Appeals

Exhibit 1

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



NEW BUILDING LOCATION PLAN UNION PIER TERMINAL



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

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

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



EXISTING 12" P&C PILE

COOPER RIVER
← 1000
← 2000

PILE
LOCATIONS

330

1500

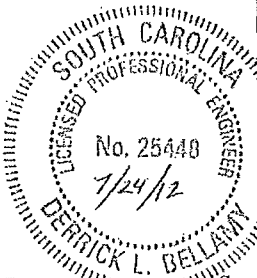
LEGEND



ELEVATORS



ESCALATOR



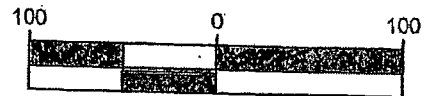
MODIFICATIONS (BUILDING 322)

South Carolina State **PORTS AUTHORITY**

176 CONCORD STREET

P.O. BOX 22287

CHARLESTON, S.C. 29413-2287



SCALE IN FEET

PROJECT NO.: CIF11E006B

FILE NAME: Upcptp4

DATE: JULY 2012

SHEET: 4 OF 11

Exhibit 2

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioners,)

v.)

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

Respondents.)

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

AFFIDAVIT OF PETER O. LEHMAN

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

1. I am over eighteen (18) years of age and competent to make this affidavit.
The facts stated within this affidavit are within my personal knowledge and are true and correct.
2. I am the Vice President of Cruise and Real Estate at the South Carolina State Ports Authority.
3. I earned a bachelor's degree in business administration from Stetson University, a certificate of advanced study from the American Graduate School of International Management (Thunderbird), and a juris doctor degree from the New England School of Law. I am a licensed attorney and a member of the South Carolina,

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

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

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

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

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

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

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

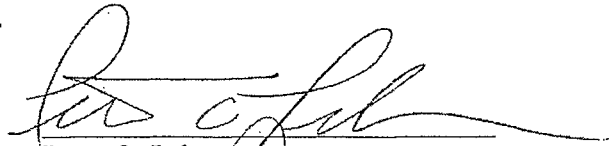
9. In the event that the federal or state environmental permits are reversed or denied, the Ports Authority will continue to accommodate and berth cruise vessels at the UPT, including but not limited to the *Carnival Fantasy*.

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

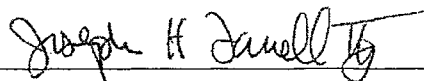
11. Regardless of whether cruise operations occur on the south end or north end of the UPT, those cruise operations will not be affected by the location, including, for example, the frequency of and the size of cruise vessels that can be berthed.

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

FURTHER AFFIANT SAYETH NOT.


Peter O. Lehman

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


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

INFRASTRUCTURE

STORMWATER

Existing Conditions

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

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

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

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

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

Regulatory Context

Applicable stormwater regulations for the Union Pier project are subject to the following regulatory programs:

- Federal Clean Water Act / National Pollutant Discharge Elimination System (NPDES) Storm Water Program
- South Carolina Pollution Control Act
- South Carolina Storm Water Management Act
- South Carolina Coastal Zone Regulation
- South Carolina Anti-Degradation Rules
- City of Charleston’s MS4 Review

In South Carolina, the South Carolina Department of Health and Environmental Control (SCDHEC) is responsible for administering the stormwater management program. In the eight coastal counties, SCDHEC has management program authority to the South Carolina Department of Natural Resources (SCDNR) Coastal Resource Management (OCRM). Recently, as part of the implementation (for small and medium sized projects), SCDHEC has delegated portions of the stormwater management program to local jurisdictions (as part of their NPDES municipal permit). The City of Charleston has delegated the stormwater management program to the City of Charleston.

Land disturbing activities (including the construction of new neighborhoods, commercial areas, etc.) are required to obtain a Phase II Construction General Permit (CGP). The permit is issued based on the project’s size, the quantity of land disturbing, the proximity to receiving water, and proximity to sensitive areas. The following are the criteria for a land disturbing project is:

- ≥ 1 acre and not within $\frac{1}{2}$ mile of a receiving water body
- if a project is $> \frac{1}{2}$ acre and within $\frac{1}{2}$ mile of a receiving water body

CONCEPT PLAN DISTRICT

Exhibit 3

STATEMENT OF FACTS

UPT is a 63-acre property located along the Cooper River on the Charleston peninsula and is owned and operated by the Ports Authority as a fully operational marine terminal. As currently configured, UPT accommodates upwards of 200 cargo ships annually, in addition to the requisite trains and trucks necessary to service those cargo ships, and has a designated cruise passenger terminal on the southern end of the property. UPT accommodates significant roll-on/roll-off cargo facilities used for automobiles, trucks and heavy equipment and UPT can accommodate passenger vessel calls for almost 100 years, including cruise vessels, which have called on the UPT cruise passenger facility every year since 1973, the date of dedication for the existing cruise passenger terminal facility.¹² Ex. 12, Aff. of James I. Newsome, III ¶7 (Aug. 22, 2011) (Newsome Aff.). Pursuant to its statutory obligations under, *inter alia*, S.C. Code Ann. § 53-3-130, the Ports Authority has sought to foster, stimulate, and increase water-borne commerce through cruise ship calls at UPT.¹³

¹² Cruise Opponents' claims that cruise ships are significantly larger in scale than those ships that have historically called on UPT is simply inaccurate and unsupported by any facts. See Ex. 3, Ports Authority Ltr. dated Jan. 7, 2013 to DHEC Bd. at 7, (Building 322 is the white-roofed warehouse near the cargo ship). As is evident, the cruise ships that call on UPT, and specifically the Carnival Fantasy as shown at the southern end of the pier of Exhibit 3, is not disproportionate in size or scale to the cargo ships (such as car carriers) that regularly call on UPT, as evidenced by the ship berthed at the northern end of UPT (foreground of the picture) of Exhibit 3. In fact, much larger ships than the pictured cargo ship call on the Port of Charleston on a weekly basis.

¹³ The cruise industry in Charleston has benefited in recent years by the City's continued and increasing popularity as a tourist destination. The draw of Charleston and the successful cruise partnership with the Ports Authority has resulted in cruise lines designating Charleston as home port to certain of their passenger vessels. Most recently, Carnival Cruise Lines (Carnival) designated Charleston as the home port of one of its vessels, the Carnival Fantasy. The corresponding increase in cruise vessel calls (and thus the increase in maritime commerce) has, in turn, contributed to the City of Charleston and the State of South Carolina in numerous ways, including increased local revenue. See Ex. 13, Aff. of Joseph P. Riley, Jr. ¶4 (Aug. 22, 2011) (Riley Aff.) (noting that the cruise industry has generated approximately \$35 million and over 400 jobs).

In order to accommodate the cruise passenger demand, the Ports Authority undertook the instant capital improvement plan for UPT. The planned improvements will be undertaken in an economically efficient and environmentally sustainable way, including renovating existing buildings on the terminal footprint, demolishing older structures, the proposed redevelopment of much of the existing terminal acreage, including public green spaces, restoration of the natural waterfront and other public and private development undertakings. *See* Ex. 14, UPT Presentation of Riley and Newsome, SCPA 001281-225; Ex. 15, Existing v. Proposed Drawing Comparison, SCPA 001217; Ex. 16, Aff. of Peter O. Lehman (Lehman Aff.) Ex. B, SCPA 001253-366 (Concept Plan for Union Pier Waterfront dated Sep. 2010).

The planned renovations to cruise facilities at UPT will also ensure continued compliance with current terminal security requirements mandated by federal law under the oversight of the CBP. In 2007, the Ports Authority entered into a Memorandum of Understanding with the CBP for the conditional approval of ongoing cruise operations on a continuing trial basis, which has since been renewed with the understanding that a passenger terminal facility with improved security would be needed for continued operations. The Memorandum of Understanding was recently renewed for an eighth (8th) time and for an additional two (2) years, extending cruise operations at UPT through September 2015. *See* Ex. 17, Ports Authority-CBP MOU (June 20, 2006), as amended.

Additionally, replacement of cargo facilities with a renovated cruise terminal at the northern end of the UPT footprint will allow the cessation of existing rail operations, and accompanying traffic impediments, that service the existing cargo operations. This reduction in rail traffic and associated street closures on embarkation/debarkation days, will be made as a part of an overall traffic management plan put into place by the Ports Authority. The effect of traffic

management plan, which includes the removal of current cargo traffic and rail impediments to the UPT area—even assuming an increase in traffic to the relocated cruise terminal (which the traffic management plan is designed to alleviate)—is a net neutral traffic impact on the areas surrounding UPT. *See* Ex. 3, Ports Authority Ltr. to DHEC Bd., Jan. 7, 2013, Ex. G (traffic diagram comparison).

In anticipation of the successful completion of the UPT Project and relocation of cruise operations less than 600 yards to the north, existing facilities which were used for cargo operations, and which handled upwards of 200 cargo vessel calls a year, have begun relocation to a different Ports Authority terminal facility.¹⁴ As a result of this relocation and the voluntary traffic management plan, emissions at and around the UPT will decrease as a direct result of the UPT Project, including for the areas represented by Cruise Opponents. *See* Ex. 18, OCRM Technical Review at 8; Ex. 19, Trinity Consultants Study: Historical, Current and Future Criteria Pollutant Emissions at Union Pier Terminal (Dec. 23, 2013); Ex. 3, Ports Authority Ltr. to DHEC Bd., Jan. 7, 2013 at 4. In short, the Ports Authority's capital improvement plan will aid the economic development and improve the environment of Charleston. *Id.* (comparing impacts between the status quo and planned redevelopment of UPT); *see also* Ex. 20, Voluntary Cruise Management Plan (agreeing, *inter alia*, to limits on the size and frequency of cruise operations at UPT). However, should the renovated northern end of the UPT not be utilized for cruise operations, it will continue to be used for cargo operations, along with the accompanying resumption and continuation of air emissions and truck and rail traffic necessary to operate a dynamic and

¹⁴ In addition to the relocation of the cargo operations, the Ports Authority adopted the Voluntary Cruise Management Plan that limits the number of cruise vessel calls to 104 per calendar year. *See* Ex. 20, Voluntary Cruise Management Plan. Consequently, there will be a net reduction in the amount of large, ocean-going vessel traffic at UPT if the proposed plan is realized.

productive terminal facility and promote shipping commerce in Charleston and for the State. *See* Ex. 16, Lehman Aff. ¶¶ 8-11 (noting that cruise operations at UPT will continue—with greater or lesser size and frequency—regardless of the permitting decision in this contested case); *see also* Ex. 21, What Kind of Future Do you Want?, SCPA 002630 (describing the two options for UPT—cruise and cargo operations on the north and south ends or cruise operations only on the north end).

CRUISE OPPONENTS AND THIS CONTESTED CASE

The proponents of this contested case have a clear objective: rid UPT of the cruise industry permanently through delay of litigation, perpetuation of unsupportable allegations, and discouragement by imposition of infeasible regulations. Aptly named Cruise Opponents are a small and vocal minority.¹⁵ Unfortunately, this well-funded minority has used its bully pulpit and the institution of legal proceedings to attempt to prevent any cruise ship vessels from calling on UPT. Notwithstanding these efforts to attack the City's economic interests, Charleston, aided by the successful partnership with and continued growth of the cruise industry, continues to rank as the top tourist destination in America.¹⁶

¹⁵ Despite purporting to speak on behalf of the community, it appears Cruise Opponents are a small and vocal minority intent on using the administrative and judicial processes to derail a widely embraced redevelopment plan for UPT. *See, e.g.*, Ex. 22, Ltr. of Sarah Christopher to DHEC, DHEC-SCPA 000727 (downtown resident describing Cruise Opponents as a small but vocal minority); Ex. 23, Minutes of May 9 CNA Mtg., Cruise Opponents 001729-001733 (describing the ascendance of the anti-cruise agenda in the CNA as a "hostile takeover" and "a blitzkrieg"); Ex. 24, Ltr. of S.D. Thomas, M.D. to DHEC, DHEC-SCPA 000731-32 (downtown resident describing Cruise Opponents as a "small but tightly knit group of miscreants determined to have its way"); Ex. 25, Ltr. of Theodore D. Stoney, Jr., DHEC-SCPA 001085-87; Ex. 26, Randy Pelzer E-Mail, Feb. 25, 2010, Cruise Opponents 008806 (describing the inability of Cruise Opponents to secure support from residential landowners near UPT); Ex. 27, Katie Zimmerman Email, May 11, 2012, Cruise Opponents 004484-85 (discouraging a researcher from interviewing Charleston residents about the cruise controversy for fear of negative feedback about Cruise Opponents).

¹⁶ For the third year in a row, readers of the renowned traveler magazine Conde Nast have voted Charleston the No.1 tourist destination in America. *See* Ex. 28, Oct. 16, 2013 Post & Courier Article, "Charleston's No.1 for 3 years running."

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

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

v.

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

AFFIDAVIT OF JAMES I. NEWSOME, III

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

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

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

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

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

§ 54-3-130. Purposes of Authority.

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

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

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

§ 54-3-120. Jurisdiction of Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

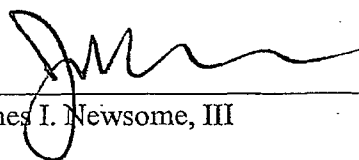
17. Cargo valued at \$50 billion passed through the Charleston Customs District in 2010. The total tonnage of cargo that passes through the Port of Charleston is approximately 15 million tons per year.

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

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

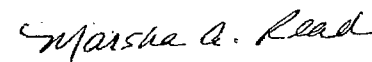
19. If the theories proposed by Plaintiffs are found to be legitimate, not only will the overall Union Pier improvement plan be scuttled, but all ocean going interstate and foreign maritime commerce, which is facilitated through the Ports Authority's Union Pier and Columbus Street Terminal facilities,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

FURTHER AFFIANT SAITH NOT.


James I. Newsome, III

Sworn to and subscribed before me,

this 22nd day of August 2011.


Notary Public for South Carolina

My Commission Expires: Nov. 13, 2016

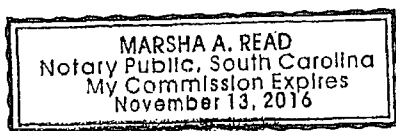


Exhibit 4



In the "Before" (shown on the left), the end of North & South Market is closed, a portion of Washington St., & Concord St. is closed during cruise operations. In the "After" (shown on the right), these streets are open. The closure anticipated is the portion of Concord St. within the Union Pier Terminal footprint that is closed today.

R.001230

Regulatory Programs Division Decision Document
Impact Assessment for COMMERCIAL DOCK
Office of Ocean and Coastal Resource Management – SCDHEC

TECHNICAL SUMMARY OF REVIEW

Permit Name: South Carolina State Ports Authority – Union Pier
Decision: _____

Permit: _____
Permit with Conditions: X
Deny: _____

I. Background Information:

Database ID# 75114

Permit Number: OCRM-12-054-B

P/N Date: March 23, 2012 Date Received: April 27, 2012

Permit Type: Joint Other Agency Permits: SCDHEC-BOW & Corps

County: Charleston Water Body: Charleston Harbor/Cooper River
Location: On and adjacent to Cooper River at 32 Washington Street (Future 180 Concord Street), South Carolina State Ports Authority ~ Union Pier Terminal,
Description: Charleston, Charleston County, South Carolina. TMS#: 459-00-00-009.

II. Project Description and Stated Purpose:

Description:

The work as proposed and shown on the attached plans consists of making improvements to an existing waterfront building. Specifically, the applicant seeks to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes are proposed to be made to building 322 and the construction of two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies.

Purpose: The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322

III. Summary of Public and Agency Comments (List by name, date & comment summary; if none, so indicate):

Federal Agencies: **None**

State Agencies: **SCSPA – NOBJ**
SCDNR – NOBJ

Local Agencies: **None**

Public Comment (Include all names from Public Hearing): **See the attached list**

Adjoining Property Owners (Include all names of those who commented:
See the attached list

IV. Environmental Assessment:

A. Describe the coastal resources (i.e., vegetation, habitat, etc.), which will be impacted:
Open water areas beneath an existing wharf and existing building over the water.

B. Watershed and vicinity information (include watershed name & size, classification; any impaired waters listed within impaired parameter; and shellfish status):

The proposed work will be situated within Shellfish Management Area 10B, which is classified as "Prohibited."

1) Vicinity information (include information on developments within watershed within 3 mile radius):
Site is located at an existing SCSPA commercial pier. This area of the Cooper River historically has been utilized directly and indirectly by commercial maritime shipping industry for many years, including the cruise ship industry. The area is currently surrounded by other commercial entities.

2) Existing system stressors (i.e. shellfish closures, 303d):
The proposed work will be situated within Shellfish Management Area 10B, which is classified as "Prohibited."

C. GAPC Review (List any GAPC's present on or adjacent to project site; include agency comments; attach GIS printout; and outline treatment methods):

There are no known endangered species, or SCORE sites resources at this site. The site is adjacent to the "Old and Historic Charleston" district and is designated as a GAPC. The SCSPA Union Pier is also designated as a GAPC.

D. Name and approximate width of water body: **The Cooper River**

V. Policy Assessment:

A. Regulatory History:

- 1) Previous OCRM authorizations (land disturbance, Federal cert.):
- | | |
|--------------------------------------|----------------------|
| SC STATE PORTS AUTHORITY | 90-4T-172-P |
| FLEET LANDING RESTAURANT, LLC | OCRM-04-339-R |
| SC STATE PORTS AUTHORITY | 99-1P-261-P-C |

- 2) Previous Enforcements (is project in compliance w/all previous permits, etc.): **None**
- 3) Master Plans (dock, archaeological, wetland): **No**
- 4) Date of O & M: **N/A**
- 5) Navigable tributary crossings proposed: **None**
- 6) Property frontage at highground and water, offsets these lines: **N/A. The existing commercial pier is a SC State Port Authority pier. It is also a permitted/grandfathered structure with permitted/grandfathered activities (including cruise ship operations), that will be modified within the existing pier footprint.**
- 7) Community or public marina: **Commercial Pier**
- 8) Water quality sampling/monitoring program required: **No.**
- 9) Stormwater permit submitted or approved for highground dev: **No. Facility is an existing commercial pier with buildings that have been approved in the past.**
- 10) Bathroom numbers: **N/A. Facility is an existing commercial pier.**
- 11) Dock masters office location and number: **No.**
- 12) SAMP restrictions: **N/A**
- 13) NERRS review area: **N/A**
- 14) Deed restrictions: **N/A**
- 15) Wetland delineation approved by ACOE: **N/A**
- 16) Development plan and parking approved by local government: **N/A**
- 17) Valid critical area line certified: **Yes**
- 18) Marsh ownership claims: **None**

B. Applicable Regulations and Policies (list those that apply only):

- 1) CZMA:
Approval or denial of permits; appeal to council 48-39-150
Legislative declaration of state policy 48-39-30
Legislative declaration of findings 48-39-20
- 2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards):
Mitigation Criteria R.30-4(G)(2)
General Considerations R.30-11(B)
Further Guidelines R.30-11(C)

R.30-12(A)(4) The following standards in addition to those in R.30-12(A)(1) apply to construction of commercial docks that are not marinas

R.30-12(E) Marinas, including commercial and community docks with more than 250 linear feet of effective docking space.

R.30-12(F)(2)(d) Transportation

- 3) CZ Policies (Management Program Document):

Policies for Port Facilities

- 1) New port development should take place in existing industrialized areas where sufficient support facilities are available including public utilities, rail and highway transportation access, and navigational channels which are already maintained, unless there are no feasible alternatives or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.
- 2) Port development should occur in areas that have adequate high ground (non-wetland) acreage for proposed current development and near-term expansion plans, and related facilities. Port development should be located in areas where the filling of productive salt, brackish or freshwater wetlands will not be required or can be minimized. If site preparation does require filling in these wetlands, it must be clearly demonstrated that no other feasible alternatives exist or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.
- 3) To the extent feasible, port development and expansion should locate on existing channels so that the need for initial and maintenance dredging can be minimized.
- 4) New port development that will require maintenance dredging must identify adequate upland (non-wetland) spoil areas, ocean disposal, or other environmentally-acceptable alternative disposal techniques to meet the long-term demands for spoil disposal.
- 5) Port areas must provide for the handling of dangerous and volatile cargoes and materials in relatively isolated or restricted areas, so that in the event of accident, measures can be implemented to contain any spills or other contamination with minimal environmental damage and limited threat to the health, safety and welfare of the public.
- 6) Wharves, piers, mooring dolphins and other port-related structures should not restrict or block navigation or alter the natural pattern of water currents.
- 7) Proposed port development or expansion and operation must meet existing air and water quality standards, as regulated by the Federal Environmental Protection Agency and the South Carolina Department of Health and Environmental Control.
- 8) Port facilities developed by the State Ports Authority (SPA), as well as by private developers, must be sited, constructed and operated in a manner that is consistent with local and State development

objectives as set forth in public documents such as comprehensive plans, zoning ordinances and performance standards.

- 9) Potential negative impacts on navigation which might restrict port and harbor activities in the area will be considered in evaluation of permits for marinas, docks and piers, transportation facilities (especially bridges), cables and pipelines and other relevant activities.
- 10) Port development or expansion plans must include provision for necessary breakwater or other wake protection measures along major navigable ship channels where appropriate in order to reduce erosion damage. These structures must be in compliance with other applicable policies and Rules and Regulations.
- 11) All bulkheads associated with a port area must meet the policies as stated in the Erosion Control Program [Chapter IV(C)].
- 12) All dredging and dredge spoil disposal policies, as stated in VIII (A) and (B) of the Resource Policies will be applied to port activities.
- 13) All piers and dockage must meet the policy requirements as stated in VI (C) of the Resource Policies.
- 14) Transportation projects associated with port development must follow the transportation policies stated in II (B)-(E) of the Resource Policies.
- 15) The policies for manufacturing will apply to port development and related industrial development (III (D) of the Resource Policies).

CZMP II - 1
CZMP II, Section II(A)
CZMP III - 5 General Considerations
CZMP III - 14 at I(7)
CZMP III - 14(8)
CZMP III - 19
CZMP III - 20
CZMP III - 22
CZMP IV

Priority of Uses

The following are the uses of priority for all state ports created and operated by the South Carolina State Ports Authority (SPA) beginning with the use of highest priority:

- 1) Uses which require water access or uses for which the water orientation is the central purpose of the activity, such as maritime shipping, fishing, marine industry, and recreational boating. Included in the uses of highest priority for state ports are provisions to assure safety within the ports. These water-dependent uses should have no prudent or feasible alternative;
- 2) Water-related uses which do not reduce or degrade the natural value or resources within the port;
- 3) Nonwater-dependent or nonwater-related uses which retain future flexibility of the port for water-dependent needs.

Designated Sites

The South Carolina Ports Authority owns and manages the following facilities, which are designated as GAPCs: Beaufort County: Port Royal-State Pier 21; Charleston County: Port of Charleston; Georgetown County: State Piers 31 and 32.

C. Does the project contravene any coastal zone regulations?

YES

X NO

(If No, skip to section VII; if Yes, complete Section VI.)

VI. Modifications for bringing the project into compliance with regulations:

A. Modifications required to minimize impacts (list avoidance & minimization measures; buffers; size and/or use restrictions; additional treatment measures; deed restrictions; and agency agreements):

See attached Special Conditions

B. If Permit is denied, explain contraventions of regulations and/or Coastal Zone Management Program.

N/A

VII. Field assessment by: Steven Brooks/Blair Williams June 13, 2012

(Name)

(Date)

VIII: Reviewed By:

1. Project Manager:

Steven Brooks

12/17/12

(Signature)

(Date)

2. Section Manager

Blair Williams

12/17/12

(Signature)

(Date)

IX. Notes:

Previously, this project was advertised on public notice on March 9th and March 23rd as a proposal to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. On April 18, 2012, A public hearing was held at the Sterett Hall Auditorium. Subsequently, DHEC-OCRM met with the SC State Ports Authority on July 18, 2012 to discuss additional information that was requested in a letter dated June 29, 2012. At the end of the meeting, it was agreed the SPA would be submitting the additional information as requested. On July 26, 2012, the requested information was received. The application was re-noticed on August 3, 2012 and the comment period was extended to September 2, 2012.

This project was re-public noticed to include proposed modifications consisting of additional structural changes that are to be made to building 322 and the construction of two covered staging areas. A second public hearing was held on Wednesday, September 19, 2012 at 6:00 pm at the Sterett Hall Auditorium. The record of the public hearing was kept open until October 10, 2012, in order to receive any additional comments.

LONGTERM CUMULATIVE AFFECTS

R.30-11(C)(1) The extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area. The long-range cumulative effect of this project will not have any substantive impact to any type of development because development in this area has already been established and completed. Additionally, the long-range cumulative effect of this project will not have any substantive impact to the general character of the area because the general character of this area has been for more than a century an existing commercial pier that is a SC State Port Authority pier with grandfathered activities that include cargo and cruise ship operations.

This is an activity that would be occurring on an existing commercial pier that is a SC State Port Authority pier. The activity (cruise ship operation) currently exists on this facility and is considered grandfathered at this pier.

NEW LOCATION POTENTIAL IMPACT A DESIGNATED HISTORIC AREA

The Union Pier facility is adjacent to the "Old and Historic Charleston" district. The "Old and Historic Charleston" district was listed on the National Register of Historic Places in 1978 for its architectural integrity. The SC State Ports Authority is not undertaking any new activity that would threaten the architectural integrity of this historic district. The Port of Charleston and the historic district have co-existed for many years. In light of the afore-mentioned, it has been determined that there would be no potential adverse effect on the adjacent historic district.

CRUISE SHIP CALLS AFTER SHIFT TO NEW TERMINAL

The South Carolina State Ports Authority (SCSPA) has committed to a very responsible voluntary Cruise Management Plan to manage the number of cruise ship calls per year. The operations for the new passenger cruise facility at Union Pier Terminal will be conducted in accordance with the Voluntary Cruise Management Plan. The SCSPA will include the Department in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

AIR EMISSIONS

Air quality for vessel mobile source is governed by international treaty and federal regulation (MARPOL Annex VI), and Congressional adoption of that treaty. Regulatory authority is under the federal EPA and U.S. Coast Guard.

The cruise ships that will call at this facility are not equipped to connect with shore power. Shore power is prohibitively expensive infrastructure. Shore power is extremely costly, and is usually required only in areas that face air quality challenges. Charleston does not face the air quality challenges.

There will be a reduction in cruise ship related emissions on Union Pier as a result of the implementation of the North American Emission Control Area (ECA), which began in August of this year and will be completely implemented by August 2015. All cruise ships will be required to use lower sulfur fuel as a result of the directives of the North American Emission Control Area (ECA). Emissions will be decreased even further once construction has been completed for the passenger cruise terminal, as this will eliminate emissions associated with shuttling cruise passengers to and from the current offsite parking area and emissions associated with dropping off and picking up baggage, and processing passengers and vehicles near the cruise ship. Additionally, to further mitigate air emissions, the SCSPA has agreed that the space remaining on the south end of the terminal would not be re-utilized to handle cargo. The space remaining on the south end of the terminal would be redeveloped and reunited with the City of Charleston.

In summary, the applicant's request is permissible by law. The proposed work is in line with the general character of the surrounding area. Based on the foregoing, SCDHEC issued a permit authorizing the installation 5 pilings, additional structural changes to building 322, and the installation of two covered staging areas. These activities were issued with the following special conditions:

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal is conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".
2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.
3. Provided that the SPA requires its contractors, for the activities addressed under this permit, to:
 - a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.
 - b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all nonroad equipment between 100 and 750 horsepower.
 - c. turn off construction equipment and vehicles not in active use.
 - d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.
 - e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.
4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.
5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.
6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning

System equipment.

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

X. Attachments Required:

GIS Review (See Section IV.C. above)
Site Photographs

SC State Ports Authority
OCRM-12-054-B

0 0.05 0.1 0.2
Miles





MEMORANDUM

To: Patrick Moore - South Carolina State Ports Authority
CC:
From: George J. Schewe, CCM, QEP – Trinity Consultants
Date: December 23, 2013
RE: Historical, Current and Future Criteria Pollutant Emissions at Union Pier Terminal

South Carolina State Port Authority's (SCSPA) Union Pier Terminal (UPT) located in Charleston, South Carolina, has previously engaged in the import and export of autos and various other commodities via rolling stock (Ro Ro) marine vessels and as a terminal for passenger cruise ships. In 2012, the only significant activity at UPT was the use of the terminal for passenger cruise ships. Future plans for UPT include construction of a passenger terminal at the north end of UPT and the elimination of maritime activities (i.e. export/import). Removing the import/export activities from operations will eliminate approximately 200 cargo ships, trains, and related truck and car traffic.

In response to information on air quality requested by South Carolina Ocean and Coastal Resource Management (OCRM) regarding construction of a new cruise ship terminal, SCSPA has completed calculations for four (4) UPT scenarios:

- Criteria pollutant air emissions associated with UPT activities conducted in calendar year 2010
 - emissions were calculated for Ro Ro marine vessels, passenger cruise ships, and railroad activities;
- Criteria pollutant air emissions associated with UPT activities conducted in 2012
 - emissions were calculated for passenger cruise ships, busing, and motor vehicle emissions while dropping off/picking up baggage at the terminal;
- Criteria pollutant air emissions associated with UPT activities anticipated to be conducted in 2013 and 2014
 - emissions were calculated for passenger cruise ships, busing, and motor vehicle emissions while dropping off/picking up baggage at the terminal; and,
- Projected criteria air pollutant emissions from anticipated activities in 2015
 - emissions were calculated for passenger cruise ships and a parking area.

Criteria pollutants include carbon monoxide (CO), oxides of nitrogen (NO_x), particulate matter less than 10 microns in diameter (PM₁₀), particulate matter less than 2.5 microns in diameter (PM_{2.5}), sulfur dioxide (SO₂) and volatile organic compounds (VOC, a precursor to ozone). Explanations of calculation methods and assumptions, as well as example calculations, are provided in this document.

The total sum of criteria pollutant emissions from the UPT, as utilized for maritime activities, is significantly higher than emissions from UPT used exclusively as a terminal for passenger cruise ships. Conversion of the UPT exclusively to a passenger cruise ship terminal, and adherence to regulations decreasing allowable sulfur content in diesel fuel, will decrease annual criteria pollutants.

Sum of Criteria Pollutants (Annual Tons)			
2010 Maritime Activities	2012 Cruise Ship Activities	2013-2014 Projected Cruise Ship Activities	2015 Projected Cruise Ship Activities
244.43	129.91	158.93	120.52

*There is a 47% decrease in the total mass of criteria pollutants between 2010 and 2012, and another 7% decrease in the total mass of criteria pollutants between 2012 and 2015.

MARINE DIESEL FUEL SULFUR CONTENT

The globally-applicable requirements of MARPOL (International Convention for the Prevention of Pollution from Ships) Annex VI became enforceable in the United States through the Act to Prevent Pollution from Ships (APPS) in January 2009. The Act to Prevent Pollution from Ships (APPS) is a U.S. law (33 USC 1901 et seq.) that was last amended when President Bush signed into law the Maritime Pollution Prevention Act of 2008 (Public Law 110-280, July 21, 2008). APPS is the law that authorizes and requires the United States to implement MARPOL Annex VI. The 2008 APPS amendments require compliance with all aspects of Annex VI by all persons subject to the engine and vessel requirements of Annex VI. The amendments also authorize the U.S. Coast Guard and EPA to enforce the provisions of Annex VI against domestic and foreign vessels and to develop implementing regulations as necessary. In addition, APPS gives EPA sole authority to certify that U.S. marine engines meet the Annex VI requirements.¹

EPA has adopted regulations under APPS authority to implement the provisions of MARPOL Annex VI. Under these regulations, both U.S.- and foreign-flagged ships subject to the engine and fuel standards of MARPOL Annex VI must comply with the applicable Annex VI provisions when they enter U.S. ports.

Under MARPOL Annex VI, the North American Emission Control Area (ECA) entered into force on August 1, 2011.

ECA's were established to limit the emission of SO_x and particulate matter which is primarily achieved by limiting the maximum sulfur content of the fuel oils as loaded, bunkered, and subsequently used onboard. These fuel oil sulfur limits (expressed in terms of % by weight) are subject to a series of step changes over the years 2010 and 2020 for non-ECA's and over the years 2012 and 2015 for ECAs.²

In this emission summary for UPT, SO₂ emissions for 2010 are based on heavy diesel fuel (California ARB); SO₂ emissions for 2012 are based on data supplied by Carnival cruise ships (1% S); and SO₂ data for 2015 are based on anticipated limits under MARPOL Annex VI (0.1% S).

¹ 40 CFR part 94 and 40 CFR part 1042 apply to marine compression-ignition engines. 40 CFR Part 80 Subpart I contains current regulations that apply to marine diesel fuels. 40 CFR part 1043 contains APPS regulations implementing MARPOL Annex VI and the North American ECA.

² [http://www.imo.org/OurWork/Environment/PollutionPrevention/AirPollution/Pages/Sulphur-oxides-\(SOx\)---Regulation-14.aspx](http://www.imo.org/OurWork/Environment/PollutionPrevention/AirPollution/Pages/Sulphur-oxides-(SOx)---Regulation-14.aspx)

2010 UNION TERMINAL OPERATING SCENARIO AND POLLUTANT EMISSIONS

For the 2010 operating scenario, emissions were calculated using the actual number of Ro Ro and passenger cruise ships that were processed through the UPT.

Major operations contributing to criteria pollutant emissions in 2010 at the UPT were: Ro Ro marine vessel hotelling (docked, at berth); passenger cruise ship hotelling; and, railroad locomotive idling.

Ro Ro and Passenger Cruise Ships

Ro Ro and passenger cruise ship emission factors were taken from the California Air Resource Board (ARB)'s *Emissions Estimation Methodology for Ocean-Going Vessels*.³

The California ARB emission factors are in units of grams per kilowatt -hour (gr/kw-hr) for each pollutant. As a basis for emission calculations the following data were used.

Data Description	Ro Ro Criteria Emissions	Passenger Cruise Ship Criteria Emissions
Hotelling Engine Load ¹	26%	16%
Hotelling ^a Power (kw) ^{1, 4}	2,605	38,120
Hours ^b of Operation (hrs) ^{1, 5}	4,182	727

^a Hotelling power for cruise ships is not applicable as all are diesel-electric, thus the average of all cruise ships total power was used as the basis as taken from Moffatt & Nichol report⁶.

^b Average of all cruise ship berthing times in 2010 < 24 hours.

Example Calculation

Pollutant Emission (tpy) = EF (gr/kw-hr) x Power (kw) x Engine Load (%) x Hours of Operation (hrs) x 1.1E-06 (gram to ton conversion factor)

Railroad Locomotives

Emission factors for train locomotives were taken from a document written for the Federal Motor Carrier Safety Administration (FMCSA).⁷

The FMCSA emission factors are in units of grams per gallon of diesel (gr/gal). Based on the UPT operations, locomotive engines were operated at the UPT for about 1,600 hours in 2010. Typical locomotive idling fuel consumption is 4 gallons per hour.⁸ The number of locomotive operating hours was multiplied by the idling fuel consumption to determine annual fuel consumption in gallons. The results are reported in tons per year (tpy).

³ *Emissions Estimation Methodology for Ocean-Going Vessels*, California Air Resource Board. May 2008.

⁴ CCL Paper, "How Do Cruise Emissions and Truck Emissions Stack Up?"

⁵ From SCSPA records (cruise ship remains at berth for an average of 10 hrs).

⁶ Moffatt & Nichol, *South Carolina State Port Authority, 2011 Emissions Inventory Update*, Long Beach, CA, April 1, 2013.

⁷ Final Environmental Assessment For The 2011 Final Hours-Of-Service (HOS) Of Drivers Rule, Docket No. FMCSA-2004-19608, December 2011, U.S. Department Of Transportation Federal Motor Carrier Safety Administration, Appendix A, Exhibit A -2

⁸ <http://www.hotstart.com/home/products/locomotive-products/idle-reduction-solutions-2/fuel-consumption-calculator/emd-fuel-consumption-at-idle/>

Example Calculation

Pollutant Emission (tpy) = EF (gr/gal) x (Annual Fuel Consumption (gal) x 1.1E-06 (gr to ton conversion factor)

Total Criteria Pollutant Emissions – 2010

	CO	NO _x	PM ₁₀	PM _{2.5}	VOC	SO _x
	tpy					
Ro Ro + Auto Carrier (Hotelling)	3.43	45.90	4.68	4.56	1.51	34.66
Passenger Cruise (Hotelling)	5.38	71.87	7.33	7.14	2.37	54.27
Railroad	0.19	1.02	0.03	0.03	0.05	6.68E-04
Total Emissions	9.00	118.79	12.05	11.73	3.93	88.93

2012 AND 2013-2014 UNION TERMINAL OPERATING SCENARIO AND POLLUTANT EMISSIONS

For the 2012 calendar year operating scenario, emissions were calculated using the actual number of passenger cruise ships that were processed through UPT. For the years 2013-2014, emissions were calculated using the maximum number of passenger cruise ships that can be processed through UPT. There were no other significant maritime activities at UPT in 2012 and there are no other significant maritime activities expected during the years 2013-2014.

Major operations contributing to criteria pollutant emissions in 2012 and expected to contribute to criteria pollutant emissions in 2013-2014 at UPT : passenger cruise ship hotelling (at berth) and bus idling emissions.

Passenger Cruise Ships

Passenger cruise ship emission factors were taken from the California Air Resource Board (ARB)'s *Emissions Estimation Methodology for Ocean-Going Vessels*.⁹ Emissions were calculated for calendar year 2012 and the years 2013-2014 using the same method as for calendar year 2010.

The California ARB emission factors are in units of grams per kilowatt -hour (gr/kw-hr) for each pollutant. As a basis for emission calculations the following data were used. Results are reported in tons per year (tpy).

⁹ *Emissions Estimation Methodology for Ocean-Going Vessels*, California Air Resource Board. May 2008.

Data Description	Passenger Cruise Ship
Hotelling Engine Load ⁵	16%
Hotelling ^a Power (kw) ¹⁰	38,120
2012 Hours of Operation (hrs) ¹¹	923
2013-2014 Hours of Operation (hrs) ¹²	1,129

^a Hotelling power for cruise ships is not applicable as all are diesel-electric, thus the average of all cruise ships total power was used as the basis as taken from Moffatt & Nichol report⁶.

^b Average of all cruise ship times in 2010 < 24 hours.

Example Calculation

Pollutant Emission (tpy) = EF (gr/kw-hr) x Power (kw) x Engine Load (%) x Hours of Operation (hrs) x 1.1E-06 (gr to ton conversion factor)

In 2012, cruise ship passengers waited in a queue at the UPT to drop off baggage and process passengers and vehicles near the cruise ship, the scenario was similar upon returning from the cruise. Passengers then proceeded to off-site parking and were bused back to the UPT. It was estimated that ten (10) buses idled for 1.5 hours each, per cruise. In 2012 there were a total of 85 cruises. The terminal is expected to continue operation in this manner for the years 2013-2014. The UPT can process a maximum of 104 cruises per year.

Car Idling: Drop-off and Pick-up

Emissions associated with waiting to drop off baggage and process passengers and vehicles were estimated using emission factors developed from MOBILE6 output files contained in the New Jersey Park & Ride environmental assessment prepared by the U.S. Department of Transportation Federal Transit Administration and New Jersey Transit. MOBILE6.2 emissions data in grams per mile were multiplied by 2.5 miles per hour, as recommended by EPA, to arrive at an emission factor for idling emissions.¹³ Due to limited data, only idling emissions were considered in the emissions for drop-off and pick-up of baggage and to process passengers and vehicles. SCSA estimates the drop-off time to be fifteen (15) minutes and the pick-up time to be fifteen (15) minutes for a total estimated idle time per car per cruise of thirty (30) minutes.

Example Calculation

VOC (tpy) = Composite emission factor (grams/mile) x 2.5 (mile/hr) x total annual idling time (hr) x 1.1E-06 (gr to ton conversion factor)

Buses

Emission factors for hydrocarbons (HC, calculated as VOC), CO and NO_x were taken from *Idle Emissions for Heavy Duty Trucks in the New York Metropolitan Area*¹⁴. Emission factors for particulates (PM) were taken from EPA's

¹⁰ CCL Paper, "How Do Cruise Emissions and Truck Emissions Stack Up?"

¹¹ From SCSA records (cruise ship remains at berth for an average of 10 hrs).

¹² From SCSA – maximum number of passenger cruise ships that can be processed through UPT per year.

¹³ Gram/mile x 2.5 mile/hr = gram/hr; Technical Guidance on the Use of MOBILE6.2 for Emission Inventory Preparation, p. 43. EPA420-R-04-013. August 2004.

¹⁴ S Tang; J Munn, *Idle Emissions for Heavy Duty Diesel Trucks in the New York Metropolitan Area*, New York State Department of Environmental Conservation. Nov 2001.

document *Guidance for Quantifying and Using Long Duration Truck Idling Emission Reductions in State Implementation Plans and Transportation Conformity*.¹⁵ SO₂ emissions were calculated based on diesel fuel with a 15 ppm sulfur content and a sulfur to SO₂ conversion rate of 97.7%.

Example Calculation

SO₂ (grams/minute) = Fuel Consumption During Idle (gal/hr) x 7.1 (lb/gal) x 454 (gram/lb) / 60 (min/hr) x 0.0015% S x (64 g SO₂ / 32 g S) x (0.977 S:SO₂ conversion)

EPA describes heavy duty engines as those in trucks and buses. Therefore, emission factors for heavy duty trucks were used to calculate emissions for buses.¹⁶

Total Criteria Pollutant Emissions – 2012 (1% Sulfur, 85 Cruises per Year)

	CO	NO _x	PM ₁₀	PM _{2.5}	VOC	SO _x
	tpy					
Passenger Cruise (Hotelling)	6.82	86.22	3.35	2.17	3.40	26.24
Busing	3.12E-02	1.15E-01	4.63E-04	4.63E-04	1.33E-02	1.33E-04
Drop-off/Pick-up	1.28	1.68E-02	6.86E-02	6.86E-02	1.07E-01	2.25E-03
Total Emissions	8.14	86.36	3.42	2.24	3.52	26.24

Total Criteria Pollutant Emissions – 2013-2014 (1% Sulfur, 104 Cruises per Year)

	CO	NO _x	PM ₁₀	PM _{2.5}	VOC	SO _x
	tpy					
Passenger Cruise (Hotelling)	8.35	105.49	4.10	2.66	4.16	32.10
Busing	3.81E-02	1.40E-01	5.67E-04	5.67E-04	1.63E-02	1.62E-04
Drop-off/Pick-up	1.57	2.06E-02	8.40E-02	8.40E-02	1.07E-01	2.75E-03
Total Emissions	9.95	105.66	4.18	2.74	4.28	32.11

2015 UNION TERMINAL OPERATING SCENARIO AND POLLUTANT EMISSIONS

Emission for 2015 are calculated based on the maximum annual number of cruises (104) that can be processed through the UPT. The same emission factors that were used to calculate emissions for the years 2012 and 2013-2014 were used to estimate criteria pollutant emissions for calendar year 2015, with the exception of SO₂. In 2015, under MARPOL Annex VI, the sulfur content in diesel fuel used by marine vessel in ECA's (which includes the US) will be limited to 0.1% S. This limit is reflected in the SO₂ emission factor used in calendar year 2015

¹⁵ EPA420-B-04-001, *Guidance for Quantifying and Using Long Duration Truck Idling Emission Reductions in State Implementation Plans and Transportation Conformity*. Jan 2004.

¹⁶ <http://www.epa.gov/otaq/hd-hwy.htm>

calculations. In addition, SCSA expects cruise ship hotelling time (time at berth) to decrease by thirty (30) minutes due to operational efficiencies enabled by the new terminal design; therefore an average 10.35 hours at berth per cruise ship is used in emission calculations.

Once the cruise terminal construction is complete, passengers will have access to parking at the terminal. Idling emissions (or emissions associated with an average speed of 2.5 miles per hour, as explained in the 2012 section of this letter) were estimated using an average of seven minutes per car per cruise to maneuver through the parking area, for a total of fourteen (14) minutes idle/travel time through the parking area per vehicle per cruise.

An onsite parking area will eliminate both the need for busing, and the need for drop-off and pick-up of baggage and processing of passengers and vehicles at the terminal, and will therefore eliminate criteria pollutant emissions associated with these activities.

Total Criteria Pollutant Emissions – 2015 (0.1% Sulfur, 104 Cruises per Year)

	CO	NO_x	PM₁₀	PM_{2.5}	VOC	SO_x
	tpy					
Passenger Cruise (Hotelling)	7.96	100.63	1.81	2.53	3.96	2.90
Parking Area	5.98E-01	7.84E-03	3.20E-02	3.20E-02	5.01E-02	1.00E-03
Total Emissions	8.56	100.64	1.84	2.57	4.01	2.90

CONCLUSION

Due to changes in operations at the Union Pier Terminal, there has been a 47% decrease in the total mass of criteria pollutants between 2010 and 2012, with a 7% decrease in the total mass of criteria pollutants anticipated between 2012 and 2015.

The total criteria emissions associated with operating the Union Pier Terminal as it has been operated up until 2012, where a combination of Ro Ro vessels and cruise passenger ships were processed through the port, are significantly more than criteria emissions associated with using the terminal exclusively as a cruise ship terminal.

Emissions will decrease even further once construction has been completed for the passenger cruise terminal, as this will eliminate emissions associated with shuttling cruise passengers to and from the current off-site parking area and emissions associated with dropping off and picking up baggage, and processing passengers and vehicles near the cruise ship.

A. 40-100-1-1

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

- (1) The number of cruise ships will be no more than 104 calls per calendar year.
- (2) The port will host no more than one ship at a time at the cruise terminal.
- (3) The terminal will be designed at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called Charleston in the past (1,900 to 3,500 passenger design capacity)
- (4) A Traffic Management Plan which removes maritime cruise traffic from City streets as soon as possible as well as continued coordination and communication with the Charleston City Police Department and the City Special Events Committee.
- (5) A continued commitment by the SCSPA to contribute an allocation to the DASH Downtown Shuttle program, as described in the City Agreement with the SCSPA, providing free shuttle rides to those traveling in the downtown areas of the City.

SEE APPENDIX A
C. 40-100-1-1

ATTACHMENT A

CLARIFICATION OF PROCESS OF CITY CONSULTATION REGARDING
CRUISE MANAGEMENT PLAN ALTERATION

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

- (1) Written notification to the Mayor and City Council.
- (2) Written notification to the Cruise Neighborhood Advisory Council.
- (3) Written notification to Charleston Metro Chamber of Commerce and the Maritime Association of South Carolina.
- (4) Written notification to the Historic Charleston Foundation and the Preservation Society.
- (5) The convening of a community forum to discuss any material change to the plan.
- (6) The solicitation of public input through one or more public hearings, including a public hearing at a City Council meeting.
- (7) Careful and thoughtful consideration of the public input.
- (8) Report to the Mayor and City Council of the SCSPA board and staff findings and decision.

Exhibit 5

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

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*ALSO ADMITTED IN TX

January 7, 2013

VIA HAND DELIVERY

Members of the Board
c/o The Honorable Lisa L. Longshore
Clerk to the Board
S.C. Dep't of Health & Env'tl. Control
2600 Bull Street
Columbia, S.C. 29201

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL
2013 JAN -7 PM 12:36
OFFICE OF GENERAL COUNSEL
ADMINISTRATION
CLERK, BOARD OF DHEC

Re: Request for Final Review, P/N OCRM-12-054-B (Preservation Society, *et al.*)

Dear Members of the Board:

The South Carolina Ports Authority (Ports Authority) files this response to the request for final review (RFR) filed on or about January 2, 2013, by the Preservation Society, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, the Charlestowne Neighborhood Association, Anson House Condominium Association, and the Charleston Chapter of the Surfrider Foundation (collectively, along with other requester Historic Charleston Foundation, referred to as Opponents). As explained below, the issues posed by Opponents have been thoroughly vetted by OCRM staff, Opponents have raised no new issues for consideration, and all indications are that Opponents intend on pursuing this matter further in a request for a contested case hearing before the South Carolina Administrative Law Court (ALC) in continuation of their ongoing crusade against cruise business.¹ Therefore, the Ports Authority respectfully requests that the Board decline to conduct a

¹ Note that Carnival Cruise Lines has suspended long-term contract discussions with the Ports Authority until the litigation is resolved. It appears that the Opponents intend to delay and throw up as many roadblocks as possible in the hopes of destroying the cruise business in Charleston. Of course, as discussed herein, if this tactic is successful, the Union Pier Terminal will continue to be used as a cargo terminal with more ships, more traffic, and more rail than the cruise operations generate. Exhibit A, Affidavit of James I. Newsome, III, dated Aug. 22, 2011, ¶11 ("Carnival has now suspended further action on the long-term contract discussions unless and until this lawsuit is expeditiously ended."); Exhibit B, Affidavit of Arnaldo Perez, dated July 2011, ¶5 (pending litigation makes it "difficult for Carnival Cruise Lines to justify the long term arrangement proposed" by the Ports Authority).

final review conference to allow the parties to move forward to the ALC in the most expeditious manner possible.

This RFR, along with the companion request filed by the Historic Charleston Foundation, constitute the third and fourth legal actions filed on behalf of these same parties in their longstanding and continuing attempt to prevent cruise ship vessels from calling on the Port of Charleston. The Opponents already have actions pending before the South Carolina Supreme Court and the Federal District Court attacking cruise ship calls in Charleston, and, relevant to the Preservation Society, whose professed mission is to preserve and protect historic Charleston, the federal lawsuit specifically targets historic preservation issues.

In their efforts to block this capital improvement project by the Ports Authority, Opponents continue to ignore an inconvenient truth: **Charleston, and specifically the Union Pier property owned and operated by the Ports Authority, has accommodated passenger vessel calls for over 100 years.** In fact, passenger vessels, including cruise vessels, have called on the Union Pier passenger facility every year since 1973 (prior to the area's historic designation in 1977). Exhibit A, Affidavit of James I. Newsome, III, dated Aug. 22, 2011, ¶7. Further, Carnival Cruise Lines, the subject of much of Opponents' ire, first directed cruise vessels to Union Pier in 1994, and it began to do so regularly, continuing to present day, in 1999. Exhibit B, Affidavit of Arnaldo Perez, dated July 2011, ¶3. The reality that Opponents would prefer this Board disregard is that vessels called on Union Pier and Charleston in the past, they do so today, and irrespective of the ultimate determination on this pending Permit, vessels will continue to call on Union Pier and Charleston in the future.

More importantly, as explained below, the relocation of cruise operations from the south end of the Union Pier Terminal to the north end of the terminal addresses the only real complaint that the vast majority of Charlestonians have with the cruise business: traffic. Should the permit be reversed, then the existing traffic patterns will be maintained and there will be additional rail and truck traffic generated from the use of the north end of the Union Pier Terminal to handle cargo (in addition to the likely continued use of the south end of the terminal as a cruise terminal).

Furthermore, it is essential to understand what the permit is and what it is not. Currently, the Union Pier cruise passenger facilities are located on the southern end of the terminal footprint. The Ports Authority's proposed capital improvement project involves renovating a warehouse located on an existing piled wharf at the northern end of the Union Pier Terminal footprint, Building 322, and relocating the cruise passenger facilities, in their entirety, to the repurposed Building 322. See Exhibit C, Map of Union Pier Terminal footprint. The activity allegedly triggering OCRM permitting jurisdiction in this renovation and repurposing project is the planned installation of five pile clusters driven into the marl within the existing footprint (in addition to the approximately 1,008 existing pilings under Building 322 alone) for the installation of three elevators and two escalators in the renovated Building 322. Exhibit D, Map of Pile Clusters. For the purpose of context, below is a picture of rows of existing pile clusters beneath Building 322.



Five pile clusters added to the approximately 1,008 existing pile clusters under Building 322 and thousands of others under the wharves led the U.S. Army Corps of Engineers to conclude that “[o]nce installed the actual footprint of the additional pilings represents a very small area among the thousands of pilings that are already located underneath the existing pile supported structure.” Exhibit E, Corps Mem. For Record, SAC-2003-13026, dated April 20, 2012.

In other words, the permitted project is for pile clusters to provide additional support for an existing structure, within the existing footprint of an already developed marine terminal. As OCRM noted, the “existing commercial pier is a [Ports Authority] pier. It is also a permitted/grandfathered structure with permitted/grandfathered activities (including cruise ship operations), that will be modified within the existing pier footprint.” Exhibit F, OCRM Technical Summary of Review, dated Dec. 17, 2012; see Exhibit E, Corps Mem. For Record, SAC-2003-13026, dated April 20, 2012 (“[T]he renovation of Building 322 to consolidate existing activities at Union Pier and to increase the efficiency of the existing passenger facility is not considered a ‘change in use.’”). The entirety of the effect of this project is that current cruise operations will be moved to a location less than 600 yards to the north in a renovated warehouse, still within the existing boundary of the Union Pier Terminal footprint. Thus, this project is a relocation of existing operations and current capabilities.

Also, the additional pilings and renovation of the existing building are necessary to bring the facilities into compliance with current terminal security requirements mandated by Federal Law and under the oversight of the United States Customs and Border Protection (CBP). In 2007, the Ports Authority entered into a Memorandum of Understanding with the CBP for the conditional approval of ongoing cruise operations on a continuing trial basis, which has since been renewed annually, with the understanding that a passenger terminal facility with improved security would be needed for continued operations. See Exhibit E, Corps Mem. For Record, SAC-2003-13026, dated April 20,

2012 (The “proposed renovations to Building 322 are considered minor deviations in the existing structure’s configuration that are required to comply with Federal regulations and current terminal security requirements that were established after September 11, 2001.”) (emphasis added).

Further, in anticipation of the move of cruise operations to the northern end of the base, most existing berth facilities which were used for cargo operations, and which handled upwards of 200 cargo vessel calls a year, have been relocated to another Port Authority terminal facility. In addition to the decrease in emissions at the Union Pier Terminal as a result of this relocation, the relocation of cruise operations would have the added benefit of ceasing rail operations to Union Pier Terminal, which blocked vehicular traffic on a daily basis. The result of these relocations and the additional traffic management plan is that the relocated cruise passenger facility will result in no increase in traffic and will reduce the current route congestion. Exhibit G, Comparison Traffic Diagram. In fact, the traffic management plan projects a simpler, more efficient traffic environment than what currently exists. However, should the north end not be utilized for cruise operations, it will continue its use for cargo operations, increasing air emissions and traffic beyond what would exist for cruise operations.

To further illustrate the benefits that will be achieved with this capital improvement project, the following table illustrates the positive environmental and community impacts the relocation of cruise vessel operations will have when compared side-by-side with the forecasted cruise and cargo operations at Union Pier if the status quo is maintained.

<u>OCRM AND PORTS AUTHORITY</u>	<u>OPPONENTS</u>
<u>Relocation</u> of Operations to Northern End of Union Pier Terminal (UPT)	<u>Status Quo</u> and Projected Growth if Cruise Operations Maintained on Southern End
Cruise vessel calls voluntarily limited to 104 per calendar year.	Cruise vessel calls voluntarily limited to 104 per calendar year.
UPT will no longer receive cargo ships.	UPT receives over 200 cargo vessels per year, at an average of 4 per week.
Rail access to the northern end of UPT will cease.	Fully operational rail spur to UPT which causes daily at-grade vehicular blockage.
Implementation of a traffic management plan, which more quickly facilitates and disperses maritime cruise traffic from City streets.	Continued existing road closures due to location of cruise terminal operations at southern end of UPT.
Restoration and re-use of southern end of UPT.	Continued use of all of UPT for cruise vessel operations on the south and cargo on the north.

Charleston Mayor Joe Riley explains the practical and positive impact of the differences reflected in this table of the “with permit” scenario.

When the new terminal is completed, street closures now occurring when vessels embark from Charleston will cease, and the Ports Authority will make available for redevelopment some 35 acres along the Cooper River waterfront. The redevelopment of Union Pier poses an extraordinary, once in forever opportunity for the City and the State. Under the redevelopment plan, streets will be reconstructed, view corridors reopened, new parks constructed and eyesores removed. The plan will create opportunities for additional places for people to live and work in the City. Properties which are now bordered by chain link or barbed wire fencing will be opened and lined with trees and shrubs. And, public access to the water's edge will be restored and preserved.

Exhibit H, Affidavit of Joseph P. Riley, Jr., dated Aug. 22, 2011, ¶6.

The footprint of the relocated cruise operation stays within the existing terminal boundary. While the permitted activity simply aids the retrofit and repurpose of an existing cargo warehouse, an activity which is both economically efficient and environmentally sustainable, the larger plan of Union Pier redevelopment will see the demolition of older warehouses and facilities on the southern end of the Terminal, where the cruise passenger operations are currently located, and allow for the potential restoration of the natural waterfront and establishment of public green spaces and private commercial and residential units of approximately 35 acres—larger than the 27 acre footprint of the northern end of the terminal to be used for cruise operations. In other words, the larger redevelopment plan aids economic development in Charleston—a prospect of interest to the vast majority of Charlestonians. Mayor Riley has testified that in 2010 the cruise business generated approximately \$35 million and over 400 jobs. Exhibit H, Affidavit of Joseph P. Riley, Jr., dated Aug. 22, 2011, ¶4. A 2011 impact study concluded that the planned relocation of the cruise operations would lead to \$43 economic million in local output or impact and create 336 jobs. Center for Business Research, Charleston Metro Chamber of Commerce, Economic Impact Study (March 2011). Indeed, the South Carolina General Assembly passed a Concurrent Resolution expressing “their thanks for Carnival Cruise Lines’ contributions to the economic well-being of South Carolina and for the company’s commitment to operating in a balanced manner that is sensitive to the environment.” Senate Bill 968 (June 21, 2011).

As an act of good faith and stewardship, the Ports Authority also proffered, and ultimately entered into, a Voluntary Cruise Management Plan with the City of Charleston that was adopted by OCRM as a special condition of the permit. This demonstrates the efforts of the Ports Authority to be a responsible citizen of the City of Charleston, and goes well beyond the undertakings of any major global port with such diverse maritime commerce. As a part of the Voluntary Cruise Management Plan, the Ports Authority voluntarily agreed to:

- i. Limit the number of passenger cruise ship calls on Union Pier to 104 annually.
- ii. Host no more than one ship at a time at the Union Pier cruise terminal.
- iii. Design the renovated terminal facility at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called on Charleston in the past.

- iv. Enter into a Traffic Management Plan to remove maritime cruise traffic from the City streets as soon as possible, as well as continued coordination with the Charleston City Police Department and the City Special Events Committee.
- v. Continued commitment to contribute an allocation to the DASH Downtown Shuttle Program, which provides free shuttle rides to those traveling in the downtown areas of the City.

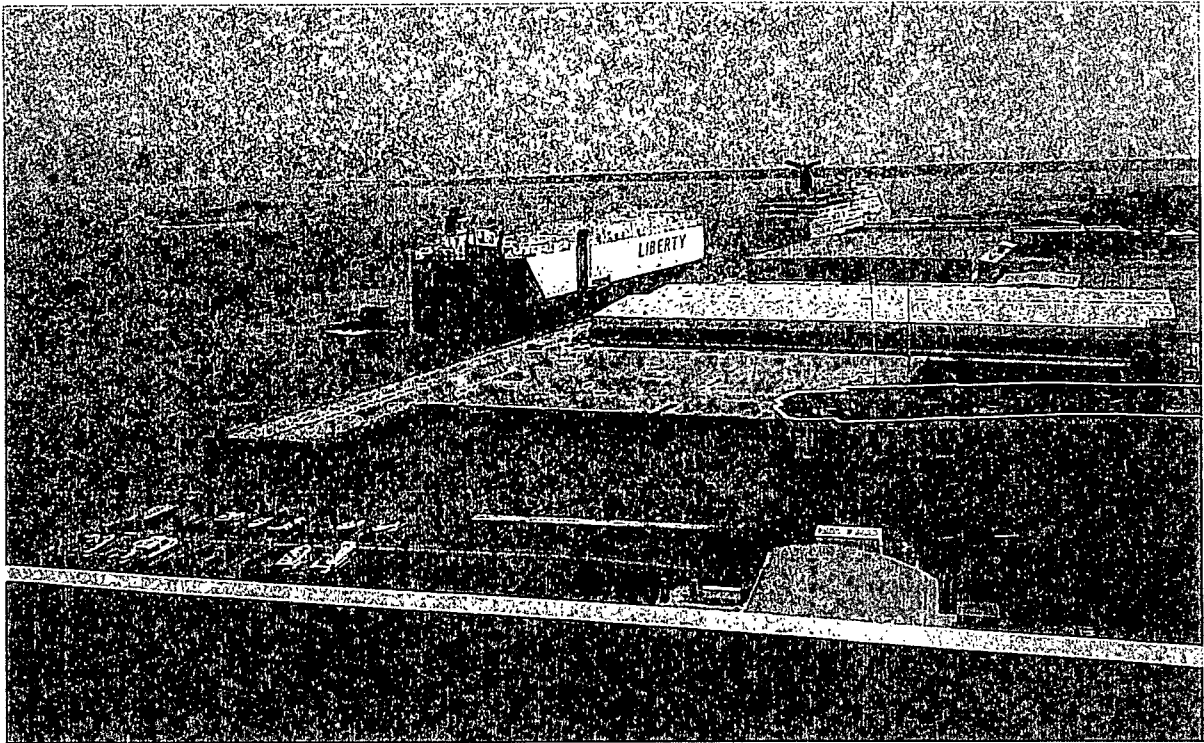
Id. Notwithstanding these good faith efforts of the Ports Authority, and OCRM's thorough review of the permit application, which resulted in special conditions imposed through the permit, Opponents contend OCRM's staff decision was made in violation of applicable statutes, regulations and rules.² While the Opponents' RFR is cloaked in the appearance of a challenge on the merits, at issue is the larger war being waged by Opponents against the cruise industry.³ At bottom, Opponents are anti-cruise, and this permit represents one of many battlefronts against the industry in Charleston.

In furtherance of that endeavor, Opponents raise a handful of issues with the Permit—none of which have any merit and are wholly unsupported by facts. While this response is not the appropriate vehicle for a detailed refutation of each allegation, a couple of points suffice to demonstrate the lack of substance of the Opponents' claims. The Opponents claim, for example, that long-term cumulative impacts were inadequately reviewed. However, as OCRM demonstrates in the section of its technical review memorandum entitled "Longterm Cumulative Affects," there are no substantive cumulative impacts because this a developed area—and an area developed for maritime purposes—and "the general character of this area has been for more than a century an existing commercial pier ... with grandfathered activities that include cargo and cruise ship operations. Exhibit F, OCRM Technical Summary of Review, dated Dec. 17, 2012. Moreover, the Opponents claim that the cruise ships are "enormous when compared to the historic scale of shipping on Charleston's waterfront." However, below is a picture of the Union Pier Terminal with the Carnival Fantasy cruise ship in the farthest berth and a cargo ship (car carrier) berthed in the foreground. (Building 322 is the white-roofed warehouse near the cargo ship.) It is clear that these ships are not disproportionate in size or scale, and much larger ships than the pictured cargo ship

² Opponents also rely extensively on the South Carolina Supreme Court preliminary opinion Kiawah Development Partners, II v. S.C. Dep't Health and Envtl. Control, 2011 WL 5840326 (2011). However, despite the fact that Opponents' counsel is counsel of record in that case, Opponents should have disclosed to the Board that this case has been reheard by the Supreme Court and no subsequent opinion has been issued. In other words, **the entire decision and language relied upon by the Opponents is not the current law in South Carolina**. Rather, the case is still pending on appeal. Christy v. Christy, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1995) (a case is not finally disposed of until the remittitur is sent to the lower court). Therefore, reliance on the holdings in furtherance of Opponents' arguments to the Board, is entirely inappropriate and should be disregarded.

³ For example, as for the supposed complaints about noise and pollution, none existed until the Ports Authority proposed moving the cruise operations from one end of the terminal to the other. In an affidavit from the Director of Livability Division of the City of Charleston dated August 22, 2011, the Director testified that he had "consulted the police department and reviewed the records of the Livability Division regarding complaints pertaining to noise or pollution from passenger ships that call at Union Pier and as of the date of the Affidavit, there have been none." Exhibit I, Affidavit of Daniel Riccio dated Aug. 22, 2011.

below call on the Port of Charleston. The Opponents' claim is simply inaccurate and unsupported by any facts.



As this RFR appears to be nothing more than a broader litigation strategy of Opponents across several courts and venues, it is in the best interest of the Ports Authority, DHEC, Charleston, and the State of South Carolina for a speedy resolution from the courts, and the Ports Authority respectfully requests that the Board decline conducting a Final Review Conference in this matter so this matter may proceed directly to the ALC for disposition to allow this project—which has a positive net gain for both the economy and the environment—move forward.

Thank you for your time and consideration. If you have any questions, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.

Randolph R. Lowell
Randolph R. Lowell

Enclosures

cc: Amy E. Armstrong, Esquire
Philip L. Lawrence, Esquire
Ms. Barbara Melvin
Bradley Churdar, Esquire

Exhibit 6

Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court

Allegation #1 – Disrupts Charleston's Skyline

Supreme Court:

- “[T]he *Fantasy* visually disrupts the historic skyline with large, unhistorical, and impossible-to-ignore forms that detract form and diminish historic structures such as Charleston’s iconic church spires in the historic district. The sheer height, scale, and mass of the cruise ships, which act as both tour boats and hotels, dwarf everything around them and block the historic skyline and protected street views of the Cooper River and Charleston Harbor.”
 - Am. Compl., ¶10 (A).

Corresponding Affidavit Allegations:

- “I do not believe that the backdrop of an early 19th century neighborhood can coexist with a disproportionately modern behemoth of a vessel looming on the skyline, without that neighborhood losing the values and aesthetics that I appreciate. It is totally incongruous, out of character, and I feel most unacceptable....”
 - Dodd Aff. at 3.
- I felt the historic ambiance of the city being eclipsed by the disproportionately large and unsightly cruise ships as they docked in the middle of the historic downtown district.”
 - Gates Aff. at 2.
- “CNA members have suffered a real and substantial diminution in the quality of their lives from ... skyline impairment caused by the increasing operations of cruise ships within the historic downtown district.”
 - Gates Aff. at 3.

Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court

Allegation #2 - Traffic

Supreme Court:

- “The influx of thousands of passengers, crew, and support personnel (and associated traffic) . . . cause major traffic congestion downtown and the closure of public roads.”
 - Am. Compl., ¶10 (B).
- “On *Fantasy* embarkation and debarkation days, portions of Concord and Washington Streets—which are public streets—are closed for cruise business. Because of those closures, displacement of traffic, and the concentration of cruise traffic in a limited area for a limited time, cruise embarkations and debarkations cause increased congestion along the east side of the downtown Peninsula.”
 - Am. Compl., ¶11.

Corresponding Affidavit Allegations:

- “With the influx of cruise traffic, I have also experienced problems with traffic congestion....”
 - Dodd Aff. at 2.
- “On days when the cruise ship is in town, between the increased automobile and pedestrian traffic, it has been very difficult to navigate and enjoy my neighborhood and community, with activities lasting many times longer than they normally would.”
 - Dodd Aff. at 2.
- “[My husband and I] used to be able to meet for lunch in downtown Charleston, but we can no longer do so when the cruise ship is in port because the travel time around the terminal is approximately an hour.”
 - Lane Aff. at 3.
- “I have [individuals] coming to my office who have expressed problems with being able to access my office due to cruise-related traffic ... In my observations, cruise-related traffic and congestion has impaired [individuals] from getting to and accessing my office.”
 - Lane Aff. at 4.
- “Beginning in 2010, when the Carnival Fantasy began home port operations in Charleston, I noticed traffic congestion becoming increasingly unmanageable and it becoming unbearable to visit the cruise terminal area on the days the Fantasy is in port.”
 - Gates Aff. at 2.
- “The main arterial street of East Bay becomes gridlocked with cruise ship traffic heading for the Union Pier terminal, diverting me and most local drivers through the surrounding small residential streets to reach our destination, and clogging the entire downtown peninsula.”
 - Gates Aff. at 2.

Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court

Allegation #3 – Noise Pollution

Supreme Court:

- “The vessels emit noise pollution, including broadcast announcements and music”
 - Am. Compl., ¶10 (C).

Corresponding Affidavit Allegations:

- “CNA members have suffered a real and substantial diminution in the quality of their lives from ... noise ... caused by the increasing operations of cruise ships within the historic downtown district.”
 - Gates Aff. at 3.

Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court

Allegation #4 – Soot Deposition

Supreme Court:

- “[T]he burning of diesel fuel emits visible particulate soot from ship funnels....”
 - Am. Compl., ¶10 (C).
- “Cruise ships such as the Defendant’s *Fantasy* also emit visible particulate soot and other pollutants, including nitrogen and sulfur oxides, which are harmful to human health when inhaled and are deposited into the surrounding waters and land.”
 - Am. Compl., ¶19.

Corresponding Affidavit Allegations:

- “I am opposed to this permit and involved in this litigation because the permit threatens my ... health....”
 - Dodd Aff. at 1.
- “I have been finding soot on the window sills inside my 1843 historic home....”
 - Dodd Aff. at 2.
- “Oily soot is now prominently found on our piazzas and outdoor furniture.”
 - Dodd Aff. at 2.
- “On more than one occasion, I have been on my terrace while the Carnival Fantasy was docked and departing and I have experienced the negative effects of the thick smoke being emitted from the ship’s smokestacks firsthand. I saw thick smoke move from the cruise ship toward my home and within seconds of breathing the emissions, my throat immediately began to hurt and I was forced to retreat indoors.”
 - Robertson Aff. at 2-3.
- “[The emissions] are also coating my home in filth. My terrace pillows, furniture and the patio itself are constantly accumulating dirty soot that is extremely time consuming and costly to clean.”
 - Robertson Aff. at 3.
- “I experienced heavy and oily soot deposits on my piazza....”
 - Gates Aff. at 2.

Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court

Allegation #5 – Historic Registry Status

Supreme Court:

- “Home-porting cruise operations at an industrial scale could jeopardize the integrity, setting, and context that led to National Register designation and place maintenance of National Register status at risk.”
 - Am. Compl., ¶10 (D).

Corresponding Affidavit Allegations:

- “I am opposed to this permit and involved in this litigation because the permit threatens ... historic preservation values that I enjoy and appreciate....”
 - Dodd Aff. at 1.
- “Needless to say, I am confident that OCRM-12-054-B will detrimentally impact my enjoyment of the historically preserved setting that surrounds my home and neighborhood....”
 - Dodd Aff. at 3.
- “The colonial architecture of the historic district feeds my soul and I derive much enjoyment and pleasure viewing Charleston’s unique architecture ... The proposed new terminal is akin to killing the golden egg in that the brand of Charleston as a beautiful, small historic town will be forever lost if more and larger ships are allowed to port here, as contemplated by the permit.”
 - Lane Aff. at 3-4.
- “[S]ince the Carnival Fantasy began its home port operations, it has seriously detracted from the traditional historic feel of Charleston....”
 - Gates Aff. at 2.

Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court

Allegation #6 – General Use and Enjoyment

Supreme Court:

- “Defendant’s actions including noncompliance with zoning and environmental laws have injured the above Plaintiff organizations and their members by among other things reducing their use and enjoyment of the local environment and Charleston’s historic assets, including their homes, neighborhoods and protected structures.”
 - Am. Compl., ¶33.

Corresponding Affidavit Allegations:

- “I am opposed to this permit and involved in this litigation because the permit threatens my quality of life....”
 - Dodd Aff. at 1.
- “I have already noticed a decrease in my overall quality of life.”
 - Dodd Aff. at 2.
- “[T]he cruise ship industry has had a dramatic negative effect on my quality of life and day-to-day activities since large cruise ships began docking at Union Pier in 2010.”
 - Lane Aff. at 3.
- “I enjoyed being able to meet my husband for lunch, and my enjoyment has been decreased as a result of SPA’s operation of the cruise ship terminal at Union Pier.”
 - Lane Aff. at 3.
- “These harmful emissions have become so unbearable that I can no longer open any window or enjoy my terrace while the cruise ships are in town.”
 - Robertson Aff. at 3.
- “Unfortunately, my ability to use and enjoy my property has been substantially interfered with by the adverse consequences of the cruise ship operations as they are currently functioning.”
 - Robertson Aff. at 4.
- “[S]ince the Carnival Fantasy began its home port operations ... it has interfered with my quality of life and use and enjoyment of my property....”
 - Gates Aff. at 2.

Comparison of Cruise Opponents' Allegations before the South Carolina Supreme Court and this Court

Allegation #7 – Property Values

Supreme Court:

- “Cruise operations downtown and ineffective management of them cause [harm to] the area’s historic setting, scale, and residential character ... These activities and impacts hurt, harm, inconvenience, discomfort, damage or injure Plaintiffs and unreasonably interfere with the free use and enjoyment of plaintiffs’ property....”
 - Am. Compl., ¶75.

Corresponding Affidavit Allegations:

- “I am opposed to this permit and involved in this litigation because the permit threatens my ... property values....”
 - Dodd Aff. at 1.
- “I am concerned about the value of my property if the proposed new terminal is constructed as permitted ... The result [will be] a decreased quality of life in the historic district of Charleston, ultimately resulting in a decline in real estate prices.”
 - Lane Aff. at 4-5.
- “The location of cruise ship operations immediately adjacent to my home have negatively affected the investment I made when I decided to purchase property and move to Charleston.”
 - Robertson Aff. at 3.

Exhibit 7

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioners,)

v.)

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

Respondents.)

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

**ORDER GRANTING SUMMARY
JUDGMENT FOR LACK OF STANDING**

FILED

April 11, 2014

SC ADMIN. LAW COURT

APPEARANCES: For the Petitioners:

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This matter comes before the South Carolina Administrative Law Court (ALC or Court) on the Motion for Summary Judgment (Motion) filed by the South Carolina State Ports Authority (Ports Authority) on December 27, 2013. In this Motion, Ports Authority asserts Petitioners lack standing to proceed with this contested case. After reviewing the filings by the parties, the Court grants the Motion.

BACKGROUND

On December 18, 2012, the Department of Health and Environmental Control (DHEC) staff, through the Office of Ocean and Coastal Resource Management (OCRM), issued a Critical Area Permit and Coastal Zone Consistency Certification (Permit No. OCRM-12-054-B) authorizing Ports Authority to make improvements to Building #322, an existing waterfront

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

Petitioners filed a request for a contested case hearing at the ALC to challenge DHEC's decision to issue the permit. Petitioners allege DHEC's decision violates the South Carolina Coastal Zone Management Act, S.C. Code Ann. 48-39-10, *et seq.*, the South Carolina Code of Regulations 30-1, *et seq.*, and the Coastal Management Program (CMP). In July 2013, Ports Authority filed a Motion to Dismiss asserting Petitioners lacked standing to challenge the permit at issue in this case. After reviewing the filings by the parties and hearing oral arguments, the Court denied the Motion to Dismiss, concluding Petitioners had made sufficient allegations in the pleadings before this Court to survive the motion. *See Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987) ("A ruling on a [Rule] 12(b)(6)[, SCRC], motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.").

On December 27, 2013, Ports Authority filed this Motion asserting Petitioners lack standing to proceed with this contested case at this stage of the litigation. On January 21, 2014, Petitioners filed a Response to the Motion for Summary Judgment. The next day, the South Carolina Supreme Court issued a decision in a separate case brought in that court's original jurisdiction. *Carnival Corp. v. Historic Ansonborough Neighborhood Assoc.*, 407 S.C. 67, 753 S.E.2d 846 (2014). Subsequently, Ports Authority filed its Reply to Petitioners' Response with the benefit of the Supreme Court's analysis in *Carnival Corp.* Petitioners thereafter filed a Surreply to address what it argued was a significant new argument by Ports Authority based on *Carnival Corp.*¹ Ports Authority filed a Response to the Surreply on March 10, 2014.

¹ Ports Authority consented to a surreply limited to the discrete argument made in Ports Authority's Reply regarding the Supreme Court's decision in *Carnival Corp.*, but it challenged the proposed surreply on the basis that it is beyond the scope of that discrete argument. In an order dated March 3, 2014, this Court granted Petitioners' Motion to File a Surreply and accepted those portions of its Surreply responding to Ports Authority's contentions regarding the implications of *Carnival Corp.*

DISCUSSION²

The Rules of Procedure for the Administrative Law Court provide “[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.” ALC Rule 68. Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment is properly granted when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *Byers v. Westinghouse Elec. Corp.*, 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992). Although the evidence and inferences drawn therefrom generally must be construed against the moving party, “the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but a response by affidavit or otherwise . . . must set forth specific facts creating a genuine issue for trial.” Rule 56(e), SCRCF. Affidavits proffered by the non-movant must consist of more than conclusory or speculative allegations of fact or subjective beliefs to survive a summary judgment motion. *See, e.g., Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994); *see also*, 49 C.J.S. *Judgments* § 332 (“[S]tatements made in an affidavit . . . in opposition to, the motion for summary judgment, must be statements of fact, and not mere conclusions or opinions.”).

In the context of a challenge to standing, although “general factual allegations of injury resulting from the defendant’s conduct may suffice” at the pleading (and motion to dismiss) stage, “[i]n response to a summary judgment motion, however, the plaintiff can no longer rest on such ‘mere allegations,’” but, instead, must provide specific facts, whether by affidavit or other evidence. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990); *Arcadia Lakes v. S.C. Dep’t of Health and Envtl. Control*, 404 S.C. 515, 745 S.E.2d 385 (Ct. App. 2013) (finding that neither the Town nor its residents had standing to challenge DHEC’s decision and noting that the elements of standing

² Petitioners argue Ports Authority’s Motion regarding lack of standing is precluded by collateral estoppel because the issue was litigated in federal court and directly decided against Ports Authority. However, as explained in the Order Denying Petitioners’ Motion to Vacate, issued December 20, 2013, the federal court order addressed the federal process, and it did not negate the critical area permit and coastal zone consistency certification at issue in this case.

“are not mere pleading requirements but rather an indispensable part of the plaintiff’s case;” therefore, “each element must be supported . . . with the manner and degree of evidence required at the successive stage of the litigation” (quoting *Lujan*, 504 U.S. at 561)). Thus, Petitioners must provide sufficient evidence of standing in order to proceed with this contested case.

For cases filed in South Carolina state courts, standing may be acquired: (1) by statute; (2) through what is called constitutional standing;³ or (3) under the public importance exception. *Bodman v. State*, 403 S.C. 60, 66-67, 742 S.E.2d 363, 366 (2013) (citing *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008)).⁴ “The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.” *Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (2012); *see also Youngblood v. S.C. Dep’t of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) (“When no statute confers standing, the elements of constitutional standing must be met.”). “Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation.” *Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518. Nevertheless,

[i]f . . . a statute does not clearly and specifically address who may bring suit pursuant to it . . . case law seems to suggest that the traditional constitutional standing analysis still applies. Thus, the specificity of a statutory standing provision may be critical to determining whether statutory standing exists and, if not, whether a constitutional analysis is appropriate.

Richard H. Seamon, Paige J. Gossett, & John D. Geathers, *Administrative Agencies – General Concepts and Principles*, in *South Carolina Administrative Practice and Procedure* 1, 76-77 (Randolph R. Lowell ed., 2013).

³ In *Sea Pines Association for Protection of Wildlife, Inc. v. South Carolina Department of Natural Resources*, 345 S.C. 594, 550 S.E.2d 287 (2001), the South Carolina Supreme Court adopted the federal test for “constitutional standing” as set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). The three elements of the test are:

First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

Lujan, 504 U.S. at 560-561 (citations omitted).

⁴ An association may also have standing to bring suit on behalf of its members under certain circumstances. *See* discussion *infra*.

In this case, section 44-1-60 provides that an “applicant, permittee, licensee, or affected person” may contest a final agency decision of DHEC by filing a request for a contested case hearing before the ALC. S.C. Code Ann. § 44-1-60(F)(2) & (G) (Supp. 2010). This remedy is available for all DHEC decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions. § 44-1-60(A) & (G). Petitioners thus may establish statutory standing by establishing they are “affected persons” and are challenging DHEC’s decision to grant the permit to Ports Authority. Here, however, the General Assembly did not define “affected person” for purposes of the permit at issue.⁵ Therefore, Petitioners may not establish standing simply by adopting the self-imposed moniker that they are “affected persons.” Furthermore, in this instance, where a clear, specific definition of “affected person” is not available, the *Lujan* test provides a sufficient framework to determine whether the Petitioners qualify as affected persons for the purpose of establishing standing.⁶ Petitioners thus must satisfy the elements of the *Lujan* test to sufficiently establish standing, defeat this motion for summary judgment, and proceed to the next stage of litigation.

Standing under the *Lujan* Test

Injury in Fact

The first element of the *Lujan* test requires Petitioners to show an “injury in fact,” which is “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan*, 504 U.S. at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). To be particularized, the injury must affect Petitioners “in a personal and individual way.” *Sea Pines*, 345 S.C. at 602, 550 S.E.2d at 292. It is settled that “a private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom.” *ATC*, 380 S.C. at 196, 669 S.E.2d at 339 (quoting *Evins v. Richland Cnty. Historic Pres. Comm’n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000)).

Furthermore, in a recent opinion evaluating the standing of many of Petitioners’ organizations to bring an action seeking an order permanently enjoining cruise operations at the

⁵ Cf. S.C. Code Ann. § 44-7-130(1) (2002) (defining “affected person” for purposes of the State Certification of Need and Health Facility Licensure Act to include, among others, the applicant, a person residing within the geographic area to be served by the applicant, and persons located in the health service area).

⁶ The South Carolina appellate courts have followed this approach in application. See *Carnival Corp.*, *supra*; *Town of Arcadia Lakes*, 404 S.C. at 529, 745 S.E.2d at 392; *Smiley v. S.C. Dep’t of Health & Envtl. Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 33 (2007).

UPT, the Supreme Court of South Carolina rejected the allegations of injury-in-fact advanced by Petitioners as insufficient to satisfy their burden of proving standing. See *Carnival Corp.*, 407 S.C. at ___, 753 S.E.2d at 849-53. Although the Supreme Court's decision was based upon a nuisance claim, which is not the legal issue before this Court, the allegations of injury-in-fact in this case, as well as the parties advancing them, are quite similar, if not the same.⁷ For instance, the allegations include the same injuries to person and property as asserted in this contested case, including complaints that "vessels emit noise pollution . . . and burning diesel fuel emits visible particulate soot from ship funnels," traffic problems related to cruise passengers embarking and debarking ships, and pollution to surrounding waters.

Nevertheless, Petitioners suggest that the Supreme Court's injury-in-fact analysis should not be applied to this case because the nuisance and ordinance causes of action required a "special injury." That argument ignores the clear parallel drawn by the Supreme Court between the "special injury" requirement and particularized harm. In setting forth the level of proof required to allege a "special injury," the Supreme Court applied the same test as it did in *Lujan* for determining whether the plaintiff has suffered a concrete and particularized harm under the constitutional injury-in-fact analysis:

A special injury is "individual or specific damage in addition to that suffered by the public," *Brown [v. Hendricks]*, 211 S.C. [395,] 400, 45 S.E.2d [603], 605 [(1947)], and must be "of a special character, distinct and different from the injuries suffered by the public generally," *Bowlin v. George*, 239 S.C. 429, 433-34, 123 S.E.2d 528, 530 (1962). In other words, the public nuisance cause of action does not obviate the requirement of a particularized injury. Rather, for a private party to bring a public nuisance cause of action, the private party must have suffered a particularized injury.

Carnival Corp., 407 S.C. at ___, 753 S.E.2d at 852.⁸ Therefore, because the test for "special injury" and "affected person" under the facts of this case are the same —i.e., the "particularized injury" requirement under *Lujan/Sea Pines*—the Supreme Court's evaluation and rejection of the

⁷ Compare Request for Contested Case, with Ports Authority Motion for Summ. Judg., Ex. 73, Petitioners' First Am. Compl., *Carnival Corp. v. Historic Ansonborough*, No. 2011-197468 (S.C. Sup. Ct. Original Jurisdiction Granted Jan. 11, 2012).

⁸ Petitioners suggest the Supreme Court's analysis in this regard is *dicta* and was not necessary to support the Supreme Court's dismissal of Petitioners' claims. See Surreply at 3-4 (stating that the Supreme Court's "findings were not a 'necessary' basis for its decision"). This unusual approach appears to be an attempt to establish a doctrine akin to a reverse "two-issue rule" argument, suggesting that where a court makes multiple dispositive holdings, neither a party nor a reviewing court may rely upon any individual holding. However, Petitioners cite no case law for this novel approach to rejecting dispositive holdings.

same allegations of harm, advanced by many of the *same parties*, applies to the analysis of Petitioners' standing in this case.

Finally, Petitioners also contend that, since the Supreme Court evaluated the allegations of injury-in-fact at the motion to dismiss stage, the procedural posture of that dismissal prevents this Court from employing the Supreme Court's analysis here. However, the burden of proof to demonstrate standing is not stagnant; it changes as the litigation progresses, becoming progressively more difficult for Petitioners to demonstrate. See *Town of Arcadia Lakes*, 404 S.C. at 529, 745 S.E.2d at 392-93 ("Elements of standing, however, 'are not mere pleading requirements but rather an indispensable part of the plaintiff's case'; therefore, 'each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stage of the litigation.'" (quoting *Lujan*, 504 U.S. at 561)). The Supreme Court dismissed Petitioners' claims at the motion to dismiss stage, where the bar is at its lowest point to clear. Consequently, the Supreme Court's analysis suggests this Court's review at the motion for summary judgment stage be one of greater scrutiny.

Having determined the Supreme Court's reasoning in *Carnival Corp.* is instructive, we now turn to the specific facts of this case and evaluate Petitioners' claims under *Lujan*. Petitioners must demonstrate an injury-in-fact derived from DHEC's review and issuance of the permit. In applying *Lujan*, it is evident Petitioners have failed to show an "injury in fact," which is "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan*, 504 U.S. at 560. Petitioners provided several affidavits from members of their organizations to support their standing in this case. In the affidavits, the members complain about several alleged injuries, including a reduced quality of life, diminished property values, aesthetic and health effects of air pollution, and water pollution. The Court will address each allegation of injury in turn.

Quality of Life

First, Petitioners allege the permit will result in a decrease in their quality of life. For example, Stephen F. Gates, a resident of 59 Meeting Street and President of the Charlestowne Neighborhood Association, provided an affidavit in which he asserts the cruise ships at the UPT have resulted in unbearable and unmanageable traffic congestion in the historic downtown. He further contends Charleston's historic integrity and aesthetic beauty is being eclipsed by the

presence of the disproportionately large cruise ships next to the historic district. Mr. Gates complains that on the days the cruise ships are in port he has reduced access to a convenient grocery store, and he is forced to waste his time, energy, gas, and peace of mind to endure or attempt to avoid cruise traffic. While the Court has sympathy for Mr. Gates' difficulties in navigating downtown traffic, these alleged injuries are not personal or individual to him.⁹ All downtown citizens or visitors are equally affected by traffic and visual impairments generated by the presence of the cruise ships. See *Carnival Corp.*, 407 S.C. at ___, 753 S.E.2d at 849-50 (holding visual disruptions of Charleston's historic skyline and major traffic congestion as a result of cruise ships in port are "generalized grievances suffered by the public as a whole" and do not constitute a "particularized harm"); *Sea Pines Ass'n for Prot. of Wildlife, Inc.*, 345 S.C. at 600, 550 S.E.2d at 291 ("[Injury] must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public.").

Furthermore, Petitioners have failed to show the injury to their quality of life is "actual or imminent." *Lujan*, 504 U.S. at 560. As demonstrated by the affiants' complaints, Petitioners complain of traffic congestion and aesthetic issues that have been affecting their quality of life since the *Carnival Fantasy* made Charleston its home port in 2010. The harms Petitioners describe are pre-existing; therefore, they are not pertinent to whether the permit at issue will cause a particularized injury to Petitioners. Rather, Petitioners rely on speculation that the permit will increase cruise activities to argue the existing injuries they are suffering will be exacerbated by the permitted activity. Essentially, the injury Petitioners assert is the exacerbation of pre-existing injuries. However, Petitioners' affiants' conclusory statements and opinions in support of this alleged injury are not sufficient to create a genuine issue of fact to survive summary judgment.¹⁰ See *Germann v. New York Life Ins. Co.*, 286 S.C.34, 39, 331 S.E.2d 385, 388 (1985) ("A conclusory statement as to the ultimate issue in a case is not sufficient to create a

⁹ Indeed, the affidavits of Christina Dodd and Virginia Lane also complain of increased traffic congestion in the Charleston peninsula area on days the *Fantasy* is in port, and of the effects of the cruise ship's presence on Charleston's aesthetic beauty.

¹⁰ An affidavit of a fact witness "shall set forth facts as would be admissible in evidence" and is prohibited from offering opinion testimony which would also be inadmissible at trial. Rule 56(e), SCRCP; see also *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) (holding "a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training" (citing Rules 602 and 701 of the South Carolina Rules of Evidence)). The information offered by Mr. Gates and the other affiants is of limited evidentiary value because much of it relies on hearsay and consists of conclusory statements of the affiants' personal opinions and speculations.

genuine issue of fact for purposes of resisting summary judgment.”). Petitioners fail to provide evidence conclusively demonstrating (1) cruise activities will increase if the permit is granted and (2) reliable expert testimony to support their contention that the increased cruise activities will result in increased traffic congestion and aesthetic degradation. Without expert testimony or evidence presenting a foundation for the affiants’ claims, any effect the permit will have on Petitioners’ quality of life is conjecture.

Effects on Property Values and Businesses

Next, Petitioners express *concern* that the permit will have deleterious effects on their property values and businesses. Virginia Lane, a member of the Board of Trustees for the Historic Charleston Foundation, stated in her affidavit that the new terminal *would likely* impact her architecture business and reduce the value of her property; however, she provided no evidence to support these speculative claims.¹¹ Mr. Gates stated he was *concerned* the new terminal would result in more and/or bigger cruise ships calling in Charleston, and therefore more soot would damage his house, effectively decreasing the value of his property. Concern, without evidence of declining property values and business reasonably attributed to granting the permit, does not constitute actual or imminent harm. Moreover, in reviewing a permit request, DHEC is charged with considering “the extent to which the proposed use could affect the value and enjoyment of *adjacent* owners.” S.C. Code § 48-39-150(A)(10) (2008); S.C. Code Ann. Regs. 30-11(B)(10) (2011) (emphasis added); *see also L. E. Winget v. Winn-Dixie Stores, Inc.*, 242 S.C. 152, 164, 130 S.E.2d 363, 369 (1963) (“[A] use of property which does not create a nuisance cannot be enjoined or a lawful structure abated merely because it renders neighboring property less valuable.” (quoting 66 C.J.S. *Nuisances* § 19d)). None of Petitioners’ members own property adjacent to the UPT. Furthermore, Petitioners provide no evidence linking diminishing property values to the proposed permitted activity.¹² Thus, diminished property values and diminished business prospects are not injuries-in-fact, but purely hypothetical injuries.

¹¹ Moreover, any potential impact to Ms. Lane’s architecture business is personal to her and may not be used to establish standing on behalf of the Foundation.

¹² Petitioners did not submit evidence of real estate appraisals or another probative measure of real estate values even though one of the affiants, Christina Dodd, sold her home in the Ansonborough neighborhood during the pendency of this case.

Emissions from Ships

Several of Petitioners' affiants further complain they have been injured by oily soot on the window sills and piazzas of their homes. Mr. Gates asserted he was concerned about the real and substantial risks posed by increased soot and air emissions from expanded cruise activities as a result of the permit.¹³ Similarly, Tommie Robertson claimed she has been on her porch when the *Fantasy* has docked and, within seconds of breathing in the ambient air, experienced a sore throat and difficulty breathing as a result of the ship's emissions. Robertson contends the permit will exacerbate this issue. However, Petitioners' provided no expert medical testimony substantiating their claims, nor did they provide any evidence linking the proposed permit with the alleged potential harm. While air pollution is certainly a concern for the public at large, Petitioners have failed to demonstrate that their affiants are affected any differently from any other downtown Charleston resident. Moreover, the case before this Court is based on a DHEC permit related to water quality, not air quality. Thus, the allegations of possible air pollution are not relevant to the issue before this Court and cannot establish an injury in fact sufficient to confer standing upon the Petitioners.

Water Pollution

Finally, Petitioners allege the permit will injure them because it will increase water pollution and, therefore, exacerbate related health and safety issues. Katherine Zimmerman, who is a Program Director for the Coastal Conservation League, discussed the issue of water quality in her affidavit. Ms. Zimmerman described and attached several reports discussing issues involving water quality and the cruise industry as a whole. However, the hearsay¹⁴ reports offer no discussion of, or connection with, the cruise industry in Charleston. Reports discussing the cruise industry in general do not satisfy the personal and particularized requirement of an injury-in-fact, which Petitioners are required to demonstrate. Likewise, Marty Morganello's¹⁵ affidavit asserting he is concerned the permitted activity is a precursor to expanded cruise ship operations,

¹³ Specifically, Mr. Gates contends he must scrub his porch and windows more often and more vigorously as a result of purportedly imminent soot deposition. Ms. Dodd also complained of soot deposition on her window sills and piazzas, but she has since sold her home. Accordingly, her concerns in this regard are now moot.

¹⁴ See Rule 56(e), SCRPC (requiring affidavits to be "made on personal knowledge" and "set forth facts . . . admissible in evidence").

¹⁵ Morganello is the President of the Charleston Chapter of the Surfrider Foundation. He resides at 1620 Oak Island Drive, which is several miles from Charleston's historic district. He enjoys Charleston and its surrounding waterways.

which will result in increased water pollution, does not constitute a particularized injury. Even if Mr. Morganello's speculations are true, they remain unsubstantiated speculations without evidence showing how the permit will result in increased cruise activities, and increased cruise activities will result in increased water pollution. The Court is not concerned with predictions of general future harm based on conjecture. Accordingly, Petitioners fail to show potential increases in water pollution is an injury-in-fact.

Identifiable Trifle

Petitioners also contend the injury required for standing purposes need not be a substantial injury but an "identifiable trifle" is enough. This Court's conclusions, however, are not based on an analysis of whether the injuries are substantial or an "identifiable trifle." Rather, this Court's analysis is based on whether the injuries are "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan*, 504 U.S. at 560. Here, as in *Carnival Corp.*, Petitioners' alleged injuries do not affect them in a personal and individual way different from the way they affect the general public. Petitioners' affidavits do not provide material facts to establish a concrete and particularized injury distinguishable from the harm suffered by the general public. Further, Petitioners fail to show how their allegations are not conjectural or hypothetical, given that they are tied to current conditions with existing cruise operations as opposed to any actual or imminent injury deriving from the permitted activity. Accordingly, this Court finds Petitioners have failed to show an injury-in-fact under *Lujan* for the purpose of establishing standing.

Causal Connection

Even if Petitioners were able to show an injury-in-fact, this Court finds they cannot satisfy the second element of the *Lujan* test, which requires "a causal connection between the injury and the conduct complained of—the injury has to be 'fairly...trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.'" *Lujan*, 504 U.S. at 560 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)). In this case, the conduct complained of is the permit authorizing the construction of pilings in the critical area which are necessary for relocating the cruise ship terminal to the northern end of the UPT. Petitioners allege the relocation of the cruise ship terminal under the permit will result in more and/or bigger cruise ships docking at Charleston,

which will, in turn, exacerbate the alleged injuries Petitioners are already suffering.¹⁶ Petitioners cite to *Duke Power Co. v. Carolina Env'tl. Study Group, Inc.*, 438 U.S. 59 (1978) in support of their claim, arguing *Duke Power* stands for the principle that causation can be proven by a “but for” test. In this case, Petitioners claim that but for the granting of the permit, the alleged harms to Petitioners would not be exacerbated. However, *Duke Power* is inapplicable here for two reasons. First, in *Sea Pines*, South Carolina adopted the test for standing as provided in *Lujan*, not *Duke Power*. Second, even if *Duke Power* was applicable, Petitioners have provided no evidence, in the form of expert testimony or otherwise, to prove a “but for” causal connection between the permit and the alleged potential harms.

Applying the correct, stricter standard under *Lujan*, Petitioners’ claim of a causal connection fails. The facts of this case are analogous to the situation in *Bailey v. S.C. Dep’t of Health & Env’tl. Control*, 388 S.C. 1, 693 S.E.2d 426 (Ct. App. 2010). In *Bailey*, the petitioner contested DHEC’s decision to grant a nearby property owner a permit to change part of his fixed dock to a floating dock. *Id.* at 2, 693 S.E.2d at 427. The petitioner expressed “concern” that the dock would become a marina, and the Court of Appeals upheld this Court’s determination that his concern was “conjectural and speculative.” *Id.* at 7, 693 S.E.2d at 429. Moreover, the Court of Appeals upheld this Court’s finding of no causal connection between the petitioner’s alleged injury and the permitted conversion of the fixed dock into a floating dock because the neighbor’s boats had been docked there for years, and they would continue to be docked there regardless of the permitting decision. *Id.* Here, like in *Bailey*, Petitioners raise concerns about potential future harms. Petitioners’ complaints are merely based on speculation that the permit will exacerbate the existing alleged harms related to the cruise ships porting at the UPT. Petitioners, however, have provided no expert testimony connecting the permitted activities with the alleged exacerbation of harm. Further, like *Bailey*, even if this Court denied the permit, the UPT will remain an operational marine terminal servicing cruise ships.¹⁷

¹⁶ Petitioners also contend that without the permitted pilings to provide structural support for the relocated cruise terminal, Ports Authority will be forced to cease all cruise ship operations. However, cessation of current cruise ship operations is not at issue in this case. Moreover, Petitioners have failed to provide any evidence substantiating their claims that cruise operations would cease if the permit were denied.

¹⁷ In fact, if the permit is denied, the Ports Authority represents that not only will UPT continue to service cruise vessels, but also cargo ships, which have already been moved to another terminal in anticipation of the renovation of the cruise terminal, will return to UPT, along with their associated rail and truck traffic.

Moreover, Petitioners' contention that the permit will increase cruise ship operations at the UPT relies on assumptions about the decisions of third parties, like Carnival Cruise Lines, who is not part of this action, and who must initially decide to expand the size of its fleet in Charleston. *See Simon*, 426 U.S. at 41-42 (“[T]he ‘case or controversy’ limitation of Art. III still requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court.”). Thus, there is no evidence before this Court that the permitted activities at issue in this case are causally connected with the potential alleged injuries.

Redressability

The third element of the *Lujan* test requires that “it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Lujan*, 504 U.S. at 561 (quoting *Simon*, 426 U.S. at 38, 43). Petitioners request this Court review the permit and issue an order reversing the decision to issue the permit or, in the alternative, remand the case to DHEC with instructions to conduct an analysis of alternative terminal locations, traffic impacts, noise impacts, air emissions, and impacts on the historic qualities of Charleston. Although Petitioners allege that the existing complaints will be exacerbated as a result of the permit at issue in this case, Petitioners provided no evidence, particularly no expert testimony, to support those claims. Therefore, not only is it speculative that the permit will exacerbate Petitioners' alleged injuries, it is also speculative that a denial of the permit will redress the alleged harms.

Petitioners also argue the denial of the permit will redress existing injuries to its members from current cruise operations. Nevertheless, existing injuries from current cruise operations which are not connected to the proposed permitted activities are not at issue in this case. Petitioners further claim their injuries would be redressed if this Court denied the permit and instructed DHEC to conduct its permitting in a “legal manner,” which would “allow for identification of specified historic, health and environmental impacts and adoption of measures to reduce them, such as shore power, standards for cruise operation and discharges, terminal redesign (e.g., less impervious parking) and terminal relocation away from the most congested and historically intact part of Charleston.” However, this Court cannot address the issue of whether DHEC properly issued the permit unless Petitioners establish standing. Accordingly, there is no evidence before this Court that the denial of the permit in this case would redress Petitioners' alleged potential injuries.

Associational Standing

Where the petitioner is an association, the association has standing to bring an action on behalf of its members, but it is “substantially more difficult.” *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). An association has standing “only if it alleges that it or its members will suffer an individualized injury; a mere interest in a problem is not enough.” *Id.* Specifically, an association has standing to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests at stake are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Id.* (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977)). As previously discussed, Petitioners have failed to provide evidence proving their members individually meet the elements of *Lujan*, particularly the requirement of an injury-in-fact. Because Petitioners cannot show their individual members have suffered an injury-in-fact, Petitioners likewise cannot show the members have standing to sue in their own right to satisfy the first element of associational standing under *Beaufort Realty*. See *id.* at 301, 551 S.E.2d at 589 (holding an organization has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right); see also *Carnival Corp.*, 407 S.C. at ___, 753 S.E.2d at 851 (“[T]o possess standing, either Plaintiffs alone must have suffered a concrete, particularized injury or their members must have suffered such an injury and the other elements of associational standing must be satisfied.”). This finding mirrors that of the Supreme Court in *Carnival Corp.*, which held plaintiffs, in an almost identical position as Petitioners,

fail[ed] to allege a particularized injury either to themselves or their members. Rather, they assert[ed] only generalized grievances suffered by the public as a whole which are insufficient to establish associational standing.

Carnival Corp., 407 S.C. at ___, 753 S.E.2d at 851. Thus, Petitioners fail to meet the first requirement for organizational standing.

Next, Petitioners, with the exception of Charleston Communities for Cruise Control (Cruise Control), also fail to satisfy the second element of *Beaufort Realty* because Petitioners fail to show the permitted activity is germane to Petitioners’ associational purposes. For example, the Historic Ansonborough Neighborhood Association (HANA) states its purpose is to “address matters of importance to the historic residential neighborhood designated as Ansonborough . . . and to foster a spirit of community and cooperation with the Ansonborough

Neighborhood.” While HANA has provided the affidavit of one of its members who alleges the permitted activity has injured her individually, it has not provided any evidence showing how the permitted activity is germane to addressing matters of importance to all members of the Ansonborough neighborhood.¹⁸ Furthermore, HANA does not assert any of its members own property adjacent to the UPT. HANA thus presents no more than a mere interest in the permitted activity, which does not establish standing. *See Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589 (holding “a mere interest in a problem” is not sufficient to establish standing). The Charlestowne Neighborhood Association (CNA) fails to satisfy the second element of organizational standing for similar reasons.¹⁹

The Preservation Society of Charleston (PSC) asserts its mission is to “inspire the involvement of all who dwell in the Lowcountry to honor and respect our material and cultural heritage.” PSC fails to show how the permitted activities will hinder its ability to “inspire involvement” in its preservation activities. Similarly, the Historic Charleston Foundation (HCF) is “dedicated to preserving and protecting the architectural, historical and cultural character of Charleston and its Lowcountry environs, and educating the public about Charleston’s history and the benefits that are derived from preservation.” HCF argues the addition of five pilings and the relocation of the terminal will adversely impact Charleston’s architectural, historical, and cultural heritage. However, HCF fails to specify what that impact is, particularly considering Charleston is a port city and has undeniably derived its cultural heritage from the maritime industry, to which the UPT has contributed for over one hundred years. Like HANA and CNA, PSC and HCF fail to present anything more than a “mere interest” in the permitted activity. *See Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589 (holding “a mere interest in a problem is not enough” is not sufficient to establish standing).

The Charleston Chapter of the Surfrider Foundation (Surfrider) states it is an “environmental organization dedicated to the protection and enjoyment of the world’s oceans, waves and beaches for all people, through conservation, activism, research and education.”

¹⁸ Furthermore, HANA’s individual member who submitted an affidavit, Christina Dodd, no longer lives in the Ansonborough neighborhood. Accordingly, the concerns expressed in her affidavit are now moot, and her affidavit may not be relied upon to confer standing upon the Petitioner, Historic Ansonborough Neighborhood Association.

¹⁹ CNA’s membership is limited to residents living south of Broad Street, which is located many blocks south of the UPT.

Surfrider has not presented evidence showing how the permitted activity will affect its ability to protect and enjoy the world's oceans, waves and beaches. Furthermore, Surfrider's affiant, Mr. Morganello, provided no admissible or substantiated evidence useful to this Court. Accordingly, Surfrider fails to satisfy the second element of organizational standing.

The permitted activity arguably is germane to CCL's broadly stated purpose to "protect the natural resources and quality of life in South Carolina communities, to promote appropriate development and to prevent projects that would excessively harm the state's natural resources and interfere with its residents' quality of life." However, CCL, like the other associations, does not specifically state how the permitted activity hinders its purpose, other than speculating about potential future harms. In light of its broad purpose, it is more important for CCL to show the permitted activity is germane to its purpose, its members, and is not merely of interest to it. This Court finds CCL failed to show it has more than a mere interest in the permitted activity. Furthermore, to the extent CCL rests its claim for standing on the affidavit of Zimmerman, her testimony is largely inapplicable or inadmissible.²⁰ Similarly, Robertson asserts that CCL represents her interest in the "use and enjoy[ment of] the aesthetic, historic, cultural and natural resources of the City of Charleston and the greater coastal zone in which it sits." CCL's broadly stated purpose does include the protection of the "quality of life in South Carolina communities" which arguably includes the use and enjoyment of "aesthetic, historic, cultural and natural resources." However, Ms. Robertson did not provide any evidence showing how the permitted activity is germane to addressing matters of importance to all members. Rather, as discussed above, her allegations relate to interests which are not distinguishable from any other downtown Charleston resident.

Moreover, even if Robertson's claims relating to the emissions from cruise ships and their effect on her health and property could be connected to the permitted activity, those claims are personal to her and cannot be used to establish standing on behalf of CCL. An organization lacks standing where the claim asserted and the relief requested requires the participation of individual members in the lawsuit. *See Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589 (holding an association has standing if neither the claim asserted nor the relief requested requires

²⁰ Zimmerman's affidavit purported to give opinions on the air and water quality impacts of the permitted activity. Zimmerman did not establish her expertise to give an opinion regarding these issues. Accordingly, her statements are mere speculation. Furthermore, the study she quoted on the use of shore-side power is hearsay and thus insufficient to establish a genuine issue of material fact.

the participation of individual members in the lawsuit). Furthermore, the recent decision of the South Carolina Supreme Court in *Georgetown County League of Women Voters v. Smith Land Co., Inc.*, 393 S.C. 350, 358, 713 S.E.2d 287, 292 (2011), points out the flaws in Petitioners' use of Robertson's claims to establish standing. The dissenting opinion in *Smith Land*,²¹ which was authored by Justice Hearn and joined by Justice Kittredge, concluded that, in order to satisfy the third prong of the *Beaufort Realty/Hunt* test, "the organization must show that the right it seeks to vindicate is common to the membership and the interest of the harmed members in the proceedings derives from their membership." *Id.* at 358, 713 S.E.2d at 293. The dissent recognized that while the League of Women Voters alleged that its members suffered and would continue to suffer harm as a result of the permitted activity, the evidence presented by the League of Women Voters was limited to harm alleged by only one member.²² Pertinent to the issues at hand, the dissent recognized that injury as to one member of an organization does not extend to the rest of the organization. *Id.* at 361, 713 S.E.2d at 293 ("With harm occurring to only one member of the League [of Women Voters] and a cause of action thereby inuring only to that one member, the right the League is pursuing under the Act is not a common one."). Further, the dissent emphasized that the harm suffered by the individual does not, in and of itself, satisfy the associational standing requirement unless the injury suffered flows from the membership in the organization. *Id.* Applying that reasoning to this case reveals a similar disconnect between the injuries alleged and CCL's purpose. The experiences of Robertson regarding the effects of cruise ships' soot upon her personal property and breathing do not establish the third prong of the *Beaufort Realty/Hunt* test.

Therefore, this Court finds none of Petitioners satisfy all three requirements for associational standing.

²¹ The *Smith Land* majority found the issue of standing to be unpreserved for its appellate review; therefore, it took no position on the issue. *Smith Land*, 393 S.C. at 352 n.1, 713 S.E.2d at 288 n.1. The dissent, believing the majority had misapplied the rules of preservation, addressed the issue of associational standing in a manner that is problematic for Petitioners. *Id.* at 357-58, 713 S.E.2d at 291. Thus, to date, the only two Justices to have evaluated the *Beaufort Realty/Hunt* test under similar circumstances came down on the side of the Ports Authority's argument in this case, while the remaining three Justices have taken no position on the issue.

²² Evidence was also presented by two other neighboring property owners; however, those neighbors were not members of the League of Women Voters. *Smith Land*, 393 S.C. at 360-61, 713 S.E.2d at 293.

Standing under the Public Importance Exception

In the alternative, Petitioners assert they have standing under the public importance exception. Where a court determines a case presents issues of important public interest, standing may be conferred “without requiring the plaintiff to show he has an interest greater than other potential plaintiffs.” *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007). However, “[t]he key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of ‘future guidance’ that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.” *Bodman*, 403 S.C. at 68, 742 S.E.2d at 367 (quoting *ATC South, Inc.*, 380 S.C. at 198-199, 669 S.E.2d at 341). Petitioners argue this Court should find they have standing under the public importance exception because the permitted activity will result in a “[thirty five] million [dollar] cruise terminal in the heart of the most historic area in all of South Carolina and impact that area for generations to come.” However, the permitted activity will not change the existing footprint of the UPT, nor will it change the function of the UPT as a marine terminal, and the permit cost is not representative of its public importance or the need for future guidance. The core issue in this case is whether DHEC complied with state law when issuing the Critical Area Permit and Coastal Zone Consistency Certification authorizing the Ports Authority to make improvements to Building #322. Petitioners have not shown, and this Court fails to see, how the resolution of this case is needed for future guidance. Accordingly, this Court finds Petitioners fail to establish standing under the public importance exception.

Conclusion

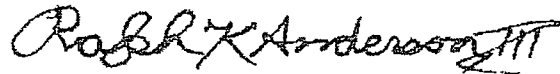
In response to a summary judgment motion, Petitioners can no longer rest on “‘mere allegations,’ but must ‘set forth’ by affidavit or other evidence ‘specific facts,’ which for purposes of the summary judgment motion will be taken to be true.” *Lujan*, 504 U.S. at 561; see Rule 56(e), SCRCF (providing “the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but a response by affidavit or otherwise . . . must set forth specific facts creating a genuine issue for trial”). Petitioners have made many allegations and conclusory statements, but have failed to set forth specific, admissible facts to support their allegations and

statements. Consequently, Petitioners have failed to show they satisfy the elements of standing under any theory presented so as to defeat this summary judgment motion.²³

ORDER

IT IS HEREBY ORDERED that Ports Authority's Motion for Summary Judgment for lack of standing is **GRANTED**.

AND IT IS SO ORDERED.



Ralph K. Anderson, III
Chief Administrative Law Judge

April 11, 2014
Columbia, South Carolina

²³ Petitioners filed a Motion for Reconsideration of this Court's Order of March 3, 2014, denying Petitioners' Motion to Expand Discovery on March 13, 2014. In response to the Court's e-mail inquiry on March 24, 2014, counsel for Petitioners represented to the Court that Petitioners sought expanded discovery in order to prepare for the hearing on the merits and not for purposes of responding to the Motion for Summary Judgment. Therefore, the Order denying Petitioners' Motion to Expand Discovery is vacated. Nevertheless, in light of the disposition of the summary judgment motion, the Motion for Expanded Discovery is moot and is thus denied. Likewise, all remaining outstanding motions are moot and are also denied.

CERTIFICATE OF SERVICE

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

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

April 11, 2014
Columbia, South Carolina

Exhibit 8

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. Geathers, Administrative Law Judge

Case No. 07-ALJ-07-0107-CC

Case No. 07-ALJ-07-0108-CC

South Carolina Coastal Conservation League,..... Petitioner,

vs.

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

PETITION FOR A WRIT OF CERTIORARI

James Blanding Holman
SOUTHERN ENVIRONMENTAL LAW CENTER

Mailing address: Post Office Box 609
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Telephone (843) 513-1071

Attorneys for the Petitioner

decision.” S.C. Code Ann. § 44-1-60(F)(1).³ The Board, or its designee, may request additional information and question anyone providing information at the conference, id. § 44-1-60(F)(1), with parties “encouraged” to “engage in mediation during the final agency review process, id. § 44-1-60(G).” Act 387 directs that DHEC “shall” comply with “all requirements for public notice” before making “a department decision,” and states that “[a]ny statutory deadlines applicable to permitting and licensing programs administered by the department shall be extended to allow for this final review process.” Id. §§ 44-1-60(B), (H).

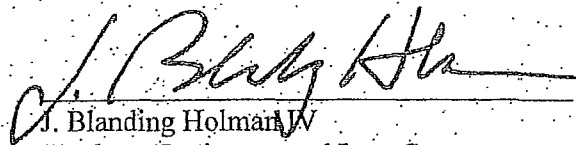
The first step in this process is an initial DHEC staff decision, which becomes the agency’s final decision “unless” a request for Board review is made within 15 days after notice is mailed by “certified mail, return-receipt requested” to the applicant. S.C. Code Ann. § 44-1-60(E). Here, DHEC staff mailed notice of the initial Terminal Permit decision to SPA by return-receipt request certified mailings deposited on October 31, November 2, and November 17, 2006. (Terminal R. p. 379; SPA Terminal Br. at 3, 15) Two requests for Board review were made regarding the Terminal Permit. The first was by SPA, on November 13, 2006. (Terminal R. pp. 146-154.). The second was by the League, which received late mailed written notice on November 20 and filed its request that day. (Terminal R. pp. 158-160).⁴

³ 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 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). An affected person “desiring to contest the final agency decision” may request a contested case hearing before the ALC. Id. § 44-1-60(F)(2).

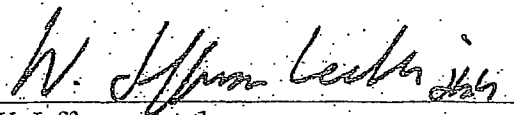
⁴ The League also filed a motion to intervene in SPA’s request for review on December 6, 2006. (Terminal R. pp. 161-166.)

This the 20th day of January, 2009.

Respectfully submitted,



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Attorneys for Petitioner

Exhibit 9

South Carolina General Assembly
119th Session, 2011-2012

Download [This Bill](#) in Microsoft Word format

~~Indicates Matter Stricken~~

Indicates New Matter

S. 968

STATUS INFORMATION

Concurrent Resolution

Sponsors: Senator Grooms

Document Path: l:\s-res\lkg\018cruil.kmm.lkg.docx

Companion/Similar bill(s): 4371

Introduced in the Senate on June 16, 2011

Introduced in the House on June 21, 2011

Adopted by the General Assembly on June 21, 2011

Summary: Carnival Cruise Lines

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
6/16/2011	Senate	Introduced, adopted, sent to House
6/21/2011	House	Introduced, adopted, returned with concurrence (House Journal-page 16)

View the latest [legislative information](#) at the LPITS web site

VERSIONS OF THIS BILL

6/16/2011

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A CONCURRENT RESOLUTION

TO EXPRESS THE THANKS OF THE SOUTH CAROLINA SENATE FOR CARNIVAL CRUISE LINES' CONTRIBUTIONS TO THE ECONOMIC WELL-BEING OF SOUTH CAROLINA AND FOR THE COMPANY'S COMMITMENT TO OPERATING IN A BALANCED MANNER THAT IS SENSITIVE TO THE ENVIRONMENT.

Whereas, Carnival Cruise Lines is one of the largest vacation companies and is the most popular cruise line in the world. The company's stated mission is "to deliver exceptional vacation experiences... that cater to a variety of different lifestyles and budgets, all at an outstanding value unrivaled on land or at sea"; and

Whereas, Charleston is consistently ranked as one of the top ten tourism destinations in the world by numerous publications and the city has welcomed visitors for more than three hundred years; and

Whereas, visitors enjoy the area's golf courses, nationally-ranked tennis facilities, picturesque beaches, monumental battleships, and carefully preserved architecture. The city is a museum in and of itself, a treasure that should be shared, not sheltered; and

Whereas, the cruise business is a maritime business, and the South Carolina Ports Authority is charged by law with developing and improving the state's harbors and seaports and increasing waterborne commerce generally; and

Whereas, the cruise business generated \$37 million for South Carolina's economy in 2010 and projected to generate 407 jobs in the Tri-County region, paying a total of \$16,193,200 in labor income; and

Whereas, a 2010 survey of more than 1,500 embarking passengers showed that nearly one-third of Charleston's cruise passengers are South Carolina residents, more than one-third stayed more than one night in one of more than fifty different hotels across the area, one-half ate in one of more than one hundred different restaurants, and nearly forty percent shopped in resident-oriented retail stores, locally-owned shops, and tourist-oriented stores throughout the area; and

Whereas, South Carolina's cruise passengers are predominately couples traveling without children and these families have a median annual household income of between \$100,000 and \$124,999; and

Whereas, when a cruise ship embarks from Charleston, more than two hundred local residents are working directly in support of the operation, including check-in agents, parking attendants, longshoremen and stevedores, security personnel, and others; and

Whereas, the ship also acquires a number of products and services locally, including health care, flowers, water, paper products, ground transportation, financial services, and fuel; and

Whereas, the South Carolina Ports Authority maintains an environmentally responsible port. The authority reports that Carnival Cruise Lines, and all other lines that bring ships to the Charleston port, is a member of Cruise Lines International Association, a cruise industry trade association, which has collectively and voluntarily set strict environmental standards that exceed federal and international law, thereby partnering with the authority in its commitment to operate in a balanced and environmentally sensitive manner; and

Whereas, grateful for Carnival Cruise Lines' investment in the Palmetto State, the Senate takes great pleasure in commending the company for its contributions to South Carolina's economy and for its sensitivity to pertinent environmental issues. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the members of the South Carolina Senate, by this resolution, express their thanks for Carnival Cruise Lines' contributions to the economic well-being of South Carolina and for the company's commitment to operating in a balanced manner that is sensitive to the environment.

Be it further resolved that a copy of this resolution be provided to Carnival Cruise Lines.

---XX---

This web page was last updated on June 29, 2011 at 4:10 PM



**RESOLUTION IN SUPPORT OF THE SOUTH CAROLINA STATE PORT
AUTHORITY'S PLANS FOR THE REDEVELOPMENT OF UNION PIER TO
INCLUDE RELOCATION OF THE PASSENGER TERMINAL**

WHEREAS, The City of Charleston is a working port city that has been influenced economically and culturally by the marine commerce industry since its founding in 1670; and

WHEREAS, The South Carolina State Ports Authority's (SPA) mission is to contribute to the economic development of South Carolina by fostering and stimulating waterborne commerce and shipment of freight; and

WHEREAS, The SPA is dependent on over 400 private companies to facilitate Port operations and thus creates thousands of jobs for the citizens of the City of Charleston and throughout the Lowcountry including longshoremen, stevedores, harbor pilots, trucking companies, railroad operators, marine suppliers, customs agents and brokers, fuel vendors, equipment leasing companies, warehousing, freight forwarders, environmental service companies, admiralty attorneys, marine insurers, mechanics, diving companies, dredging companies, tug boats, marine surveyors; and

WHEREAS, The SPA's mission to promote, develop and facilitate waterborne commerce includes the movement of cargo and passengers; and

WHEREAS, The SPA and Council acknowledge the international and federal regulations in place to address environmental issues regarding the cruise industry and the SPA is committed to continue to work closely with the City and neighborhood residents to monitor other effects of the cruise ship business and where and when needed, mitigate those effects; and

WHEREAS, The SPA's forward progress in redeveloping Union Pier including the new passenger terminal is critical not only due to the potential for economic growth but also for the redevelopment of a waterfront asset and the opportunity for increased public access; and

WHEREAS, The SPA's first phase of the Union Pier redevelopment includes a new cruise terminal on the northern end of Union Pier and a commitment that

immediately upon its opening, the SPA and the City will work on new public access to the waterfront; and

WHEREAS, The Union Pier and Columbus Terminals are owned and operated by the SPA, which is an economically self-sustaining business owned by the state of South Carolina; and

WHEREAS, The SPA's cruise ship business will substantially contribute to our local economy; and

WHEREAS, The South Carolina State Ports Authority, which has been in existence since 1942 and is the primary catalyst for our marine commerce industry and represents the future success and economic health of our community:

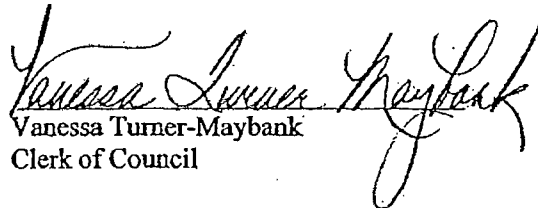
NOW, THEREFORE, BE IT RESOLVED THAT I, Joseph P. Riley, Jr., Mayor, City of Charleston, and Charleston City Council pledge our support to the South Carolina Ports Authority in their vital role in our City and State's continued economic development which includes 1) plans to redevelop Union Pier including a new passenger cruise terminal on the north end of the property and new public access to the waterfront and 2) management of a cruise business as outlined in a June 25, 2010 letter from SPA Executive Director Jim Newsome and a July 30, 2010 letter from Bill H. Stern, Chairman of the SPA Board, as an attached addendum herein.

DONE this 14th day of September, 2010



Joseph P. Riley, Jr., Mayor
City of Charleston

ATTEST:



Vanessa Turner-Maybank
Clerk of Council

Exhibit 10

At the heart of Cruise Opponents' strategy in this and other pending litigation is a desire to delay the Project and dissuade Carnival from home-porting the Carnival Fantasy:

- “Do you know if there are any *plans to sue the state? It would seem that to tie them up, at least temporarily, might be a good idea....* There’s only one goal. Keeping cruise ships out of Union Pier—and we should focus only on that, nothing else.” Ex. 29, Jay Williams E-Mail, March 17, 2011, Cruise Opponents 8042 (emphasis added).
- “One of the things that is percolating around is *litigation to slow this process down*. Blan Holman (who spoke at our last general membership meeting) says there are a number of grounds showing cause for a challenge to some of the Port’s actions. He has some clients and is looking for others who want to join the group.” Ex. 30, Stephen F. Gates, Minutes from CNA Board Mtg., May 3, 2011, Cruise Opponents 001747 (emphasis added).
- “I think the *only road block that will slow the port down is a lawsuit.*” Ex. 31, Harold Pratt-Thomas E-Mail, May 19, 2011, Cruise Opponents 004156 (emphasis added).
- “If we could put a nuisance suit together based on soot deposition it would be great.” Ex. 32, Dana Beach E-Mail, May 22, 2011, Cruise Opponents 006832.
- “*Lawsuits should be dropped in exchange for the SPA agreeing to put the cruise terminal on hold* and conduct a long term, comprehensive planning process.” Ex. 33, Dana Beach E-Mail, July 7, 2011, Cruise Opponents 6831 (emphasis added).
- “*Unless the terminal is put on hold*, any study, biased or not, is irrelevant.” Ex. 34, Dana Beach E-Mail, July 25, 2011, Cruise Opponents 005255 (emphasis added).
- “It is important to note that our staying power, letters to the OCRM (Office of Ocean & Coastal Resource Management) regarding their duty to consider the long-term implications the pilings requested by the SPA would represent, and keeping the issue in the news are

most likely several of the *reasons that the SPA is well behind on the timetable* it established for the new terminal.” Ex. 35, Carrie Agnew E-mail, July 3, 2012, Cruise Opponents 001447-48 (emphasis added).

- “No ‘breaking news’ this time.....but *we have helped slow down the process* and this is having an impact!!” Ex. 36, Carrie Agnew E-Mail, April 13, 2013, Cruise Opponents 001509 (emphasis added).
- “No news on the various lawsuit fronts.... *The terminal is stalled by the litigation. We are doing a great job and just need to ‘keep on keeping on!’*” Ex. 37, Carrie Agnew E-Mail, May 5, 2013, Cruise Opponents 001511 (emphasis added).

As is self-evident, delay is paramount to Cruise Opponents, because they see litigation as the means through which they can effectuate their vision for the Charleston peninsula.¹⁷

A contested case request challenging a permit issued by DHEC must necessarily take issue with the environmental impacts caused by the **permitted** activity. Yet, the contested case request and Cruise Opponents’ filings in this case demonstrate that Cruise Opponents instead complain

¹⁷ This tactic is not reserved solely for the Ports Authority or the cruise industry, but has become the *modus operandi* of opposition. *See, e.g.,* Ex. 38, *Kiawah Development*, Reh’g Trans. 6:14-17, 11:9-25 (June 5, 2013) (wherein Chief Justice Toal took issue with the tactics employed by the League and Cruise Opponents’ counsel in a recent oral argument, stating “what we get into so many times, folks who really oppose any development, and they *use this process to delay*, if they can, a decision that they are not in favor of” and “*you don’t simply make a value judgment about whether you want a piece of property developed.*” (emphasis added). In fact, Cruise Opponents openly embrace employing the judicial process as an instrument of delay. *See* Exs. 29-37, *supra*; *see also* Ex. 39, Katie Zimmerman E-Mail, May 12, 2011, Cruise Opponents 005280 (“Don’t worry—we will keep pushing until we get the regulation [of the cruise industry] ... as we all keep the pressure up, it WILL happen ☺.”); Ex. 40, Jay Williams E-Mail, Jun. 1, 2011, Cruise Opponents 008473 (describing the goal of the litigation as “[t]he stated goal is to *get the offending party, Carnival, to the negotiating table* to compromise on its and the SPA’s inflexible position opposing all regulation for cruise ships. Personally, I see no other way to do this either.”) (emphasis added); Ex. 41, Katie Zimmerman E-Mail, Mar. 4, 2013, Cruise Opponents 009231-32 (“I am optimistic that, at some point, the port or the Mayor or someone with authority will help us get around a table to have a good discussion.”).

From: Jay Williams [jwilliams@dmrinteractive.com]
Sent: Thursday, March 17, 2011 8:52 AM
To: Katie Zimmerman
Subject: Re: Update on this morning's Task Force discussion
Hey Katie,

Do you know if there are any plans to sue the state? It would seem that to tie them up, at least temporarily, might be a good idea.

I do disagree with part of the CCL approach, as you know, and I think someone from the organization spoke at Monday's Charlestowne Neighborhood Assn. meeting. I think that pollution from cruise ships, whether the City can charge the cruise lines for taxes on drinks served in port, etc. are not just side issues, they are distracting and are turning into negatives for us. The only real issue--is using Union Pier, arguably the most valuable undeveloped waterfront parcel on the East Coast, for cruise ship docking/car parking the highest and best use of the land and is it a positive for the City of Charleston and the state. The answer to both is "no."

I think when people divide the issues and start arguing federal and state pollution rules, the type of coating the ships use on their hulls, we are not only causing the public's eyes to glaze over, we are over-reaching--it is unlikely that any resident believes that this is in our purview and many openly question the information (and whether it's true) that's being presented. It is all weakening the case for moving cruise ships out of Union Pier to a location farther north.

The British lost when they divided their forces (arguments) against Francis Marion, and we will continue to lose if we continue to divide our arguments this way--in my opinion. There's only one goal. Keeping cruise ships out of Union Pier--and we should focus only on that, nothing else.

One other thing. I don't believe the P&C people are on our side. I read the letters to the editor yesterday, and the one they printed took the opposite position of my letter. So while there may be a friend or two on the editorial board, the people working day-to-day in the newsroom don't seem to be "friendlies."

Again--these are just my opinions. Thanks for your response. --Jay

On Mar 17, 2011, at 8:38 AM, Katie Zimmerman wrote:

We expected there to be an answer like this. We are moving forward with our economic scenario study to show what using waterfront property for surface parking will do. We're not done yet ☺

Coastal Conservation League
P.O. Box 1765
Charleston, SC 29402
Ph 843-723-8035 x 1028
Fax 843-723-8308

008042

R.001754

CHARLESTOWNE NEIGHBORHOOD ASSOCIATION

BOARD MEETING – MAY 3, 2011

First (Scots) Presbyterian Church

Attending

Mary Cutler
Tootie Dawson
Rainey Evans
Steve Gates
Edward Hart
Melinda Laurens
Jeff Leath

Cornelia Pelzer
Randy Pelzer
Margot Rose
Ras Smith
Preston Wilson
Callie Witham

Absent

David McCormack
David Smythe

Vice President Mary Cutler called the May 3 meeting of the Charlestowne Neighborhood Association to order at 5:00 p.m.

She called for approval of the minutes of the April 12 meeting. The minutes were approved as written.

There was no treasurer's report at this time.

VP Cutler then moved on to committee reports:

CITY SERVICES: Melinda Laurens

Melinda shared with the Board the extension of "B" zoned parking as proposed by City of Charleston Traffic and Transportation Director, Robbie Somerville. Paving seems to be complete and she knows of no others scheduled for paving at the moment. There was much discussion regarding handicapped parking and "Xing" parking spots. Randy asked the question concerning whether we should adopt a formal position that the Board is not going to act on these request, make a statement or pass a resolution. Ras stated that he doesn't feel we should give up any leverage we have ever even if we don't give T&T an opinion. Melinda suggests we have Mr. Somerville attend a general meeting to explain the plan.

PARKS AND PLAYGROUNDS: Edward Hart

Edward reported that he has attended several meetings and he is happy to announce that October 16 will be the Hazel V. Parker family reunion and field day at the Playground. Activities for the entire family start at 12:30 p.m. He may come back to the Board for a contribution toward that event. Presently there is a plan to perhaps plant a tree in her honor. Rain date is following Sunday. Tennis Court and building work is still underway. He once again complimented the director, Chrystal Reed.

TAXES: David McCormack - No Report

001746

R.001756

BAR/BZA: Ras Smith

Ras stated that he is meeting with Craig Bennett to determine that status of 15 Orange Street. Jeff added what information he has gleaned concerning the property. All of this is for information only. The Board is not involved.

TOURISM: Mary Cutler

Mary reported that she had attended the Tourism Committee meeting which centered on the horses. Cathy Forester and her committee studied the situation for 3 years and came up with a good solution regarding the health and treatment of the carriage horses. Nothing was resolved. Carriages should not be on the streets now after 6 p.m.

Steve then reported on activities of the Cruise Task Force Committee of the Board. He stated that since our last meeting the P&C did an editorial stating that the Port and the City should rethink Union Pier. Four days later the Port put out their letter to the Mayor that, in essence, said thank you for your views (neighborhood associations) but the current plans will move forward. He assessed the letter as a step backward in any hope for cooperative action on the part of the Port. One of the things that is percolating around is litigation to slow this process down. Blan Holman (who spoke at our last general membership meeting) says there are a number of grounds showing cause for a challenge to some of the Port's actions. He has some clients and is looking for others who want to join the group. Steve thinks that Ansonborough will consider that at a future meeting. A movement to Columbia has started. Also the National Trust for Historic Preservation has been asked to become involved. The Mayor has talked to the head of the National Trust and lobbied against Charleston being considered endangered by cruise ships. A major question is why are other cities regulated and Charleston is not.

MEMBERSHIP: Tootie Dawson

We are at about the same membership as this time last year ... 590. An e-mail will go out soon to try to boost membership.

CRIME: Cornelia Pelzer

Everything is quiet. The next Chief's Advisory for the Team 2 (downtown Charleston) is Thursday, May 5 – 6:30 at the County Library – 2nd floor. Everyone is encouraged to attend.

*** TREASURER'S REPORT: Callie Witham. Callie reported income year to date at \$16,237.86, Total expenses: \$5,013.31 – Net: \$11,224.55. Balance in the bank: Checking: \$33,109.93 and in the CD: \$23,371.80 for total assets of \$56,531.73.

001747

R.001757

OLD BUSINESS:

Jeff Leath agreed to be the new board member to serve a 2 year term.

Margot discussed her progress on the Website. Estimate cost of \$900.00 for redesign and training. There is no monthly maintenance fee. A motion was made, seconded and approved to spend the \$900 for the website.

A postcard reminder of the meeting was sent out.

The CNA newsletter was discussed. It has been a while since one was published and all felt it a good tool for keeping the residents informed. Margot distributed a notification regarding the HCF's meeting Monday night immediately following CNA's General Membership meeting and asked for help in getting the word out to the general membership. After a short discussion regarding the membership list, David will talk with our list manager, Tom Uffleman, to determine what our options are.

NEW BUSINESS:

Mary presented the proposed redistricting for information.

Randy broached the subject of meeting location. He stated that he preferred meeting at Carriage Properties on Exchange Street in order to allow absent members to participate in discussions of the board by phone, and that under South Carolina law, directors are entitled to participate. Mary stated that she needed to wait for David's input. Randy stated that David doesn't have a say in this and made a motion that we move the meetings to Melinda's. If David wants to come back in next month and give a reason why we shouldn't move, he is welcome to do that. Rainey stated that she is in disagreement with a move to Melinda's. To constantly move the meeting location to accommodate directors who can't make the meeting is unreasonable. Melinda stated that she felt we should remain at the church unless we were informed of who could not make the meeting. The motion was seconded and passed.

Randy addressed the presentation by Tom Bradford at a recent meeting seeking support for a bicycle access across the Ashley River. Randy then made a motion that our organization approves the concept of a bicycle lane if the relevant transportation authorities determine it is a viable possibility over the Ashley River Bridge. The motion was seconded. After much discussion, Randy restated his motion as follows: He moved to endorse a study that will lead to a feasible bike route to the West Ashley Area. The motion was approved.

Next board will be held June 7th at 5:30 at First (Scots) unless whoever cannot make the meeting in person wants to teleconference. Cornelia stated it is hardship of those who have to drive because there is no parking. So David will be asked.

Randy then stated that he wanted to get a feel on the board about this lawsuit against the cruise terminal that Blan Holman mentioned in his presentation. Randy asked if anyone had any feelings they were ready to express. Ras stated that he'd like to hear from the lawyers. Jeff stated that he had talked to Blan and that there are two ways to go, noting that he and Blan differ. One way is a sub-

type of suite that would involve both the SPA and cruise lines, but he feels that the SPA has so many layers of defense through jurisdictional issues. The other way is a demand be made on the city to enforce its existing ordinances. He is convinced that the cruise industry can and should be regulated within the parameters of the existing law. And, once the city refuses to do that, file a suit to force the city to take some action. This may cause City Council to take action over the Mayor's objection. Ras asked what joining the lawsuit means. ... in terms of our financial obligation? Steve said he thought it would be done pro-bono by Southern Legal Environmental Foundation. The proposal is not to invest money, it to be one of the main thinkers. Edward stated that he gets a little squeamish when this board considers getting involved in a lawsuit. Steve explained that each area or group could bring different perspectives to such proceedings.

With no further business the meeting was adjourned.

Rainey Evans, Secretary

From: Pratt-Thomas, Harold [Harold.Pratt-Thomas@dhgllp.com]
Sent: Thursday, May 19, 2011 1:43 PM
To: Katie Zimmerman
Subject: RE: City Paper and Charleston Mercury talk cruise ships
What time and where is the event"

Harold Pratt-Thomas, Jr. | Partner
Dixon Hughes Goodman LLP

D 843.727.3201
T 843.722.6443
F 843.723.2647
525 East Bay Street, Suite 100, Charleston, SC 29403
dhgllp.com

cid:image001.jpg@01CBF515.C2A0D670

From: Katie Zimmerman [mailto:katiez@scccl.org]
Sent: Thursday, May 19, 2011 11:05 AM
To: Pratt-Thomas, Harold
Subject: RE: City Paper and Charleston Mercury talk cruise ships

We still must keep up the pressure and getting media hits, but we have been investigating claims.

Are you coming to our event on June 7th? That will be when we have the details sorted out like timeline, etc. From what I understand, we'll be moving quickly.

Coastal Conservation League
P.O. Box 1765
Charleston, SC 29402
Ph 843-723-8035 x 1028
Fax 843-723-8308
katiez@scccl.org

To learn more about Coastal Conservation League issues: www.coastalconservationleague.org

From: Pratt-Thomas, Harold [mailto:Harold.Pratt-Thomas@dhgllp.com]
Sent: Thursday, May 19, 2011 10:47 AM
To: Katie Zimmerman
Subject: RE: City Paper and Charleston Mercury talk cruise ships

I think the only road block that will slow the port down is a lawsuit.
Several people including Laura Gates have told me this is in the works.
Can you give me an update on time frame etc?
Thanks
Harold

Harold Pratt-Thomas, Jr. | Partner
Dixon Hughes Goodman LLP

004156

From: Dana Beach

Sent: Sunday, May 22, 2011 8:47 AM

To: 'cwagnew@bellsouth.net'; Michelle Sinkler; Katie Zimmerman; Kate Parks

Cc: 'cuz49@comcast.net'; 'jwillits@wrsrealty.com'; 'grantlaw@usa.com'; 'scwahoo@comcast.net'

Subject: Re: pollution study

This is absolutely true. The fuel they burn is almost the dirtiest available. As you probably know, the Carnival CEO has been outspoken about cleaner fuel standards being "the biggest threat to the industry." Cruise ships burn more than four times as much fuel at the dock as cargo ships, for obvious reasons. If we could put a nuisance suit together based on soot deposition it would be great.

Dana

From: Carrie Agnew <cwagnew@bellsouth.net>

To: Dana Beach; Michelle Sinkler; Katie Zimmerman; Kate Parks

Cc: Steve Hanson <cuz49@comcast.net>; Jeremy Willits <jwillits@wrsrealty.com>; Kirk Grant <grantlaw@usa.com>; Gil & Connie Baldwin <scwahoo@comcast.net>

Sent: Sun May 22 08:41:38 2011

Subject: FW: pollution study

Very interesting—and scary!

carrie-sig

From: Jay Williams [mailto:jwilliams@dmrinteractive.com]

Sent: Saturday, May 21, 2011 10:11 PM

To: Carrie Agnew

Subject: pollution study

You are correct in your email on all counts, Carrie.

A new study was just released--and it appears to be a cautionary study about health. I cannot attest to the merits of this study, only that it was just released last month by the University of Southern California (USC). It says that smog, air pollution caused by freeway traffic may be a cause of brain inflammation and Alzheimer's disease. We have already heard about other potential effects. This may be important as the cruise ships--and please remember that with an 1800 foot pier--two ships the size of the Carnival Fantasy (the ship that is based here in Charleston) could easily dock in Charleston at the same time. Although the SPA says this will not happen, they are unwilling to put this (or any other) "voluntary limit" in writing--so if this terminal gets built, it appears that they can do whatever they want. Why is this important?--

006832

B.001763

From: Dana Beach
Sent: Thursday, July 07, 2011 11:45 AM
To: 'Michele Smelter; Kate Parks; M. Higginbotham'; Kate Parks; M. Higginbotham
Subject: RE: Please take a look at this very rough first draft and let me know what you think

Great, Hugh. We'll have a great draft by then. It will be an interesting discussion because Ron will probably raise some of the things in this draft. Which is fine. We'll help work something out.
Dana

-----Original Message-----
From: Hugh C. Lane, Jr. <hlan@hlan.com>
To: Dana Beach; Michele Smelter; Kate Parks; M. Higginbotham; Kate Parks; M. Higginbotham; Kate Parks; M. Higginbotham
Sent: Thu Jul 07 11:50:53 2011
Subject: RE: Please take a look at this very rough first draft and let me know what you think.

I am meeting with Ron on Monday for 10:00. Hugh

-----Original Message-----
From: Dana Beach [mailto:Dana.Beach@hlan.com]
Sent: Thursday, July 07, 2011 10:59 AM
To: Michele Smelter; Kate Parks; M. Higginbotham; Hugh C. Lane, Jr.; Kate Zimmermann; Megan Desrochers
Cc: Dana Beach
Subject: Please take a look at this very rough first draft and let me know what you think.

Low-Bidder Plan
The cruise ship debate has degenerated into the political equivalent of a high school food fight. We would like to offer a perspective that we hope will advance real solutions instead of providing more ammunition to the entrenched combatants.

The SC State Ports Authority exists to promote industrial development in South Carolina. It has done this very effectively over the past half-century by facilitating water-borne freight movement. BMW and Boeing are two outstanding examples of businesses whose decisions to come to South Carolina were heavily influenced by the port's presence and its reputation for efficiency.

A combination of factors, many of which were out of control of the SPA, contributed to the recent decline in container movement through the port, and to the redundancy of Savannah as a competitor. The cruise business appears to be an opportunity to fill the revenue gap. However, we believe it is important to comprehensively examine the future of the port in all of its operations before moving forward with a long-term cruise commitment.

A wider Panama canal in 2014 could drastically change the status of all East Coast ports. It is likely that only three or four ports will benefit from larger "post-Panamax" ships. Charleston is on the short list. Charleston's advantages include terminals that are close to the ocean, a relatively deep harbor, and the port's efficiency in moving cargo from the ship to the terminal.

Disadvantages include multiple terminal sites, height constraints on the largest ships passing under the Ravenel bridge, and a lack of rail at some terminals.

Fortunately, these disadvantages are surmountable. But overcoming them will require long-term planning for future consolidation, a viable rail plan and funding for its implementation and, importantly, a careful analysis of the efficacy of eliminating Union Pier for freight use. Union Pier and the Charleston Street terminal are the only terminals that are not "height-limited" and can accommodate the largest ships. It would be short-sighted to convert Union Pier to non-height use, to fill a short-term revenue gap, when the terminal may represent an important asset in attracting post-Panamax business.

If a thorough evaluation does conclude that a cruise terminal is a reasonable use for the upper 37 acres of Union Pier, Charleston can, and should, lead the nation in integrating the cruise business into the city in the most productive way possible. One important innovation would be shore-side power, which allows ships to turn off their engines while they are at the dock. Other cities have adopted this technology and it is particularly important in Charleston because of the proximity of the terminal to neighborhoods and the Market.

Off-site parking with shuttle service to the cruise terminal would allow the SPA to eliminate the massive areas of surface parking and better utilize this extremely valuable property.

Residents have reasonably asked for assurances, beyond promises, that the cruise industry will not spiral out of control. Although we suspect the SPA is probably accurate about the market indicators for cruise visits, it would be appropriate to make a cap on the number of ship visits in the zoning and building approvals the terminal complex will require from the city.

Similarly, we are confident that Carnival and the other lines calling on Charleston are not discharging sewage and other waste closer than the twelve mile limit to which they have committed. For that reason, they will likely not object to signing an Memorandum of Agreement with the city memorializing that promise.

We believe the next steps will have to be a vote first by both sides. Low rail should be dropped in exchange for the SPA agreeing to put the cruise terminal on hold and conduct a long-term, comprehensive planning process.

The city and the SPA should agree that if the plan determines that cruise complex is the best use for the upper end of Union Pier, they will support a cap on visits and ship size, and deploy reasonable technology to control emissions.

This debate does not have to be adversarial. Everyone involved has legitimate interests and concern for the future of Charleston and South Carolina. The points that both sides have made are worthy of calm and thoughtful discussion.

Let's respectfully consider these points as we move toward a resolution. Lawsuits and name-calling are not the way to reach agreement on such an important and far-reaching question. NOTICE: The information contained in this email is legally privileged and confidential for the sole use of the intended recipient. Any use, distribution, transmission or re-transmission of information contained in this email by persons who are not intended recipients may be a violation of law and is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

006831

R.001765

From: Dana Beach
Sent: Monday, July 25, 2011 11:00 AM
To: Rick Reed; Katie Zimmerman
Subject: Re: Cruise

Unless the terminal is put on hold, any study, biased or not, is irrelevant.

On 7/25/11 9:29 AM, "Rick Reed" <fereed@bellsouth.net> wrote:

>How is the CHF "unbiased" review being structured? It would appear
>that any thing that comes out of it can be ignored just as SPA and
>Mayor have continued to do.

>I would like to push for the 2 sides to be called together by some
>higher authority (before the Courts become that entity). Who might
>that be - God?

>To that end I sent this and got this reply:

>Dear Rick,

>

>This is a most gracious and detailed letter. We print Tuesday a.m.

>and are full to the gills with copy. I'll see if there is any way
>possible to fit this, but I think the answer is no, but we can for Aug
>11.

>

>We will have a third in the series from Tom Robinson to run July 28.

>

>Again, many thanks.

>

>Charles

>

>Charles W. Waring III

>Publisher

>Charleston Mercury

>

>On Fri, Jul 22, 2011 at 5:28 PM, Rick Reed <fereed@bellsouth.net> wrote:

>> I would like to submit this LTE and commend the Mercury for
>>investigative reporting. Hope you will continue and possibly lead
>>this City to understand all the issues.

>>

>> The old proverb of blind men describing the elephant captures the
>>essence of the current Cruise debate. Recent op eds in the Post and
>>Courier only continue to carry the Cruise debate in circles while all
>>the participants should be circling the wagons around issues which

005255

R.001767

Fwd: Summer Doldrums????

From: Cruise Ship Standards/Controls <cruisestandards@gmail.com>
To: amy@scelp.org, Phyllis Nisoff <phyllis@scelp.org>
Subject: Fwd: Summer Doldrums????
Date: Tuesday, April 30, 2013 5:01 PM
Size: 10 KB

Charleston Communities for Cruise Control
PO Box 21022
Charleston, SC 29413
cruisestandards@gmail.com

For more information about C4, visit www.charlestoncruisecontrol.org

----- Forwarded message -----

From: **Cruise Ship Standards/Controls** <cruisestandards@gmail.com>
Date: Tue, Jul 3, 2012 at 6:22 PM
Subject: Summer Doldrums????
To: Cruise Controls <cruisestandards@gmail.com>

Well so much for summer doldrums!!!! July has kicked off with a new suit filed in Federal court combined with a front page cover story in the Post & Courier on the health impacts of soot from cruise ships and a separate article about our "Soot Away" flags!!

All can be found on the [home page](#) of the website....

Also please read our sixth and latest letter to Micky Arison, the CEO of Carnival Corp on the "[Letters with Carnival](#)" page. Dated June 6, copies with the enclosure were sent to Carnival Cruise Lines CEO, Gerry Cahill, Sir Robert Parker, the chair of their HESS (Health, Environment, Safety and Security) Committee, Jim Newsome, head of the South Carolina State Ports Authority, and Mayor Joe Riley.

To date, as with previous letters, no response has been received (other than returned receipt labels!).

It is important to note that our staying power, letters to the OCRM (Office of Ocean & Coastal Resource Management) regarding their duty to consider the long-term implications the pilings requested by the SPA would represent, and keeping the issue in the news are most likely several of the reasons that the SPA is well behind on the timetable it established for the new terminal.

So thank you all! Well-deserved and celebratory wishes for a happy Fourth of July!!

Best regards,

Carrie Agnew

Executive Director; C4

Charleston Communities for Cruise Control
PO Box 21022
Charleston, SC 29413
cruisestandards@gmail.com

For more information about C4, visit www.charlestoncruisecontrol.org

Fwd: Spring Tourists

From: Cruise Ship Standards/Controls <cruisestandards@gmail.com>
To: amy@scelp.org, Phyllis Nisoff <phyllis@scelp.org>
Subject: Fwd: Spring Tourists
Date: Tuesday, April 30, 2013 5:35 PM
Size: 50 KB

Charleston Communities for Cruise Control
PO Box 21022
Charleston, SC 29413
cruisestandards@gmail.com

For more information about C4, visit www.charlestoncruisecontrol.org

----- Forwarded message -----

From: **Cruise Ship Standards/Controls** <cruisestandards@gmail.com>
Date: Sat, Apr 13, 2013 at 10:35 AM
Subject: Spring Tourists
To: Cruise Controls <cruisestandards@gmail.com>

No "breaking news" this time.....but we have helped slow down the process and this is having an impact!! And Carnival is certainly having enough problems to have the SPA scrambling.....probably already looking for a replacement cruise line??

Two Important Things:

- MANY thanks to the brilliant anonymous person who printed out an explanation sheet and attached it to an eye-level flag!! Literally stops people midstride! I have taken the liberty of reworking it a bit and attached it to this email for anyone who would like to post it, regardless of where your flag is (or even if you don't have one). Suggest putting it in a plastic sleeve so it can withstand rain.....

With the tourist season upon us in full, it is great to really let people know what we are about!

- C4 is in dire need of a volunteer to help us update the website....requires an half hour or so a week (some weeks nothing) to post news/articles. Our previous web guru has moved on to a fulltime job and no longer is able to assist us, so we are unable to update on a timely basis. So until further notice, please watch our Facebook page (Don't Leave Charleston in Your Wake) or mine (Carrie Agnew) **001509**

Fwd: Update 5.5.13

From: Amy Armstrong <amy@scelp.org>
To: Phyllis Nisoff <phyllis@scelp.org>
Date: Sun, 5 May 2013 6:57 PM

Please add to the C4 documents that we are producing.

----- Original message -----

From: "Cruise Ship Standards/Controls" <cruisestandards@gmail.com>
To: Cruise Controls <cruisestandards@gmail.com>
Subject: Update 5.5.13
Date: Sun, 5 May 2013 16:28:53 -0400

Keeping it short and simple.....

LITIGATION

No news on the various lawsuit fronts... the terminal is stalled by the litigation. We are doing a great job and just need to "keep on keeping on!"

FLAGS

For those of you who have had their flag stolen: Take it as a compliment?!? There are still some at the Preservation Society Store on King Street and we will be ordering more this week, so please swing by there to pick up a new flag or get additional ones—Spoleto is approaching and a wonderful time to make our concerns noticed by tourists who actually care about/spend time in our City.

The \$25 contribution for a flag is requested, not required....especially if yours was stolen. That said, they cost us close to double to have produced so all donations are, as always, gratefully appreciated!!

OTHER NEWS

Several of us spoke last week at the Charleston Kiwanis Club meeting. Yes, we encountered the "NIMBY" (Not In My Backyard) question, but the overwhelming consensus was one of support and thanks for our efforts.

Please help us help our cause and enter Spoleto with flags flying, knowing that we have already made tremendous strides!!

Best,

Carrie
Executive Director; C4
Charleston Communities for Cruise Control
PO Box 21022
Charleston, SC 29413

001511