(5)

21943

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge

Appellant Case No. 2014-000847

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

vs.

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

RECORD ON APPEAL
VOLUME V OF VII

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APR 14 2015

Part III **Grants and Other Assistance to Individuals in the United States.** Complete if the organization answered "Yes" to Form 990, Part IV, line 22. Use Schedule I-1 (Form 990) if additional space is needed.

(a)Type of grant or assistance	(b)Number of recipients	(c)Amount of cash grant	(d)Amount of non-cash assistance	(e)Method of valuation (book, FMV, appraisal, other)	(f)Description of non-cash assistance

Part IV **Supplemental Information.** Complete this part to provide the information required in Part I, line 2, and any other additional information.

Identifier	Return Reference	Explanation

Additional Data

Return to Form

Software ID:
Software Version:
EIN: 57-0887278
Name: SOUTH CAROLINA COASTAL CONSERVATION LEAGUE INC

Form 990,Schedule I, Part II, Grants and Other Assistance to Governments and Organizations in the United States

(a) Name and address of organization or government	(b) EIN	(c) IRC Code section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
CONSERVATION VOTERS OF SOUTH CAROLINA701 WHALEY STREET STE 207 COLUMBIA,SC 29201	87-0792700	501C3	5,000		BOOK		GENERAL SUPPORT
CENTER FOR HUMANS AND NATURE NFP20 N WACKER DRIVE STE 1422 CHICAGO,IL 60606	43-1978884	501C3	200		BOOK		GENERAL SUPPORT

Form 990,Schedule I, Part II, Grants and Other Assistance to Governments and Organizations in the United States

(a) Name and address of organization or government	(b) EIN	(c) IRC Code section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
COMMITTEE ON BETTER RACIAL ASSURANCE HUMAN SERVICES AGENCY PO BOX 71473 N CHARLESTON,SC 29415	57-0523813	501C3	5,000		BOOK		GENERAL SUPPORT
GULLAHGEECHEE SEA ISLAND COALITIONPO BOX 1207 ST HELENA ISLAND, SC 29920			350		BOOK		GENERAL SUPPORT

Form 990,Schedule I, Part II, Grants and Other Assistance to Governments and Organizations in the United States

(a) Name and address of organization or government	(b) EIN	(c) IRC Code section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
MEPKIN ABBEY CATHOLIC CONFERENCE1098 MEPKIN ABBEY ROAD MONCKS CORNER, SC 29461	57-0416728		100		BOOK		GENERAL SUPPORT
SOUTH CAROLINA POLICY COUNCIL EDUCATION FOUNDATION1323 PENDLETON ST COLUMBIA,SC 29201	57-0835744	501C3	100		BOOK		GENERAL SUPPORT

Form 990,Schedule I, Part II, Grants and Other Assistance to Governments and Organizations in the United States

(a) Name and address of organization or government	(b) EIN	(c) IRC Code section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
SOUTH CAROLINA WILDLIFE FEDERATION215 PICKENS ST COLUMBIA,SC 29205	57-0602549	501C3	1,000		BOOK		GENERAL SUPPORT
THE LAND INSTITUTE2440 EAST WATER WELL ROAD SALINA,KS 67401	48-0842156	501C3	350		BOOK		GENERAL SUPPORT

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Schedule J (Form 990)

Department of the Treasury
Internal Revenue Service

Compensation Information

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees
▶ Complete if the organization answered "Yes" to Form 990, Part IV, question 23.
▶ Attach to Form 990. ▶ See separate instructions.

OMB No 1545-0047

2011

Open to Public Inspection

Name of the organization
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE INC

Employer identification number
57-0887278

Part I Questions Regarding Compensation

			Yes	No
1a	Check the appropiate box(es) if the organization provided any of the following to or for a person listed in Form 990, Part VII, Section A, line 1a Complete Part III to provide any relevant information regarding these items ☐ First-class or charter travel ☐ Housing allowance or residence for personal use ☐ Travel for companions ☐ Payments for business use of personal residence ☐ Tax idemnification and gross-up payments ☐ Health or social club dues or initiation fees ☐ Discretionary spending account ☐ Personal services (e g , maid, chauffeur, chef)			
b	If any of the boxes in line 1a are checked, did the organization follow a written policy regarding payment or reimbursement orprovision of all the expenses described above? If "No," complete Part III to explain	1b		
2	Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all officers, directors, trustees, and the CEO/Executive Director, regarding the items checked in line 1a?	2	Yes	
3	Indicate which, if any, of the following the organization uses to establish the compensation of the organization's CEO/Executive Director Check all that apply ☐ Compensation committee ☐ Written employment contract ☐ Independent compensation consultant ☐ Compensation survey or study ☐ Form 990 of other organizations ☑ Approval by the board or compensation committee			
4	During the year, did any person listed in Form 990, Part VII, Section A, line 1a with respect to the filing organization or a related organization			
a	Receive a severance payment or change-of-control payment?	4a		No
b	Participate in, or receive payment from, a supplemental nonqualified retirement plan?	4b		No
c	Participate in, or receive payment from, an equity-based compensation arrangement?	4c		No
	If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III			
	Only 501(c)(3) and 501(c)(4) organizations only must complete lines 5-9.			
5	For persons listed in form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of			
a	The organization?	5a		No
b	Any related organization?	5b		No
	If "Yes," to line 5a or 5b, describe in Part III			
6	For persons listed in form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of			
a	The organization?	6a		No
b	Any related organization?	6b		No
	If "Yes," to line 6a or 6b, describe in Part III			
7	For persons listed in Form 990, Part VII, Section A, line 1a, did the organization provide any non-fixed payments not described in lines 5 and 6? If "Yes," describe in Part III	7		No
8	Were any amounts reported in Form 990, Part VII, paid or accured pursuant to a contract that was subject to the initial contract exception described in Regs section 53 4958-4(a)(3)? If "Yes," describe in Part III	8		No
9	If "Yes" to line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53 4958-6(c)?	9		

R.002006

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use Schedule J-1 if additional space needed.

For each individual whose compensation must be reported in Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions on row (ii) Do not list any individuals that are not listed on Form 990, Part VII

Note. The sum of columns (B)(i)-(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, columns (D) and (E) for that individual

(A) Name		(B) Breakdown of W-2 and/or 1099-MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable, benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation reported in prior Form 990 or Form 990-EZ
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
(1) DANA BEACH	(i)	140,200	0	0	6,272	20,527	166,999	0
	(ii)	0	0	0	0	0	0	0

Part III Supplemental Information

Complete this part to provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 4c, 5a, 5b, 6a, 6b, 7, and 8 Also complete this part for any additional information

Identifier	Return Reference	Explanation

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Schedule L (Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Transactions with Interested Persons

▶ Complete if the organization answered "Yes" on Form 990, Part IV, lines 25a, 25b, 26, 27, 28a, 28b, or 28c, or Form 990-EZ, Part V lines 38a or 40b.

▶ Attach to Form 990 or Form 990-EZ. ▶See separate instructions.

OMB No 1545-0047

2011

Open to Public Inspection

Name of the organization
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE INC

Employer identification number
57-0887278

Part I Excess Benefit Transactions (section 501(c)(3) and section 501 (c)(4) organizations only).

Complete if the organization answered "Yes" on Form 990, Part IV, line 25a or 25b, or Form 990-EZ, Part V, line 40b

1 (a) Name of disqualified person	(b) Description of transaction	(c) Corrected? Yes	(c) Corrected? No

2 Enter the amount of tax imposed on the organization managers or disqualified persons during the year under section 4958 . . . . . ▶ $

3 Enter the amount of tax, if any, on line 2, above, reimbursed by the organization . . . . . ▶ $

Part II Loans to and/or From Interested Persons.

Complete if the organization answered "Yes" on Form 990, Part IV, line 26, or Form 990-EZ, Part V, line 38a

(a) Name of interested person and purpose	(b) Loan to or from the organization? To	(b) From	(c) Original principal amount	(d) Balance due	(e) In default? Yes	(e) No	(f) Approved by board or committee? Yes	(f) No	(g) Written agreement? Yes	(g) No
Total . . . . . ▶ $										

Part III Grants or Assistance Benefitting Interested Persons.

Complete if the organization answered "Yes" on Form 990, Part IV, line 27.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of grant or type of assistance

Part IV Business Transactions Involving Interested Persons.
Complete if the organization answered "Yes" on Form 990, Part IV, line 28a, 28b, or 28c.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of transaction	(d) Description of transaction	(e) Sharing of organization's revenues?	
				Yes	No
(1) VIRGINIA C BEACH	OFFICER SPOUSE	17,790	NEWSLETTER		No
(2) KATHERINE HASTIE	BOARD MEMBER	1,000	RENT		No

Part V Supplemental Information
Complete this part to provide additional information for responses to questions on Schedule L (see instructions)

Identifier	Return Reference	Explanation

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SCHEDULE M (Form 990)

Department of the Treasury
Internal Revenue Service

NonCash Contributions

▸Complete if the organization answered "Yes" on Form 990, Part IV, lines 29 or 30.
▸ Attach to Form 990.

OMB No 1545-0047

2011

Open to Public Inspection

Name of the organization
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE INC

Employer identification number
57-0887278

Part I Types of Property

		(a) Check if applicable	(b) Number of Contributions or items contributed	(c) Contribution amounts reported on Form 990, Part VIII, line 1g	(d) Method of determining contribution amounts
1	Art—Works of art				
2	Art—Historical treasures				
3	Art—Fractional interests				
4	Books and publications				
5	Clothing and household goods				
6	Cars and other vehicles				
7	Boats and planes				
8	Intellectual property				
9	Securities—Publicly traded	X	1	36,318	FAIR MARKET VALUE
10	Securities—Closely held stock				
11	Securities—Partnership, LLC, or trust interests				
12	Securities—Miscellaneous				
13	Qualified conservation contribution—Historic structures				
14	Qualified conservation contribution—Other				
15	Real estate—Residential				
16	Real estate—Commercial				
17	Real estate—Other				
18	Collectibles				
19	Food inventory				
20	Drugs and medical supplies				
21	Taxidermy				
22	Historical artifacts				
23	Scientific specimens				
24	Archeological artifacts				
25	Other ▸ (_____)				
26	Other ▸ (_____)				
27	Other ▸ (_____)				
28	Other ▸ (_____)				

29 Number of Forms 8283 received by the organization during the tax year for contributions for which the organization completed Form 8283, Part IV, Donee Acknowledgement . . . 29

			Yes	No
30a	During the year, did the organization receive by contribution any property reported in Part I, lines 1-28 that it must hold for at least three years from the date of the initial contribution, and which is not required to be used for exempt purposes for the entire holding period?	30a		No
b	If "Yes," describe the arrangement in Part II			
31	Does the organization have a gift acceptance policy that requires the review of any non-standard contributions?	31	Yes	
32a	Does the organization hire or use third parties or related organizations to solicit, process, or sell non-cash contributions?	32a		No
b	If "Yes," describe in Part II			
33	If the organization did not report revenues in column (c) for a type of property for which column (a) is checked, describe in Part II			

R.002011

Part II

Supplemental Information. Complete this part to provide the information required by Part I, lines 30b, 32b, and 33. Also complete this part for any additional information.

Identifier	Return Reference	Explanation

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SCHEDULE O
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on Form 990 or to provide any additional information.
▶ Attach to Form 990 or 990-EZ.

OMB No 1545-0047

2011

Open to Public Inspection

Name of the organization
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE INC

Employer identification number
57-0887278

Identifier	Return Reference	Explanation
	FORM 990, PART VI, SECTION B, LINE 11	A COPY OF THE FORM 990 WAS PROVIDED TO ALL BOARD MEMBERS PRIOR TO FILING, THEY WERE GIVEN ONE WEEK IN WHICH TO PRESENT QUESTIONS AND/OR COMMENTS ABOUT THE FORM
	FORM 990, PART VI, SECTION B, LINE 12C	THE CONFLICT POLICY IS REVIEWED ANNUALLY AND BOARD MEMBERS MUST DISCLOSE ANY POTENTIAL CONFLICTS AS THEY ARISE
	FORM 990, PART VI, SECTION B, LINE 15	THE BOARD OF DIRECTORS APPROVES THE SALARY OF THE EXECUTIVE DIRECTOR DURING THE BUDGETING PROCESS OTHER EMPLOYEE SALARIES ARE REVIEWED BY MEMBERS OF THE BOARD OF DIRECTORS INDIRECTLY THROUGH THE BUDGETING PROCESS
	FORM 990, PART VI, SECTION C, LINE 19	THE ORGANIZATION PROVIDES THESE DOCUMENTS UPON REQUEST VIA THEIR ADMINISTRATIVE OFFICES, THE SECRETARY OF STATE'S OFFICE, CHARITY NAVIGATOR, AND WWW GUIDESTAR ORG
CHANGES IN NET ASSETS OR FUND BALANCES	FORM 990, PART XI, LINE 5	NET UNREALIZED LOSSES ON INVESTMENTS -425,111

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SCHEDULE R (Form 990)

Department of the Treasury
Internal Revenue Service

Related Organizations and Unrelated Partnerships

▶ Complete if the organization answered "Yes" to Form 990, Part IV, line 33, 34, 35, 36, or 37.
▶ Attach to Form 990. ▶ See separate instructions.

OMB No 1545-0047

2011

Open to Public Inspection

Name of the organization
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE INC

Employer identification number
57-0887278

Part I Identification of Disregarded Entities (Complete if the organization answered "Yes" on Form 990, Part IV, line 33.)

(a) Name, address, and EIN of disregarded entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Total income	(e) End-of-year assets	(f) Direct controlling entity
(1) CCL REALTY LLC 328 EAST BAY STREET CHARLESTON, SC 29401	DISTRIBUTION OF LOCALLY GROWN AGRICULTURE	SC	169,215	928,288	

Part II Identification of Related Tax-Exempt Organizations (Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related tax-exempt organizations during the tax year.)

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Exempt Code section	(e) Public charity status (if section 501(c)(3))	(f) Direct controlling entity	(g) Section 512(b)(13) controlled organization	
						Yes	No

R 002014

Part III **Identification of Related Organizations Taxable as a Partnership** (Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related organizations treated as a partnership during the tax year.)

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Predominant income (related, unrelated, excluded from tax under sections 512-514)	(f) Share of total income	(g) Share of end-of-year assets	(h) Disproportionate allocations? Yes	(h) No	(i) Code V—UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner? Yes	(j) No	(k) Percentage ownership

Part IV **Identification of Related Organizations Taxable as a Corporation or Trust** (Complete if the organization answered "Yes" on Form 990, Part IV, line 34 because it had one or more related organizations treated as a corporation or trust during the tax year.)

(a) Name, address, and EIN of related organization	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Direct controlling entity	(e) Type of entity (C corp, S corp, or trust)	(f) Share of total income	(g) Share of end-of-year assets	(h) Percentage ownership

Part V Transactions With Related Organizations (Complete if the organization answered "Yes" on Form 990, Part IV, line 34, 35, 35A, or 36.)

Note. Complete line 1 if any entity is listed in Parts II, III or IV

		Yes	No
1	During the tax year, did the orgranization engage in any of the following transactions with one or more related organizations listed in Parts II-IV?		
a	Receipt of **(i)** interest **(ii)** annuities **(iii)** royalties **(iv)** rent from a controlled entity	1a	
b	Gift, grant, or capital contribution to related organization(s)	1b	
c	Gift, grant, or capital contribution from related organization(s)	1c	
d	Loans or loan guarantees to or for related organization(s)	1d	
e	Loans or loan guarantees by related organization(s)	1e	
f	Sale of assets to related organization(s)	1f	
g	Purchase of assets from related organization(s)	1g	
h	Exchange of assets with related organization(s)	1h	
i	Lease of facilities, equipment, or other assets to related organization(s)	1i	
j	Lease of facilities, equipment, or other assets from related organization(s)	1j	
k	Performance of services or membership or fundraising solicitations for related organization(s)	1k	
l	Performance of services or membership or fundraising solicitations by related organization(s)	1l	
m	Sharing of facilities, equipment, mailing lists, or other assets with related organization(s)	1m	
n	Sharing of paid employees with related organization(s)	1n	
o	Reimbursement paid to related organization(s) for expenses	1o	
p	Reimbursement paid by related organization(s) for expenses	1p	
q	Other transfer of cash or property to related organization(s)	1q	
r	Other transfer of cash or property from related organization(s)	1r	

2 If the answer to any of the above is "Yes," see the instructions for information on who must complete this line, including covered relationships and transaction thresholds

	(a) Name of other organization	(b) Transaction type(a-r)	(c) Amount involved	(d) Method of determining amount involved
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

R 002016

Part VI **Unrelated Organizations Taxable as a Partnership** (Complete if the organization answered "Yes" on Form 990, Part IV, line 37.)

Provide the following information for each entity taxed as a partnership through which the organization conducted more than five percent of its activities (measured by total assets or gross revenue) that was not a related organization See instructions regarding exclusion for certain investment partnerships

(a) Name, address, and EIN of entity	(b) Primary activity	(c) Legal domicile (state or foreign country)	(d) Predominant income(related, unrelated, excluded from tax under sections 512-514)	(e) Are all partners section 501(c)(3) organizations?		(f) Share of total income	(g) Share of end-of-year assets	(h) Disproportionate allocations?		(i) Code V—UBI amount in box 20 of Schedule K-1 (Form 1065)	(j) General or managing partner?		(k) Percentage ownership
				Yes	No			Yes	No		Yes	No	

Schedule R (Form 990) 2011

Part VII Supplemental Information

Complete this part to provide additional information for responses to questions on Schedule R (see instructions)

Identifier	Return Reference	Explanation	

Exhibit 64

THE MARITIME ASSOCIATION

South Carolina

Open Letter in Response to Coastal Conservation League Solicitation

January 2013

Please accept this as a formal response to the Coastal Conservation League's (CCL) solicitation letter to me dated December 31, 2012. As President of the Maritime Association of SC I welcome this opportunity to explain why I will **NOT** be contributing to your anti-cruise campaign.

While the CCL appeal lauds the amount of exposure given to efforts to thwart cruise operations in Charleston, the truth is a tremendous amount of what the CCL has presented is at best only part of the story and at worst a blatant disregard of the facts. This issue is deserving of more than hyperbole.

Here's the **real** story. The State Ports Authority (SPA) and the City of Charleston agreed to a voluntary cruise management plan that limits the number of cruise ships to no more than 104 per calendar year and the new terminal will not host more than one arrival at a time. There will be widespread written notification one-year prior to any material change of the Voluntary Cruise Management Plan, with a community forum, public hearings, and a report to the Mayor and City Council. The new facility will be designed to accommodate ships consistent with the size and profile that have called on Charleston in the past. Statutorily limiting growth would be an absurd business decision and is an absolutely ridiculous demand on the part of the CCL. If that were done what would stop CCL from waging a campaign to limit the number of containers or BMW's that pass through our port?

CCL also references shore-side power in its appeal. Shore side power is being presented as a simple process—like running an extension cord out on the dock and plugging the ship in. Reality check. Presently there are only 14 vessels in the entire cruise fleet capable of using shore side power—none of which call on Charleston. CCL's trumpeting of shore power aims to eliminate cruises from Charleston. The cities cited by CCL with shore-side power are generally located in air quality challenged areas and have multiple berths and multiple daily arrivals—the very scenario CCL is fighting! As cruise opponents like to point out, "it's all about scale."

Shore side power is expensive. Engineering estimates are $5.6 million for establishing the on-terminal capacity while retrofitting a ship for shore side power is $1-2 million. From a technical standpoint, additional off-site electrical capacity improvements such as substations and power lines would be required – a venture that has its own negative environmental impact that is conveniently ignored by CCL (of course, that would be felt outside of the downtown area in someone else's backyard). In Charleston, shore-side power is an expensive solution looking for a problem.

The good news is the **objective** of shore side power is fewer emissions, which cleaner fuel accomplishes. New fuel standards now being implemented will reduce the amount of sulfur content in fuels used by these ships to .01% by 2015. Coupled with drastically reduced ship calls and less truck traffic at Union Pier, **overall emissions at the new cruise terminal** when compared to 2010 (when it was used for both cruise and cargo) **will be reduced 70-75%.**

No one has more at stake than those of us who have spent many years working on and around the docks. In my case I spent thirty-plus years working on the waterfront with Customs and Border Protection (CBP) at locations all along the east coast – retiring as Port Director here in Charleston in 2008. We are much more likely to be affected than others who are periodically exposed at some distance. Yet, as I pointed out in a previous editorial, **32 years worth of data from the preventive health care service provider to Charleston's dockworkers shows no trends or pockets of abnormalities among said workers that is indicative of airborne or chemical exposures**. Put into context with all the other emission causing threats present daily in every city in the world (even those that are not seaports) "the sky is falling" proclamations are not credible.

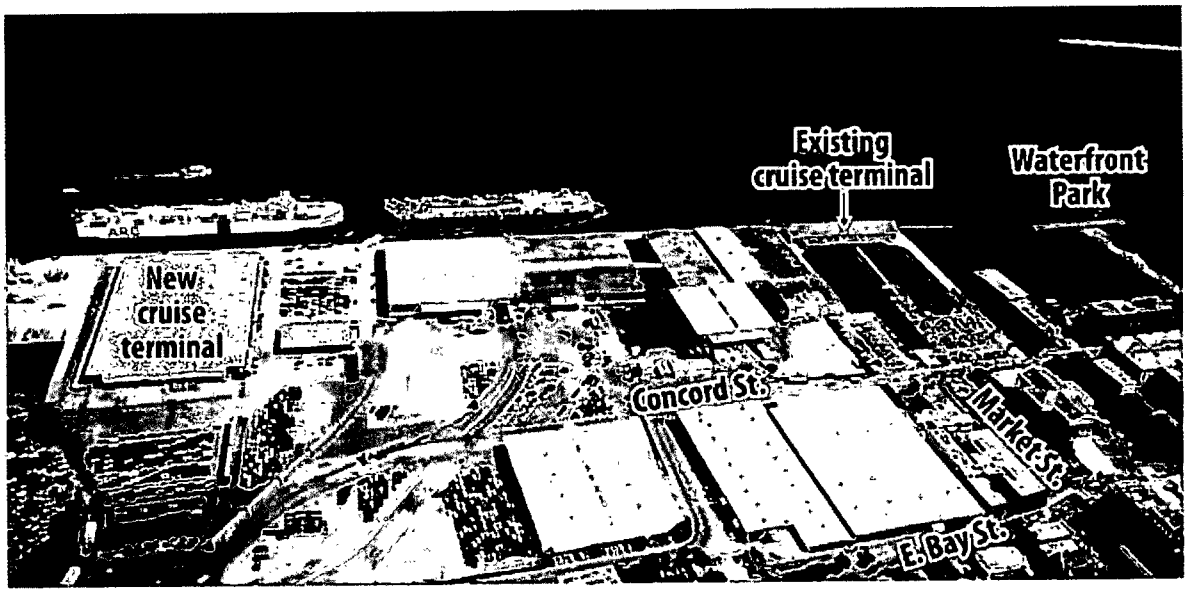
Exhibit 65

The Post and Courier

Charleston cruise-ship opponents seize opportunity to battle new passenger terminal

By David Slade
dslade@postandcourier.com

Posted: Thursday, April 19, 2012 12:30 a.m.



File/Staff This undated photograph, taken before cargo operations were moved from Union Pier in 2011, show the location of the current and proposed cruise ship passenger terminals Buy this photo

Opponents of Charleston's cruise-ship industry believe the State Ports Authority's need for a permit to build a $35 million passenger terminal presents an opportunity to stop the plan.

About 200 people, with a clear majority opposed to the new terminal, turned out Wednesday night for a hearing in North Charleston on the Office of Ocean and Coastal Resource Management permit.

The permit would allow the SPA to install five additional pilings under Union Pier on the Cooper River. The pilings would support

elevators and escalators that would be installed in an existing warehouse slated for conversion to the new passenger terminal.

Cruise opponents said the state must consider every impact cruise ships are having in Charleston before deciding on the pilings permit.

"Simply put, if this project goes through, it could mean the end of the Ansonborough neighborhood and many others," said Kathleen Summerall, a neighborhood resident.

Several downtown neighborhood associations have joined with environmental, health and preservation groups to oppose the cruise terminal and call for limits on the existing cruise business. A lawsuit is pending before the state Supreme Court.

Cruise terminal supporters, including Mayor Joe Riley and a number of people with port-related jobs and businesses, spoke in favor of the plan. Existing cruise-ship operations would move from the south end of union pier, near Market Street, to the north end, near Laurens Street.

"It is the same business, the same cruise activity, that is currently going on in Charleston," Riley said.

He said the plan has the "overwhelming support" of most residents, would reduce the current impact of the cruise business, and would open 35 acres of SPA property to beneficial redevelopment.

Opponents say cruise ships pollute the air as they run their engines while in port, disturb city residents with their horns and passenger announcements, and cause traffic problems when thousands of passengers arrive and depart by car.

Coastal Conservation League Director Dana Beach said having a cruise ship in port is like putting a dirty power plant on the edge of a residential neighborhood.

"This thing is not about five pilings," he said. "It's about the broader impacts of the terminal project."

The new passenger terminal would be far larger than the current one, which Beach and other opponents fear could lead to more and larger cruise ships. The city and SPA have agreed to cap cruise-ship visits at an average of two per week, and 84 are planned this year.

SPA President and CEO Jim Newsome did not speak at the OCRM permit hearing, but in comments after an SPA board meeting Tuesday, he said his pledges about the cruise business can be relied upon.

"I'm not going to be made a liar over something that accounts for five percent of our business," he said.

The Ansonborough and Charlestowne neighborhood associations want the new passenger terminal relocated, possibly to the SPA's Columbus Street terminal outside the downtown area. Newsome and other SPA officials have said that idea's a non-starter, partially because Columbus Street is busy and growing port used to ship BMW vehicles and other non-container cargo.

Port worker James Pinkney Jr., vice president of the dockworker's union, said the project should move forward. He said opponents are hypocritical, because when he was growing up in an Ansonborough housing project, he heard no objections to projects that environmentally harmed the area.

Downtown resident Courtenay McDowell said cruise-ship operations have approached a tipping point in the livability of the area.

"I speak of what's happening today in fear of what will happen tomorrow, with more cruise ships," she said.

There is no deadline for a decision on the permit from the Office of Ocean and Coastal Resource Management.

Reach David Slade at 937-5552 or Twitter @DSladeNews.

Exhibit 66

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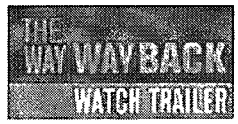

April 19, 2011

Historic City at Odds With Its Popularity as Cruise Port

By KEITH SCHNEIDER

CHARLESTON, S.C. — A plan to open a new cruise ship terminal next year has ignited a debate over the future of this historic city. Supporters of the project, including Mayor Joseph P. Riley Jr., say it will help open up an underused stretch of waterfront to public and private development. Opponents, among them preservation groups, downtown homeowners and real estate agents, counter that a huge influx of new visitors would overwhelm the city's cultivated charm and hurt home values.

Last month, a $2.4 million contract to design the new terminal, which will cost $25 million, was awarded to a Colorado company, CH2M Hill. The company plans to convert an empty 100,000-square-foot steel warehouse at the north end of the 67-acre Union Pier complex to replace the existing 18,000-square-foot cinder block terminal, built in 1973, at the south end.

The terminal is seen as an essential step in what the South Carolina State Ports Authority, the project's developer, says will be a much larger demolition and mixed-use development project that will divide the Union Pier complex in two. Twenty-two acres at the north end is reserved for the terminal and parking for cruise ship passengers. Some eight acres of pilings and concrete deck would be removed. And 35 acres of shoreline property with exquisite views of the harbor will be made available for private development.

"Our vision is to extend the city grid to the waterfront," said Mayor Riley, a 68-year-old Democrat first elected in 1975. "There will be a combination of public spaces, waterfront access, residential and commercial development. We have the conceptual plan. It's the starting point for a new part of Charleston that begins along the water's edge, and from there mixes uses in a low-rise 18th- and 19th-century-scale city."

Opponents say their concerns center on what the new terminal is supposed to achieve: enhancing Charleston's growing reputation as a destination and a home port for cruise ships. This year the port expects 175,000 passengers from 90 cruises, up from 69 cruises and 111,000 passengers in 2010.

The critics, among them the Preservation Society of Charleston; the Historic Charleston Foundation; and some of the city's most prominent real estate agents, hotel owners and downtown

homeowners, say the growing number of cruise passengers could hurt residential real estate sales, run roughshod over the city's historic charm and character, and detract from the new shoreline development.

"The prescription for a high-quality destination does not include being overrun with cruise ships," said P. Steven Dopp, the president of the Portwood Properties Corporation, the principal owner of the 12-story, 87-year-old Francis Marion Hotel, one of Charleston's grandest. "The scale of the ships and the number of people dumped on the street — it's not what Charleston was or wants to be."

Dana Beach, the executive director of the Coastal Conservation League, said: "Union Pier is some of the most valuable real estate in the South. Using almost half for a terminal and surface parking for passengers is absurd."

The debate over the port's plan reflects the vigilance that Charlestonians exhibit over development projects big and small. In the 1980s, in a similarly heated struggle, preservationists and city officials tussled over the height of Charleston Place, a 441-room hotel at the center of the historic area. The hotel was opened in 1986 with eight stories, six fewer than the 14 initially proposed.

The debate over preservation aside, Charleston has fared better than most during the downturn. The marine terminal is one of three active public sector projects intended to strengthen the tourism industry, valued by the city at $3 billion annually.

Just north and west of Union Pier, the Gaillard Municipal Auditorium, a theater and exhibition center built in 1968, awaits a $142 million renovation and expansion. The 2,726-seat auditorium will lose 900 seats and the roof will be raised to incorporate boxes and three levels of balcony. The 119,000-square foot building will expand to 261,000 square feet. The project includes constructing a 84,000-square-foot addition to house city offices and staff. The city is financing half of the construction; the other half is being raised privately, led by a $20 million gift from a donor who has asked to remain anonymous.

Seven blocks south, the Charleston City Market, which dates to the early 19th century, is undergoing a $5 million renovation that is close to completion. The market, owned by the city, is leased and managed by City Market Preservation Trust. Hank Holliday, one of three principals, who also operates three hotels and several restaurants in the market area, said the company undertook the publicly financed renovation "in self defense." The four brick buildings, three of them open-air, had deteriorated significantly enough that they had the potential to affect property values, he said.

The renovation, which has taken two years, involved a painstaking process of local review that accompanies every development in Charleston's historic district. That strengthened the restoration project, said Mr. Holliday, who also opposes the growing cruise ship business in Charleston and

worries about its influence on the historic district, which includes the market.

He said increasing the number of cruise ships and passengers had the potential to discourage local residents from visiting downtown restaurants, living in the historic homes and shopping in Charleston's distinctive stores.

"I'm not aware of any city that had its quality of life or environment enhanced by the presence of cruise ships," he said.

That sentiment, though, is not widely shared by the vendors and sales staff in shops in the area around the market. "We do get people who come through and get on a cruise and then come back because they find Charleston irresistible," said Ann Spann, the sales coordinator for the Birds I View Gallery, two blocks from the market. "It's wonderful to have the ships here. It's not hurting Charleston, I can tell you that."

Debates over the effects of the cruise industry on Charleston's character have flared occasionally since 1973, when the existing terminal opened, as the number of dockings increased, then ebbed as cruise numbers declined.

The discord reached a new level of intensity in September 2009 when the Carnival Corporation announced that Union Pier would be the home port for the 855-foot, 2,056-passenger Carnival Fantasy, which arrived in May 2010 for its initial five-, six-, and seven-day home port cruises to Key West, Fla., and the Bahamas.

By then, the State Ports Authority and its new president and chief executive, James Newsome III, had already begun an intensive $1.3 million planning process, involving dozens of meetings with community groups, to replace the old passenger terminal and consider new uses for Union Pier.

Last September, the Charleston City Council unanimously approved the port's proposal to establish the terminal at the north end of Union Pier and turn the south end into a new residential neighborhood. In addition, Mr. Newsome reached an informal agreement with Mayor Riley to limit voluntarily the number of ships calling on the port to 104 annually.

Mr. Dopp and other critics of the cruise industry said many of their fears would vanish if the verbal agreement were put in writing.

Also, The Post and Courier, the city's newspaper, published an editorial on Sunday, the third in as many months, that urged the city to respond to what it said was growing public concern about cruise ship operations and the location of the new marine terminal.

"Instead of shrugging their shoulders and professing to have no authority in the matter, city officials should look for ways to protect the peninsula from potential erosion of its quality of life," said the newspaper.

Mr. Riley said a formal limit on cruise ships was unnecessary because cruise ship passengers made up less than 4 percent of the city's 4.5 million annual visitors.

Mr. Newsome said he, too, was comfortable with a voluntary limit. "The port is a business," he said, "and businesses don't typically accept regulation on the amount of business they do."

This article has been revised to reflect the following correction:

Correction: April 23, 2011

An article in the Square Feet pages on Wednesday about debate over a plan to build another cruise ship terminal in Charleston, S.C., misstated the terms of an informal agreement between the city and the State Ports Authority over the frequency of port calls by the ships. It allows 104 calls annually; it does not limit them to two a week.

Exhibit 67

Transcript of the Testimony of

SC COASTAL CONSERVATION LEAGUE VS. SC DHEC ET AL.

Date: July 2, 2007

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 07-ALJ-21-0107-CC, 07-ALJ-21-0108-CC

South Carolina Coastal Conservation League,

Petitioner,

v.

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

Respondents.

MOTION HEARING
****

Monday, July 2, 2007
10:06 a.m. - 11:57 p.m.

The hearing before the Honorable John D. Geathers, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 2nd day of July, 2007 before Karen L. Yearwood-Cole, Court Reporter and Notary Public in and for the State of South Carolina.

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INDEX

PAGE

MOTION:
MR. LOWELL 8
MR. WHITEHEAD. 36
MR. HOLMAN 43
MR. HOLMAN 65
MR. LOWELL 73
MR. HOLMAN 83
Certificate 85

EXHIBITS

(No exhibits introduced)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

THE COURT: This morning, we're here to deal with a motions hearing in the matter of South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control and the South Carolina Ports Authority, docket 07-ALJ-21-0107. There's also an additional matter, docket 07-ALJ-21-0108 involving all of the previous aforementioned parties with the exception of the Department of Transportation. I thought that Ms. Durden would be here now and that we could go ahead and dispense with both of these motion hearings at the same time and consolidate them since the issue is the same in both. I don't see any need to have separate argument. Does that make sense?

MR. LOWELL: Your Honor, I think it makes sense in the legal issues. There are some factual distinctions and there actually is one procedural distinction between the two. I mean, I agree, and I suspect that Mr. Holman will probably agree that it doesn't make sense to go through because both my motion and his response are fairly cut and paste on the essential legal issues.

THE COURT: Well, the time frames are the same,

Page 37

to your second issue about what's the meaning of this 15 days, is it just internal. Moving beyond the Board process, and I believe it's fleshed out in Judge McLeod's Order, the jurisdiction of the ALC flows after the Board's entertainment of that request for review, so when you read those provisions together, that's the basis in part of the Department's assertion that it is a prerequisite. And that's further supported, we believe, by the MRI at Belfair case. With respect to your question about the definition of effected persons, I would assert that generally the Department's view would be that unless otherwise defined by statute or regulations that would be the equivalent of judicial standing as far as the interpretation of who or what constitutes an effected person. I think that's a reasonable substitute or surrogate for that term unless otherwise defined. With respect to your question about a DHEC process for sending out copies of decisions or notification of decisions, as you're quite familiar with this process, applications come in. Public notices are given. Public comments are received. Many

Page 38

times those comments just say I think that's a great idea, I think it's an awful idea and don't say anything further. In those instances, the Department's not going to send that person a copy of the decision. They haven't requested it. Under 44-1-60(e), which came into effect through Act 380, it establishes that upon receipt of a request for notification, the Department is to send out a copy of the decision. And so, the Department's interpretation of the application of that statutory provision has been when we receive a written request to be notified of the Department's staff decision, we do send that out by certified mail. So, I hope that addresses your question about what the process is. With respect to the Regulation 61-101 and sort of the nestling of permits and certifications into the critical area permit, there's a similar provision, 261-101(a)(8), and that is embodied in Regulation 30-2(h), and that pertains to the critical area of permits and essentially echos what you have in 61-101 in saying that the process for critical area permits is what controls when these other

Page 39

certifications are nestled into it. So, in my mind, those two provisions compliment each other as far as that goes. I'd just like to touch on the issue of the Department's coordination with the Ports Authority in trying to resolve some of the Ports Authority's concerns prior to the Board entertaining this. That contact only was between either Department staff and Ports Authority staff or myself on behalf of the Department and counsel for the Ports Authority. I don't recall that there's any sort of contact with Board members or any of those that would be reviewing the decision.

THE COURT: So, an official conference was not held then?

MR. WHITEHEAD: Well, there's was a variety of communication back and forth between Ports Authority staff and DHEC staff, but as far as ... the connotation of ex parte in my mind is some sort of ...

THE COURT: Well, I'm not getting at that. I'm just saying as far as subpart F is concerned, would you consider that the communications that were held between yourself and the Ports Authority to be a conference?

Page 40

MR. WHITEHEAD: I would say they were more in the nature of settlement communications. They all did occur prior to appearing before the DHEC Board.

THE COURT: Okay. And so, you would then conclude that when you reached that settlement, then the Agency decision became final, or do you take the approach that Mr. Lowell takes that it doesn't become final until, if it is in fact challenged, it doesn't become final until a decision's rendered by the ALC?

MR. WHITEHEAD: Well, Your Honor, I would say my ... I have a certain attachment to Agency decision being the final Board decision, with all due respect to the Administrative Law Court.

THE COURT: Well, yeah.

MR. WHITEHEAD: So, I have a certain attachment.

THE COURT: You're not insulting me.

MR. WHITEHEAD: Right. I have a certain attachment to that term. I would say that to the extent an issue has been challenged through a review conference request to the Board, that issue is pending, as you would normally think, but to the extent the parties have resolved it at that time and the Board took it up and gave it their

Exhibit 68

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concentrated traffic, closed roads, noise, soot in the Historic District, impairment of historic easements, obstructed views by nonhistoric structures, and rupture of the historic fabric, and we've also submitted an affidavit from one of the members of the organization who's alleged directly that this involves her property interests, and we think we have associational standing under the precedent of this court that gives associational standing.

CHIEF JUSTICE TOAL: Well, those -- so far, all of the things you've listed, including the affidavit of the individual, do not allege harm that is particularized to a particular piece of property. They allege historic status. They allege pollution. They allege traffic congestion and so forth. Those are not the sort of things that result in particularized damage to a particular piece of property in the normal nuisance action, either public or private. And that's what we're searching for, is something beyond just a generalization.

MR. HOLMAN: Your Honor, if I might, I think the, the, the hesitation, perhaps, may center on the fact that we have asserted associational standing. At --

CHIEF JUSTICE TOAL: Well, associational standing's not going to get you out of the question we're asking about particularized damage. Let's say we recognized associational damage. In the context of nuisance, you've still got to have some particularized damage as I understand jurisprudence.

MR. HOLMAN: Your Honor, with associational standing, of course, an association can represent parties that have particularized interests.

CHIEF JUSTICE TOAL: Yes, sir, and again --

MR. HOLMAN: That is the, entire doctrine.

CHIEF JUSTICE TOAL: -- it's the particularized damage we're driving at, and --

MR. HOLMAN: Well, well, take the Dodd (PHONETIC) affidavit.

CHIEF JUSTICE TOAL: Well, all, so far, that individuals of the association have alleged is generalized damages that are the product of living in an urban environment. They have not alleged this particular piece of property has this particular piece of particularized damage as a result of a violation of this particular law. That's what we're hunting for.

MR. HOLMAN: Your Honor, we have alleged in the complaint that there is particularized, unique injury

CERTIFICATE OF TRANSCRIPTIONIST

I, Kim von Keller, do hereby certify:

That the foregoing audio file entitled Case_Number_201197486_131119_102219_AudioMix.mp3 was transcribed; that the foregoing transcript as typed is a true, accurate and complete record of the audio file to the best of my ability under the prevailing circumstances.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Kim von Keller

December 10, 2013

Exhibit 69

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 13-ALJ-07-0056-CC

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation and Charleston Communities for Cruise Control,	)
Petitioners,	)
v.	)
South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control,	)
Respondents.	)

ADMINISTRATIVE HEARING

****

Friday, September 6, 2013
10:03 a.m. - 1:19 p.m.

The hearing before the Honorable Ralph King Anderson, III was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 6th day of September, 2013 before Amy G. Byrd, Court Reporter and Notary Public in and for the State of South Carolina.

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Jamie A. White

INDEX

	PAGE
MOTION TO STRIKE	4
MOTION TO STRIKE EXHIBITS:	
MS. ARMSTRONG DIRECT EXAMINATION	11
MR. LOWELL CROSS EXAMINATION	15
MR. JOHNSTON CROSS EXAMINATION	33
MOTION TO STRIKE INFLAMMATORY REFERENCE:	
MR. LOWELL DIRECT EXAMINATION	57
MS. ARMSTRONG CROSS EXAMINATION	68
MR. LEATH CROSS EXAMINATION	74
MOTION TO DISMISS:	
MR. LOWELL DIRECT EXAMINATION	81
MS. ARMSTRONG CROSS EXAMINATION	96
MS. HOLMAN CROSS EXAMINATION	97
MR. LOWELL RE-DIRECT EXAMINATION	105
MR. HOLMAN RE-CROSS EXAMINATION	127
MR. LOWELL RE-DIRECT EXAMINATION	140
Certificate	148

EXHIBITS

(No Exhibits were Marked for this Hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

we can switch the computers.

THE COURT: Okay. Do we want a lunch break or are we going to be finishing up in about an hour?

MS. ARMSTRONG: I think that we can -- I'm content to continue on.

THE COURT: All right. I am.

MS. ARMSTRONG: Yeah, that's fine.

MR. LOWELL: That's fair.

THE COURT: All right. We'll take a quick break. Al

(A short break was taken from 12:07 p.m. until 12:16 p.m.)

THE COURT: All right.

MR. HOLMAN - CROSS EXAMINATION - MOTION TO DISMISS:

MR. HOLMAN: I need to be reoriented sometimes, especially on a long hearing like this one. May it please the court, I'm Blan Holman, here to give a little perspective or a lot of perspective in this case and also some comments about some other parallel cases. I am of counsel and I am a lawyer in those cases and should Your Honor have any questions about them I'll be glad to answer them including the matter pending before the state Supreme Court which was filed against Carnival Cruise Lines.

Mr. Lowell mentioned it. He said it was about the cruise terminal and it's actually -- that is directly at Carnival and not about the SPA. But to roll back a little bit on perspective -- to understand where the petitioners are coming from. The Union Pier Terminal before 2010 did not serve as the home base for cruise ships, year around home base for cruise ships. That never happened until then. That's the big development that has caused the trouble in Charleston because a home base operation means that the ship is there 2,000 to 3,000 people get off, 2,000 to 3,000 people have to get on. That's where they have to get on the boat because the cruise comes back and the same thing happens again. Supplies on, trash off. Port of call visits -- before 2010, port of call visits typically where a ship is out on some other itinerary stops, people walk around town, get back on the ship and leave. And so that's what happened in 2010 and that is what Carnival has being doing and that is what the new cruise terminal is built to accommodate. So that was the announcement of the new cruise terminal happening and frankly, it was, you

Exhibit 70

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 CARRIE AGNEW

PERSONALLY APPEARED BEFORE me Carrie Agnew, who, after being duly sworn, deposes and says that:

1. I am a property owner, resident, citizen, and taxpayer of the City of Charleston, Charleston County, South Carolina. I own my home, which is located at 35 Hasell Street, Charleston, South Carolina 29401, and I have lived there since January, 2001. I currently am self-employed and work out of my home. I have personal knowledge of the matters herein.

2. My home is not at street level. It is located on the second and third stories of 35 Hasell Street. It is located approximately two blocks from the Union Pier Terminal and within eyesight and earshot of the Carnival *Fantasy* operation there.

3. I have been a member of the Historic Ansonborough Neighborhood Association (HANA) for ten years or so. HANA is a non-profit corporation that represents approximately 240 members in the Ansonborough neighborhood, just west of the Union Pier Terminal. Its role and position in this litigation was authorized by its membership, is consistent with its mission,

and vindicates the interests of the members it represents, including me.

4. Before 2009, when Charleston became a cruise ship home port, there was no traffic, congestion or noise from cruise ships in my neighborhood.

5. Beginning in 2010, the *Fantasy* begin the first year-round home port cruise operation in Charleston. I can see the Fantasy from my house and its trademark funnel emitting dark soot into the air.

6. Since 2010 I have noticed black soot continuously being deposited on the exterior of my house and porch. I believe that the *Fantasy* causes or contributes to this soot. The soot detracts from my use and enjoyment of my residence and increases maintenance and cleaning costs. Prior to that time, pollen was the only airborne issue I had to contend with. Soot also accumulates in my bedroom, which is the only room in the house with windows that open. Having read about the harms caused by diesel soot emissions – including cancer and cardiopulmonary disease – I am concerned that the soot entering and covering my home poses risks to my health.

7. I have heard public address announcements from the *Fantasy* as well as music from the ship as passengers embark. After two hours of salsa music during one docking in late 2010, I called the police regarding a violation of the noise ordinance. The police investigated and also told me to call the Mayor's office. I called the Mayor's office and notified them of the complaint. In fact, I held the phone out of my door so the person who answered could hear the music – and they could. New Year's Day 2011 I heard public address announcements from the *Fantasy* around 6:30 a.m. That was not the way I wanted to start my New Year. I have heard announcements in the past month including occasional morning but always afternoon announcements. My understanding is that, per international law, these announcements and

safety drills can be made after the ship leaves the dock, as long as they occur within 24 hours. One day I had to conduct a business call from a bathroom at the other end of my home in order to not have the noise come through the phone. Friends who have telephoned me during the announcements and been astounded at the excessive level of volume. The ship also sounds a very loud horn multiple times before it departs. These noises are loud, distracting and annoying.

8. The Fantasy home base operations cause serious traffic problems in my neighborhood. The closing of two public streets and the influx of thousands of passengers and crew adds significant congestion in a small downtown area already challenged by too much traffic. A friend who was coming to take me to a doctor's appointment late this spring sat through five lights at the corner of Hasell and East Bay before she could take a right turn off of East Bay onto Hasell Street to get me. Pedestrian traffic also greatly increases on cruise days as cruise passengers seek supplies such as liquor, which I understand is not covered by the cruise ticket price, before getting on board the ships. Everyone knows that cruise days cause serious traffic in this area and people avoid my area on those days and times. The traffic is a major inconvenience and annoyance and interferes with my use and enjoyment of my home and ability to conduct business in my home and over the phone.

9. I can see the Carnival Fantasy from my house and walking around my neighborhood and in the Historic District generally. The site of the *Fantasy's* funnel belching smoke, visible from my house, diminishes my use and enjoyment of my home. Several real estate agents have told residents who want to sell homes that they must disclose that their home is adjacent to a home porting cruise operation because of the negative impacts of the cruise operation on the property. I have heard that cruise operations have interfered with the sales of homes in the area and locating businesses here, and I am concerned that ongoing unregulated

operations by Carnival are impacting the value of my home.

10. I chose to live in Charleston because of the strong history of historical protection and because Ansonborough is a quiet residential area. The historical atmosphere, local business, quiet streets, and view of harbor are assets that I enjoy and that are being negatively impacted by the home porting of the Carnival cruise operation.

11. I am not opposed to cruise operations in Charleston, and neither is anyone I know in Ansonborough. What we would like to see is compliance by Carnival with local and state laws. We have no desire to limit cargo ship operations at Union Pier or elsewhere.

12. Because of Carnival's home port operation, I suffer individualized injury that injures my interests as a citizen, resident, property owner, and taxpayer in the City of Charleston. This injury in fact is fairly traceable to Carnival's operations challenged in this action. These injuries would be redressed by a favorable decision in this case.

FURTHER AFFIANT SAYETH NOT.

Carrie Agnew

SWORN and subscribed to before me
this 24th day of January 2012.

Notary Public for South Carolina

Notary Public for the State of South Carolina
My Commission expires January 20th, 2019

Charleston, South Carolina

Exhibit 71

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT
INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Ann., Title 27, Chapter 50, Article 1 requires that an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions. A complete list of exemptions may be found in S.C. Code Ann., Section 27-50-30.

2. You must check one of the boxes for each of the questions on this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator, or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know, or should have known, of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and, subsequently, something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows, or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. Please consult with your attorney if you have any questions. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as the contract otherwise provides. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Disher Hamrick & Myers Res Inc 25 Cumberland Street Suite 120 Charleston, SC 29401
Phone: (843)577-4115 Fax: H Hamrick

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AS SELLER OF THE PROPERTY IDENTIFIED HEREIN, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) OR CONDITION/CHARACTERISTIC WITH ANY OF THE FOLLOWING:

		Yes*	No	No Representation
1.	Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck, walkways, or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ stucco ___ aluminum ___ masonite ___ cement-plank ___ other BRICK b. Approximate age of structure 170 yrs.	☐	☒	☐
2.	Roof and gutters (leakage or other problem)? a. Approximate age of roof covering 9 a. Are you aware of any leaks during your ownership (or within the past 3 years, if your ownership exceeds 3 years)?	☐ ☐	☐ ☒	☐ ☐
3.	Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4.	Electrical system (outlets, wiring, panel, switches, fuses, circuit breakers, fixtures, etc)?	☐	☒	☐
5.	Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☒	☐
6.	Heating and/or air conditioning? Approximate Age 15 a. Heat source: furnace ___ heat pump ✓ baseboard ___ solar ___ other ___ b. Cooling source: central ✓ wall/window unit(s) ___ other ___ c. Fuel source: electricity ✓ natural gas ___ propane ___ oil ___ solar ___ other ___	☐	☐	☐
	If there is more than one system, please answer questions again on a separate page			
7.	Water supply (water quality, quantity, water pressure)? a. water supply is: city/county ✓ community system ___ private well ___ other ___ b. water pipes are: copper ✓ galvanized ___ PVC/CPVC ___ polybutelene ___ combination ✓ other ___	☐	☒	☐
8.	Sewer/septic system? a. Type system: septic tank ___ community system ___ other ___ connected to city/county system ___ city/county system available ___ other ___ b. Does the system require a sewage lift pump? Yes ___ No ___ c. Has the septic system been serviced/pumped during your ownership? Yes ___ No ___	☐	☒	☐
9.	Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, icemaker, etc- contract may control what transfers)	☐	☒	☐
10.	Present infestation, or damage, **WHICH HAS NOT BEEN REPAIRED** from past infestation of wood destroying insects or organisms or dry rot or fungus? Is there a termite bond or warranty? Yes ✓ No ___ Name of organization that treats property for organisms: LEDFORD If there is a termite bond or warranty, please provide/describe: expiration date 06/13, transferable ✓, amount of transfer fee ___, What does bond/warrant cover? ___ Is it a repair bond? ___ Is it a retreatment bond only (i.e. no repair)? ___ Other info: ___	☐	☒	☐

	Yes*	No	No Representation
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
a. Are you aware of any underground tanks or voids?	☒	☐	☐
* b. Are you aware of any soil drains on the property?	☐	☒	☐
c. Are you aware of any sump pumps on the property?	☐	☒	☐
d. Are you aware of significant fill material on or below ground?	☐	☒	☐

If yes, describe tanks/voids or drains or pumps or material/amount: _____

12. Other built-in systems and fixtures	☐	☒	☐

Mark below for any systems that have malfunctions or defects. .
See contract to determine if any systems below convey to new owner.
central vacuum __ pool __ hot tub __ spa __ attic fan exhaust fan __ ceiling fan __ sump pump __
irrigation system __ cable tv wiring or satellite dish __ security system __ fountain __ storage building __
water filtration __ solar panels __ or other systems _____

13. During your ownership, or within the past five (5) years, if ownership exceeds five years, have there been any individual repairs in excess of $500.00 (five hundred dollars) to any item checked in Questions 1-12?

* Explain: 2 Cisterns (?)

#13: Repaired cracked sewer line (part of condo regime)
Recoated roof to maintain Seal-O-Flex warranty

REGARDING THE PROPERTY IDENTIFIED HEREIN, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

	Yes*	No	No Representation
14. Room additions or other structural changes made during your ownership?	☐	☒	☐
15. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, fuel oil, paint, PCBs, lead hazards, toxic mold, methamphetamine, methamphetamine byproducts, or other hazardous or toxic material (whether encapsulated or buried or covered), any contaminated soil or water, or other environmental contamination of property?	☐	☒	☐
16. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
Explain: _____			
17. Previous damage caused by fire or smoke or water?	☐	☒	☐
18. Violations or variances of building codes, restrictive covenants, other land use restrictions or zoning ordinances that are applicable to the property?	☒	☐	☐
Explain: EXTERIOR EASEMENT W/ HISTORIC CHARLESTON FOUNDATION			
19. Restrictions to property use? (covenants, conditions, or deed)	☒	☐	☐
If yes, are copies attached? available upon request			
If there is a regime fee or similar fee, who do you pay? To be set up by future owner with			
Explain: owner of 35-A unit			

Property Address: 35 HASELL STREET UNIT B, CHARLESTON, SC 29401
Tax Map Number: 458-05-01-143
Initials/Date: Seller(s) 02.05.13 Buyer(s)

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		Yes*	No	No Representation
20.	Utility or other easements, shared driveways, party walls, erosion control (seawalls, rip-rap, etc), or encroachments from or on adjacent property?	☒	☐	☐
21.	Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or insurance issues, notice from any governmental agency, individual(s), or organization(s) that could affect title to the property?	☐	☒	☐

If you choose to volunteer information about nearby issues that may or may not be in the public record yet, please report here: _____

22.	If there is a dock, dam, retaining wall, or other structure requiring inspections, permits, etc., have such requirements been complied with in full? Are the documents attached? _____	☐	☒	☐
23.	If property includes a manufactured home, has it been legally converted to real property and the DMV title retired? Are the documents attached? _____ Explain: _____	☐	☒	☐
24.	Are there flood hazards or is the property in a federally-designated flood plain? If there is flood insurance for the property, what is the amount, time period, and coverage? Available upon request Please describe any erosion and erosion control measures. _____	☒	☐	☐
25.	Are there rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing? If there is a management company, please provide name and contact information: _____	☐	☒	☐
26.	Are there any outstanding charges owed by for gas, electric, water, sewerage, or garbage services provided to the property that are delinquent? Explain: _____	☐	☒	☐

Answer any of the questions #27-40 that are applicable to this property.

		Yes*	No	No Representation	N/A
27.	Owners Association fees or common area expenses/assessments?	☐	☒	☐	☐
28.	Are there any resale or rental restrictions?	☐	☒	☐	☐
29.	Is Owners Association involved in current or anticipated litigation?	☐	☒	☐	☐
30.	Has Owners Association levied special or insurance assessments?	☐	☒	☐	☐
31.	Are there any guest, visitor, or animal restrictions?	☐	☒	☐	☐
32.	Does the property include assigned parking space(s)?	☒	☐	☐	☐
33.	Are keys required to access common or recreational areas?	☐	☒	☐	☐
34.	Is a copy of the Master Deed and Bylaws attached?	☒	☐	☐	☐
35.	Is a copy of the covenants, conditions, and restrictions attached?	☒	☐	☐	☐
36.	Is there a transfer fee levied to transfer the property?	☐	☐	☐	☐

37. What are the Ownership Association dues? $_____ per _____ (month/year/etc.)
38. What do the dues cover? _____ Is insurance included? ____
39. What is the name and contact information for the Owners Association? _____
40. Will any memberships transfer with the property? _____ Documentation attached? _____

Explain: _____

*IF YOU ANSWERED "YES" TO ANY OF THE PREVIOUS QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS OR ADDITIONAL INFORMATION.

#32 2 off-street parking spaces

#34/35: Available upon request

Property Address: 35 HASELL STREET UNIT B, CHARLESTON, SC 29401
Initials/Date: Seller(s) CA 2.05.13 Buyer(s) _____

To read the South Carolina Residential Property Condition Disclosure Act, (S.C. Code Ann. § 27-50-10 *et seq.*) please visit: http://www.scstatehouse.gov/code/t27c050.php

This disclosure does not limit the obligation of the purchaser to inspect the physical condition of the property and improvements that are the subject of a sales agreement. The real estate licensee, whether acting as listing agent or selling agent, has no duty to inspect the onsite or offsite conditions of the property and any improvements.

Owner(s) Acknowledgement

Property Address: 35 HASELL STREET UNIT B, CHARLESTON, SC 29401

The property is currently: owner-occupied ✓ leased ___ in an estate ___ in foreclosure ___ vacant ___ (If vacant, how long?) _____
Owner's Name(s): CAROLYN W. AGNEW
Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: Carolyn W. Agnew Date: 2.5.13 Time: 1:30 PM
CAROLYN W. AGNEW

Owner Signature: _____ Date: _____ Time: _____

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: Peggy LaBelle Date: 5/2/13 Time: 11:00

Purchaser Signature: Russell LaBelle Date: 5/2/13 Time: 11:00

Property Address: 35 HASELL STREET UNIT B, CHARLESTON, SC 29401
Tax Map Number: 458-05-01-143
Initials/Date: Seller(s) CA 2.5.13 Buyer(s) Russell LaBelle
Peggy LaBelle

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35 HASELL STRE

Exhibit 72

Nature and Community in Balance

Winter 2006 ¤ Volume 17 No.1

Coastal Conservation League

Wayne Irvin

The painted bunting (Passerina ciris) depends on marsh islands to survive

3 *Make Way for Fish*

Tideland Oases 4

6 *Beware Takings*

Johns Island Wins 13

18 *Wild Things and Wonder*

From the Director

Mutual Assured Survival

Students of twentieth century history, and those of us who were around back then, will remember the Cold War strategy of Mutual Assured Destruction (MAD). MAD held that if both the U.S. and the former Soviet Union had adequate nuclear capacity to retaliate with massive force to the other's nuclear attack, both would be deterred from using that power.

Francis Beach

This appears to have been an accurate, if chilling, assessment.

A friend recently compared MAD to the situation we face on the coast with municipal annexation. But the analogy is flawed. Rather than deterring municipal aggression, South Carolina's annexation laws actually enhance the potential for deployment of annexation as an offensive and destructive weapon.

Consider North Charleston's recent attempt to annex Watson Hill in rural Dorchester County. The city announced that it would bring this 6,600-acre site, adjacent to Middleton Place, under their jurisdiction. The move would allow the developer to proceed with a highly controversial plan to build 4,500 units, including a hotel and golf course.

Mayor Keith Summey justified this invasion across the Ashley River by stating that he did not want North Charleston to become landlocked. In response to the threat by North Charleston, the Town of Summerville annexed a strip of riverfront properties extending to the Dorchester/Charleston border.

Subsequently, the City of Charleston completed the enclosure by annexing a 100-foot wide strip along the Ashley River Road, meeting Summerville at the county line. The resulting lawsuits will probably be in court for many years.

In Beaufort County, the Town of Port Royal has exhibited similarly aggressive behavior, annexing across more than three miles of water to take in tiny Rose Island. Their tactical purpose was to establish a beachhead to jump back across the river to annex another property on the north side, approximately ten miles from the town's center (see article on page 9).

Fortunately, cooler minds are prevailing elsewhere. The Town of Mount Pleasant and its Waterworks Commission were on track to annex and extend sewer and water lines to private land 12 miles into the Francis Marion National Forest, pushing development to the boundaries of the most important public land on the coast. In an opinion piece in Charleston's *Post and Courier*, Mayor Harry Hallman explained that Mount Pleasant's actions were designed to prevent the City of Charleston and other governments from jumping in ahead of the town.

Subsequently, Mayor Hallman, Charleston Mayor Joe Riley, Berkeley County Supervisor Jim Rozier, and representatives from various sewer and water authorities agreed to meet to hammer out an agreement that none would extend their boundaries into the national forest. We won't know the outcome of the meeting until after this column goes to press, but the initiative shows that with leadership, municipal mutual assured destruction can become mutual assured survival. This is good news for South Carolina's environment and its taxpayers.

As we go to press, Mount Pleasant Town Council has delayed a vote on expanding its planning area to the edge of the Francis Marion National Forest. Meanwhile, the mayors of the City of Charleston and Mount Pleasant, as well as the Berkeley County leadership, are calling for a joint planning effort to permanently restrain urban sprawl near the forest, an effort that we hope will be joined by other local jurisdictions and agencies. For the latest information on this issue, please check out our Web site at www.CoastalConservationLeague.org.

COASTAL CONSERVATION LEAGUE

Winter 2006 Vol.17 No.1

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Cover photograph by Wayne Irvin

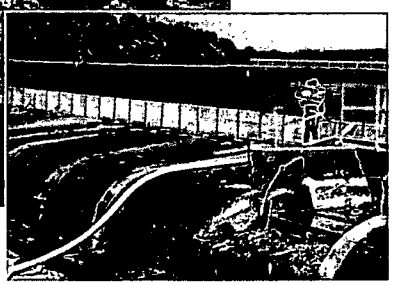
R.002058

Room to Grow–

Historic Broad River spawning grounds reopened

Ron Able, S.C. Department of Natural Resources

What's Good for Fish is Good for Spiderlilies – *Rare rocky-shoals spiderlilies (Hymenocallis coronaria) cling to small boulders near the fall line on the Broad River*



Columbia Dam fishway under construction

Virginia Beach

This spring, when the shad and herring and short-nose sturgeon embark on their annual migration upstream to Columbia, they're in for a big surprise. For the first time in more than 100 years, these anadromous fish will be able to reclaim 25 miles of their historic spawning grounds in the Broad River – by traversing the Columbia Dam through a newly constructed vertical slot fishway.

"For thousands of years these species have left the salty Atlantic to lay their eggs in the fresh waters of South Carolina's inland rivers," explains Patrick Moore, Water Quality Associate in the Conservation League's Columbia office. "But over the last century, a journey that would have taken them as far as Greenville each spring has been cut short by the proliferation of hydroelectric dams on every major river in South Carolina."

Before the dams, the herring and shad were so numerous in upstate rivers that they could be harvested with shovels. Serving as fundamental building blocks for the food chain in ocean and river alike, the fish are constantly eating and being eaten, adding to a nutrient cycle that feeds both plant and animal communities.

"Standing at the Columbia Dam, just north of the Riverbanks Zoo, you could watch the fish each spring jumping up and hitting against the concrete walls, unable to get through," continues Moore. Now as a result of a new operating license issued by the Federal Energy Regulatory Commission (FERC), the construction of a fishway has begun. The Conservation League and our river conservation partner, American Rivers, sought fish passage and other enhancements for the Broad River through the relicensing process completed in 2002. Other key participants were S.C. Electric and Gas (the dam operator), the City of Columbia (which now owns the dam), S.C. Department of Natural Resources, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

The fishway will produce a five-to-ten-fold increase in water flowing through three miles of the Broad and Congaree Rivers affected by the dam, enabling an estimated 100,000 anadromous fish to swim through. The increase in water flows and migratory species will also enhance habitat for resident fish, as well as create the necessary conditions for the restoration of the rare rocky-shoals spiderlily – a requirement of the new license.

R.002059

Marsh Islands Compromise Reached

Conservation and development interests craft landmark regulations allowing for reasonable development while protecting public trust tidelands

Deemed a model of how to develop regulations, an advisory committee has achieved what an earlier task force found impossible – a consensus for governing South Carolina's marsh islands and their adjacent tidelands. The guidelines developed by the Marsh Island Advisory Committee prohibit bridges to all but about 250 of the 2,409 islands currently without car access. They also limit the length of bridges, depending on the distance between island and mainland, and the size of the island.

Tom Blagden

Marsh islands play a unique role in the coastal ecosystem

Nancy Vinson

A Wise Consensus –
(l-r) Will Cleveland, Matt Sloan and Patty Richards at work on proposed marsh island regulations

While the committee's recommendations are still in the public comment phase and will require approval from the legislature this spring, the board of the S.C. Department of Health and Environmental Control (DHEC) has approved emergency regulations, based on the recommendations, to handle any permit applications submitted before the new rules become law. "We didn't want there to be a window of vulnerability," states Elizabeth Hagood, chairman of the DHEC board.

The proposed new regulations prevent about 90% of the state's marsh islands from being bridged, especially in the Cape Romain, ACE Basin and North Inlet areas.

The remaining 10% (or 250) are governed by a sliding scale, as follows:

- Islands of 2-3 acres are eligible for a bridge if they are within 200 feet of the mainland;
- Islands of 3-5 acres are eligible for a bridge within 300 feet of the mainland;
- Islands between 5 and 30 acres are eligible for a bridge within 500 feet of the mainland;
- Islands greater than 30 acres are eligible for a bridge within 1,500 feet of the mainland.

TIDELAND OASES

Painting by J.J. Audubon

If you've ever been caught by a sudden rainstorm while boating in a tidal creek along the coast, you may have taken refuge on what's called a "hummock" or marsh island. These islands dot the tidelands of the South Carolina and Georgia coasts and provide precious high ground and fresh water in an otherwise salty, muddy world.

In fact, scientists have discovered a surprising degree of richness and diversity among the plants and animals harbored by marsh hummocks. High concentrations of our most colorful songbird – the painted bunting (see cover photo)– nest each spring and summer on hummocks. Migrating warblers and other neo-tropical songbirds also rest and feed here, as well as

R.002060

Luke Platt

Safe Haven – *Bobcats use marsh islands for food, shelter and territory*

The committee decided no bridges over public marshland should be longer than 1,500 feet. In addition, for islands less than 10 acres, a bridge can consist of only a cart path or single lane. For those islands 10 acres or above, a 2-lane bridge is allowed. Furthermore, for those islands eligible for bridges – in order to protect the public's waters and views – development standards will apply regarding stormwater plans, density, septic tanks, buffering, docks, paving, lighting, tree and wetland protection, and open space requirements.

"It was a privilege to participate in a process where the property rights interests of the development community were balanced with the interests of the conservation community in protecting these scarce resources," comments Matt Sloan of the Daniel Island Company and a member of the advisory committee. Other members of the committee included Will Cleveland, Chairman of the Conservation League board; Robert Clement, President of the S.C. Realtors Association; Mitch Bohannan, President of the S.C. Tourism Council; Jimmy Chandler, Director of the S.C. Environmental Law Project; and Patty Richards of the Palmetto Bluff development group in Beaufort County.

WHAT YOU CAN DO: Contact your state legislators and ask them to support the regulations without any weakening amendments.

large flocks of herons, egrets, ibis and wood storks.

Mammals such as deer, bobcat, mink and river otter also use marsh islands for food, shelter and territory. In addition, temporary depressions that flood with rainwater provide essential fresh water to a surprising number of frogs and salamanders. Recent studies demonstrate that these islands, large and small, play a unique role in the coastal ecosystem, especially by providing undisturbed sanctuaries in an increasingly developed coastal zone.

[Sources: Laurie, Pete. "Saltmarsh Refuge," South Carolina Wildlife, Nov.-Dec. 2004 and Georgia's Marsh Hammocks – A biological survey, Southern Environmental Law Center, Sept. 2003.]

THE PUBLIC TRUST

Bridges to marsh islands concern all South Carolinians because they cross water and marshlands that are governed by the Public Trust Doctrine, which dates back to Roman civil law. Roman law states, "By the law of nature these things are common to all mankind – the air, running water, the sea, and consequently the shore of the sea. No one, therefore, is forbidden to approach the seashore, provided that he respects habitations, monuments, and the buildings, which are not, like the sea, subject only to the law of nations."

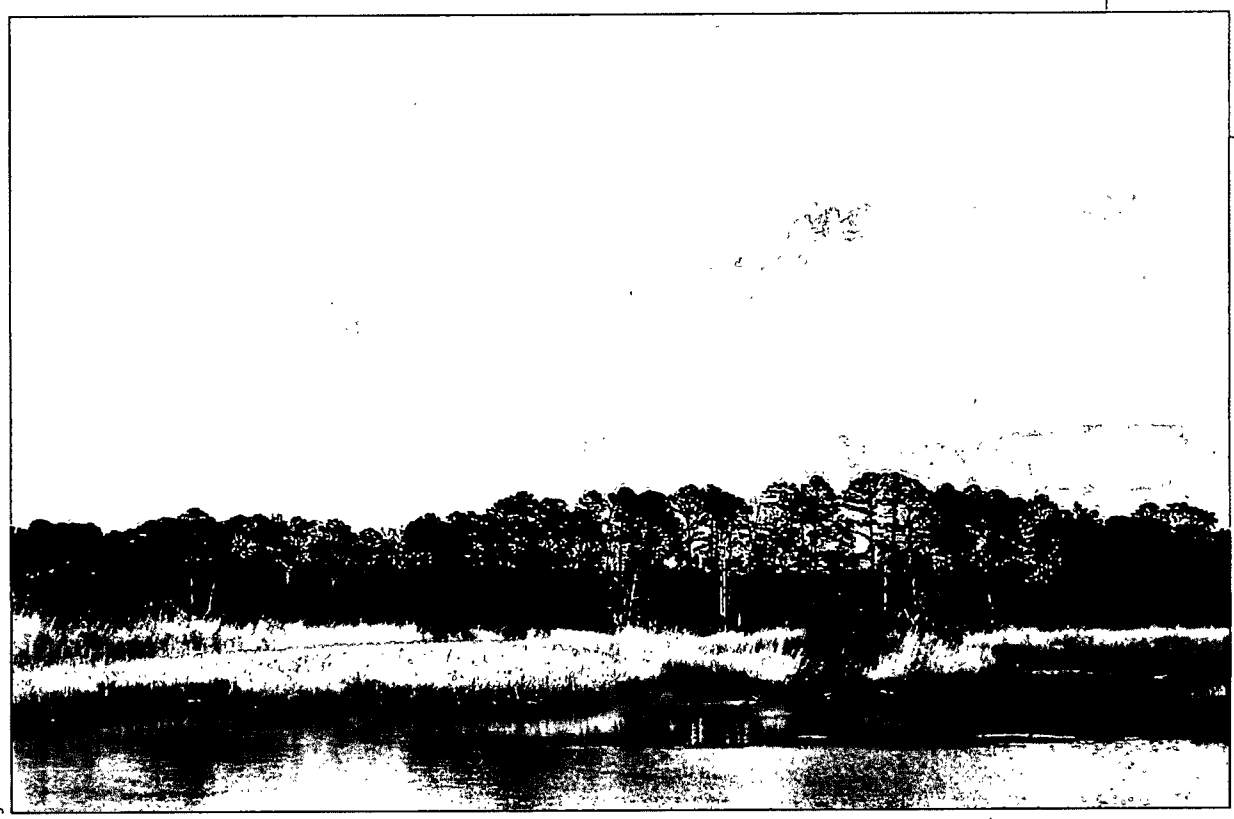
Today, the Public Trust Doctrine provides that public trust lands, water and living resources in a state are held by the state in trust for the benefit of all of the people, and establishes the right of the public to fully enjoy public trust lands, waters and living resources for a wide variety of recognized public uses. Much of the work of the Coastal Conservation League involves defending the public trust.

In general, public trust waters are the "navigable waters" in a state, and public trust lands are the lands beneath these waters, up to the ordinary high water mark. The living resources (e.g., fish and other aquatic animal and plant life) inhabiting these lands and waters are also subject to the Public Trust Doctrine.

[Source: Putting The Public Trust Doctrine To Work, Coastal States Organization, Inc., June 1997.]

Painting by Honor Marks

R.002061



Jane Lareau

Proposed marsh island regulations must not be weakened

Beware Out-Of-State Takings Bill

It's been two years since a South Carolina property rights task force crafted reasonable, compromise legislation that balanced the rights of individual property owners with the public interest and the interests of state and local governments. Act 39 was passed in 2004 and was supported by the development community and conservationists – a not so rare alliance in South Carolina these days, especially when it comes to safeguarding our historic and natural resources.

Now national property rights advocates are at it again, attempting to force anti-zoning, anti-home rule legislation on our 2006 Legislative Session. Three lawyers from Oregon have teamed up with the S.C. Landowners Association to try and undo the original compromise in Act 39 by amending the South Carolina constitution to prevent the enactment of land use plans and/or to force local and state governments to pay private landowners for any lost value due to zoning rules.

This radical constitutional change mirrors Oregon's Measure 37, which fortunately is not yet a done deal. An Oregon circuit court has overturned the extreme measure, confirming that such a reckless challenge to local and state planning rests on very weak constitutional ground.

DHEC Oversight Threatened

As we begin the 2006 legislative session, H. 3285 remains on the Senate's Contested Calendar. This bill would completely strip the S.C. Department of Health and Environmental Control (DHEC) board of its oversight of appeals and place final agency decisions in the hands of administrative law judges, who lack knowledge of environmental issues and who are not held politically accountable to the public for their decisions.

R.002062

Legislative Issues

Please visit **www.CoastalConservationLeague.org** and sign up for our Legislative Update e-mail, sent weekly during the legislative session. You can also find talking points on issues, contact your legislators, and learn about joining our Legislative Lobby Team on the Web site.

A "Common Agenda" for 2006

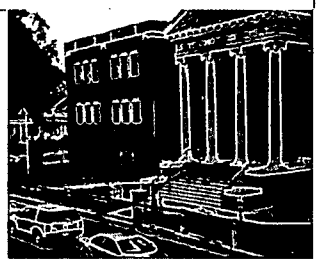
Conserving communities naturally

Since last summer, representatives from conservation groups around the state, including the Coastal Conservation League, have been meeting to develop a "Common Agenda" for the 2006 legislative session. Under the theme "Conserving Communities Naturally," specific initiatives include:

Passage of the Priority Investment Area (PIA) bill. Sponsored by Representative Ben Hagood (R-Charleston), the bill would require local governments to coordinate with relevant agencies (e.g., school districts) as they develop comprehensive plans to determine where growth should occur and to designate priority areas and/or projects.

Protect Freshwater Wetlands –
In South Carolina, the barred owl is found almost exclusively in wooded swamps

Passage of Fair Permitting of Natural Wetlands legislation. The protection of non-federal wetlands has been called into question by a recent Supreme Court decision and now it is the state's responsibility to clarify the confusing situation that currently exists. At the end of the 2004 legislative session, the conservation community and development interests were charged with reaching a compromise on this contentious issue. They met for six months and developed reasonable legislation, but development interests balked in the final hour and prevented passage in the 2005 session. The conservation community continues to support the compromise legislation for 2006.



Passage of the Priority Investment Area bill will help steer new school construction closer to community and town centers

Passage of Marsh Island Regulations (see article on page 4). An advisory committee comprised of development and conservation interests has crafted reasonable and fair guidelines for regulating bridges to South Carolina's marsh islands. Now the proposed regulations must win approval from the House and Senate Agriculture Committees before going to the floor of the Legislature.

Full Funding of the Conservation Bank. The Bank has completed three funding cycles, awarding approximately $23 million in grants, protecting more than 30,000 acres of land and historic battlefields and houses in South Carolina. The Conservation Bank has worked with a variety of partners to leverage these dollars all across the Palmetto State. This year, with less federal money available, it is especially critical to maintain or increase funding levels.

For further information, contact the League at 803-771-7102, ext. 21 or christiem@scccl.org. Meeting dates will be posted at www.CoastalConservationLeague.org.

In addition, the DHEC automatic stay provision is now imperiled with the recent Administrative Law Court rule change that no longer recognizes an automatic stay while a permit appeal is pending. The automatic stay is crucial in the event of a pending permit appeal because the stay prevents the permit applicant from moving forward with construction that could significantly harm the environment. Furthermore, another rule change was implemented recently with no public input – the filing fee to appeal a DHEC permit was raised from $100 to $250, which is the highest fee of any agency.

R.002063

701 Corridor at Risk

Some 50 local landowners and conservationists gathered this fall at Hasty Point Plantation, hosted by Conservation League member Bob Schofield, to discuss the future of the 701 Corridor between the cities of Conway and Georgetown. In particular, they discussed the impacts of large scale timberland sales in the area – namely, the future of 100,000 acres of International Paper lands in Georgetown County, much of it bordering Highway 701 and the Black River.

Co-hosted by the Lowcountry Open Land Trust, the group heard from Edwin Cooper, landowner; Will Haynie, Director of the Lowcountry Open Land Trust; Charles Lane, Chairman of the S.C. Conservation Bank; David Farren, attorney with the Southern Environmental Law Center; and Dana Beach, Director of the Conservation League.

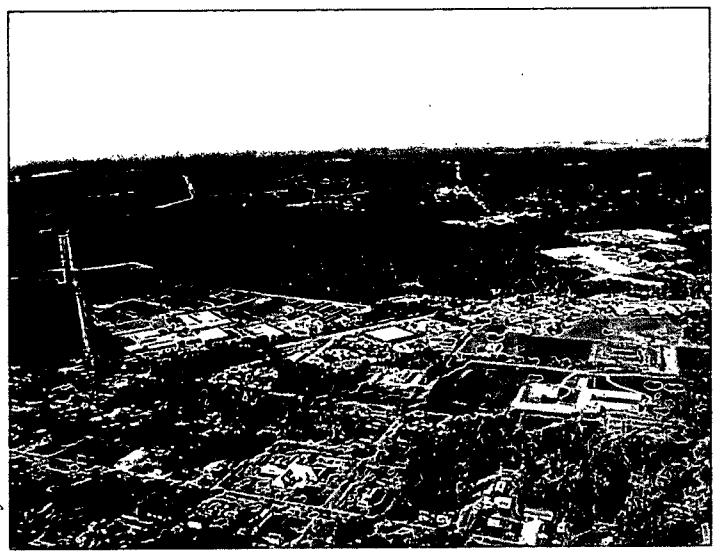
Their message was clear: Changes are ahead and the community must be proactive to protect what they value about Georgetown County. In addition to the timberlands sell-off, a proposed widening of 701 and proposed new sewer lines for the corridor will change this historic landscape forever. As David Farren put it, "What happens in the next two years will define Georgetown for the next 100 years."

Nancy Cave

Landowner and League member Bob Schofield leads discussion on future of 701 Corridor

Plan Where You Grow - Grow Where You Plan

Georgetown ponders first development agreement in county's history



Henry Fair

Changing Landscape – *International Paper plans to sell off 100,000 acres of timberland in Georgetown County, including the Weehaw Tract near Georgetown, which has already been sold*

Georgetown County Council is poised to hire an outside consultant to help it evaluate a proposed development agreement for the 5,200-acre Weehaw Tract owned by Copper Station Holdings. This is the first such agreement ever to be submitted to Georgetown County, on a tract of land larger than the Town of Georgetown and in a mostly unzoned area west of town along Highway 701.

"The slate is essentially clean," says League North Coast Director Nancy Cave, "so that whatever course the county charts will set a precedent for years to come." The League has urged the council to conduct a public planning process and to choose a consultant with a commitment to public input as well as proven experience in site planning, road and traffic planning, open space and livability issues, as well as cost-benefit analysis of economic impacts.

County Council recently stated that it could take more than a year to decide on the terms of the development agreement; and well it should, considering what is at stake for Georgetown County.

R.002064

Beaufort Director Tara McGrath and her husband, Doug Hatch, in Budapest this summer

New Beaufort Director Hired

Tara McGrath has joined the staff of the Coastal Conservation League as the Director of the Beaufort office. An officer in the U.S. Marine Corps for the last four years, Tara has most recently served as a military lawyer and senior defense counsel in the Second Marine Aircraft Wing in Beaufort. Her distinguished service won her the Navy and Marine Corps Commendation Medal.

A graduate of the University of Michigan law school, Tara has maintained an abiding commitment to public service, having helped raise $23,000 for the Navy and Marine Corps Relief Society at the Beaufort Air Station, volunteered for the United Way, and participated in the 2005 Leadership Beaufort Program. She looks forward to applying her skills and talents to the non-profit sector and in particular, the conservation arena.

Victory on Dale School Site

The Dale site for the proposed north area high school finally has been laid to rest. The Beaufort County Board of Education has directed superintendent Edna Crews to find another site to build the $30 million school, most likely in Seabrook, where elementary and middle schools already exist.

For four years, the Conservation League has worked with local citizens and political leaders to convince the school board to consider sites within northern Beaufort County's urban growth boundary, rather than out in the tiny rural community of Dale – far from existing student populations and far from the public infrastructure needed to support such a major facility. "This has been a long and difficult process, but the school board has made a decision that is good for the students and also preserves the county's Comprehensive Plan," states Land Use Associate Jacki Martin. "It's a win-win for all of Beaufort County."

Bluffton Seafood Festival – *Visitors to the seafood festival learn about water quality and oyster restoration.*

Say "No" to Port Royal Annexation

The Town of Port Royal has received a petition to annex and rezone a 105-acre parcel (the Mobley Tract) located some ten miles from the town's center in a rural and environmentally sensitive area along Chechessee Creek in southern Beaufort County. The property owner proposes to have the property zoned to one of the town's most intensive urban densities. Such a zoning change would substantially undermine county comprehensive planning for the area.

Neighbors of the tract, as well as town residents, strongly oppose the development project. Public comments at town council hearings have been overwhelmingly in opposition, and all three county newspapers have published editorials against it. In October, Port Royal Town Council members voted to table the plan, requesting more study. The League will continue working with Port Royal and Chechessee area residents to halt this ill-conceived annexation proposal.

Beaufort PaddleFest– *A kayak race and paddle clinic, taught by two-time gold medal Olympian Greg Barton, were two of the featured events.*

R.002065

A VISION for the 21st Century

How things could be different in the world of transportation

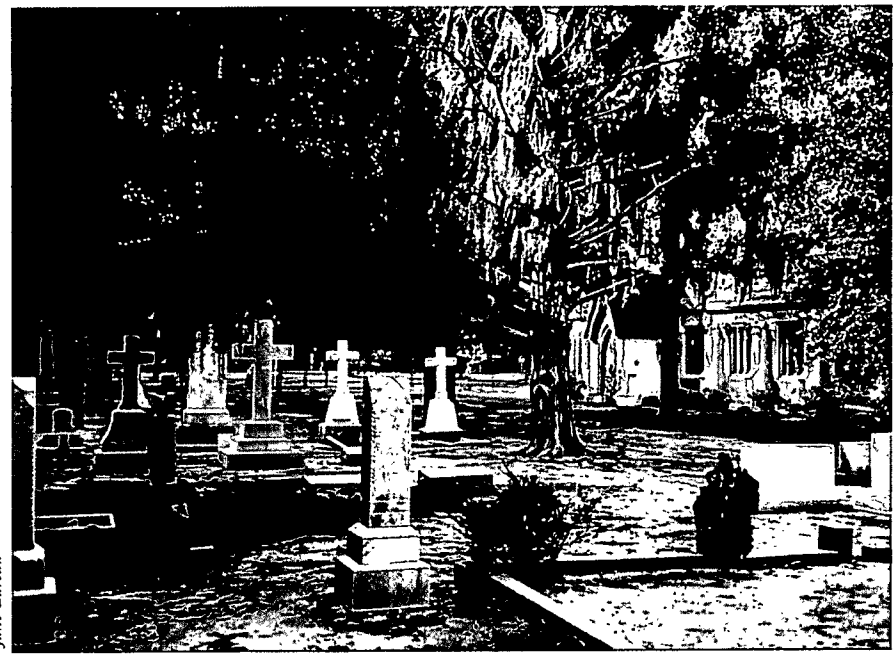
The Dark Ages

South Carolina ranks 25th nationally in terms of population and 40th in terms of land mass. Yet our state-maintained highway system is the fourth largest in the nation – two-and-a-half times the national average. In the decade between 1992 and 2002, South Carolina spent the fifth highest percentage of funds of any state constructing new road capacity. Yet, it ranked sixth from the bottom in the percentage spent on road maintenance.

These statistics reflect a sad truth about our state. We are in the dark ages when it comes to transportation planning. Major roads are decided upon without the benefit of meaningful public scrutiny. Projects are rarely voted down by the regional Metropolitan Planning Organizations (MPOs), the nominal governing bodies. A pet political road project can skyrocket to the top of the priority list and no one objects as long as they eventually get their road project. It is an unspoken rule of the process that "I won't oppose your road if you won't oppose mine."

The current system discourages the public from deriving a true understanding of mobility needs in the region. If there is congestion, too often the prevailing answer is to widen the road or build a new one. There is little acknowledgement that there might be other tools to relieve congestion. Transportation planners and consultants in this state still resist, or simply ignore, what is an undisputed fact: roads themselves foster congestion and sprawl.

Hence, in a state with 25,000 miles of decaying road surface (which the Department of Transportation says it cannot repair), with one-fourth of all its bridges (2,800) structurally deficient or functionally obsolete, and where paving of all secondary roads has ceased, our Department of Transportation has determined that its top priority is a new $2 billion interstate (known as I-73) to ferry tourists from Detroit to Myrtle Beach.



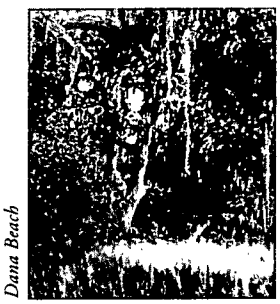
Jane Lareau

Rural areas with important cultural resources are often threatened by unnecessary new roads and massive road widening projects

Seeing the Light

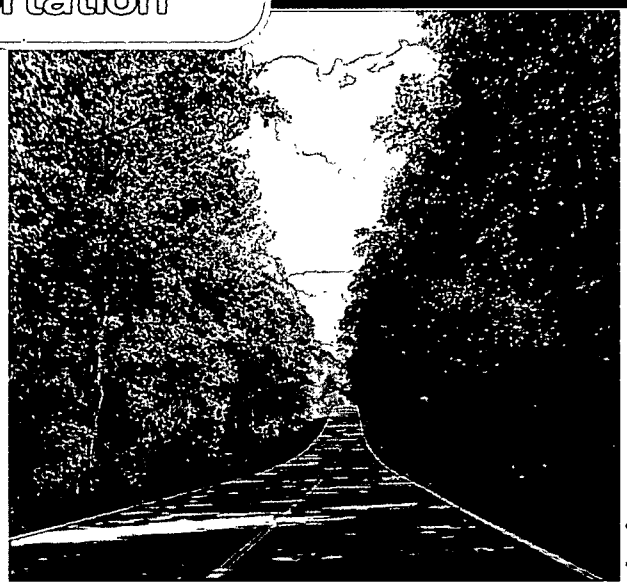
Fortunately, other states around the country provide us alternatives that South Carolina should be considering. These states are implementing transportation planning that is open to and accessible by the public, where maintenance of existing roads and bridges is a priority, and where new roads and lanes are added only if it is clear they are needed and will help move traffic.

These states understand that roads affect land use, and therefore take land use issues and environmental impacts into consideration in the planning stages, using state-of-the-art modeling and GIS tools. Some states are required by law to coordinate their road projects with county comprehensive plans and priority investment areas. Others are looking beyond road construction, and including sidewalks, bicycle paths, public transit and various alternatives to address mobility issues.



Dana Beach

R.002066



Jane Lareau

Needless widening of rural roads destroys habitat and promotes sprawl

What Other States Are Doing

Transportation Planning

The federal government requires that all state transportation departments develop short-term and long-term transportation plans. Means by which road projects are submitted, how projects are chosen, and how the plans are approved vary from state to state. In addition, some states choose to implement quantitative measures within transportation plans to provide measurable goals, something South Carolina has yet to do.

The Florida Department of Transportation sets goals to preserve existing infrastructure, enhance economic competitiveness, and improve mobility. Under preservation of infrastructure, for example, 80 percent of roads and 90 percent of bridge pavement must meet certain department standards.

Through its Congestion Relief and Transportation Trust Fund Renewal Act, New Jersey has developed a "Capital Investment Strategy" requirement. The Act requires setting overall transportation goals, including, but not limited to:

- Reduction of vehicular/pedestrian accidents;
- Reduction of at least one-half of bridge repair projects;
- Increase in bicycle path lanes by 1,000 miles;
- Increase of bus fleet with reduced emission of air pollutants using alternative fuel methods; by July 1, 2007 all buses must meet these criteria.

Fix-It-First

To leverage limited state funding, Fix-It-First initiatives across the nation promote economic efficiency by prioritizing funding based on maintenance and preservation needs. The State of Virginia requires that transportation funds be set aside primarily for the maintenance of roads. Similarly, Alabama appropriates proceeds from highway and road bonds for both the maintenance of roads and the construction of highways and bridges.

The State of Michigan implemented a "Preserve First Program" in April 2003. The Preserve First Program is written into Michigan's Department of Transportation's Five-Year Road & Bridge Program. In addition to appropriating funds directly to maintenance and preservation of existing roads, the Preserve First Program pledges to improve the condition of freeways by 95 percent and non-freeways by 85 percent by the year 2007.

Goodbye Farmland, Hello Sprawl – *The rural landscape of Johns and Wadmalaw Islands is directly threatened by the extension of the Mark Clark expressway*

Land Use Considerations

Although not extensive, there are some mechanisms in place across the country that do link transportation planning and land use planning. States that require a comprehensive transportation plan include Delaware, Virginia, Florida, West Virginia, and Georgia. In fact, Georgia requires that all affected local governmental bodies, regional planning agencies, and other appropriate state and federal agencies develop comprehensive transportation plans. In addition, transportation plans must take into consideration all possible alternative modes of transportation when developing a project, and include all appropriate planning agencies.

Environmental Impacts

Under the National Environmental Protection Act (NEPA) states are required to consider environmental impacts on proposed actions while supplying reasonable alternatives. Nineteen states throughout the country have implemented a statewide environmental policy act; South Carolina has not. There are some states that specifically reference transportation projects and require a separate environmental impact review specific to transportation projects.

Transportation projects are excluded from Virginia's environmental impact report regulation. Rather, major transportation projects are enforced by a Memorandum of Agreement that requires all transportation projects to undergo a state environmental review process. In Florida, all transportation plans must pass intense screening processes regarding environmental impacts.

Roadways to SPRAWL

Too far out - Building beyond Charleston County's urban growth boundary

If the Mark Clark Extension is Built, More of Charleston's Busiest Roads will get Worse

Charleston County is now asking the South Carolina State Transportation Infrastructure Bank to pay for the Mark Clark extension, a project that will increase congestion on many roads in the Tri-county region. The county would contribute nothing to the cost of construction, and the application puts construction of the Mark Clark extension ahead of a new port access road, a project of true regional and state significance.

While the application lists regional transportation benefits as a major reason the Infrastructure Bank should fund 100% of the construction of both roads, the Conservation League is challenging the need for the Mark Clark extension. The county claims that congestion will decline and commutes will get better. However, the Berkeley Charleston Dorchester Council of Governments study sited by Charleston County shows that the seven miles of new road will actually make daily commutes worse in many parts of the tri-county region.

Consider the following:

- The Mark Clark extension will make almost 44 miles of road in Charleston County drop by one or more levels of service and will only improve 21 miles of road by one level of service.
- Of this 44 miles, 12.2 miles of the most heavily traveled roads, carrying more than 35,000 vehicles per day, will drop by at least one level of service. These include portions of I-26, Highway 61 West of the Ashley, Folly Road on James Island, Maybank Highway on Johns Island, and the existing Mark Clark between Savannah Highway and I-26.
- Almost 14 miles of road that are already failing by 2030 will get even worse.

Charleston County Councilwoman Colleen Condon, who voted against sending the application forward, states, "The public benefit of this project really should be called into question. Why should the Infrastructure Bank pay for a road that will make many peoples' lives across Charleston County worse?"

WHAT YOU CAN DO:
Go to our Web site for updates and information on how to contact your local and state representatives.

U.S. Forest Service

Smoke Wars – *As new and improved roads invade national forests and private timberlands, foresters' ability to manage the land with controlled burning becomes severely limited*

Steed Creek Road – A de facto Mount Pleasant Bypass, with Devastating Environmental Impacts

The federal government is proposing a $4.2 million widening of Steed Creek Road – a lightly traveled route through the Francis Marion National Forest – that will wreak environmental havoc through one of the Southeast's last remaining refuges for the endangered red-cockaded woodpecker and rare longleaf pine ecosystem.

Painting by Honor Marks

A proposed widening of Steed Creek Rd. threatens carnivorous plants that thrive in the understory of the mature pine forest adjacent to the road

The Federal Highway Administration wants to widen the two-lane road from 20 feet to 28 feet with another 8 feet of vegetated shoulders. The stated purpose is to make the road safer for large vehicles (i.e., container trucks headed to the Wando port terminal), bicyclists and other motorists. However, state highway department statistics contradict any purported basis of need: only about 800 vehicles use this road everyday and its location is far north of the Mount Pleasant 17-Bypass gridlock that extends from Carolina Park south.

It is important to note that the widening of this little used Forest Service road has morphed into a proposal for what would be a de facto Mount Pleasant bypass. It is the brainchild of a relatively recent arrival to the East Cooper area, who happened to have the ear of a legislator. Astonishingly, this one individual's boondoggle of an idea – without any studies, documentation or statistics, and with no public input or analysis – has now made it into the Charleston area's Long Range Transportation Plan.

"This is a short-cut to nowhere," comments League Land Use Director Jane Lareau. "There are many correct approaches to fixing traffic problems in Mount Pleasant. Building a bypass 15 miles north of the congestion – beyond Charleston County's urban growth boundary and through one of the South's last great forests – is not one of them."

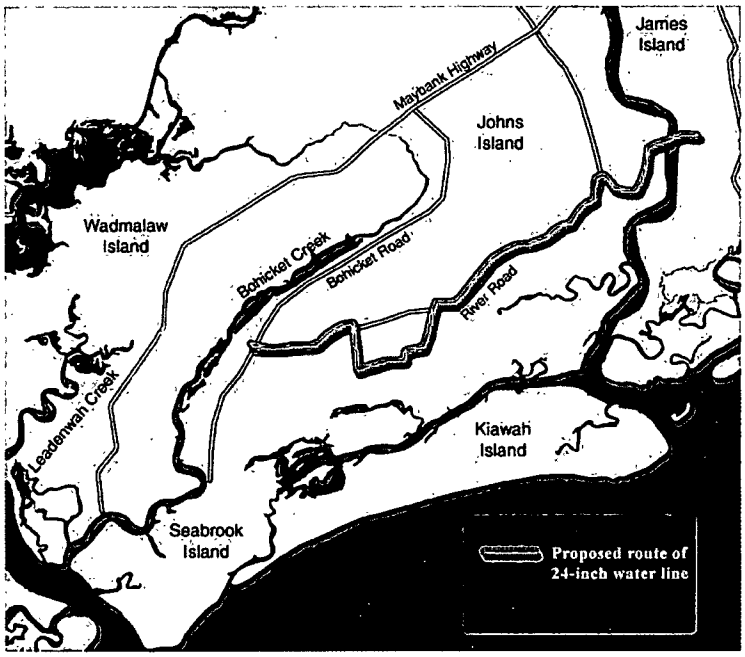
A Win For Johns Island

After more than two years of litigation, St. John's Water Company agrees to 24-inch water line – Conservation League drops appeal, citizens withdraw lawsuits

Bowing to overwhelming opposition, the St. John's Water Company has finally abandoned its plans for a 30-inch water line across lower Johns Island. Instead, St. John's will construct a 24-inch water line – a size in keeping with Charleston County's Comprehensive Plan and one that will accommodate projected needs on the largely rural sea island.

"Such a compromise is far more consistent with the existing needs of Johns Island," says John Kozma, a local attorney and secretary of the Johns Island Council, a voluntary land planning group on the island. "It was really a question of 'How big?' And it was clear that the larger water line would have fueled more sprawl and traffic congestion."

Two years ago, the Conservation League appealed the St. John's Water Company's ill-conceived proposal for a 30-inch water line and instead proposed a smaller, 24-inch line.



Post and Courier

Megan Terebus

Pipeline to Sprawl – *A 30-inch water line, pictured above, would have spurred large-scale suburban development on rural Johns Island*

Echoing this same proposal, the Charleston Commissioners of Public Works urged the utility to consider a 24-inch line, offering to contribute to the installation of booster pumps and storage tanks if expanded capacity was needed in the future.

Simultaneously, water customers circulated petitions and filed lawsuits. Nevertheless St. John's continued to stonewall and refused to open its monthly board meetings to paying customers or to grant them access to its minutes. As a utility that receives public money in the form of state and federal grants, and that has the power of eminent domain, St. John's is required to allow its members access to these records.

"We've been paying customers of St. John's ever since they opened up, yet we were not allowed in the meetings," laments Julia Grant, who was born and raised along lower River Road and was one of the residents who filed suit under the state's Freedom of Information Act. She also was personally sued by St. John's for helping lead the petition drive.

Like most Johns Islanders, Grant wants the island to remain rural. As she puts it, "Johns Islanders have always been fighters, and we have a right to be heard." It was the residents' willingness to stay in the fight that led St. John's to finally agree to build a smaller water line and to end all litigation. Grant and island residents Sam Brownlee and Thomas Legare, who were also sued for damages by St. John's, have recently won seats on the water company's board. Ultimately, St. John's will be held accountable to the community it was chartered to serve.

R.002069

Guardian of Murrells Inlet

Dr. Henry "Pat" Worrell – from creek boy to citizen activist

Henry "Pat" Worrell is a man with no time to waste. Last year, he was diagnosed with stage four prostate cancer. Since then, he has thoroughly researched the disease, implemented a strict diet, undergone various treatments and therapies, and even appeared on national TV with Armstrong Williams – a fellow Marion native – to promote regular cancer screening and early detection.

On meeting Pat, one quickly realizes that he does nothing halfway. A family scrapbook reveals that at age 12, he became one of the youngest Eagle Scouts in history. When he was 18, he won a scholarship to Wofford College and upon graduation, entered the Medical College of Virginia. In 1967, he graduated with a doctorate in dental surgery and joined the Navy, where he fulfilled an internship with the Portsmouth (Va.) Naval Hospital and then served on the USS Saratoga, an attack aircraft carrier stationed in the Mediterranean.

In 1970, Pat returned home to Marion to set up his dental practice and become, as he puts it, "a country dentist." Pat is passionate about a lot of things in life – in particular, his community and home state, his wife Hallett and their children and grandchildren, and Murrells Inlet.

Virginia Beach

Nancy Cregg

All Aboard for Dewees Island –

League members learn the eco-history and art of sweetgrass on Dewees Island.

Historic Trails and Tales –

Members explore the cemeteries, gardens, roads and relics of the Ashley River Historic District.

Kayaking for Conservation –

The Island Giant Kayak Race at Isle of Palms, sponsored by Half-Moon Outfitters and Coastal Expeditions, raised more than $8,000 for the Conservation League and drew 73 race participants and more than 200 spectators.

R.002070

Members' Corner

To the uninitiated, Murrells Inlet is not hard to miss. Sandwiched between the Grand Strand beaches of Garden City, Surfside and Myrtle Beach to the north, and Litchfield Beach and Pawleys Island to the south, one can easily bypass this quiet fishing village, well-known locally for its fresh seafood and scenic views.

Pat is passionate about a lot of things in life – in particular, his community and home state, his wife Hallett and their children and grandchildren, and MURRELLS INLET

While Murrells Inlet has not escaped the trappings of modern day resort development, Pat can still guide you down its sandy, live oak lanes – the same lanes he followed as a boy in the 1940s and 50s, wagon in tow, headed to the ice house. Pat would buy a block of ice for his family's ice box and pull it back to their waterfront cottage, Westhaven, built by his grandfather in 1933.

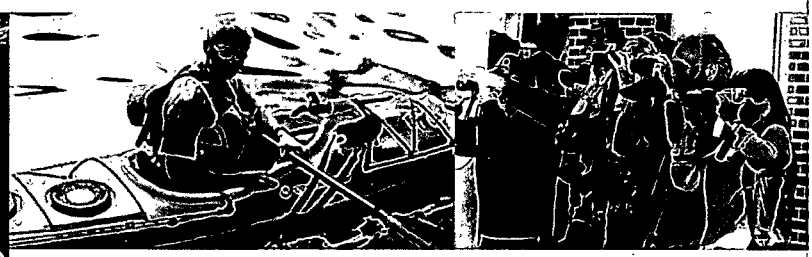
He can also show you Parsonage Creek, where as a boy he would row out with the tides to gather oysters. "In those days, tens of thousands of bushels of oysters thrived in the waters of Murrells Inlet," remembers Pat, "before pollution and boat wakes began to take their toll." He also caught shrimp, which he sold for 15 cents a pound.

"When school closed for the summer in Marion, our family moved down to Murrells Inlet," Pat explains. "We didn't return until the day before school started." Summer after summer at Murrells Inlet, combined with years of scouting, cemented a conservation ethic in Pat Worrell that stays with him to this day.

"I first met Pat when we were both working on wetland protection issues," comments Jimmy Chandler, environmental attorney and director of the S.C. Environmental Law Project (SCELP) based in Georgetown. "He later joined SCELP's board of directors. Pat is passionate about protecting natural resources and channels that passion into hard work and meticulous research."

Pat's environmental activism began in the early 1980s when he and his neighbors formed the Murrells Inlet Concerned Citizens Association to fight a marina and fish processing operation proposed for Smith Landing in Murrells Inlet. Eventually, the permit was withdrawn. "Not only was the project a violation of the public trust, it was a violation of most of the principles in the Coastal Zone Management Act," Pat states.

Today, Pat battles threats to Murrells Inlet's water quality with the same zeal and intensity he did 30 years ago. He also still savors the fresh oysters ("sweetest in South Carolina") and shrimp from Parsonage and Allston Creeks, and delights in the views from Cedar Hill Landing across the salt marshes to Drunken Jack's Island. "We need to be good stewards of our natural resources in spite of today's development pressures," concludes Pat. "I believe that some things are worth more than money."



Beaufort PaddleFest –
Participants get to try out the latest equipment and hone their paddling skills.

Sweetgrass Culture –
Vera Manigault teaches League members about the origins of sweetgrass (Muhlenbergia filipes).

Hobcaw Barony –
Supporters of the League tour the historic property and research labs of Hobcaw and enjoy a reception in the Baruch mansion.

R.002071

Women in Conservation

Nancy Vinson and Harriet Keyserling among recipients of prestigious award

At the Evelyn Thayer Chace Awards Dinner held in Columbia this fall, John Flicker, President of the National Audubon Society, presented Conservation League Water Quality Director, Nancy Vinson, and former League board member Harriet Keyserling with "Women in Conservation" awards. Nancy and Harriet were among five South Carolinians to receive this prestigious award and were so honored because of their enormous contributions to conservation in the state. Having served as Sierra Club's State Chapter Director for three-and-a-half years, Nancy joined the staff of the Conservation League in 1994, where she has used her expert knowledge of environmental issues to pass important legislation and regulations that protect our natural environment. Harriet became the first woman to serve on Beaufort County Council and was later elected to the S.C. General Assembly, serving eight terms in the House of Representatives (1977-1993) and becoming a champion of environmental protection.

(l-r) John Flicker, Ken Driggers, Mary Waltex, Harriet Keyserling, Angela Viney, Nancy Vinson, and Norman Brunswig

Dana Beach

Shannon Fitzpatrick

Virginia Beach

Patrick Moore

New (and not so new) Faces on Staff

These days at the League's 328 East Bay Street offices in Charleston, you will find **Shannon Fitzpatrick** working the front desk and answering the phone. A Charleston native, Shannon joined the staff last summer, having worked in administration for Jacobs Engineering prior to her new post at the League. Currently a nursing student at Trident Technical College, Shannon serves as Administrative Assistant to Tonnia Switzer.

Patrick Moore is certainly not a new face in the Columbia office, having served as a part-time assistant to former Rivers Project Director Gerrit Jöbsis since fall of 2004. This past fall, he became a full-time Water Quality Associate, having completed his Juris Doctor from University of South Carolina Law School and a Master's in Environmental Law from Vermont Law School. A former Eagle Scout, Patrick is an avid outdoorsman and is engaged to be married to Beth Viamonte this spring.

Meanwhile, **Gerrit Jöbsis** has left the Conservation League to become Director of Southeast Conservation for American Rivers, the nation's premiere river protection advocacy organization with more than 35,000 members nationwide. Gerrit will continue to work in partnership with the League (he and Patrick Moore share office space in Columbia), safeguarding the clean waters and wildlife habitat of South Carolina rivers through vigilant monitoring of the federal dam relicensing program.

R.002072

Changing of the Guard

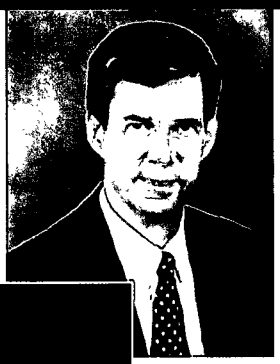
Will Cleveland assumes chairmanship of Conservation League board

Will Cleveland, a principal and head of business litigation for Buist, Moore, Smythe, McGee law firm in Charleston, has assumed the chairmanship of the Coastal Conservation League Board of Directors. He takes over from Charlotte Caldwell, who steps down after four years at the helm. Having been a member of the League board since 1997, Will also served on the state's Marsh Island Advisory Committee, where he donated many hours of his time to help develop landmark compromise regulations.

Laura Gates, who joined the League board in 2002, will take over as vice-chair. A native of Chicago, Laura was Vice President of Operations at The Field Museum in Chicago where she began her involvement with environmental issues and organizations. In addition to the League, she is active with *Chicago Wilderness* magazine, the Chicago Shakespeare Theater, and the Albert Schweitzer Fellowship.

We welcome back long-time supporter and former vice-chair **Trenholm Walker** to the League board. Trenholm previously served from 1993 to 2003, and contributed many hours of pro bono legal work. He grew up in Summerville and is a partner in the law firm of Pratt-Thomas, Epting and Walker. Walker has also served on the board of The Preservation Society of Charleston.

Farewell and thanks to **Holly Houghton**, who has recently moved back to Aiken from Georgetown, where she became active with the Conservation League, having been a member of the board since 2002. **Jay Mills,** of Chattanooga, Tennessee and Debordieu Island, is also stepping down from the League board, but will continue to serve as an advisor on the Investment Committee.



Will Cleveland

Laura Gates

Trenholm Walker

Thank You, Charlotte Caldwell

Charlotte Caldwell

"I am happy and proud to have put myself out of a job!" laughs **Charlotte Caldwell**, outgoing chair of the Coastal Conservation League Board of Directors. Charlotte has led the board since 2001, having chaired the League's successful capital campaign, which exceeded its goal of $6 million in 2004 and enabled the League to broaden its mission, expand its staff and expertise, and set in motion policies and programs that ensure the long-term viability of the organization.

In fact, Charlotte became a member of the Conservation League prior to moving to Charleston in 1998. Born and raised on Lookout Mountain in Tennessee, Charlotte had no choice but to love nature. "My father taught me to fish and hike. My mother taught me humility and respect for all living things," she explains. "Consequently, I have a deep respect for the utilitarian value of nature, as well as for its more intrinsic values."

Charlotte looks forward to a new chapter in life with her husband, Jeffrey Schutz, a venture capitalist from Denver and a member of the League's Investment Committee. Together, they are establishing a ranch near Livingston, Montana, where they will work toward energy efficiency and restoration of native habitat. "At 5,800 feet above sea level, it's a whole different environment!" exclaims Charlotte. And you can be sure she will make as positive an impact on Montana as she has on the Lowcountry of South Carolina.

Rudy Mancke Embarks on His First Ever Indoor Nature Walk

Honor Marks' oil renderings serve as a guide through South Carolina's wild places.

On Thursday, December 1st, the Conservation League's Live Oak Society members were treated to a sneak preview of local Charleston artist Honor Marks' current exhibit, "Wild Things and Wonders." Rudy Mancke, premier naturalist and host of public television's NatureScene, led guests on an indoor journey through South Carolina's wild places, stopping to examine each rare or endangered species glimpsed in Honor's exquisite paintings. Rudy delighted the crowd with entertaining tales about South Carolina's natural history, and discussed the importance of the habitats in which these endangered species live.

"In the past, painters revealed new landscapes and new species to audiences that had traveled little," says Dana Beach, League Executive Director. "It is amazing to think of the reception Audubon's birds received in Europe, and the lines of viewers who waited for a chance to examine the enormous landscapes of Frederick Church and Thomas Cole, and the renderings of the Amazonian jungle by Martin Johnson Heade.

"Today, we have traveled much and settled almost every place on earth. For exactly those reasons, it is essential that we learn to see in a different way than we have in the past. It is important because unlike the figures in Church's landscapes, we are no longer small or insignificant in our impact on nature. Learning to see is the first step in learning to protect. Honor Marks' paintings of native and endangered plants of the Lowcountry are wonderful because they are beautiful, and because they inspire in us the need for stewardship of life forms about which we may have been unaware."

The exhibit was made possible by the Michael and Donna Griffith Lowcountry Artists Award administered by the Coastal Community Foundation. Honor is the 2005 recipient of the award.

For more information on becoming a member of the Conservation League's Live Oak Society, please contact Cathy Forrester at CathyF@scccl.org, or 843-723-8035, ext.13.

(l-r) Dana Beach, Honor Marks, and Rudy Mancke

Honor Marks

Lowcountry Artist

The artist gained inspiration as a child in the Francis Marion National Forest

Honor Marks grew up in Charleston, where she remembers slogging through the marshes of the Lowcountry as a child, searching for rare wildflowers with her family. Through the years, they photographed hundreds of wildflowers all over the South, and Honor spent hours listening to and looking intently at the natural wonders around her. Today, Honor continues that journey through her artwork.

Many of her beautiful paintings of native and endangered South Carolina plant species adorn the pages of this issue of the League newsletter. You can see the full collection on her website – www.HonorMarks.com.

R.002074

Thank You!

Live Oak Society

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East Africa - A Marvel of Bio-Diversity

Photographs by Jane Lareau

(l-r) Land Use Director Jane Lareau with League supporters Harriet Gettys, Paula Lareau and Kathy Lindsay in the shadow of Mt. Kilimanjaro. The four friends toured Kenya and Tanzania this summer, marveling at East Africa's abundant and diverse wildlife, manifested in the cheetah and saddle-billed stork pictured here.

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Thank You!

New Leadership at OCRM

Carolyn Boltin has been appointed Deputy Commissioner for the Office of Ocean and Coastal Resource Management (OCRM). Boltin comes to OCRM from the U.S. Coast Guard where she was a civilian employee serving as Chief of the Natural Resource Damage Division of the National Pollution Funds Center in Arlington, Virginia. In that division since its establishment in 1999, she managed the $1 billion Oil Spill Liability Trust Fund for natural resources damages. In 2005, she received the U.S. Department of Defense's "Women Change America" award.

From 1997 to 1999, Boltin worked with the Strom Thurmond Institute at Clemson University where she researched coastal zone plantations. Previously, she served as Project Coordinator for the S.C. Wildlife Federation. Boltin holds a bachelor's degree in Marine Sciences from the University of South Carolina and a master's degree in Agriculture and Applied Economics - Natural Resources from Clemson. Born and raised in Lexington, she now resides in Goose Creek.

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In memory of Ancrum D. Ballenger
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Membership Director Nancy Cregg has made it possible for shoppers at Piggly Wiggly and other Greenbax stores to donate their Greenbax dollars to the Coastal Conservation League. Check us out at www.greenbax-online.com under "Charities."

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In memory of Harriet A. Riley
Mr. and Mrs. Langdon D. Long

In memory of friends
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In honor of Richard P. Pinson
Ms. Sarah Pinson

In memory of Harriet Almeida Riley
Ms. Anne Marie Ugarte
Mr. and Mrs. Doyle Weeks

R.002079

Final Thoughts

There has never been a more important time for conservation in our state. Carolina Bays and other isolated wetlands have lost the federal protection they once had. Thousands of small marsh islands are vulnerable to the damaging impacts of intense development if bridges are permitted to connect them to the mainland. Hundreds of thousands of acres of timberland are up for sale. Many of these timber parcels adjoin historic properties like those along the Ashley and Cooper rivers or border critical wildlife habitat in the Francis Marion National Forest and state Natural Heritage Preserves. Poorly managed growth along the coast and across the state threatens our quality of life with increased air and water pollution, rising traffic congestion, and loss of natural habitat.

Our elected officials will consider legislation affecting these and other critical conservation issues during the 2006 legislative session of the S.C. General Assembly. They have an historic opportunity to sustain South Carolina's natural lands, wildlife and water resources for our children, and for their children. Whether they take this opportunity or not depends on us.

Help us conserve our water, our land and our way of life. Tell the legislature what YOU want for South Carolina. There are many ways to make your voice heard:

SIGN-UP FOR LEGISLATIVE UPDATES: Sign-up at www.CoastalConservationLeague.org and receive a weekly e-mail update on conservation legislation during the session so you can contact your legislators about the issues that are most important to you.

JOIN THE CONSERVATION LOBBY TEAM: The Conservation Lobby Team will help move the conservation agenda forward by going to the State House with our lobbyists to visit legislative offices, observe the session, speak to representatives and senators, and attend hearings. As a team member, you'll commit to attend one Tuesday during the session, but we hope you'll give it a try early and return again. For more information, send an e-mail to christiem@scccl.org, visit our Web site at www.CoastalConservationLeague.org, or give us a call at 803-771-7102, ext. 21.

Painting by Honor Marks

VOLUNTEER: Attend a local public hearing or council meeting, write a letter to the editor, man the League table at a festival or fair, send an e-mail or letter to local and state representatives, or let us know how you would like to give your time. For more information, please send an e-mail to christiem@scccl.org, give us a call at 803-771-7102, ext.21, or visit our Web site at www.CoastalConservationLeague.org.

Volunteer

Cover Artist -Photographer **Wayne Irvin** is a retired dentist, with a Masters degree in zoology living in Southern Pines, N.C. He has had a lifelong interest in natural history, having once served on the staff of the N.C. Museum of Natural Sciences in its Department of Ornithology. Wayne devotes much of his time, as a volunteer, "to what's going on in ornithology in North Carolina."

THE MISSION OF THE COASTAL CONSERVATION LEAGUE is to protect the natural environment of the South Carolina coastal plain and to enhance the quality of life of our communities by working with individuals, businesses and government to ensure balanced solutions.

For more information about the Coastal Conservation League, check out our Web site at www.CoastalConservationLeague.org

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R.002080

Exhibit 73

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, the Coastal Conservation League, and Preservation Society of Charleston, Plaintiffs,	)	SUMMONS
vs.	)	FILE NO. 11-CP- 10 - 4139
Carnival Corporation D/B/A Carnival Cruise Lines, Defendant, and The South Carolina State Ports Authority and The City of Charleston, Intervening Defendants.	)	

2011 SEP 12 PM 3:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the amended complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

SCCA 401 (5/02)

Charleston, South Carolina
Dated: 9-12-11

J. Blanding Holman IV

Attorney for Plaintiffs Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, and Coastal Conservation League

Address: Southern Environmental Law Center
43 Broad Street, Suite 300
Charleston, SC 29401

Dated: 9-12-11

John A Massalon

Attorney for Plaintiff Preservation Society of Charleston

Address: Wills Massalon & Allen, LLC
97 Broad St
Charleston SC 29401

Dated: 9-12-11

Timothy C. Dargan

Attorneys for Historic Ansonborough Neighborhood Association

Address: Brown & Varnado LLC
P.O. Box 1127
Mount Pleasant, SC 29464
(843) 737-7300

SCCA 401 (5/02)

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, the Coastal Conservation League, and Preservation Society of Charleston, Plaintiffs,	SUMMONS
vs.	FILE NO. 11-CP- 10-4139
Carnival Corporation D/B/A Carnival Cruise Lines, Defendant, and The South Carolina State Ports Authority and The City of Charleston, Intervening Defendants.	

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SCCA 401 (5/02)

Charleston, South Carolina
Dated: 9-12-11

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Attorney for Plaintiffs Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, and Coastal Conservation League

Address: Southern Environmental Law Center
43 Broad Street, Suite 300
Charleston, SC 29401

Dated: 9-12-11

John A Massalon

Attorney for Plaintiff Preservation Society of Charleston

Address: Wills Massalon & Allen, LLC
97 Broad St
Charleston SC 29401

Dated: 9-12-11

Timothy C. Dargan

Attorneys for Historic Ansonborough Neighborhood Association

Address: Brown & Varnado LLC
P.O. Box 1127
Mount Pleasant, SC 29464
(843) 737-7300

SCCA 401 (5/02)

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, the Coastal Conservation League, and Preservation Society of Charleston, Plaintiffs,	)	SUMMONS
vs.	)	FILE NO. 11-CP- 10 - 4139
Carnival Corporation D/B/A Carnival Cruise Lines, Defendant, and The South Carolina State Ports Authority and The City of Charleston, Intervening Defendants.	)	

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YOU ARE HEREBY SUMMONED and required to answer the amended complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

SCCA 401 (5/02)

Charleston, South Carolina
Dated: 9-12-11

J. Blanding Holman IV

Attorney for Plaintiffs Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, and Coastal Conservation League

Address: Southern Environmental Law Center
43 Broad Street, Suite 300
Charleston, SC 29401

Dated: 9-12-11

John A Massalon

Attorney for Plaintiff Preservation Society of Charleston

Address: Wills Massalon & Allen, LLC
97 Broad St
Charleston SC 29401

Dated: 9-12-11

Timothy C. Dargan

Attorneys for Historic Ansonborough Neighborhood Association

Address: Brown & Varnado LLC
P.O. Box 1127
Mount Pleasant, SC 29464
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SCCA 401 (5/02)

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	
	)	
	)	
HISTORIC ANSONBOROUGH NEIGHBORHOOD ASSOCIATION, CHARLESTOWNE NEIGHBORHOOD ASSOCIATION, COASTAL CONSERVATION LEAGUE, and PRESERVATION SOCIETY OF CHARLESTON,	)	IN THE COURT OF COMMON PLEAS
	)	
	)	CASE. NO. 11-CP-10-4139
Plaintiffs,	)	
	)	
v.	)	FIRST AMENDED COMPLAINT (Declaratory and Injunctive Relief Sought)
	)	
CARNIVAL CORPORATION, D/B/A CARNIVAL CRUISE LINES,	)	
	)	
Defendant, and	)	
	)	
THE SOUTH CAROLINA STATE PORTS AUTHORITY and THE CITY OF CHARLESTON,	)	
	)	
Intervenors-Defendants	)	

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INTRODUCTION

1. In this Complaint, Plaintiffs allege that Defendant Carnival Cruise Lines ("Carnival") is violating numerous laws that protect Charleston's historic assets and environment from uncontrolled and incompatible cruise industry operations, and that Defendant's enterprise and its impacts comprise an injurious nuisance. At base, Defendant Carnival is conducting an intensive cruise accommodations and tour business in downtown historic Charleston as if the enterprise were beyond the reach of laws that other businesses and citizens must, and do, obey. Defendant is discharging pollutants

from its vessel the Carnival *Fantasy* into Charleston Harbor without permits required by South Carolina pollution control law. Further, Defendant is conducting Charleston's single largest accommodations and tour boat business in an area where accommodations, tour boats and deepwater transportation are not allowed. The crowds, pollution, and traffic associated with these unlawful operations create a nuisance for Charleston citizens. This lawsuit aims to protect Charleston's neighborhoods, families and the environment by having Defendant Carnival play by the longstanding rules and norms that have made – and make – Charleston a wonderful place to work, live, and visit. Relief sought includes a declaration that Defendant is not above local laws as well as injunctive relief to obtain compliance with those laws and to abate the nuisance caused by Defendant's operations.

BACKGROUND

New Charleston Cruise Ship Operations

2. Charleston has recently experienced an explosion of cruise ship activity that goes far beyond prior cruise operations in scale, kind and intensity. Prior to 2008, no cruise ships used Charleston as a home-port, *i.e.,* the land base at which passengers, crew and supplies load and unload. While ships making port-of-call visits release and retrieve passengers over the entire docking period, vessels that home-port require that passengers, supplies and crew come to and from Charleston by land or air for embarkations and debarkations on a single day in concentrated windows of time. In 2009, cruise ships docked at the South Carolina Ports Authority's ("SPA") Union Pier Cruise Terminal in Charleston some 33 times. In 2010, the number more than doubled, to 67. For 2011, the number is expected to be 90 – 68 of which will be home-port calls.

3. The SPA is an instrumentality of the State of South Carolina, created by S.C.

Code Ann. § 54-3-10, *et. seq.* SPA owns and operates Union Pier Terminal and contracts with Defendant Carnival for the use of portions of that facility, which includes the Union Pier Cruise Terminal, for home-porting operations. Union Pier Terminal is located within the corporate limits of the City of Charleston, in Charleston County, South Carolina and is within the Old and Historic District and the Old City Height District established by City of Charleston Ordinance. As the SPA notes on the cruise section of its website, "Lovingly preserved for 300 years, Charleston is a living museum. Here a ship's passengers can step back in time to the eighteenth century, before the Revolution, when Charleston was the seat of British rule and the cultural capital of the New World."

4. The majority of the increase in cruise activity in Charleston can be attributed to the Carnival *Fantasy*, which Carnival has embarked and disembarked at Charleston since 2010. The *Fantasy* is 855 feet long and more than 60 feet tall from water line to the top of the *Fantasy's* distinctive "whale-tail" Carnival funnel. With its unique fluke-like shape and bright, red, white, and blue coloring, the funnel is a registered Carnival trademark used as a corporate logo in marketing materials. The funnel protrudes approximately 30 feet above the roofline of the *Fantasy* and towers above the historic downtown Charleston skyline. *See* Exhibit 1 (photograph of Carnival *Fantasy* funnel over Charleston).

5. The *Fantasy* is less than 190 feet tall from waterline to topmost structure.

6. The *Fantasy* has the capacity to carry 2,056 passengers and 920 crewmembers, for a total of 2,976 persons aboard. The number of staterooms for hire (1,026) is more than twice the number of rental rooms available in Charleston's largest hotels: Charleston Place (444 rooms) and the Charleston Marriott (347 rooms). In addition to multiple

restaurants, gambling casinos, bars, swimming pools, and theaters, the *Fantasy* is equipped with a "City Sports Park" with jogging track and a nine-hole mini-golf course, and a "Waterworks" park, whose bright yellow waterslide on the upper rear deck is clearly visible from the streets of historic downtown Charleston.

7. Rooms aboard the *Fantasy* are furnished to transients for consideration.

8. Charleston is world-renowned for its protected historic downtown and neighborhoods, including the Ansonborough and Charlestowne neighborhoods near Union Pier Terminal. Ansonborough and Charlestowne are in the Charleston Historic District – also known as the Charleston Old and Historic District. The District is listed on the National Register of Historic Places, a register of nationally significant properties maintained by the Secretary of the U.S. Department of Interior. National Register designation and Charleston's preservation laws enhance values for the community overall. National Register designation can be lost if the integrity, setting, and context of the Charleston Historic District are not maintained.

9. Both the SPA and Carnival advertise downtown Charleston's historic nature and attractions on their websites. In other words, the Defendant's cruise operations in Charleston depend on the draw of Charleston's sights and views to potential cruise passengers. For example, Carnival's website advertises Charleston as a "living museum" with its "formal gardens, magnificent plantations and stately old homes that offer a first-hand glimpse into life before the Civil War." Ocean view staterooms are advertised as offering "sneak peeks" at the cruise destinations, and Carnival's Spring 2010 Business Development newsletter notes that the cruises give customers the opportunity to visit Charleston and see "views of Charleston Harbor, Ft. Sumter, the Audubon Center or

Charles Towne Landing."

Historic District Impacts

10. New cruise ship operations at SPA's Union Pier Terminal, including Defendant's activities, impact the Old and Historic District and Plaintiffs in a number of ways, including but not limited to:

(A) As Exhibit 1 shows, the *Fantasy* visually disrupts the historic skyline with large, unhistorical, and impossible-to-ignore forms that detract from 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. When docked, Defendant's ships are the broadest and tallest structures in Charleston, yet are completely unhistorical in design.

(B) The influx of thousands of passengers, crew, and support personnel (and associated traffic) along with the transportation of supplies and garbage are beyond the scale of pre-existing tourist operations, different in kind from prior maritime activity in the Old and Historic District and cause major traffic congestion downtown and the closure of public roads.

(C) The vessels emit noise pollution, including broadcast announcements and music, and the burning of diesel fuel emits visible particulate soot from ship funnels – all adjacent to the Old and Historic District.

(D) 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.

11. Customers renting accommodations aboard the *Fantasy* travel to and from SPA's Union Pier Cruise Terminal in the City of Charleston via car, van, and bus near and through the surrounding neighborhoods. The SPA has stated that cruise customers drive between 500 and 1,000 cars to and from each cruise embarkation and debarkation. These vehicles wind through the check-in, security, and baggage drop locations before finally parking in a separate location and discharging passengers to board the cruise ship itself. SPA officials have described the existing process as an "absolute convoluted mess" and have publicly stated that "none of us are proud of what we have here." Supplies, services, and personnel used by the *Fantasy* and other vessels are delivered to and from the Terminal in trucks, cars, buses, and vans as well. 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.

Air and Water Pollution

12. Cruise ships such as the Carnival *Fantasy* discharge pollution into surrounding waters. The pollution includes ballast water, hull coatings, gray water, and black water. Gray water includes liquids drained from food processing, showers and sinks, and cleaning operations. Tests on gray water have shown fecal coliform levels – an indication of bacteriological activity – thousands of times higher than limits applicable to landside wastewater dischargers such as Charleston's Plum Island Wastewater Treatment Plant. Black water includes sewage discharged from toilets and medical facilities.

Although treatment is required within the navigable waters of the United States, which correspond to South Carolina's territorial limits, the applicable requirements have not been revised since the 1970s, and weak monitoring and reporting requirements, coupled with time constraints, limit the Coast Guard's ability to detect violations. Further, raw sewage may be legally discharged outside the three-mile reach of these waters. Ballast water is water that ships take on and discharge to compensate for changes in the amount and distribution of weight and thereby maintain their stability in the water. Ballast water discharges have historically represented a major cause of non-native aquatic species invasions. A number of studies and reports have discussed the extensive economic and ecological damage invasive species have visited on the United States. Regulatory authorities have increasingly recognized that invasive species represent one of the most serious, but least appreciated environmental threats.

13. While cruise advocates in Charleston have said cruise ships do not discharge pollutants within 12 miles of shore, no information has been made public demonstrating that such discharges are not occurring, and it appears no state permits have been sought or received that would allow for control and monitoring of such discharges. Moreover, reports and notices filed with the U.S. Environmental Protection Agency ("EPA") and the Coast Guard contradict the claim of no discharge, as does Defendant Carnival's own discharge policy governing certain cruise ships. Defendant has provided a notice to EPA indicating that the *Fantasy* may generate discharges of as many as a dozen pollutants within three miles of shore, a distance that corresponds to the reach of both federal navigable waters and state territorial limits. These pollutants include: ballast water; hull coatings, deck wash-down and runoff; cathodic protection; controllable pitch propeller

hydraulic fluid and other oil-to-sea interfaces; distillation or reverse osmosis brine; fire main systems; refrigerator and air condensate discharges; seawater cooling overboard discharge and seawater piping biofouling prevention; and small boat engine wet exhaust and underwater ship husbandry. *See* Exhibit 2. Other cruise lines under Carnival Corporation's umbrella have submitted similar notices to EPA of anticipated discharge generation. Specifically, notices filed for the Holland America Line's *MS Veendam* and Aida Cruises' *Aida Luna*, both of which are slated to visit Charleston this year, provide that each ship may generate discharges of nearly twenty different pollutants within three miles of shore, including gray water, ballast water, and bilge water. The *MS Veendam* anticipates discharges of gray water mixed with sewage. *See* Exhibit 3. Defendant Carnival's voluntary Shipboard Wastewater Management Policy contemplates such discharges, as it exempts ships with certain types of treatment systems from its distance limits.

14. Coast Guard records show that the Defendant's *Fantasy* and other cruise ships routinely discharge ballast water when calling on Charleston. The Coast Guard's National Ballast Information Clearinghouse records show that the Carnival *Fantasy* frequently discharges ballast water in Charleston, and other cruise ships likewise have reported Charleston as a discharge location on a number of occasions. *See* Exhibit 4. Ballast water contains marine species, which if allowed to invade a new environment pose a well-established threat to the environment and economy of the affected location. Invasive species may multiply rapidly, dramatically alter ecosystems supporting commercial and recreational uses, and lead to the extinction of native species. Because Charleston Harbor's characteristics make it one of the more probable sites for the

introduction of aquatic invasive species, ballast water discharges at the port are of "particular concern." South Carolina Aquatic Invasive Species Management Plan at 35. Indeed, a 2002 risk assessment identified Charleston Harbor as suitable to support zebra mussels, which have wreaked havoc on the Great Lakes after being discharged through ballast water from European vessels.

15. EPA reports acknowledge that existing federal requirements have not been completely successful in addressing ballast water discharges. A number of states have therefore imposed more stringent requirements to protect their health, economy, and environment as national and international authorities work towards improved measures. Yet Defendant has not applied for any South Carolina permits providing for monitoring and control of its ballast water discharges.

16. Certain discharges accompany the ship wherever it sails, and thus necessarily occur in the harbor and surrounding waters when the *Fantasy* calls on Charleston. In particular, cruise ships such as the *Fantasy* slowly and constantly discharge toxic metals from "anti-fouling" coatings painted on their hulls. These coatings are purposely designed to continuously leach biocides such as copper and zinc oxides into the water. They serve to minimize the build-up of barnacles, algae, and other marine organisms on the ships' hull. But, their impact necessarily spreads wide of these "target" organisms and can threaten serious and long-lasting harm to the marine environment. EPA has summarized the results of relevant scientific investigations as showing that anti-fouling hull coatings pose a substantial risk of acute and chronic toxicity, as well as other adverse impacts, to ecologically and economically important "non-target" aquatic life. Moreover, because copper, one of the principle components discharged, does not break down in the

environment, it can bioaccumulate and work its way up the food chain, including into fish that people eat.

17. Defendant Carnival has reported that the *Fantasy* uses an anti-fouling hull coating manufactured by Jotun Paints, Inc. ("Jotun") with the trade name Antifouling Seaforce 200 AV. Jotun provides a Materials Safety Data Sheet describing the properties and disclosing hazards of this product. The data sheet expressly states that the coating is a water-polluting substance. It also discloses that this polluting substance is highly toxic to aquatic life and may have long-term adverse impacts on the aquatic environment. Defendant Carnival has not sought or received any South Carolina permit addressing these discharges.

18. In 2010, at least one cruise vessel embarking from SPA's Union Pier Terminal experienced outbreaks of Norovirus, an infectious gastrointestinal sickness that causes vomiting, diarrhea, and nausea. More than 1,000 cruise passengers traveling in and out of Charleston became ill. The Center for Disease Control, the United States Coast Guard, South Carolina Department of Health and Environmental Control ("DHEC"), and Charleston County resources were activated to respond to the outbreaks. Three days after the infected ship returned to Charleston for a 72-hour cleaning necessitated by the third in a series of Norovirus outbreaks (March 18, 2010), the *Mercury* reportedly discharged ballast water in Charleston. On board the infected vessel, responses included enhanced custodial cleanings while the ship was moored in Charleston Harbor, with residuals of such cleaning presumably ending up as "gray water." Discharged Norovirus and other pathogens are capable of surviving in salt waters such as those in and around Charleston Harbor. Federal law allows gray water to be discharged from a moving vessel within one

mile of shore – thus within the Charleston jetties – and no state permit has been sought nor obtained and no monitoring has been done on discharges from cruise ships in South Carolina waters.

19. 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. EPA has indicated that deposition of nitrogen and sulfur compounds can acidify the affected waters and alter the surface chemistry of seawater. Nitrogen deposition also harms bays and estuaries by fueling the growth of algae populations, which consume an inordinate amount of the oxygen that fish, plants, and other organisms need to survive. DHEC has identified dissolved oxygen as a "parameter of concern" in the Charleston Harbor water system. Because there are significant periods of time in which parts of the system do not meet the applicable water-quality standards for dissolved oxygen, the waters are considered "water quality limited." Yet Defendant Carnival has not sought or received any South Carolina permit that would allow monitoring or control of pollutants that reach the surrounding waters.

20. Guidelines purporting to limit cruise ship discharges, adopted by the Cruise Line International Association ("CLIA"), are not binding or enforceable as law. Moreover, because treatment systems can be costly to operate and waste storage is limited and costly, cruise vessel operators have an incentive to discharge untreated waste when and where they can. This can result in cruise lines "bypassing" treatment systems in violation of even minimal legal requirements. In 2002, Defendant Carnival pled guilty to knowingly discharging oil-contaminated bilge and false representation in federal

pollution records and paid $18 million in fines and mitigation to resolve federal criminal charges. *See* Exhibit 5.

Legal Framework

Zoning Protections

21. To protect the wellbeing and health of citizens and its historic assets -- including its skyline, viewscapes, and architectural scale -- Charleston adopted a series of ordinances beginning in 1931 to regulate the height, scale, and mass of structures and attachments as well as zoning laws to regulate uses and activities within and near Charleston. Charleston's City Council has adopted two preservation plans – the first in 1974, the second in 2008 – to guide future development of the City, along with a comprehensive plan (the Downtown Plan) that requires preservation impacts be considered. As detailed in the counts below, cruise operations now being undertaken at Union Pier Terminal violate existing Charleston ordinances in multiple respects.

Pollution Discharge Limits

22. The South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10 *et seq.*, applies to waters of the State, including freshwaters, wetlands, estuaries, and the Atlantic Ocean within South Carolina's territorial limits, and prohibits discharges of pollutants into the environment of the State of South Carolina without a permit or authorization from DHEC. *Id.* § 48-1-10(2), § 48-1-90.

23. "Pollutant" is broadly defined for purposes of the Pollution Control Act. Multiple substances added to adjacent waters by the *Fantasy* and other cruise ships meet the definition of pollutant.

24. The Act requires permits for all discharges of pollutants into the State's waters

and ambient air. *Id.* §§ 48-1-10(20) & -48-1-90.

JURISDICTIONAL FACTS AND PARTIES

Jurisdiction

25. This Court, pursuant to S.C. Const. art. V, § 11, S.C. Code Ann. § 6-29-950, *et seq.*, City of Charleston Zoning Ordinance Section 54-905 of the City of Charleston Zoning Act, S.C. Code Ann. § 48-1-250, S.C. Code Ann. § 15-53-10 *et seq.*, and other law has jurisdiction over the Plaintiffs' claims and the Defendant. Venue for this action is proper in Charleston County because Plaintiffs are located here and the occurrences giving rise to this dispute have occurred within the City of Charleston, Charleston County, in the State of South Carolina.

Parties

Defendant

26. Defendant Carnival Corporation d/b/a Carnival Cruise Lines (collectively, "Carnival" or "Defendant") owns and operates the Carnival *Fantasy*, which routinely utilizes Union Pier Terminal and the surrounding area for regularly scheduled embarkation and debarkation. Defendant Carnival's operations at Union Pier Terminal and the activities required for, caused by, and associated with those operations give rise to Plaintiffs' injuries and this dispute.

27. Defendant Carnival advertises and furnishes for consideration "accommodations" on its vessels including *Fantasy* sailings from Charleston. *See* Exhibit 6 (Carnival Corp. Form 10-K: Annual Report at 15, F-28 (January 31, 2011)).

28. Defendant Carnival regularly conducts business in South Carolina and has a registered agent on file with the S.C. Secretary of State for service of process.

Plaintiffs

29. The Historic Ansonborough Neighborhood Association ("Ansonborough Association") is a South Carolina non-profit corporation organized in 1984. Its approximately 240 members are residents, property owners and tenants in a section of Charleston just west of the Union Pier Terminal. The Ansonborough Association is organized with committees to study proposed projects in area to review compliance with zoning ordinances and regulations and identify any adverse effect on the environment or quality of life in the area.

30. The Charlestowne Neighborhood Association ("Charlestowne Association") is an non-profit organization established under the laws of South Carolina to promote orderly well-being in the historic neighborhood bordering the waterfront on the south side of the Charleston Peninsula. The Charlestowne Association has a committee to monitor the impacts of all forms of tourism on the residential neighborhood, including cruise ships.

31. The Coastal Conservation League ("League") is a not-for-profit corporation organized and existing under the laws of South Carolina with approximately four thousand members. The League's mission is to conserve natural resources and quality of life in South Carolina, particularly Charleston and along the coast. The League's headquarters are on East Bay Street, almost adjacent to Union Pier Terminal.

32. The Preservation Society of Charleston ("Preservation Society") is a not-for-profit corporation organized and existing pursuant to the laws of the State of South Carolina and has its principal place of business in Charleston, South Carolina. The Preservation Society has more than 2,000 members concerned about the future of Charleston's historic district and the organization's by-laws establish a mission and purpose to preserve and

protect the historical, architectural and cultural character of the Charleston, South Carolina, area and its environs; cultivate and encourage interest in the preservation of buildings, sites and structures of historical or aesthetic significance; and to take whatever steps may be necessary and feasible to prevent the destruction or defacement of any such building, site or structure. In 1931, the Preservation Society was instrumental in persuading the City of Charleston to pass the first zoning ordinance enacted to protect historic resources. The Preservation Society is currently the grantee of several conservation easements that are negatively affected by cruise operations, including an easement at 301 East Bay Street.

33. 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. Plaintiff Organizations seek to vindicate the interests of their members by seeing cruise operations abide by law that manage scale, intensity and location of such operations to reduce impacts to and disruptions of the historic district. Plaintiffs use Charleston Harbor and adjacent waters for recreation, including boating, kayaking, crabbing and fishing, and the use and enjoyment thereof will continue to be diminished by pollution of those waters by cruise operations and the uncontrolled presence of cruise ships.

FIRST CLAIM

(Unlawful Use Within Light Industrial Zone District)

34. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

35. The Charleston Zoning Ordinance ("CZO") establishes base zoning districts and sets forth permitted principal uses for each base zoning district in a Table of Permitted Uses or as modified by special provisions, exception, and conditions. CZO § 54-203. The Table is based upon the 1987 Standard Industrial Classification Manual. *Id.* "Any use not permitted in a district is expressly prohibited." *Id.* § 54-203(b).

36. The Union Pier Terminal is located in the "light industrial" ("LI") district.

37. The LI district permits commercial uses and "low impact industrial uses which are compatible with surrounding commercial districts." CZO § 54-201(q). The Table of Permitted Uses, Division E, Contains several permitted uses within category 44, "Water Transportation," for the LI district including Water taxis (SIC 448), Marine cargo handling (SIC 4491), Towing and tugboat services (SIC 4492), and Marinas (SIC 4493). CZO Art. 2 – Land Use Regulations, Part 3 - Table of Permitted Uses, Division E. However, the table does not list SIC code 4481, "Deep Sea Transportation of Passengers, Except by Ferry," which encompasses establishments "primarily engaged in operating vessels for the transportation of passengers on the deep seas." *See* http://www.osha.gov/pls/imis/sic_manual.display?id=916&tab=description (visited April 19, 2011). Nor does the table list SIC Code 449, "Services incidental to water transportation" as authorized in the LI zone.

38. Defendant's cruise operations meet the definition of "Deep Sea Transportation of Passengers," (SIC 4481), and include services incident thereto, (SIC 449).

39. Because "Deep Sea Transportation of Passengers" (SIC 4481) and services incidental to water transportation (SIC 449) are not uses permitted in the LI district, they are expressly prohibited and those uses at Union Pier Terminal violates the Charleston

Zoning Ordinance. CZO § 54-203(b).

SECOND CLAIM

(Violation of the Accommodations Zoning Ordinance)

40. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

41. Pursuant to the Charleston Zoning Ordinance ("CZO") § 54-220, accommodations uses are permitted only in accommodations overlay zones.

42. The portion of Union Pier Terminal where Defendant's cruise operations occur does not have accommodations overlay zoning.

43. "Accommodations uses" are defined under the CZO as commercial uses "to provide living or sleeping units, for remuneration" to individuals for less than 29 consecutive days and "any and all similar uses . . . ." *Id.* at § 54-120.

44. Cruise operations and activities incident to those operations at Union Pier Terminal fit within the definition of "accommodations uses" under the CZO.

45. Carrying forth such uses in the absence of an accommodations overlay violates the CZO.

THIRD CLAIM

(Violation of the Tour Boat Zoning Ordinance)

46. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

47. Pursuant to the Charleston Zoning Ordinance ("CZO") § 54-221, tour boat facilities are permitted only in tour boat overlay zones.

48. "Tour boat facilities" are defined under the CZO § 54-221(b) as "the use of land,

the structures thereon, docks, wharfs, or other such appurtenances for the purpose of embarking or disembarking of passengers for hire aboard boats for transportation to and from historic sites, or for the purpose of viewing, in Charleston harbor or the rivers or lands adjacent thereto."

49. Carnival advertises Charleston's views and viewscape as well as tourist sights on its website to potential *Fantasy* passengers, stating that Charleston is a "magical city with its cobblestone streets, horse-drawn carriages, Colonial Row Houses, Antebellum Mansions and beautiful parks and gardens." Carnival has also stated that the *Fantasy* visits Charleston for the "gorgeous waterfront and unique architecture, interesting historical landmarks and more." Its ocean view rooms with large windows "offer excellent views of the ocean and sneak peeks of each destination."

50. Cruise operations and activities incident to those operations at Union Pier Terminal are "tour boat facilities" under the CZO, yet those activities are being undertaken in areas without a tour boat overlay.

51. Carrying forth such uses in the absence of a tour boat overlay violates the CZO.

FOURTH CLAIM

(Violation of the Old City Height District Ordinance)

52. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

53. The CZO defines the Old City Height District to include all of peninsular Charleston lying south of Mt. Pleasant Street..

54. Union Pier Terminal is located within the "WP" height district of the Old City Height District.

55. Cruise ships including the Carnival *Fantasy* are, while attached to the Union Pier Terminal, located within the "WP" height district.

56. Structures and attachments located within the "WP" height district may not exceed the height of sixty (60) feet. CZO § 54-306(g)(1).

57. The CZO exempts from the height limitations "church spires, belfries, cupolas, [and] domes," as well as "port cranes and movable passenger cruise boarding ramps not intended or used for human occupancy, monuments, masts and aerials." CZO § 54-308.

58. The CZO does not exempt vessels – other than their masts and aerials – from the Old City Height District height limitation.

59. The height of the Carnival *Fantasy* exceeds sixty (60) feet from waterline to the top of the ship's funnel, excluding masts and aerials.

60. Being more than 60 feet high, the Carnival *Fantasy* at Union Pier Terminal violates the Old City Height District height limitation.

FIFTH CLAIM

(Violations of View Corridor Provision)

61. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

62. The Old City Height Ordinance includes "view corridor protection" provisions applicable within that district. The view corridor protection provision requires that all "structures" be spaced so that "no street prolonged toward the Ashley or Cooper River would be blocked by a building, thereby preserving the vista from East Bay Street, East Battery, Lockwood Drive or Halsey Blvd." CZO § 54-307. "Building" is defined as "any structure built for the support, shelter, housing or enclosure of persons, animals or

property of any kind," including "appurtenances" such as "chimneys. . . terraces and decks. . . ." CZO § 54-120. A cruise ship is a "structure" that is "built for the support, shelter, housing or enclosure of persons" and thus meets the CZO definition of "building." A vessel may not be spaced such that it "block[s]" the vista of a street prolonged toward the Cooper River from East Bay Street.

63. While attached to Union Pier Terminal, cruise ships including Defendant Carnival's *Fantasy* block the easterly view of the Cooper River from East Bay Street where it crosses Market Street and violate the view corridor protection requirement of the CZO. *See, e.g.* Exhibit 7.

SIXTH CLAIM

(Violation of Sign Ordinance)

64. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

65. The CZO defines a "sign" as "any device or representation for visual communication that is used for the purpose of bringing the subject thereof to the attention of others which is located on or attached to premises, real property, structures on real property, or a vehicle, and which is visible from a public street or way." CZO § 54-120. Defendant's website states that its "Ship Funnel design" is a registered trademark and/or service mark of Carnival Corporation. The funnel has bright red, white, and blue patterned paint, and a distinctive whale tail, or fluke-like, shape. Defendant includes an image of the funnel next to its name in print and electronic media, and has patented the ship's funnel as an "ornamental design." The funnel meets the definition of "sign" as a "device or representation for visual communication" used for the purpose of bringing

attention to the subject thereof: the Carnival Corporation and its cruise business.

66. The funnel is also "located on or attached to premises, real property, structures on real property, or a vehicle, and which is visible from a public street or way." The funnel is visible from multiple streets and ways, and it is attached to a "vehicle." It is also a "roof sign" that is "erected over or on, and wholly or partially dependent upon, the roof of any building for support, or attached to the roof in any way," and an "on-premises sign" that "(a) identifies, advertises or directs the public to a use, occupancy, function, service or product which is sold or manufactured on the property where the sign is located or at the site of a commercial, industrial or office development where the sign is located. . . ." *Id.*

67. The Ordinance prohibits any sign that "projects above the peak of a roof" or that "emits a sound, odor or visible matter." CZO § 54-404(f),(h), (n).

68. Defendant Carnival's funnel sign emits visible matter, odors, and sounds, and projects above the peak of a roof. *See* Exhibit 8. It therefore violates the sign ordinance.

SEVENTH CLAIM

(Noise Ordinance)

69. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

70. It is unlawful within Charleston for any person, entity, or establishment to make, continue, or allow to be made or continued, any clamorous yelling, shouting, or other loud and unnecessary noises either in the day time or at night, which disturb the peace and quiet of the city. Charleston Ordinance § 21-16(a).

71. Cruise ships docking at Union Pier Terminal make announcements and other noises via amplified sound systems that can be heard over a large area, including within Ansonborough.

72. Because these noises are loud, unnecessary, and disturb the peace and quiet of those living in and around Ansonborough, the amplified noises made by cruise ships violate the City of Charleston's noise ordinance.

EIGHTH CLAIM

(Private Nuisance)

73. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

74. Charleston Ordinance § 21-51 defines a public nuisance as including any location, including smokestacks, which endangers the health, safety or property or causes "any hurt, harm, inconvenience, discomfort, damage or injury" to anyone in the city as well as "obstructions of streets," "unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather," "the escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the city limits or within one mile there from in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property," or "the pollution of any public well or cistern, stream, lake, canal or body of water."

75. Cruise operations downtown and ineffective management of them cause, among other things, traffic congestion, pollution emissions, road closures, large crowds, loud noises, and obstructed views that are incompatible with the area's historic setting, scale,

and residential character and impact health and the environment. These activities and impacts hurt, harm, inconvenience, discomfort, damage or injure Plaintiffs and unreasonably interfere with the free use and enjoyment of plaintiffs' property so as to constitute a common law nuisance.

NINTH CLAIM

(Public Nuisance)

76. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

77. Cruise operations downtown and ineffective management of them cause, among other things, traffic congestion, pollution emissions, road closures, large crowds, loud noises, and obstructed views that are incompatible with the area's historic setting, scale, and residential character and impact health and the environment. These activities and impacts hurt, harm, inconvenience, discomfort, damage or injure Plaintiffs and others, and, and by so doing unreasonably interfere with Charleston's quality of life and constitute a public nuisance. Plaintiffs are uniquely injured by the problems caused by and associated with Defendant's activities.

TENTH CLAIM

(S.C. Pollution Control Act Violation)

78. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

79. The South Carolina Pollution Control Act prohibits discharges of pollution into the environment of the State of South Carolina without a permit or authorization from DHEC. S.C. Code Ann. §§ 48-1-10, -90, & -100. The permit requirement applies to all

pollution discharged directly or indirectly into the State's waters or ambient air. *Id.* "Pollution" is broadly defined to encompass, among other things, sewage, other waste, air contaminates, and any other substances which may contaminate the environment, injure human health, or damage animal or marine life. S.C. Code Ann. § 48-1-10(7).

80. DHEC has promulgated regulations implementing the Pollution Control Act's requirement of a state-issued water pollution control permit. *See* S.C. Code Ann. Regs. §§ 61-9.122.1(a)(1) & (g)(1)-(2). These regulations mandate state-issued National Pollution Discharge Elimination System ("NPDES") permits for the discharge of pollutants from any point source into waters of the state. *Id.* § 122.1(b)(1). Regulation 61-9 defines a "permit" as "an authorization, license or equivalent control document issued by [DHEC] to implement the requirements of this regulation."

81. Both the Pollution Control Act and Regulation 61-9 expressly include vessels in the definition of a "point source." S.C. Code Ann. § 48-1-10(23); S.C. Code Ann. Regs. § 61-9.122.2(b). Thus, any vessel wishing to discharge pollutants into state waters directly or indirectly must first obtain a permit from DHEC.

82. Defendant Carnival's *Fantasy* discharges pollutants directly and indirectly into South Carolina waters.

83. Defendant Carnival has not obtained any permit from DHEC to discharge pollutants into South Carolina waters.

84. Defendant is violating state law by discharging pollutants from the *Fantasy* without required a state permit. S.C. Code Ann. §§ 48-1-90, 48-1-250.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as

follows:

A. Issue a declaratory judgment in Plaintiffs' favor adjudicating the illegality and unreasonableness of Defendant's use of Union Pier Terminal and surrounding areas and attached structures for cruise operations as set forth above.

B. Enjoin further violations of the law by Defendant Carnival;

C. Abate cruise operations that constitute a nuisance;

D. Award Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Charleston, South Carolina
September 12, 2011

11-4139

CERTIFICATE OF SERVICE

I certify that on this, the 12th day of September, 2011, I served the foregoing First Amended Complaint on the following parties by certified mail, return receipt requested as indicated below:

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2011 SEP 12 PM 3:13
JULIE J. ARMSTRONG
CLERK OF COURT

J. Blanding Holman IV

Exhibit 1

R.002116

Exhibit 2

EPA

United States Environmental Protection Agency
Washington, DC 20460
Notice of Intent (NOI) for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

OMB No. 2040-0004

Submission of this completed Notice of Intent (NOI) constitutes notice that the entity in Section A intends to be authorized to discharge pollutants to waters of the United States, from the vessel identified in Section B, under EPA's Vessel General Permit (VGP). Submission of the NOI also constitutes notice that the party identified in Section B of this form has read, understands, and meets the eligibility conditions of Part 1 of the VGP; agrees to comply with all applicable terms and conditions of the VGP; and understands that continued authorization under the VGP is contingent on maintaining eligibility for coverage. In order to be granted coverage, all information required on this form must be completed. Please read and make sure you comply with all permit requirements.

NPDES Permit Tracking Number (EPA Use Only) VPAAU750L

A. Vessel Owner/Operator Information

1. Name: Carnival Corporation
2. IRS Employer Information Number / Owner/Operator IMO Number. 591562976 / 8700773
3. Name of Certifying Official. Michelle Matejka
4. Mailing Address a. Street. 3655 NW 87th Ave
   b. City. Miami c. State: FL d. Zip code. 33178
   d. Country United States
   e. Phone 305-599-2600 f. Fax (Optional)
   g. Email mmatejka@carnival.com

B. Vessel Information

1. Vessel Name. Carnival Fantasy
2. Vessel ID/Registered Number/Vessel IMO Number 8700773
3. Vessel Call Sign H3GS
4. Flag State/Port of Registry Panama
5. Type of Vessel (select one)

☐Commercial Fishing Vessel with Ballast Water	☐Barge
☐Medium Cruise Ship (100 to 499 passengers)	☐Oil or Gas Tanker
☑Large Cruise Ship (500+ passengers)	☐Research Vessel
☐Large Ferry (250+ passengers or more than 100 tons of cargo, e.g., cars, trucks, trains, or other land-based transportation.)	☐Rescue Vessel

☐Other.

6. Vessel Dimensions. a. Weight. 70367 gross tons
   b Length* 224.39 meters
7. Ballast Water Capacity* 3135.6 meters3
8. Year Vessel Built* 1988
9. a. Date of last dry-dock. 09/01/2008 b. Date of next scheduled/anticipated dry-dock. 09/01/2011
10 Does the vessel have onboard treatment systems for any other waste stream covered by this permit (e.g Advanced Wastewater Treatment System for Graywater, Oily Water Separator)?

☑Yes ☐No

If yes, please complete the following for each treatment system

Waste Stream. bilgewater
Treatment system type/design and manufacturer Oil Water Separator/OMD-21/Marinfloc
Treatment System Capacity 2000 liters/hour

11. Ballast Water

a. How often is the ballast tank cleaned and sediment disposed of? every 30 months
b. How and where do you typically dispose of ballast tank sediment? homeport/drydock as either industrial or special waste based on composition
c Does vessel have an existing ballast water management plan? ☑Yes ☐No

12 a Type of anti-fouling hull coating on the vessel Jotun - Seaforce AV 200 (red)
b. When anti-fouling hull coating was last applied 09/01/2008

c. Describe hull husbandry practices, such as frequency of cleaning, method used, etc:

every 6-12 months

13. Does vessel currently have, or has vessel ever held, an NPDES permit, for any part, discharge, or operation of the vessel?

☐Yes ☑No

a. If yes, please provide the following:

Permit Number:

Dates of coverage:

b. Is this a transfer of ownership ☐Yes ☑No

If Yes, provide date of transfer

C. Vessel Voyage Information

1. Home Port/Most Frequented US Port: New Orleans LA, Mobile AL

2. US Ports Vessel Anticipates Visiting During Permit Term: New Orleans LA, Mobile AL

3. Number of overnight berths: a. Passengers 2620 b. Crew 988

a. Maximum passenger capacity 2634 b. Crew 926

4. Does vessel travel beyond the US EEZ and more than 200 nm from any shore? ☑Yes ☐No

5. Is the vessel engaged in Pacific Nearshore Voyages? ☐Yes ☑No

D. Discharge Information (commercial fishing vessels and vessels < 79 feet in length need only select Ballast Water; if such vessels have no ballast water discharges they do not need coverage under this permit):

1. Select all applicable discharges vessel may generate

☑Deck Washdown and Runoff
☐Bilgewater/Oily Water Separator Effluent
☑Ballast Water
☑Anti-fouling hull coatings
☐Aqueous Film Forming Foams (AFFF)
☐Boiler/Economizer Blowdown
☑Cathodic Protection
☐Chain Locker Effluent
☑Controllable Pitch Propeller Hydraulic Fluid and other Oil-to-Sea Interfaces
☑Distillation or Reverse Osmosis Brine
☐Elevator Pit Effluent
☑Firemain Systems
☐Freshwater layup
☐Gas Turbine Wash Water
☐Graywater
☐Motor Gasoline and Compensating Discharge
☐Non-Oily Machinery Wastewater
☑Refrigerator and Air Condensate Discharge
☑Seawater Cooling Overboard Discharge
☑Seawater Piping Biofouling Prevention
☑Small Boat Engine Wet Exhaust
☐Sonar Dome Discharge
☑Underwater Ship Husbandry
☐Weldeck discharges
☐Graywater Mixed with Sewage
☐Exhaust Gas Scrubber Washwater Discharge

2. Does Vessel ever engage in or have capacity to engage in industrial operations? ☐Yes ☑No

☐Seafood processing ☐Mining
☐Energy exploration ☐Other

3. Will the vessel be using experimental ballast water treatment system which discharges residual biocides or derivatives? ☐Yes ☑No

b. If yes, are biocide concentrations below those listed in Part 5.8 of the Permit? ☐Yes ☐No

c. List the biocide residuals or derivatives that may be discharged by the ballast water treatment system:

E. Certifier Name and Title

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name. Michelle Matcjka

Title.

Signature Michelle Matejka Date: 09/03/2009

Email mmatejka@carnival.com

NOI Preparer (Complete if NOI was prepared by someone other than the certifier)

Prepared By

Organization

Phone Ext:

Email:

Instructions for Completing the Notice of Intent for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

NOI Submittal Deadlines/Discharge Authorization Dates		
Category	**NOI Deadline**	**Discharge Authorization Date[1]**
Vessels delivered to owner or operator on or before September 19, 2009	No later than September 19, 2009	2009 Coverage granted until September 19, 2009. If EPA receives an NOI before September 19, 2009, uninterrupted coverage continues.
New Owner/Operator of Vessel - transfer of ownership and/or operation of a vessel whose discharge is previously authorized under this permit	By date of transfer of ownership and/or operation	Date of transfer or date EPA receives NOI, whichever is later
New vessels delivered to owner or operator after September 19, 2009	30 days prior to discharge into waters subject to this permit	30 days after complete NOI is received by EPA
Existing vessels delivered to owner or operator after September 19, 2009 that were not previously authorized under this permit	30 days prior to discharge into waters subject to this permit	30 days after complete NOI is received by EPA

[1] Based on a review of your NOI or other information, EPA may delay the discharge authorization date for further review, or may deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Part 1.8. In these instances, EPA will notify you in writing of the delay or the request for submission of an individual NPDES permit application. If EPA requires an individual permit for an existing vessel previously covered by a general permit, EPA will allow the permittee a reasonable amount of time to obtain individual permit coverage before the general permit coverage terminates.

Who Must File a Notice of Intent with EPA?

Under the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et. seq.), federal law prohibits discharges incidental to the normal operation of a vessel unless that discharge is covered under a National Pollutant Discharge Elimination System (NPDES) Permit. To obtain authorization under this permit, operators must meet the eligibility requirements found in Part 1.2 of the Permit and, if required by Part 1.5.1.1 of the Permit, submit a complete and accurate NOI according to the requirements in Part 10/Appendix E. NOIs must be signed in accordance with 40 CFR 122.22.

An owner/operator is required to submit an NOI if the vessel meets either of the following two criteria.

- The vessel is greater or equal to 300 gross tons,
  Or
- The vessel has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of Ballast Water.

An operator of a vessel is not required to submit a NOI pursuant to Part 1.5.1.2 of the permit if the vessel is less than 300 tons and does not have the capacity to hold or discharge more than 8 cubic meters of ballast water. Owner/Operators that are not required to submit an NOI automatically receive coverage under this permit for their vessel and are authorized to discharge in accordance with the permit requirements.

If you have specific questions about the Vessels General Permit please send a detailed email to [illegible] for assistance.

Where to File the NOI Form

EPA encourages you to complete the NOI form electronically via the Internet. EPA's Vessels Electronic Notice of Intent System (eNOI) can be found at [illegible]. Filing electronically is the fastest way to obtain permit coverage and help ensure that your NOI is complete. If you choose not to file electronically, you must send the NOI to one of the addresses listed below.

NOIs sent regular mail
EPA Vessels Notice Processing Center (4203M)
USEPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

NOIs sent overnight/express mail
EPA Vessels Notice Processing Center
EPA East Building, Rm 7420
1201 Constitution Avenue, NW
Washington, DC 20004
202-564-9545

If you have questions about whether you need to file an NOI or questions about completing the form, refer to www.epa.gov/npdes/vessels/eNOI or contact the NOI center at 1-866-352-7755.

If you file a paper NOI, please submit the original with a signature in ink – Do Not Send Copies. Also, faxed copies will not be accepted.

Completing the NOI Form

To complete this form, type or print in uppercase letters in the appropriate areas only. Please make sure you complete all questions. Make sure you make a photocopy for your records before you send the completed original form to the address above. You may also use this paper form as a checklist for the information you will need when filing an NOI electronically via EPA's Vessels eNOI system.

NPDES Permit Tracking Number

1. This field is for EPA only and will be populated only by EPA Call Center or the eNOI system to document that system generated NOI tracking number once a paper NOI has been entered into the system.

Section A. Owner/Operator Information

1. Provide the full legal name of the person, firm, public organization, or other entity that is the owner/operator of the vessel described in this application.
2. Provide the Employer Identification Number (EIN from the Internal Revenue Service (IRS)), commonly referred to as your taxpayer ID number. If the owner/operator does not have an EIN, enter the International Maritime Organization (IMO) Registered Owner or Company (DOC) number. Please designate the type of ID number entered. If the owner/operator does not have an EIN or IMO Owner or company number, enter "NA" in the space provided.
3. Provide the name of the Certifying Official
4. Provide the owner/operator's mailing address, telephone number, fax number (optional), and email address. Correspondence will be sent to this address.

Section B. Vessel Information

1. Provide the vessel's official or legal name, if applicable. If the vessel does not have a name, enter "NA" in the space provided.
2. Provide the vessel's identification, registered identification number, or IMO Ship number, as applicable. Indicate the type of number used to identify the vessel. If the vessel does not have an identification number, enter "NA" in the space provided.
3. Enter the vessel call sign, if applicable. If the vessel does not have a call sign, enter "NA" in the space provided.
4. Provide the flag state or port of registry. If the vessel does not have a flag state or port of registry, enter "NA" in the space provided.
5. Select the type of vessel by checking the appropriate box. Only the vessel types required to meet additional, vessel type-specific Permit standards are listed; all other vessel types should select "other" and enter the vessel type in the space provided

6a. Enter the vessel weight in gross tons or gross registered tons and specify the units entered.
6b. Enter the vessel length in feet or meters, and specify the units entered
7. Enter the ballast water capacity in gallons or m^3 and specify the units entered.
8. Enter the 4-digit year that the vessel was built.
9a. Enter the date of last dry-dock. Month/Day/Year
9b. Enter the date of the next scheduled/anticipated dry-dock Month/Day/Year
10. Indicate whether the vessel currently has any onboard treatment systems for any waste stream listed in the permit, such as an Advanced Wastewater Treatment System (AWTS) used for graywater or an Oily Water Separator (OWS) used for bilgewater. If yes, Describe the treatment system, including what waste stream it treats, the type and design of the system, and treatment capacity.
11. Provide information on the frequency and method of ballast tank sediment disposal and whether the vessel currently has a ballast water management plan
12. Indicate whether the vessel has an anti-foulant coating applied to the hull, what type of coating, when it was last applied, and briefly describe the vessel hull husbandry practices, including frequency of hull cleaning and method usually used.
13. Indicate whether the vessel currently holds or has ever held a NPDES permit for any part, discharge, or operation of the vessel
13a. If yes, include the Permit number and dates of permit coverage
13b. If the vessel is covered under this General Permit and this NOI is being submitted for a transfer of ownership to continue coverage, check the appropriate box and include the date of transfer Month/Day/Year

Section C. Vessel Voyage Information

- Enter the vessel home port, or if it does not have a home port, enter the US port it most frequently visits

2. Provide the name of each US port the vessel may visit during the Permit term. This list does not need to be exhaustive, but should be based on ports visited in the past and should be representative of the geographic area in which the vessel travels.
3. Provide the number of overnight berths for passengers and crew. Provide the maximum passenger capacity. Provide the crew capacity, that is, the number of crew needed for or normally used for operating the vessel.
4. Select the appropriate box to indicate if the vessel will travel in ocean waters seaward of the US EEZ and more than 200 nm from any shore. US EEZ is defined as the United State Exclusive Economic Zone. Some vessels may travel outside the US EEZ but not 200 nm from any shore. For example, vessels engaged in Pacific or Atlantic Nearshore Voyages that do not travel more than 200 nm from shore should select 'NO'.
5. Select the appropriate box if the vessel is engaged in Pacific Nearshore Voyages.

Section D. Discharge Information

1. From the list provided, select each applicable discharge type that your vessel may create. All discharges incidental to the normal operation of a vessel are included in permit coverage; you do not have to select each discharge type for your vessel to receive coverage for all discharges you may have, however, when completing the NOI, vessel owner/operators should list all discharge types they expect from their vessels. Many of these discharges are defined in Part 7- Appendix A of the Permit. You can find further information on discharges in Part 2.2 of the Permit and Part 4.4 of the Fact Sheet found at the Vessels website at www.epa.gov/npdes/vessels. Commercial fishing vessels and vessels less than 79 feet in length will only receive permit coverage for ballast water discharges and do not need to check other types of discharges in the NOI.
2. Select the appropriate box if the vessel ever engaged in or has capacity to engage in industrial operation. If yes, select the appropriate box to indicate the type of industrial operation, such as seafood processing, energy exploration, mining, or other. If 'Other', indicate they type of industrial operation.
3. If the vessel will be using a ballast water treatment system, check the appropriate box and answer the questions related to the discharge of residual biocides. The requirements for vessels using a ballast water treatment system can be found in section 5.8 of the Permit.

Section E. Certification

Carefully read the certification statement. By completing and submitting the NOI, the owner/operator certifies that every applicable General permit requirement will be met. Enter certifier's printed name, title and email address. Sign and date the form. (CAUTION: An unsigned or undated NOI form will prevent the granting of permit coverage.) Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means

(i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or

(ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations, the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

For a partnership or sole proprietorship: by a general partner or the proprietor, or

For a municipal, State, Federal, or other public facility: by either a principal executive or ranking elected official.

If the NOI was prepared by someone other than the certifier (for example, if the NOI was prepared by a consultant for the certifier's signature), include the name, organization, phone number and email address of the NOI preparer.

Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 0.64 hours per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Office of Information Collection, Collection Services Division (2823), USEPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Include the OMB control number of this form on any correspondence. Do not send the completed NOI form to this address.

Exhibit 3

EPA

United States Environmental Protection Agency
Washington, DC 20460
Notice of Intent (NOI) for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

OMB No. 2040-0004

Submission of this completed Notice of Intent (NOI) constitutes notice that the entity in Section A intends to be authorized to discharge pollutants to waters of the United States, from the vessel identified in Section B, under EPA's Vessel General Permit (VGP). Submission of the NOI also constitutes notice that the party identified in Section B of this form has read, understands, and meets the eligibility conditions of Part 1 of the VGP; agrees to comply with all applicable terms and conditions of the VGP, and understands that continued authorization under the VGP is contingent on maintaining eligibility for coverage. In order to be granted coverage, all information required on this form must be completed. Please read and make sure you comply with all permit requirements.

NPDES Permit Tracking Number (EPA Use Only): VPAA1172L

A. Vessel Owner/Operator Information

1. Name: Holland America Line
2. IRS Employer Information Number / Owner/Operator IMO Number: 980162703 / 0834114
3. Name of Certifying Official: William Morani
4. Mailing Address a. Street: 300 Elliot Ave
   b. City: Seattle c. State: WA d. Zip code: 98119
   d. Country: United States
   e. Phone: (206) 298-3849 f. Fax (Optional): (206) 301-5303
   g. Email: jturvey@hollandamerica.com

B. Vessel Information

1. Vessel Name: ms Veendam
2. Vessel ID/Registered Number/Vessel IMO Number: 9102992
3. Vessel Call Sign: PHEO
4. Flag State/Port of Registry: Netherlands/Rotterdam
5. Type of Vessel (select one)

☐Commercial Fishing Vessel with Ballast Water
☐Medium Cruise Ship (100 to 499 passengers)
☑Large Cruise Ship (500+ passengers)
☐Large Ferry (250+ passengers or more than 100 tons of cargo, e g., cars, trucks, trains, or other land-based transportation.)
☐Other
☐Barge
☐Oil or Gas Tanker
☐Research Vessel
☐Rescue Vessel

6. Vessel Dimensions a. Weight: 57092 gross registered tons
   b. Length: 719 feet
7. Ballast Water Capacity: 4200 meters3
8. Year Vessel Built: 1996
9. a. Date of last dry-dock: 05/01/2009 b. Date of next scheduled/anticipated dry-dock: 04/15/2011
10. Does the vessel have onboard treatment systems for any other waste stream covered by this permit (e.g. Advanced Wastewater Treatment System for Graywater, Oily Water Separator)?

☑Yes ☐No

If yes, please complete the following for each treatment system

Waste Stream:
Treatment system type/design and manufacturer:
Treatment System Capacity:

11. Balast Water
    a. How often is the ballast tank cleaned and sediment disposed of? Periodically
    b How and where do you typically dispose of ballast tank sediment? Landed ashore or discharged outside 12NM
    c. Does vessel have an existing ballast water management plan? ☑Yes ☐No
12. a. Type of anti-fouling hull coating on the vessel: Combination silicon and copper based
    b When anti-fouling hull coating was last applied: 05/01/2009

c. Describe hull husbandry practices, such as frequency of cleaning, method used, etc:

Periodic hull cleaning in service with divers/scrubbing equipment. Pressure washing in dry dock (every 24-30 months). Impressed current cathodic protection.

13. Does vessel currently have, or has vessel ever held, an NPDES permit, for any part, discharge, or operation of the vessel?

☐Yes ☑No

a. If yes, please provide the following

Permit Number

Dates of coverage.

b. Is this a transfer of ownership: ☐Yes ☑No

If Yes, provide date of transfer

C. Vessel Voyage Information

1. Home Port/Most Frequented US Port: Tampa FL

2. US Ports Vessel Anticipates Visting During Permit Term: Juneau AK, Ketchikan AK, various

3. Number of overnight berths a. Passengers: 1498 b. Crew: 602

a. Maximum passenger capacity: 1498 b. Crew: 602

4. Does vessel travel beyond the US EEZ and more than 200 nm from any shore? ☑Yes ☐No

5. Is the vessel engaged in Pacific Nearshore Voyages? ☑Yes ☐No

D. Discharge Information (commercial fishing vessels and vessels < 79 feet in length need only select Ballast Water; if such vessels have no ballast water discharges they do not need coverage under this permit):

1. Select all applicable discharges vessel may generate:

☑Deck Washdown and Runoff
☑Bilgewater/Oily Water Separator Effluent
☑Ballast Water
☑Anti-fouling hull coatings
☑Aqueous Film Forming Foams (AFFF)
☑Boiler/Economizer Blowdown
☑Cathodic Protection
☑Chain Locker Effluent
☑Controllable Pitch Propeller Hydraulic Fluid and other Oil-to-Sea Interfaces
☑Distillation or Reverse Osmosis Brine
☑Elevator Pit Effluent
☑Firemain Systems
☐Freshwater layup
☐Gas Turbine Wash Water
☑Graywater
☐Motor Gasoline and Compensating Discharge
☑Non-Oily Machinery Wastewater
☑Refrigerator and Air Condensate Discharge
☑Seawater Cooling Overboard Discharge
☑Seawater Piping Biofouling Prevention
☐Small Boat Engine Wet Exhaust
☐Sonar Dome Discharge
☑Underwater Ship Husbandry
☐Welldeck discharges
☑Graywater Mixed with Sewage
☐Exhaust Gas Scrubber Washwater Discharge

2. Does Vessel ever engage in or have capacity to engage in industrial operations? ☐Yes ☑No

☐Seafood processing ☐Mining
☐Energy exploration ☐Other

3. Will the vessel be using experimental ballast water treatment system which discharges residual biocides or derivatives? ☐Yes ☑No

b. If yes, are biocide concentrations below those listed in Part 5.8 of the Permit? ☐Yes ☐No

c. List the biocide residuals or derivatives that may be discharged by the ballast water treatment system:

E. Certifier Name and Title

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: William Morani

Title: Vice President, HAL EMS

Signature: William Morani Date: 09/15/2009

Email: wmorani@hollandamerica.com

NOI Preparer (Complete if NOI was prepared by someone other than the certifier)

Prepared By

Organization:

Phone: Ext.

Email:

Instructions for Completing the Notice of Intent for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

NOI Submittal Deadlines/Discharge Authorization Dates		
Category	**NOI Deadline**	**Discharge Authorization Date[1]**
Vessels delivered to owner or operator on or before September 19, 2009	No later than September 19, 2009	2009 Coverage granted until September 19, 2009. If EPA receives an NOI before September 19, 2009, uninterrupted coverage continues.
New Owner/Operator of Vessel - transfer of ownership and/or operation of a vessel whose discharge is previously authorized under this permit	By date of transfer of ownership and/or operation	Date of transfer or date EPA receives NOI, whichever is later
New vessels delivered to owner or operator after September 19, 2009	30 days prior to discharge into waters subject to this permit	30 days after complete NOI is received by EPA
Existing vessels delivered to owner or operator after September 19, 2009 that were not previously authorized under this permit	30 days prior to discharge into waters subject to this permit	30 days after complete NOI is received by EPA

[1] Based on a review of your NOI or other information, EPA may delay the discharge authorization date for further review, or may deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Part 1.8. In these instances, EPA will notify you in writing of the delay or the request for submission of an individual NPDES permit application. If EPA requires an individual permit for an existing vessel previously covered by a general permit, EPA will allow the permittee a reasonable amount of time to obtain individual permit coverage before the general permit coverage terminates.

Who Must File a Notice of Intent with EPA?

Under the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et. seq.), federal law prohibits discharges incidental to the normal operation of a vessel unless that discharge is covered under a National Pollutant Discharge Elimination System (NPDES) Permit. To obtain authorization under this permit, operators must meet the eligibility requirements found in Part 1.2 of the Permit and, if required by Part 1.5.1.1 of the Permit, submit a complete and accurate NOI according to the requirements in Part 10/Appendix E. NOIs must be signed in accordance with 40 CFR 122.22.

An owner/operator is required to submit an NOI if the vessel meets either of the following two criteria:

- The vessel is greater or equal to 300 gross tons,
  Or
- The vessel has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of Ballast Water.

An operator of a vessel is not required to submit a NOI pursuant to Part 1.5.1.2 of the permit if the vessel is less than 300 tons and does not have the capacity to hold or discharge more than 8 cubic meters of ballast water. Owner/Operators that are not required to submit an NOI automatically receive coverage under this permit for their vessel and are authorized to discharge in accordance with the permit requirements.

If you have specific questions about the Vessels General Permit please send a detailed email to commercialvesselpermit@epa.gov for assistance.

Where to File the NOI Form

EPA encourages you to complete the NOI form electronically via the Internet. EPA's Vessels Electronic Notice of Intent System (eNOI) can be found at www.epa.gov/npdes/vessels/enoi. Filing electronically is the fastest way to obtain permit coverage and help ensure that your NOI is complete. If you choose not to file electronically, you must send the NOI to one of the addresses listed below:

NOIs sent regular mail
EPA Vessels Notice Processing Center (4203M)
USEPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

NOIs sent overnight/express mail
EPA Vessels Notice Processing Center
EPA East Building, Rm. 7420
1201 Constitution Avenue, NW
Washington, DC 20004
202-564-9545

If you have questions about whether you need to file an NOI or questions about completing the form, refer to www.epa.gov/npdes/vessels/eNOI or contact the NOI center at 1-866-352-7755.

If you file a paper NOI, please submit the original with a signature in ink – Do Not Send Copies. Also, faxed copies will not be accepted.

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NPDES Permit Tracking Number

1. This field is for EPA only and will be populated only by EPA Call Center or the eNOI system to document that system generated NOI tracking number once a paper NOI has been entered into the system.

Section A. Owner/Operator Information

1. Provide the full legal name of the person, firm, public organization, or other entity that is the owner/operator of the vessel described in this application.
2. Provide the Employer Identification Number (EIN from the Internal Revenue Service (IRS)), commonly referred to as your taxpayer ID number. If the owner/operator does not have an EIN, enter the International Maritime Organization (IMO) Registered Owner or Company (DOC) number. Please designate the type of ID number entered. If the owner/operator does not have an EIN or IMO Owner or company number, enter "NA" in the space provided.
3. Provide the name of the Certifying Official.
4. Provide the owner/operator's mailing address, telephone number, fax number (optional), and email address. Correspondence will be sent to this address.

Section B. Vessel Information

1. Provide the vessel's official or legal name, if applicable. If the vessel does not have a name, enter "NA" in the space provided.
2. Provide the vessel's identification, registered identification number, or IMO Ship number, as applicable. Indicate the type of number used to identify the vessel. If the vessel does not have an identification number, enter "NA" in the space provided.
3. Enter the vessel call sign, if applicable. If the vessel does not have a call sign, enter "NA" in the space provided.
4. Provide the flag state or port of registry. If the vessel does not have a flag state or port of registry, enter "NA" in the space provided.
5. Select the type of vessel by checking the appropriate box. Only the vessel types required to meet additional, vessel type-specific Permit standards are listed, all other vessel types should select "other" and enter the vessel type in the space provided.

6a. Enter the vessel weight in gross tons or gross registered tons and specify the units entered.
6b. Enter the vessel length in feet or meters, and specify the units entered.
7. Enter the ballast water capacity in gallons or m³ and specify the units entered.
8. Enter the 4-digit year that the vessel was built.
9a. Enter the date of last dry-dock. Month/Day/Year
9b. Enter the date of the next scheduled/anticipated dry-dock. Month/Day/Year
10. Indicate whether the vessel currently has any onboard treatment systems for any waste stream listed in the permit, such as an Advanced Wastewater Treatment System (AWTS) used for graywater or an Oily Water Separator (OWS) used for bilgewater. If yes, Describe the treatment system, including what waste stream it treats, the type and design of the system, and treatment capacity.
11. Provide information on the frequency and method of ballast tank sediment disposal and whether the vessel currently has a ballast water management plan.
12. Indicate whether the vessel has an anti-foulant coating applied to the hull, what type of coating, when it was last applied, and briefly describe the vessel hull husbandry practices, including frequency of hull cleaning and method usually used.
13. Indicate whether the vessel currently holds or has ever held a NPDES permit for any part, discharge, or operation of the vessel.

13a. If yes, include the Permit number and dates of permit coverage.
13b. If the vessel is covered under this General Permit and this NOI is being submitted for a transfer of ownership to continue coverage, check the appropriate box, and include the date of transfer. Month/Day/Year

Section C. Vessel Voyage Information

1. Enter the vessel home port, or if it does not have a home port, enter the US port it most frequently visits.

2. Provide the name of each US port the vessel may visit during the Permit term. This list does not need to be exhaustive, but should be based on ports visited in the past and should be representative of the geographic area in which the vessel travels.
3. Provide the number of overnight berths for passengers and crew. Provide the maximum passenger capacity. Provide the crew capacity, that is, the number of crew needed for or normally used for operating the vessel.
4. Select the appropriate box to indicate if the vessel will travel in ocean waters seaward of the US EEZ and more than 200 nm from any shore. US EEZ is defined as the United State Exclusive Economic Zone. Some vessels may travel outside the US EEZ but not 200 nm from any shore. For example, vessels engaged in Pacific or Atlantic Nearshore Voyages that do not travel more than 200 nm from shore should select 'NO'.
5. Select the appropriate box if the vessel is engaged in Pacific Nearshore Voyages.

Section D. Discharge Information

1. From the list provided, select each applicable discharge type that your vessel may create. All discharges incidental to the normal operation of a vessel are included in permit coverage; you do not have to select each discharge type for your vessel to receive coverage for all discharges you may have, however, when completing the NOI, vessel owner/operators should list all discharge types they expect from their vessels. Many of these discharges are defined in Part 7-Appendix A of the Permit. You can find further information on discharges in Part 2.2 of the Permit and Part 4.4 of the Fact Sheet found at the Vessels website at www.epa.gov/npdes/vessels. Commercial fishing vessels and vessels less than 79 feet in length will only receive permit coverage for ballast water discharges and do not need to check other types of discharges in the NOI.
2. Select the appropriate box if the vessel ever engaged in or has capacity to engage in industrial operation. If yes, select the appropriate box to indicate the type of industrial operation, such as seafood processing, energy exploration, mining, or other. If 'Other', indicate they type of industrial operation.
3. If the vessel will be using a ballast water treatment system, check the appropriate box and answer the questions related to the discharge of residual biocides. The requirements for vessels using a ballast water treatment system can be found in section 5.8 of the Permit.

Section E. Certification

Carefully read the certification statement. By completing and submitting the NOI, the owner/operator certifies that every applicable General permit requirement will be met. Enter certifier's printed name, title and email address. Sign and date the form (CAUTION: An unsigned or undated NOI form will prevent the granting of permit coverage.) Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows

For a corporation by a responsible corporate officer, which means:
(i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or
(ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations, the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements, and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures,
For a partnership or sole proprietorship by a general partner or the proprietor, or
For a municipal, State, Federal, or other public facility by either a principal executive or ranking elected official

If the NOI was prepared by someone other than the certifier (for example, if the NOI was prepared by a consultant for the certifier's signature), include the name, organization, phone number and email address of the NOI preparer.

Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 0.64 hours per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, adjust the existing ways to comply with any previously applicable instructions and requirements, train personnel to be able to respond to a collection of information, search data sources, complete and review the collection of information, and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Office of Information Collection, Collection Services Division (2823), USEPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Include the OMB control number of this form on any correspondence. Do not send the completed NOI form to this address.

EPA

United States Environmental Protection Agency
Washington, DC 20460
Notice of Intent (NOI) for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

OMB No. 2040-0004

Submission of this completed Notice of Intent (NOI) constitutes notice that the entity in Section A intends to be authorized to discharge pollutants to waters of the United States, from the vessel identified in Section B, under EPA's Vessel General Permit (VGP). Submission of the NOI also constitutes notice that the party identified in Section B of this form has read, understands, and meets the eligibility conditions of Part 1 of the VGP; agrees to comply with all applicable terms and conditions of the VGP; and understands that continued authorization under the VGP is contingent on maintaining eligibility for coverage. In order to be granted coverage, all information required on this form must be completed. Please read and make sure you comply with all permit requirements.

NPDES Permit Tracking Number (EPA Use Only): VPABR046L

A. Vessel Owner/Operator Information

1. Name: AIDA Cruises, German Branch of Sopcieta di Crociere Mercuno Srl.
2. IRS Employer Information Number / Owner/Operator IMO Number 1996779
3. Name of Certifying Official Andre Mahr
4. Mailing Address: a. Street Am Strande 3d
   b. City Rostock c. State. d. Zip code 18055
   d. Country Germany
   e. Phone 0049(0)3814440 f. Fax (Optional): 0049(0)3814449930
   g. Email andre.mahr@aida.de

B. Vessel Information

1. Vessel Name: AIDAluna
2. Vessel ID/Registered Number/Vessel IMO Number 9334868
3. Vessel Call Sign ICLP
4. Flag State/Port of Registry: Italy/Genova
5. Type of Vessel (select one)

☐Commercial Fishing Vessel with Ballast Water ☐Barge
☐Medium Cruise Ship (100 to 499 passengers) ☐Oil or Gas Tanker
☑Large Cruise Ship (500+ passengers) ☐Research Vessel
☐Large Ferry (250+ passengers or more than 100 tons of cargo, e.g., cars, trucks, trains, or other land-based transportation.) ☐Rescue Vessel
☐Other:

6. Vessel Dimensions a. Weight 69203 gross tons
   b. Length: 251.89 meters
7. Ballast Water Capacity: 2254.41 meters3
8. Year Vessel Built 2009
9. a. Date of last dry-dock 02/26/2009 b. Date of next scheduled/anticipated dry-dock. 05/05/2011
10. Does the vessel have onboard treatment systems for any other waste stream covered by this permit (e.g. Advanced Wastewater Treatment System for Graywater, Oily Water Separator)?

☑Yes ☐No

If yes, please complete the following for each treatment system

Waste Stream:
Treatment system type/design and manufacturer
Treatment System Capacity

11. Ballast Water.
    a. How often is the ballast tank cleaned and sediment disposed of? every drydock
    b. How and where do you typically dispose of ballast tank sediment? drydock facilities
    c. Does vessel have an existing ballast water management plan? ☑Yes ☐No
12. a. Type of anti-fouling hull coating on the vessel
    b. When anti-fouling hull coating was last applied 02/01/2009

c. Describe hull husbandry practices, such as frequency of cleaning, method used, etc

high pressure washing each drydocking

13. Does vessel currently have, or has vessel ever held, an NPDES permit, for any part, discharge, or operation of the vessel?

☐Yes ☑No

a. If yes, please provide the following:

Permit Number

Dates of coverage.

b. Is this a transfer of ownership: ☐Yes ☑No

If Yes, provide date of transfer.

C. Vessel Voyage Information

1. Home Port/Most Frequented US Port: New York City / New York

2. US Ports Vessel Anticipates Visting During Permit Term: Boston, New Port, Bar Harbour, Baltimore, Charleston, Miami

3. Number of overnight berths a. Passengers: 2050 b. Crew: 590

a. Maximum passenger capacity: 2500 b. Crew: 634

4. Does vessel travel beyond the US EEZ and more than 200 nm from any shore? ☑Yes ☐No

5. Is the vessel engaged in Pacific Nearshore Voyages? ☐Yes ☑No

D. Discharge Information (commercial fishing vessels and vessels < 79 feet in length need only select Ballast Water; if such vessels have no ballast water discharges they do not need coverage under this permit):

1. Select all applicable discharges vessel may generate:

☑Deck Washdown and Runoff
☑Bilgewater/Oily Water Separator Effluent
☑Ballast Water
☑Anti-fouling hull coatings
☐Aqueous Film Forming Foams (AFFF)
☑Boiler/Economizer Blowdown
☑Cathodic Protection
☑Chain Locker Effluent
☑Controllable Pitch Propeller Hydraulic Fluid and other Oil-to-Sea Interfaces
☑Distillation or Reverse Osmosis Brine
☑Elevator Pit Effluent
☑Firemain Systems
☑Freshwater layup
☐Gas Turbine Wash Water
☑Graywater
☐Motor Gasoline and Compensating Discharge
☑Non-Oily Machinery Wastewater
☑Refrigerator and Air Condensate Discharge
☑Seawater Cooling Overboard Discharge
☑Seawater Piping Biofouling Prevention
☑Small Boat Engine Wet Exhaust
☐Sonar Dome Discharge
☐Underwater Ship Husbandry
☐Welldeck discharges
☐Graywater Mixed with Sewage
☐Exhaust Gas Scrubber Washwater Discharge

2 Does Vessel ever engage in or have capacity to engage in industrial operations? ☐Yes ☑No

☐Seafood processing ☐Mining
☐Energy exploration ☐Other

3. Will the vessel be using experimental ballast water treatment system which discharges residual biocides or derivatives? ☐Yes ☑No

b. If yes, are biocide concentrations below those listed in Part 5.8 of the Permit? ☐Yes ☐No

c List the biocide residuals or derivatives that may be discharged by the ballast water treatment system

E. Certifier Name and Title

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Andre Mahr

Title

Signature: Andre Mahr Date: 07/08/2010

Email: andre.mahr@aida.de

NOI Preparer (Complete if NOI was prepared by someone other than the certifier)

Prepared By

Organization

Phone: Ext:

Email

Instructions for Completing the Notice of Intent for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

NOI Submittal Deadlines/Discharge Authorization Dates		
Category	**NOI Deadline**	**Discharge Authorization Date[1]**
Vessels delivered to owner or operator on or before September 19, 2009	No later than September 19, 2009	2009 Coverage granted until September 19, 2009. If EPA receives an NOI before September 19, 2009, uninterrupted coverage continues.
New Owner/Operator of Vessel - transfer of ownership and/or operation of a vessel whose discharge is previously authorized under this permit	By date of transfer of ownership and/or operation	Date of transfer or date EPA receives NOI, whichever is later
New vessels delivered to owner or operator after September 19, 2009	30 days prior to discharge into waters subject to this permit	30 days after complete NOI is received by EPA
Existing vessels delivered to owner or operator after September 19, 2009 that were not previously authorized under this permit	30 days prior to discharge into waters subject to this permit	30 days after complete NOI is received by EPA

[1] Based on a review of your NOI or other information, EPA may delay the discharge authorization date for further review, or may deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Part 1.8. In these instances, EPA will notify you in writing of the delay or the request for submission of an individual NPDES permit application. If EPA requires an individual permit for an existing vessel previously covered by a general permit, EPA will allow the permittee a reasonable amount of time to obtain individual permit coverage before the general permit coverage terminates.

Who Must File a Notice of Intent with EPA?

Under the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), federal law prohibits discharges incidental to the normal operation of a vessel unless that discharge is covered under a National Pollutant Discharge Elimination System (NPDES) Permit. To obtain authorization under this permit, operators must meet the eligibility requirements found in Part 1.2 of the Permit and, if required by Part 1.5.1.1 of the Permit, submit a complete and accurate NOI according to the requirements in Part 10/Appendix E. NOIs must be signed in accordance with 40 CFR 122.22.

An owner/operator is required to submit an NOI if the vessel meets either of the following two criteria

- The vessel is greater or equal to 300 gross tons,
  Or
- The vessel has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of Ballast Water.

An operator of a vessel is not required to submit a NOI pursuant to Part 1.5.1.2 of the permit if the vessel is less than 300 tons and does not have the capacity to hold or discharge more than 8 cubic meters of ballast water. Owner/Operators that are not required to submit an NOI automatically receive coverage under this permit for their vessel and are authorized to discharge in accordance with the permit requirements.

If you have specific questions about the Vessels General Permit please send a detailed email to commercialvesselpermit@epa.gov for assistance.

Where to File the NOI Form

EPA encourages you to complete the NOI form electronically via the Internet. EPA's Vessels Electronic Notice of Intent System (eNOI) can be found at www.epa.gov/npdes/vessels/enoi. Filing electronically is the fastest way to obtain permit coverage and help ensure that your NOI is complete. If you choose not to file electronically, you must send the NOI to one of the addresses listed below.

NOIs sent regular mail:
EPA Vessels Notice Processing Center (4203M)
USEPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

NOIs sent overnight/express mail:
EPA Vessels Notice Processing Center
EPA East Building, Rm. 7420
1201 Constitution Avenue, NW
Washington, DC 20004
202-564-9545

If you have questions about whether you need to file an NOI or questions about completing the form, refer to www.epa.gov/npdes/vessels/eNOI or contact the NOI center at 1-866-352-7755.

If you file a paper NOI, please submit the original with a signature in ink – Do Not Send Copies. Also, faxed copies will not be accepted.

Completing the NOI Form

To complete this form, type or print in uppercase letters in the appropriate areas only. Please make sure you complete all questions. Make sure you make a photocopy for your records before you send the completed original form to the address above. You may also use this paper form as a checklist for the information you will need when filing an NOI electronically via EPA's Vessels eNOI system.

NPDES Permit Tracking Number

1. This field is for EPA only and will be populated only by EPA Call Center or the eNOI system to document that system generated NOI tracking number once a paper NOI has been entered into the system.

Section A. Owner/Operator Information

1. Provide the full legal name of the person, firm, public organization, or other entity that is the owner/operator of the vessel described in this application.
2. Provide the Employer Identification Number (EIN from the Internal Revenue Service (IRS)), commonly referred to as your taxpayer ID number. If the owner/operator does not have an EIN, enter the International Maritime Organization (IMO) Registered Owner or Company (DOC) number. Please designate the type of ID number entered. If the owner/operator does not have an EIN or IMO Owner or company number, enter "NA" in the space provided.
3. Provide the name of the Certifying Official.
4. Provide the owner/operator's mailing address, telephone number, fax number (optional), and email address. Correspondence will be sent to this address.

Section B. Vessel Information

1. Provide the vessel's official or legal name, if applicable. If the vessel does not have a name, enter "NA" in the space provided.
2. Provide the vessel's identification, registered identification number, or IMO Ship number, as applicable. Indicate the type of number used to identify the vessel. If the vessel does not have an identification number, enter "NA" in the space provided.
3. Enter the vessel call sign, if applicable. If the vessel does not have a call sign, enter "NA" in the space provided.
4. Provide the flag state or port of registry. If the vessel does not have a flag state or port of registry, enter "NA" in the space provided.
5. Select the type of vessel by checking the appropriate box. Only the vessel types required to meet additional, vessel type-specific Permit standards are listed; all other vessel types should select "other" and enter the vessel type in the space provided.

6a. Enter the vessel weight in gross tons or gross registered tons and specify the units entered.
6b. Enter the vessel length in feet or meters, and specify the units entered.
7. Enter the ballast water capacity in gallons or m^3 and specify the units entered.
8. Enter the 4-digit year that the vessel was built.
9a. Enter the date of last dry-dock. Month/Day/Year
9b. Enter the date of the next scheduled/anticipated dry-dock. Month/Day/Year
10. Indicate whether the vessel currently has any onboard treatment systems for any waste stream listed in the permit, such as an Advanced Wastewater Treatment System (AWTS) used for graywater or an Oily Water Separator (OWS) used for bilgewater. If yes, Describe the treatment system, including what waste stream it treats, the type and design of the system, and treatment capacity.
11. Provide information on the frequency and method of ballast tank sediment disposal and whether the vessel currently has a ballast water management plan.
12. Indicate whether the vessel has an anti-foulant coating applied to the hull, what type of coating, when it was last applied, and briefly describe the vessel hull husbandry practices, including frequency of hull cleaning and method usually used.
13. Indicate whether the vessel currently holds or has ever held a NPDES permit for any part, discharge, or operation of the vessel.

13a. If yes, include the Permit number and dates of permit coverage
13b. If the vessel is covered under this General Permit and this NOI is being submitted for a transfer of ownership to continue coverage, check the appropriate box, and include the date of transfer. Month/Day/Year

Section C. Vessel Voyage Information

1. Enter the vessel home port, or if it does not have a home port, enter the US port it most frequently visits

2 Provide the name of each US port the vessel may visit during the Permit term. This list does not need to be exhaustive, but should be based on ports visited in the past and should be representative of the geographic area in which the vessel travels

3. Provide the number of overnight berths for passengers and crew. Provide the maximum passenger capacity. Provide the crew capacity, that is, the number of crew needed for or normally used for operating the vessel.
4. Select the appropriate box to indicate if the vessel will travel in ocean waters seaward of the US EEZ and more than 200 nm from any shore. US EEZ is defined as the United State Exclusive Economic Zone. Some vessels may travel outside the US EEZ but not 200 nm from any shore. For example, vessels engaged in Pacific or Atlantic Nearshore Voyages that do not travel more than 200 nm from shore should select 'NO'.

5 Select the appropriate box if the vessel is engaged in Pacific Nearshore Voyages.

Section D. Discharge Information

1. From the list provided, select each applicable discharge type that your vessel may create. All discharges incidental to the normal operation of a vessel are included in permit coverage, you do not have to select each discharge type for your vessel to receive coverage for all discharges you may have, however, when completing the NOI, vessel owner/operators should list all discharge types they expect from their vessels. Many of these discharges are defined in Part 7-Appendix A of the Permit. You can find further information on discharges in Part 2.2 of the Permit and Part 4.4 of the Fact Sheet found at the Vessels website at www.epa.gov/npdes/vessels Commercial fishing vessels and vessels less than 79 feet in length will only receive permit coverage for ballast water discharges and do not need to check other types of discharges in the NOI.

2 Select the appropriate box if the vessel ever engaged in or has capacity to engage in industrial operation. If yes, select the appropriate box to indicate the type of industrial operation, such as seafood processing, energy exploration, mining, or other. If 'Other', indicate they type of industrial operation.

3 If the vessel will be using a ballast water treatment system, check the appropriate box and answer the questions related to the discharge of residual biocides. The requirements for vessels using a ballast water treatment system can be found in section 5 8 of the Permit

Section E. Certification.

Carefully read the certification statement. By completing and submitting the NOI, the owner/operator certifies that every applicable General permit requirement will be met. Enter certifier's printed name, title and email address. Sign and date the form. (CAUTION: An unsigned or undated NOI form will prevent the granting of permit coverage.) Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means

(i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or

(ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship by a general partner or the proprietor, or

For a municipal, State, Federal, or other public facility: by either a principal executive or ranking elected official.

If the NOI was prepared by someone other than the certifier (for example, if the NOI was prepared by a consultant for the certifier's signature), include the name, organization, phone number and email address of the NOI preparer.

Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 0.64 hours per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, adjust the existing ways to comply with any previously applicable instructions and requirements, train personnel to be able to respond to a collection of information; search data sources, complete and review the collection of information, and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Office of Information Collection, Collection Services Division (2823), USEPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Include the OMB control number of this form on any correspondence. Do not send the completed NOI form to this address.

EPA

United States Environmental Protection Agency
Washington, DC 20460
Notice of Intent (NOI) for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

OMB No. 2040-0004

Submission of this completed Notice of Intent (NOI) constitutes notice that the entity in Section A intends to be authorized to discharge pollutants to waters of the United States, from the vessel identified in Section B, under EPA's Vessel General Permit (VGP). Submission of the NOI also constitutes notice that the party identified in Section B of this form has read, understands, and meets the eligibility conditions of Part 1 of the VGP; agrees to comply with all applicable terms and conditions of the VGP; and understands that continued authorization under the VGP is contingent on maintaining eligibility for coverage. In order to be granted coverage, all information required on this form must be completed. Please read and make sure you comply with all permit requirements.

NPDES Permit Tracking Number (EPA Use Only): VPABR046L

A. Vessel Owner/Operator Information

1. Name: AIDA Cruises, German Branch of Sopcieta di Crociere Mercuno Srl.
2. IRS Employer Information Number / Owner/Operator IMO Number: 1996779
3. Name of Certifying Official: Andre Mahr
4. Mailing Address a. Street: Am Strande: 3d
   b. City: Rostock c. State: d. Zip code: 18055
   d Country: Germany
   e. Phone: 0049(0)3814440 f Fax (Optional): 0049(0)3814449930
   g. Email: andre.mahr@aida.de

B. Vessel Information

1. Vessel Name: AIDAluna
2. Vessel ID/Registered Number/Vessel IMO Number: 9334868
3. Vessel Call Sign: ICLP
4. Flag State/Port of Registry: Italy/Genova
5. Type of Vessel (select one)

☐Commercial Fishing Vessel with Ballast Water
☐Medium Cruise Ship (100 to 499 passengers)
☑Large Cruise Ship (500+ passengers)
☐Large Ferry (250+ passengers or more than 100 tons of cargo, e.g., cars, trucks, trains, or other land-based transportation.)
☐Other
☐Barge
☐Oil or Gas Tanker
☐Research Vessel
☐Rescue Vessel

6. Vessel Dimensions: a. Weight: 69203 gross tons
   b. Length: 251 89 meters
7. Ballast Water Capacity: 2254.41 meters3
8. Year Vessel Built: 2009
9. a Date of last dry-dock: 02/26/2009 b. Date of next scheduled/anticipated dry-dock: 05/05/2011
10. Does the vessel have onboard treatment systems for any other waste stream covered by this permit (e.g. Advanced Wastewater Treatment System for Graywater, Oily Water Separator)?

☑Yes ☐No

If yes, please complete the following for each treatment system

Waste Stream: Sludge Separator

Treatment system type/design and manufacturer: GEA Westfalia Separator ESD18-91-067

Treatment System Capacity: 250-300 l/h

Waste Stream: Bilge Water Separator

Treatment system type/design and manufacturer: GEA Westfalia Separator WSC25-01-006

Treatment System Capacity: 6000 l/h

Waste Stream: Lub Oil Separator

Treatment system type/design and manufacturer: GEA Westfalia Separator OSD18-0196-067/15

Treatment System Capacity: 2,9 m3/h

Waste Stream: Sewage Treatment System

Treatment system type/design and manufacturer: Hamworthy MBR 600N

Treatment System Capacity: 470 m3/h

Waste Stream: Oily Water Separator (OWS)

Treatment system type/design and manufacturer: NFV - Norddeutsche Filter Vertriebs GmbH MPEB-VT

Treatment System Capacity: 5 m3/h

11. Balast Water

a. How often is the ballast tank cleaned and sediment disposed of? every drydock

b. How and where do you typically dispose of ballast tank sediment? drydock facilities

c. Does vessel have an existing ballast water management plan? ☑Yes ☐No

12. a. Type of anti-fouling hull coating on the vessel

b. When anti-fouling hull coating was last applied 02/01/2009

c Describe hull husbandry practices, such as frequency of cleaning, method used, etc

high pressure washing each drydocking

13. Does vessel currently have, or has vessel ever held, an NPDES permit, for any part, discharge, or operation of the vessel?

☐Yes ☑No

a If yes, please provide the following

Permit Number.

Dates of coverage

b. Is this a transfer of ownership ☐Yes ☑No

If Yes, provide date of transfer

C. Vessel Voyage Information

1. Home Port/Most Frequented US Port: New York City / New York

2. US Ports Vessel Anticipates Visting During Permit Term: Boston, New Port, Bar Harbour, Baltimore, Charleston, Miami

3. Number of overnight berths a. Passengers: 2050 b. Crew: 590

a. Maximum passenger capacity: 2500 b. Crew: 634

4. Does vessel travel beyond the US EEZ and more than 200 nm from any shore? ☑Yes ☐No

5. Is the vessel engaged in Pacific Nearshore Voyages? ☐Yes ☑No

D. Discharge Information (commercial fishing vessels and vessels < 79 feet in length need only select Ballast Water; if such vessels have no ballast water discharges they do not need coverage under this permit):

1. Select all applicable discharges vessel may generate:

☑Deck Washdown and Runoff	☐Gas Turbine Wash Water
☑Bilgewater/Oily Water Separator Effluent	☑Graywater
☑Ballast Water	☐Motor Gasoline and Compensating Discharge
☑Anti-fouling hull coatings	☑Non-Oily Machinery Wastewater
☐Aqueous Film Forming Foams (AFFF)	☑Refrigerator and Air Condensate Discharge
☑Boiler/Economizer Blowdown	☑Seawater Cooling Overboard Discharge
☑Cathodic Protection	☑Seawater Piping Biofouling Prevention
☑Chain Locker Effluent	☑Small Boat Engine Wet Exhaust
☑Controllable Pitch Propeller Hydraulic Fluid and other Oil-to-Sea Interfaces	☐Sonar Dome Discharge
☑Distillation or Reverse Osmosis Brine	☐Underwater Ship Husbandry
☑Elevator Pit Effluent	☐Welldeck discharges
☑Firemain Systems	☐Graywater Mixed with Sewage
☑Freshwater layup	☐Exhaust Gas Scrubber Washwater Discharge

2. Does Vessel ever engage in or have capacity to engage in industrial operations? ☐Yes ☑No

☐Seafood processing ☐Mining
☐Energy exploration ☐Other _____

3. Will the vessel be using experimental ballast water treatment system which discharges residual biocides or derivatives? ☐Yes ☑No

b. If yes, are biocide concentrations below those listed in Part 5.8 of the Permit? ☐Yes ☐No

c. List the biocide residuals or derivatives that may be discharged by the ballast water treatment system

E. Certifier Name and Title

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Andre Mahr
Title:
Signature: Andre Mahr Date: 07/28/2010
Email: andre.mahr@aida.de

NOI Preparer (Complete if NOI was prepared by someone other than the certifier)

Prepared By:
Organization:
Phone: Ext.
Email:

Instructions for Completing the Notice of Intent for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

NOI Submittal Deadlines/Discharge Authorization Dates		
Category	**NOI Deadline**	**Discharge Authorization Date[1]**
Vessels delivered to owner or operator on or before September 19, 2009	No later than September 19, 2009	2009 Coverage granted until September 19, 2009. If EPA receives an NOI before September 19, 2009, uninterrupted coverage continues.
New Owner/Operator of Vessel - transfer of ownership and/or operation of a vessel whose discharge is previously authorized under this permit	By date of transfer of ownership and/or operation	Date of transfer or date EPA receives NOI; whichever is later
New vessels delivered to owner or operator after September 19, 2009	30 days prior to discharge into waters subject to this permit	30 days after complete NOI is received by EPA
Existing vessels delivered to owner or operator after September 19, 2009 that were not previously authorized under this permit	30 days prior to discharge into waters subject to this permit	30 days after complete NOI is received by EPA

[1] Based on a review of your NOI or other information, EPA may delay the discharge authorization date for further review, or may deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Part 1.8. In these instances, EPA will notify you in writing of the delay or the request for submission of an individual NPDES permit application. If EPA requires an individual permit for an existing vessel previously covered by a general permit, EPA will allow the permittee a reasonable amount of time to obtain individual permit coverage before the general permit coverage terminates

Who Must File a Notice of Intent with EPA?

Under the provisions of the Clean Water Act, as amended (33 U.S.C 1251 et. seq.), federal law prohibits discharges incidental to the normal operation of a vessel unless that discharge is covered under a National Pollutant Discharge Elimination System (NPDES) Permit. To obtain authorization under this permit, operators must meet the eligibility requirements found in Part 1.2 of the Permit and, if required by Part 1.5.1.1 of the Permit, submit a complete and accurate NOI according to the requirements in Part 10/Appendix E. NOIs must be signed in accordance with 40 CFR 122.22.

An owner/operator is required to submit an NOI if the vessel meets either of the following two criteria.

- The vessel is greater or equal to 300 gross tons,
  Or
- The vessel has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of Ballast Water.

An operator of a vessel is not required to submit a NOI pursuant to Part 1.5.1.2 of the permit if the vessel is less than 300 tons and does not have the capacity to hold or discharge more than 8 cubic meters of ballast water. Owner/Operators that are not required to submit an NOI automatically receive coverage under this permit for their vessel and are authorized to discharge in accordance with the permit requirements.

If you have specific questions about the Vessels General Permit please send a detailed email to commercialvesselpermit@epa.gov for assistance.

Where to File the NOI Form

EPA encourages you to complete the NOI form electronically via the Internet. EPA's Vessels Electronic Notice of Intent System (eNOI) can be found at www.epa.gov/npdes/vessels/enoi. Filing electronically is the fastest way to obtain permit coverage and help ensure that your NOI is complete. If you choose not to file electronically, you must send the NOI to one of the addresses listed below.

NOIs sent regular mail:
EPA Vessels Notice Processing Center (4203M)
USEPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

NOIs sent overnight/express mail
EPA Vessels Notice Processing Center
EPA East Building, Rm. 7420
1201 Constitution Avenue, NW
Washington, DC 20004
202-564-9545

If you have questions about whether you need to file an NOI or questions about completing the form, refer to www.epa.gov/npdes/vessels/eNOI or contact the NOI center at 1-866-352-7755.

If you file a paper NOI, please submit the original with a signature in ink – Do Not Send Copies. Also, faxed copies will not be accepted.

Completing the NOI Form

To complete this form, type or print in uppercase letters in the appropriate areas only. Please make sure you complete all questions. Make sure you make a photocopy for your records before you send the completed original form to the address above. You may also use this paper form as a checklist for the information you will need when filing an NOI electronically via EPA's Vessels eNOI system.

NPDES Permit Tracking Number

1. This field is for EPA only and will be populated only by EPA Call Center or the eNOI system to document that system generated NOI tracking number once a paper NOI has been entered into the system.

Section A. Owner/Operator Information

1 Provide the full legal name of the person, firm, public organization, or other entity that is the owner/operator of the vessel described in this application.
2. Provide the Employer Identification Number (EIN from the Internal Revenue Service (IRS)), commonly referred to as your taxpayer ID number. If the owner/operator does not have an EIN, enter the International Maritime Organization (IMO) Registered Owner or Company (DOC) number. Please designate the type of ID number entered. If the owner/operator does not have an EIN or IMO Owner or company number, enter "NA" in the space provided.
3 Provide the name of the Certifying Official.
4. Provide the owner/operator's mailing address, telephone number, fax number (optional), and email address. Correspondence will be sent to this address.

Section B. Vessel Information

1 Provide the vessel's official or legal name, if applicable. If the vessel does not have a name, enter "NA" in the space provided.
2 Provide the vessel's identification, registered identification number, or IMO Ship number, as applicable. Indicate the type of number used to identify the vessel If the vessel does not have an identification number, enter "NA" in the space provided.
3. Enter the vessel call sign, if applicable. If the vessel does not have a call sign, enter "NA" in the space provided.
4. Provide the flag state or port of registry. If the vessel does not have a flag state or port of registry, enter "NA" in the space provided.
5. Select the type of vessel by checking the appropriate box. Only the vessel types required to meet additional, vessel type-specific Permit standards are listed, all other vessel types should select "other" and enter the vessel type in the space provided.

6a. Enter the vessel weight in gross tons or gross registered tons and specify the units entered.
6b. Enter the vessel length in feet or meters, and specify the units entered.
7. Enter the ballast water capacity in gallons or m^3 and specify the units entered.
8. Enter the 4-digit year that the vessel was built.
9a Enter the date of last dry-dock. Month/Day/Year
9b. Enter the date of the next scheduled/anticipated dry-dock. Month/Day/Year
10. Indicate whether the vessel currently has any onboard treatment systems for any waste stream listed in the permit, such as an Advanced Wastewater Treatment System (AWTS) used for graywater or an Oily Water Separator (OWS) used for bilgewater. If yes, Describe the treatment system, including what waste stream it treats, the type and design of the system, and treatment capacity.
11. Provide information on the frequency and method of ballast tank sediment disposal and whether the vessel currently has a ballast water management plan.
12. Indicate whether the vessel has an anti-foulant coating applied to the hull, what type of coating, when it was last applied, and briefly describe the vessel hull husbandry practices, including frequency of hull cleaning and method usually used.
13. Indicate whether the vessel currently holds or has ever held a NPDES permit for any part, discharge, or operation of the vessel.
13a. If yes, include the Permit number and dates of permit coverage.
13b. If the vessel is covered under this General Permit and this NOI is being submitted for a transfer of ownership to continue coverage, check the appropriate box, and include the date of transfer Month/Day/Year.

Section C. Vessel Voyage Information

1 Enter the vessel home port, or if it does not have a home port, enter the US port it most frequently visits.

2 Provide the name of each US port the vessel may visit during the Permit term. This list does not need to be exhaustive, but should be based on ports visited in the past and should be representative of the geographic area in which the vessel travels.
3 Provide the number of overnight berths for passengers and crew. Provide the maximum passenger capacity. Provide the crew capacity, that is, the number of crew needed for or normally used for operating the vessel.
4 Select the appropriate box to indicate if the vessel will travel in ocean waters seaward of the US EEZ and more than 200 nm from any shore. US EEZ is defined as the United State Exclusive Economic Zone. Some vessels may travel outside the US EEZ but not 200 nm from any shore. For example, vessels engaged in Pacific or Atlantic Nearshore Voyages that do not travel more than 200 nm from shore should select 'NO'.
5. Select the appropriate box if the vessel is engaged in Pacific Nearshore Voyages.

Section D. Discharge Information

1. From the list provided, select each applicable discharge type that your vessel may create. All discharges incidental to the normal operation of a vessel are included in permit coverage; you do not have to select each discharge type for your vessel to receive coverage for all discharges you may have; however, when completing the NOI, vessel owner/operators should list all discharge types they expect from their vessels. Many of these discharges are defined in Part 7-Appendix A of the Permit. You can find further information on discharges in Part 2.2 of the Permit and Part 4.4 of the Fact Sheet found at the Vessels website at www.epa.gov/npdes/vessels. Commercial fishing vessels and vessels less than 79 feet in length will only receive permit coverage for ballast water discharges and do not need to check other types of discharges in the NOI.
2. Select the appropriate box if the vessel ever engaged in or has capacity to engage in industrial operation. If yes, select the appropriate box to indicate the type of industrial operation, such as seafood processing, energy exploration, mining, or other If 'Other', indicate they type of industrial operation.
3. If the vessel will be using a ballast water treatment system, check the appropriate box and answer the questions related to the discharge of residual biocides. The requirements for vessels using a ballast water treatment system can be found in section 5.8 of the Permit.

Section E. Certification

Carefully read the certification statement. By completing and submitting the NOI, the owner/operator certifies that every applicable General permit requirement will be met. Enter certifier's printed name, title and email address Sign and date the form. (CAUTION: An unsigned or undated NOI form will prevent the granting of permit coverage) Federal statutes provide for severe penalties for submitting false information on this application form Federal regulations require this application to be signed as follows.

For a corporation: by a responsible corporate officer, which means:
(i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or
(ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations, the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures,
For a partnership or sole proprietorship by a general partner or the proprietor, or
For a municipal, State, Federal, or other public facility by either a principal executive or ranking elected official.

If the NOI was prepared by someone other than the certifier (for example, if the NOI was prepared by a consultant for the certifier's signature), include the name, organization, phone number and email address of the NOI preparer.

Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 0.64 hours per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, adjust the existing ways to comply with any previously applicable instructions and requirements, train personnel to be able to respond to a collection of information, search data sources, complete and review the collection of information, and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Office of Information Collection, Collection Services Division (2823), USEPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Include the OMB control number of this form on any correspondence. Do not send the completed NOI form to this address.

EPA

United States Environmental Protection Agency
Washington, DC 20460
Notice of Intent (NOI) for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

OMB No. 2040-0004

Submission of this completed Notice of Intent (NOI) constitutes notice that the entity in Section A intends to be authorized to discharge pollutants to waters of the United States, from the vessel identified in Section B, under EPA's Vessel General Permit (VGP). Submission of the NOI also constitutes notice that the party identified in Section B of this form has read, understands, and meets the eligibility conditions of Part 1 of the VGP; agrees to comply with all applicable terms and conditions of the VGP; and understands that continued authorization under the VGP is contingent on maintaining eligibility for coverage. In order to be granted coverage, all information required on this form must be completed. Please read and make sure you comply with all permit requirements.

NPDES Permit Tracking Number (EPA Use Only) VPABS347L

A. Vessel Owner/Operator Information

1. Name: AIDA Cruises, German Branch of Costa Crociere S.p.A.
2. IRS Employer Information Number / Owner/Operator IMO Number: 1996779
3. Name of Certifying Official: Andre Mahr
4. Mailing Address a. Street: Am Strande. 3d
   b. City: Rostock c. State: d. Zip code: 18055
   d. Country: Germany
   e. Phone: 0049(0)3814440 f. Fax (Optional): 0049(0)3814449930
   g. Email: andre.mahr@aida.de

B. Vessel Information

1. Vessel Name: AIDAluna
2. Vessel ID/Registered Number/Vessel IMO Number: 9334868
3. Vessel Call Sign: ICLP
4. Flag State/Port of Registry: Italy / Genova
5. Type of Vessel (select one)

☐Commercial Fishing Vessel with Ballast Water	☐Barge
☐Medium Cruise Ship (100 to 499 passengers)	☐Oil or Gas Tanker
☑Large Cruise Ship (500+ passengers)	☐Research Vessel
☐Large Ferry (250+ passengers or more than 100 tons of cargo, e.g., cars, trucks, trains, or other land-based transportation.)	☐Rescue Vessel

☐Other

5. Vessel Dimensions a. Weight: 69203 gross tons
   b. Length: 251.89 meters
7. Ballast Water Capacity: 2254.41 meters3
8. Year Vessel Built: 2009
9. a. Date of last dry-dock: 02/26/2009 b. Date of next scheduled/anticipated dry-dock: 05/05/2011
10. Does the vessel have onboard treatment systems for any other waste stream covered by this permit (e.g. Advanced Wastewater Treatment System for Graywater, Oily Water Separator)?

☑Yes ☐No

If yes, please complete the following for each treatment system

Waste Stream: Sewage Treatment System

Treatment system type/design and manufacturer: Hamworthy MBR 600N

Treatment System Capacity: 470 m3/h

Waste Stream: Lub Oil Separator

Treatment system type/design and manufacturer: GEA Westfalia Separator OSD18-0196-067/15

Treatment System Capacity: 2 9 m3/h

Waste Stream: Bilge Water Separator

Treatment system type/design and manufacturer: GEA Westfalia Separator WSC25-01-006

Treatment System Capacity: 6000 l/h

Waste Stream: Sludge Separator

Treatment system type/design and manufacturer: GEA Westfalia Separator ESD18-51-067

Treatment System Capacity: 250-300 l/h

Waste Stream: Oily Water Separator (OWS)

Treatment system type/design and manufacturer: NFV - Norddeutsche Filter Vertriebs GmbH MPEB-VT

Treatment System Capacity: 5 m3/h

11. Ballast Water

a. How often is the ballast tank cleaned and sediment disposed of? every drydock

b. How and where do you typically dispose of ballast tank sediment? approved drydock facilities

c. Does vessel have an existing ballast water management plan? ☑Yes ☐No

12. a. Type of anti-fouling hull coating on the vessel: SIGMA Prime 200 / SIGMA Cover 525 / SIGMA Shield 610

b. When anti-fouling hull coating was last applied: 02/01/2009

c. Describe hull husbandry practices, such as frequency of cleaning, method used, etc.

high pressure washing each drydocking

13. Does vessel currently have, or has vessel ever held, an NPDES permit, for any part, discharge, or operation of the vessel?

☑Yes ☐No

a. If yes, please provide the following

Permit Number: VPABR046L

Dates of coverage: 07/28/2010

b. Is this a transfer of ownership ☐Yes ☑No

If Yes, provide date of transfer:

C. Vessel Voyage Information

1. Home Port/Most Frequented US Port: New York City / New York

2. US Ports Vessel Anticipates Visting During Permit Term: Boston, New Port, Bar Harbour, Baltimore, Charleston, Miami

3. Number of overnight berths a. Passengers: 2050 b. Crew: 590

a. Maximum passenger capacity: 2500 b. Crew: 634

4. Does vessel travel beyond the US EEZ and more than 200 nm from any shore? ☑Yes ☐No

5. Is the vessel engaged in Pacific Nearshore Voyages? ☐Yes ☑No

D. Discharge Information (commercial fishing vessels and vessels < 79 feet in length need only select Ballast Water; if such vessels have no ballast water discharges they do not need coverage under this permit):

1. Select all applicable discharges vessel may generate.

☑Deck Washdown and Runoff	☐Gas Turbine Wash Water
☑Bilgewater/Oily Water Separator Effluent	☑Graywater
☑Ballast Water	☐Motor Gasoline and Compensating Discharge
☑Anti-fouling hull coatings	☑Non-Oily Machinery Wastewater
☐Aqueous Film Forming Foams (AFFF)	☑Refrigerator and Air Condensate Discharge
☑Boiler/Economizer Blowdown	☑Seawater Cooling Overboard Discharge
☑Cathodic Protection	☑Seawater Piping Biofouling Prevention
☑Chain Locker Effluent	☑Small Boat Engine Wet Exhaust
☑Controllable Pitch Propeller Hydraulic Fluid and other Oil-to-Sea Interfaces	☐Sonar Dome Discharge
☑Distillation or Reverse Osmosis Brine	☐Underwater Ship Husbandry
☑Elevator Pit Effluent	☐Welldeck discharges
☑Firemain Systems	☐Graywater Mixed with Sewage
☑Freshwater layup	☐Exhaust Gas Scrubber Washwater Discharge

2. Does Vessel ever engage in or have capacity to engage in industrial operations? ☐Yes ☑No

☐Seafood processing ☐Mining
☐Energy exploration ☐Other _____

3. Will the vessel be using experimental ballast water treatment system which discharges residual biocides or derivatives? ☐Yes ☑No

b. If yes, are biocide concentrations below those listed in Part 5.8 of the Permit? ☐Yes ☐No

c. List the biocide residuals or derivatives that may be discharged by the ballast water treatment system:

E. Certifier Name and Title

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Andre Mahr

Title:

Signature: Andre Mahr Date: 09/09/2010

Email: andre.mahr@aida.de

NOI Preparer (Complete if NOI was prepared by someone other than the certifier)

Prepared By:

Organization:

Phone: _____ Ext: _____

Email:

Instructions for Completing the Notice of Intent for Discharges Incidental to the Normal Operation of a Vessel under the NPDES Vessel General Permit

NOI Submittal Deadlines/Discharge Authorization Dates		
Category	**NOI Deadline**	**Discharge Authorization Date[1]**
Vessels delivered to owner or operator on or before September 19, 2009	No later than September 19, 2009	2009 Coverage granted until September 19, 2009 If EPA receives an NOI before September 19, 2009, uninterrupted coverage continues.
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[1] Based on a review of your NOI or other information, EPA may delay the discharge authorization date for further review, or may deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Part 1.8. In these instances, EPA will notify you in writing of the delay or the request for submission of an individual NPDES permit application. If EPA requires an individual permit for an existing vessel previously covered by a general permit, EPA will allow the permittee a reasonable amount of time to obtain individual permit coverage before the general permit coverage terminates.

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  Or
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NOIs sent overnight/express mail.
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EPA East Building, Rm. 7420
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Washington, DC 20004
202-564-9545

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3. Provide the name of the Certifying Official.
4. Provide the owner/operator's mailing address, telephone number, fax number (optional), and email address. Correspondence will be sent to this address.

Section B. Vessel Information

1. Provide the vessel's official or legal name, if applicable. If the vessel does not have a name, enter "NA" in the space provided.
2. Provide the vessel's identification registered identification number, or IMO Ship number, as applicable. Indicate the type of number used to identify the vessel. If the vessel does not have an identification number, enter "NA" in the space provided.
3. Enter the vessel call sign, if applicable. If the vessel does not have a call sign, enter "NA" in the space provided.
4. Provide the flag state or port of registry. If the vessel does not have a flag state or port of registry, enter "NA" in the space provided.
5. Select the type of vessel by checking the appropriate box. Only the vessel types required to meet additional, vessel type-specific Permit standards are listed, all other vessel types should select "other" and enter the vessel type in the space provided.

6a. Enter the vessel weight in gross tons or gross registered tons and specify the units entered.
6b. Enter the vessel length in feet or meters, and specify the units entered.
7. Enter the ballast water capacity in gallons or m^3 and specify the units entered.
8. Enter the 4-digit year that the vessel was built.
9a. Enter the date of last dry-dock. Month/Day/Year
9b. Enter the date of the next scheduled/anticipated dry-dock: Month/Day/Year
10. Indicate whether the vessel currently has any onboard treatment systems for any waste stream listed in the permit, such as an Advanced Wastewater Treatment System (AWTS) used for graywater or an Oily Water Separator (OWS) used for bilgewater. If yes, Describe the treatment system, including what waste stream it treats, the type and design of the system, and treatment capacity.
11. Provide information on the frequency and method of ballast tank sediment disposal and whether the vessel currently has a ballast water management plan.
12. Indicate whether the vessel has an anti-foulant coating applied to the hull, what type of coating, when it was last applied, and briefly describe the vessel hull husbandry practices, including frequency of hull cleaning and method usually used.
13. Indicate whether the vessel currently holds or has ever held a NPDES permit for any part, discharge, or operation of the vessel.

13a. If yes, include the Permit number and dates of permit coverage.
13b. If the vessel is covered under this General Permit and this NOI is being submitted for a transfer of ownership to continue coverage, check the appropriate box, and include the date of transfer. Month/Day/Year.

Section C. Vessel Voyage Information

1. Enter the vessel home port, or if it does not have a home port, enter the US port it most frequently visits.

2 Provide the name of each US port the vessel may visit during the Permit term. This list does not need to be exhaustive, but should be based on ports visited in the past and should be representative of the geographic area in which the vessel travels.
3 Provide the number of overnight berths for passengers and crew. Provide the maximum passenger capacity. Provide the crew capacity, that is, the number of crew needed for or normally used for operating the vessel
4. Select the appropriate box to indicate if the vessel will travel in ocean waters seaward of the US EEZ and more than 200 nm from any shore. US EEZ is defined as the United State Exclusive Economic Zone. Some vessels may travel outside the US EEZ but not 200 nm from any shore. For example, vessels engaged in Pacific or Atlantic Nearshore Voyages that do not travel more than 200 nm from shore should select 'NO'.
5. Select the appropriate box if the vessel is engaged in Pacific Nearshore Voyages.

Section D. Discharge Information

1. From the list provided, select each applicable discharge type that your vessel may create. All discharges incidental to the normal operation of a vessel are included in permit coverage, you do not have to select each discharge type for your vessel to receive coverage for all discharges you may have, however, when completing the NOI, vessel owner/operators should list all discharge types they expect from their vessels. Many of these discharges are defined in Part 7-Appendix A of the Permit. You can find further information on discharges in Part 2.2 of the Permit and Part 4.4 of the Fact Sheet found at the Vessels website at www.epa.gov/npdes/vessels. Commercial fishing vessels and vessels less than 79 feet in length will only receive permit coverage for ballast water discharges and do not need to check other types of discharges in the NOI.
2. Select the appropriate box if the vessel ever engaged in or has capacity to engage in industrial operation. If yes, select the appropriate box to indicate the type of industrial operation, such as seafood processing, energy exploration, mining, or other. If 'Other', indicate they type of industrial operation.
3. If the vessel will be using a ballast water treatment system, check the appropriate box and answer the questions related to the discharge of residual biocides. The requirements for vessels using a ballast water treatment system can be found in section 5.8 of the Permit.

Section E. Certification

Carefully read the certification statement. By completing and submitting the NOI, the owner/operator certifies that every applicable General permit requirement will be met. Enter certifier's printed name, title and email address. Sign and date the form. (CAUTION: An unsigned or undated NOI form will prevent the granting of permit coverage.) Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows

For a corporation, by a responsible corporate officer, which means

(i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or

(ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements, and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures,

For a partnership or sole proprietorship by a general partner or the proprietor; or

For a municipal, State, Federal, or other public facility by either a principal executive or ranking elected official.

If the NOI was prepared by someone other than the certifier (for example, if the NOI was prepared by a consultant for the certifier's signature), include the name, organization, phone number and email address of the NOI preparer.

Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 0.64 hours per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, Office of Information Collection, Collection Services Division (2823), USEPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Include the OMB control number of this form on any correspondence. Do not send the completed NOI form to this address

Exhibit 4

Ballast Water Delivery and Management Data

Table 3 - Ballast Tank Records

State: ***South Carolina***

Dates: ***2008-01-01*** to ***2011-06-10***

Vessel type: ***Passenger***

More information: Charts

Arrival Date	Vessel Name	IMO Number	Vessel Type	Discharge Source	Source Location	Source Date	Management Location	Management Method	Percent Exchanged	Discharge Location	Date Discharged	Volume Discharged [mt]
2008-04-10	Seven Seas Navigator	9064126	Passenger	Overseas	26.25333 -79.145	2008-04-05		ER		Charleston (USA, SC)	2008-04-10	44
2008-04-10	Seven Seas Navigator	9064126	Passenger	Coastwise	26.26333 -80.00833	2008-04-07		ER		Charleston (USA, SC)	2008-04-10	46
2008-04-10	Seven Seas Navigator	9064126	Passenger	Coastwise	27.42 -79.93	2008-04-08		ER		Charleston (USA, SC)	2008-04-10	76
2009-05-25	Carnival Triumph	9138850	Passenger	Overseas	24.75 -79.73333	2009-05-17	18.03333 -86.4	ER	100	Charleston (USA, SC)	2009-05-25	345
2009-05-25	Carnival Triumph	9138850	Passenger	Overseas	17.83333 -85.95	2009-05-21		ER		Charleston (USA, SC)	2009-05-25	564
2009-05-25	Carnival Triumph	9138850	Passenger	Overseas	18 -86.48333	2009-05-21		ER		Charleston (USA, SC)	2009-05-25	280
2009-11-02	Carnival Triumph	9138850	Passenger	Overseas	30.1 -76	2009-10-27	30.18333 -77.9	ER	100	Charleston (USA, SC)	2009-11-02	345
2009-11-02	Carnival Triumph	9138850	Passenger	Overseas	25.21667 -77.38333	2009-10-29	29.16667 -78.5	ER	100	Charleston (USA, SC)	2009-11-02	564
2009-11-02	Carnival Triumph	9138850	Passenger	Overseas	25.75 -77.46667	2009-10-30	29.75 -78.16666	ER	100	Charleston (USA, SC)	2009-11-02	645
2009-11-02	Carnival Triumph	9138850	Passenger	Coastwise	28.31667 -78.98333	2009-10-30		ER		Charleston (USA, SC)	2009-11-02	280
2009-11-02	Carnival Triumph	9138850	Passenger	Coastwise	28.43333 -78.91666	2009-10-30		ER		Charleston (USA, SC)	2009-11-02	250
2010-03-18	Celebrity Mercury	9106302	Passenger	Overseas	23.85833 -68.38834	2010-02-10	23.96833 -68.48666	ER	100	Charleston (USA, SC)	2010-03-21	50
2010-05-18	Carnival Fantasy	8700773	Passenger	Coastwise	26.025 -85.68833	2010-05-09		ER		Charleston (USA, SC)	2010-05-18	252
2010-05-23	Carnival Fantasy	8700773	Passenger	Coastwise	30.32833 -79.45834	2010-05-19		ER		Charleston (USA, SC)	2010-05-23	252
2010-05-23	Carnival Fantasy	8700773	Passenger	Overseas	26.27333 -78.41	2010-05-20		ER		Charleston (USA, SC)	2010-05-23	250
2010-05-23	Carnival Fantasy	8700773	Passenger	Overseas	29.82667 -78.63834	2010-05-22		ER		Charleston (USA, SC)	2010-05-23	201
2010-05-24	Carnival Glory	9198367	Passenger	Coastwise	25.635 -80.01	2010-05-16		ER		Charleston (USA, SC)	2010-05-24	644
2010-05-24	Carnival Glory	9198367	Passenger	Overseas	24.54833 -80.49	2010-05-16		ER		Charleston (USA, SC)	2010-05-24	574
2010-05-24	Carnival Glory	9198367	Passenger	Coastwise	33.51833 -81.96167	2010-05-22		ER		Charleston (USA, SC)	2010-05-24	338
2010-05-30	Carnival Fantasy	8700773	Passenger	Coastwise	30.1 -79.45834	2010-05-24		ER		Charleston (USA, SC)	2010-05-30	201
2010-05-30	Carnival Fantasy	8700773	Passenger	Coastwise	29.90667 -79.445	2010-05-24		ER		Charleston (USA, SC)	2010-05-30	252
2010-05-30	Carnival Fantasy	8700773	Passenger	Coastwise	29.545 -79.43	2010-05-24		ER		Charleston (USA, SC)	2010-05-30	200

2010-06-11	Carnival Fantasy	8700773	Passenger	Coastwise	29.49 -78.18166	2010-05-31	ER	Charleston (USA, SC)	2010-06-11	200
2010-06-11	Carnival Fantasy	8700773	Passenger	Coastwise	28.40167 -77.68166	2010-06-10	ER	Charleston (USA, SC)	2010-06-11	252
2010-06-11	Carnival Fantasy	8700773	Passenger	Coastwise	29.31333 -78.1	2010-06-10	ER	Charleston (USA, SC)	2010-06-11	201
2010-06-16	Carnival Fantasy	8700773	Passenger	Coastwise	28.76333 -79.41	2010-06-12	ER	Charleston (USA, SC)	2010-06-16	252
2010-06-21	Carnival Fantasy	8700773	Passenger	Coastwise	29.68667 -78.27167	2010-06-17	ER	Charleston (USA, SC)	2010-06-21	252
2010-06-21	Carnival Fantasy	8700773	Passenger	Coastwise	28.98667 -79 42	2010-06-20	ER	Charleston (USA, SC)	2010-06-21	122
2010-06-26	Carnival Fantasy	8700773	Passenger	Coastwise	28.97333 -79.41833	2010-06-12	ER	Charleston (USA, SC)	2010-06-26	200
2010-06-26	Carnival Fantasy	8700773	Passenger	Coastwise	29.675 -79.43667	2010-06-22	ER	Charleston (USA, SC)	2010-06-26	122
2010-06-26	Carnival Fantasy	8700773	Passenger	Coastwise	29 88833 -79.44666	2010-06-22	ER	Charleston (USA, SC)	2010-06-26	252
2010-06-26	Carnival Fantasy	8700773	Passenger	Coastwise	29 33833 -79.425	2010-06-22	ER	Charleston (USA, SC)	2010-06-26	201
2010-06-26	Carnival Fantasy	8700773	Passenger	Coastwise	28 07 -79.38667	2010-06-25	ER	Charleston (USA, SC)	2010-06-26	290
2010-07-02	Carnival Fantasy	8700773	Passenger	Coastwise	26.71833 -79 745	2010-06-27	ER	Charleston (USA, SC)	2010-07-02	201
2010-07-02	Carnival Fantasy	8700773	Passenger	Coastwise	28 78667 -77.855	2010-07-01	ER	Charleston (USA, SC)	2010-07-02	122
2010-07-07	Carnival Fantasy	8700773	Passenger	Coastwise	30.13833 -79.44833	2010-07-03	ER	Charleston (USA, SC)	2010-07-07	200
2010-07-07	Carnival Fantasy	8700773	Passenger	Coastwise	29.89 -79.44666	2010-07-03	ER	Charleston (USA, SC)	2010-07-07	122
2010-07-12	Carnival Fantasy	8700773	Passenger	Coastwise	30.37833 -79 46333	2010-07-08	ER	Charleston (USA, SC)	2010-07-12	250
2010-07-12	Carnival Fantasy	8700773	Passenger	Coastwise	29.97333 -79.44334	2010-07-08	ER	Charleston (USA, SC)	2010-07-12	122
2010-07-12	Carnival Fantasy	8700773	Passenger	Coastwise	24.90333 -80.01667	2010-06-29	ER	Charleston (USA, SC)	2010-07-12	252
2010-07-12	Carnival Fantasy	8700773	Passenger	Coastwise	29.75333 -79 445	2010-07-03	ER	Charleston (USA, SC)	2010-07-12	201
2010-07-17	Carnival Fantasy	8700773	Passenger	Coastwise	30.52 -79.465	2010-07-13	ER	Charleston (USA, SC)	2010-07-17	252
2010-07-17	Carnival Fantasy	8700773	Passenger	Overseas	25.55833 -77.14333	2010-07-15	ER	Charleston (USA, SC)	2010-07-17	200
2010-07-24	Carnival Fantasy	8700773	Passenger	Coastwise	30.17167 -77 71	2010-07-18	ER	Charleston (USA, SC)	2010-07-24	250
2010-07-24	Carnival Fantasy	8700773	Passenger	Overseas	21.82833 -71.38167	2010-07-20	ER	Charleston (USA, SC)	2010-07-24	252
2010-07-24	Carnival Fantasy	8700773	Passenger	Overseas	26.03833 -77.83667	2010-07-22	ER	Charleston (USA, SC)	2010-07-24	122
2010-07-30	Carnival Fantasy	8700773	Passenger	Coastwise	28.845 -77.78333	2010-07-25	ER	Charleston (USA, SC)	2010-07-30	250
2010-07-30	Carnival Fantasy	8700773	Passenger	Overseas	26 15667 -78 11166	2010-07-27	ER	Charleston (USA, SC)	2010-07-30	252
2010-08-04	Carnival Fantasy	8700773	Passenger	Coastwise	30.49333 -79.46667	2010-07 31	ER	Charleston (USA, SC)	2010-08-04	201
2010-08-04	Carnival Fantasy	8700773	Passenger	Overseas	26.33167 -76.70834	2010-08-03	ER	Charleston (USA, SC)	2010-08-04	122
2010-08-04	Carnival Fantasy	8700773	Passenger	Coastwise	28.13333 -79.37666	2010-07-31	ER	Charleston (USA, SC)	2010-08-04	100
2010-08-09	Carnival Fantasy	8700773	Passenger	Coastwise	29.24167 -79.42167	2010-08-05	ER	Charleston (USA, SC)	2010-08-09	252
2010-08-09	Carnival Fantasy	8700773	Passenger	Overseas	26.07833 -77.99	2010-08-08	ER	Charleston (USA, SC)	2010-08-09	201
2010-08-09	Carnival Fantasy	8700773	Passenger	Overseas	26.105 -78 11667	2010-08-08	ER	Charleston (USA, SC)	2010-08-09	200
2010-08-09	Carnival Fantasy	8700773	Passenger	Overseas	27.32833 -79 42667	2010-08-08	ER	Charleston (USA, SC)	2010-08-09	122
2010-08-14	Carnival Fantasy	8700773	Passenger	Coastwise	30 65333 -79 46833	2010-08-10	ER	Charleston (USA, SC)	2010-08-14	252
2010-08-14	Carnival Fantasy	8700773	Passenger	Coastwise	30.48 -79 465	2010-08 10	ER	Charleston (USA, SC)	2010-08-14	201

2010-08-14	Carnival Fantasy	8700773	Passenger	Overseas	26.56167 -79.26667	2010-08-13			ER	Charleston (USA, SC)	2010-08-14	150
2010-08-21	Carnival Fantasy	8700773	Passenger	Overseas	27 27 -77.02	2010-08-15			ER	Charleston (USA, SC)	2010-08-21	201
2010-08-21	Carnival Fantasy	8700773	Passenger	Overseas	25 42 -77.22	2010-08-16			ER	Charleston (USA, SC)	2010-08-21	200
2010-08-21	Carnival Fantasy	8700773	Passenger	Overseas	25.02 -75.84	2010-08-17			ER	Charleston (USA, SC)	2010-08-21	252
2010-08-21	Carnival Fantasy	8700773	Passenger	Overseas	23.94 -72.94	2010-08-19			ER	Charleston (USA, SC)	2010-08-21	122
2010-08-27	Carnival Fantasy	8700773	Passenger	Overseas	26.17 -78.15	2010-08-24			ER	Charleston (USA, SC)	2010-08-27	252
2010-08-27	Carnival Fantasy	8700773	Passenger	Overseas	26.27 -78.39	2010-08-24			ER	Charleston (USA, SC)	2010-08-27	100
2010-08-27	Carnival Fantasy	8700773	Passenger	Coastwise	24.79 -80 15	2010-08-25			ER	Charleston (USA, SC)	2010-08-27	150
2010-08-27	Carnival Fantasy	8700773	Passenger	Coastwise	24 64 -80.34	2010-08-25			ER	Charleston (USA, SC)	2010-08-27	122
2010-09-01	Carnival Fantasy	8700773	Passenger	Overseas	26.04 -77.83	2010-08-30			ER	Charleston (USA, SC)	2010-09-01	252
2010-09-01	Carnival Fantasy	8700773	Passenger	Overseas	26.08 -77.93	2010-08-29			ER	Charleston (USA, SC)	2010-09-01	201
2010-09-01	Carnival Fantasy	8700773	Passenger	Overseas	26.11 -78 13	2010-08-31			ER	Charleston (USA, SC)	2010-09-01	122
2010-09-01	Carnival Fantasy	8700773	Passenger	Overseas	26 15 -78.33	2010-08-31			ER	Charleston (USA, SC)	2010-09-01	150
2010-09-06	Carnival Fantasy	8700773	Passenger	Coastwise	29.59 -80 50	2010-09-02			ER	Charleston (USA, SC)	2010-09-06	252
2010-09-06	Carnival Fantasy	8700773	Passenger	Overseas	26.04 -77.83	2010-09-04			ER	Charleston (USA, SC)	2010-09-06	201
2010-09-06	Carnival Fantasy	8700773	Passenger	Coastwise	26.82 -79.60	2010-09-05			ER	Charleston (USA, SC)	2010-09-06	250
2010-09-11	Carnival Fantasy	8700773	Passenger	Coastwise	28.23 -79.40	2010-09-07			ER	Charleston (USA, SC)	2010-09-11	252
2010-09-11	Carnival Fantasy	8700773	Passenger	Overseas	25.45 -77.46	2010-09-09			ER	Charleston (USA, SC)	2010-09-11	201
2010-09-11	Carnival Fantasy	8700773	Passenger	Overseas	26.06 -77.93	2010-09-09			ER	Charleston (USA, SC)	2010-09-11	250
2010-09-11	Carnival Fantasy	8700773	Passenger	Overseas	26.54 -79 26	2010-09-10			ER	Charleston (USA, SC)	2010-09-11	122
2010-09-18	Carnival Fantasy	8700773	Passenger	Overseas	25.15. -75.87	2010-09-14			ER	Charleston (USA, SC)	2010-09-18	252
2010-09-18	Carnival Fantasy	8700773	Passenger	Coastwise	29 02 -76.80	2010-09-17			ER	Charleston (USA, SC)	2010-09-18	122
2010-09-24	Carnival Fantasy	8700773	Passenger	Coastwise	29 68 -80.31	2010-09-19			ER	Charleston (USA, SC)	2010-09-24	200
2010-09-24	Carnival Fantasy	8700773	Passenger	Coastwise	29.38 -80.25	2010-09-19			ER	Charleston (USA, SC)	2010-09-24	252
2010-09-24	Carnival Fantasy	8700773	Passenger	Coastwise	29.12 -80 21	2010-09-19			ER	Charleston (USA, SC)	2010-09-24	122
2010-09-29	Carnival Fantasy	8700773	Passenger	Coastwise	30.04 -80 32	2010-09-25			ER	Charleston (USA, SC)	2010-09-29	252
2010-09-29	Carnival Fantasy	8700773	Passenger	Coastwise	29 52 -80.28	2010-09-25			ER	Charleston (USA, SC)	2010-09-29	300
2010-09-29	Carnival Fantasy	8700773	Passenger	Coastwise	29.02 -80.19	2010-09-25			ER	Charleston (USA, SC)	2010-09-29	122
2010-09-29	Carnival Fantasy	8700773	Passenger	Overseas	25 08 -77.34	2010-09-27	26.90	-79.68	ER	100 Charleston (USA, SC)	2010-09-29	290
2010 09-29	Carnival Fantasy	8700773	Passenger	Coastwise	28 95 -80.18	2010-09-19			ER	Charleston (USA, SC)	2010-09-29	201
2010-10-04	Carnival Fantasy	8700773	Passenger	Coastwise	30 50 -80.19	2010 09 30			ER	Charleston (USA, SC)	2010-10 04	250
2010-10-04	Carnival Fantasy	8700773	Passenger	Coastwise	30.19 -80 30	2010-09 30			ER	Charleston (USA, SC)	2010-10-04	201
2010-10-04	Carnival Fantasy	8700773	Passenger	Coastwise	27 43 -79.83	2010-10-03			ER	Charleston (USA, SC)	2010-10-04	408
2010-10-09	Carnival Fantasy	8700773	Passenger	Coastwise	29 30 -80.24	2010-10-05			ER	Charleston (USA, SC)	2010-10-09	201
2010-10 09	Carnival Fantasy	8700773	Passenger	Coastwise	28 63 -80.11	2010-10-05			ER	Charleston (USA, SC)	2010 10-09	200

2010-10-09	Carnival Fantasy	8700773	Passenger	Coastwise	27.90 -79.98	2010-10-05	ER	Charleston (USA, SC)	2010-10-09	122
2010-10-09	Carnival Fantasy	8700773	Passenger	Coastwise	27.32 -79.86	2010-10-08	ER	Charleston (USA, SC)	2010-10-09	191
2010-10-15	Carnival Fantasy	8700773	Passenger	Coastwise	28.61 -80.11	2010-10-10	ER	Charleston (USA, SC)	2010-10-15	250
2010-10-15	Carnival Fantasy	8700773	Passenger	Coastwise	28.00 -80.00	2010-10-10	ER	Charleston (USA, SC)	2010-10-15	122
2010-10-15	Carnival Fantasy	8700773	Passenger	Coastwise	27.62 -79.93	2010-10-10	ER	Charleston (USA, SC)	2010-10-15	201
2010-10-15	Carnival Fantasy	8700773	Passenger	Overseas	26.09 -79.39	2010-10-12	ER	Charleston (USA, SC)	2010-10-15	191
2010-10-15	Carnival Fantasy	8700773	Passenger	Coastwise	27.43 -79.83	2010-10-14	ER	Charleston (USA, SC)	2010-10-15	252
2010-10-20	Carnival Fantasy	8700773	Passenger	Coastwise	29.50 -80.32	2010-10-16	ER	Charleston (USA, SC)	2010-10-20	250
2010-10-20	Carnival Fantasy	8700773	Passenger	Coastwise	29.37 -80.28	2010-10-16	ER	Charleston (USA, SC)	2010-10-20	122
2010-10-20	Carnival Fantasy	8700773	Passenger	Coastwise	29.00 -80.19	2010-10-16	ER	Charleston (USA, SC)	2010-10-20	252
2010-10-20	Carnival Fantasy	8700773	Passenger	Coastwise	28.03 -80.00	2010-10-16	ER	Charleston (USA, SC)	2010-10-20	201
2010-10-25	Carnival Fantasy	8700773	Passenger	Coastwise	32.44 -79.68	2010-10-20	ER	Charleston (USA, SC)	2010-10-25	252
2010-10-25	Carnival Fantasy	8700773	Passenger	Coastwise	28.88 -80.17	2010-10-21	ER	Charleston (USA, SC)	2010-10-25	250
2010-10-25	Carnival Fantasy	8700773	Passenger	Coastwise	27.44 -79.90	2010-10-21	ER	Charleston (USA, SC)	2010-10-25	122
2010-10-25	Carnival Fantasy	8700773	Passenger	Coastwise	27.12 -79.83	2010-10-21	ER	Charleston (USA, SC)	2010-10-25	201
2010-10-30	Carnival Fantasy	8700773	Passenger	Coastwise	31.68 -79.86	2010-10-25	ER	Charleston (USA, SC)	2010-10-30	250
2010-10-30	Carnival Fantasy	8700773	Passenger	Coastwise	32.28 -79.72	2010-10-25	ER	Charleston (USA, SC)	2010-10-30	122
2010-10-30	Carnival Fantasy	8700773	Passenger	Coastwise	32.03 -79.78	2010-10-25	ER	Charleston (USA, SC)	2010-10-30	201
2010-11-01	Carnival Glory	9198367	Passenger	Coastwise	31.61 -77.00	2010-10-30	ER	Charleston (USA, SC)	2010-11-01	322
2010-11-01	Carnival Glory	9198367	Passenger	Coastwise	31.61 -77.00	2010-10-30	ER	Charleston (USA, SC)	2010-11-01	322
2010-11-04	Carnival Fantasy	8700773	Passenger	Coastwise	32.42 -79.68	2010-10-25	ER	Charleston (USA, SC)	2010-11-04	252
2010-11-04	Carnival Fantasy	8700773	Passenger	Coastwise	29.29 -80.23	2010-10-31	ER	Charleston (USA, SC)	2010-11-04	250
2010-11-04	Carnival Fantasy	8700773	Passenger	Coastwise	29.93 -80.17	2010-10-31	ER	Charleston (USA, SC)	2010-11-04	122
2010-11-04	Carnival Fantasy	8700773	Passenger	Coastwise	27.70 -79.95	2010-11-02	ER	Charleston (USA, SC)	2010-11-04	150
2010-11-04	Carnival Fantasy	8700773	Passenger	Overseas	25.73 -77.57	2010-11-03	ER	Charleston (USA, SC)	2010-11-04	191
2010-11-09	Carnival Fantasy	8700773	Passenger	Coastwise	28.59 -80.11	2010-10-31	ER	Charleston (USA, SC)	2010-11-09	201
2010-11-09	Carnival Fantasy	8700773	Passenger	Coastwise	29.03 -80.18	2010-11-05	ER	Charleston (USA, SC)	2010-11-09	250
2010-11-09	Carnival Fantasy	8700773	Passenger	Coastwise	27.79 -79.96	2010-11-05	ER	Charleston (USA, SC)	2010-11-09	122
2010-11-09	Carnival Fantasy	8700773	Passenger	Coastwise	27.11 -79.74	2010-11-08	ER	Charleston (USA, SC)	2010-11-09	191
2010-11-09	Carnival Fantasy	8700773	Passenger	Coastwise	28.78 -80.16	2010-11-05	ER	Charleston (USA, SC)	2010-11-09	252
2010-11-15	Carnival Fantasy	8700773	Passenger	Coastwise	29.30 -79.42	2010-11-10	ER	Charleston (USA, SC)	2010-11-15	250
2010-11-15	Carnival Fantasy	8700773	Passenger	Coastwise	29.04 -79.41	2010-11-10	ER	Charleston (USA, SC)	2010-11-15	122
2010-11-15	Carnival Fantasy	8700773	Passenger	Coastwise	28.44 -79.40	2010-11-10	ER	Charleston (USA, SC)	2010-11-15	252
2010-11-15	Carnival Fantasy	8700773	Passenger	Overseas	26.44 -78.74	2010-11-12	ER	Charleston (USA, SC)	2010-11-15	201
2010-11-20	Carnival Fantasy	8700773	Passenger	Coastwise	29.26 -80.22	2010-11-16	ER	Charleston (USA, SC)	2010-11-20	250

2010-11-20	Carnival Fantasy	8700773	Passenger Coastwise	29.00 -80.18	2010-11-16	ER	Charleston (USA, SC)	2010-11-20	122
2010-11-20	Carnival Fantasy	8700773	Passenger Coastwise	28.58 -80.11	2010-11-16	ER	Charleston (USA, SC)	2010-11-20	252
2010-11-20	Carnival Fantasy	8700773	Passenger Coastwise	28.32 -80.04	2010-11-16	ER	31.27 -79.71	2010-11-19	201
2010-11-20	Carnival Fantasy	8700773	Passenger Coastwise	28.79 -79.94	2010-11-19	ER	Charleston (USA, SC)	2010-11-20	191
2010-11-27	Carnival Fantasy	8700773	Passenger Coastwise	29.67 -78.20	2010-11-21	ER	Charleston (USA, SC)	2010-11-27	250
2010-11-27	Carnival Fantasy	8700773	Passenger Coastwise	24.46 -80.60	2010-11-25	ER	Charleston (USA, SC)	2010-11-27	122
2010-11-27	Carnival Fantasy	8700773	Passenger Coastwise	29.02 -77.87	2010-11-21	ER	Charleston (USA, SC)	2010-11-27	252
2010-12-11	Carnival Fantasy	8700773	Passenger Overseas	27.16 -79.50	2010-12-10	ER	Charleston (USA, SC)	2010-12-11	252
2010-12-11	Carnival Fantasy	8700773	Passenger Coastwise	28.66 -79.92	2010-12-10	ER	Charleston (USA, SC)	2010-12-11	250
2010-12-17	Carnival Fantasy	8700773	Passenger Overseas	29.67 -79.44	2010-12-12	ER	Charleston (USA, SC)	2010-12-17	350
2010-12-17	Carnival Fantasy	8700773	Passenger Coastwise	29.47 -79.43	2010-12-12	ER	Charleston (USA, SC)	2010-12-17	122
2010-12-17	Carnival Fantasy	8700773	Passenger Coastwise	29.06 -79.42	2010-12-12	ER	Charleston (USA, SC)	2010-12-17	252
2010-12-22	Carnival Fantasy	8700773	Passenger Overseas	26.19 -78.18	2010-12-19	ER	Charleston (USA, SC)	2010-12-22	250
2010-12-22	Carnival Fantasy	8700773	Passenger Coastwise	30.22 -79.45	2010-12-18	ER	Charleston (USA, SC)	2010-12-22	122
2010-12-22	Carnival Fantasy	8700773	Passenger Coastwise	32.28 -79.58	2010-12-17	ER	Charleston (USA, SC)	2010-12-22	252
2010-12-22	Carnival Fantasy	8700773	Passenger Coastwise	27.46 -79.90	2010-12-21	ER	Charleston (USA, SC)	2010-12-22	100
2010-12-27	Carnival Fantasy	8700773	Passenger Coastwise	28.57 -80.10	2010-12-26	ER	Charleston (USA, SC)	2010-12-27	350
2010-12-27	Carnival Fantasy	8700773	Passenger Coastwise	30.91 -80.08	2010-12-26	ER	Charleston (USA, SC)	2010-12-27	100
2011-01-01	Carnival Fantasy	8700773	Passenger Coastwise	27.93 -79.99	2010-12-28	ER	Charleston (USA, SC)	2011-01-01	252
2011-01-01	Carnival Fantasy	8700773	Passenger Coastwise	30.71 -79.96	2010-12-31	ER	Charleston (USA, SC)	2011-01-01	320
2011-01-07	Carnival Fantasy	8700773	Passenger Coastwise	30.26 -78.49	2011-01-02	ER	Charleston (USA, SC)	2011-01-07	252
2011-01-22	Carnival Fantasy	8700773	Passenger Coastwise	30.36 -80.28	2011-01-18	ER	Charleston (USA, SC)	2011-01-22	122
2011-01-28	Carnival Fantasy	8700773	Passenger Coastwise	24.35 -80.92	2011-01-24	ER	Charleston (USA, SC)	2011-01-28	122
2011-01-28	Carnival Fantasy	8700773	Passenger Coastwise	30.54 -80.24	2011-01-18	ER	Charleston (USA, SC)	2011-01-28	250
2011-02-07	Carnival Fantasy	8700773	Passenger Coastwise	27.86 -79.86	2011-02-06	ER	Charleston (USA, SC)	2011-02-07	122
2011-02-12	Carnival Fantasy	8700773	Passenger Coastwise	30.62 -80.20	2011-02-08	ER	Charleston (USA, SC)	2011-02-12	122
2011-02-12	Carnival Fantasy	8700773	Passenger Coastwise	27.43 -79.89	2011-02-11	ER	Charleston (USA, SC)	2011-02-12	250
2011-02-18	Carnival Fantasy	8700773	Passenger Coastwise	27.09 -79.81	2011-02-17	ER	Charleston (USA, SC)	2011-02-18	122
2011-02-23	Carnival Fantasy	8700773	Passenger Coastwise	27.85 -79.97	2011-02-19	ER	Charleston (USA, SC)	2011-02-23	122
2011-03-01	Carnival Fantasy	8700773	Passenger Coastwise	32.22 -79.73	2011-02-23	ER	Charleston (USA, SC)	2011-03-01	122
2011-03-01	Carnival Fantasy	8700773	Passenger Coastwise	27.10 -79.81	2011-02-28	ER	Charleston (USA, SC)	2011-03-01	150
2011-03-06	Carnival Fantasy	8700773	Passenger Coastwise	30.02 -80.32	2011-03-07	ER	Charleston (USA, SC)	2011-03-06	300
2011-03-06	Carnival Fantasy	8700773	Passenger Coastwise	27.13 -79.83	2011-03-05	ER	Charleston (USA, SC)	2011-03-06	122
2011-03-12	Carnival Fantasy	8700773	Passenger Coastwise	29.41 -80.26	2011-03-07	ER	Charleston (USA, SC)	2011-03-12	300
2011-03-12	Carnival Fantasy	8700773	Passenger Coastwise	26.54 -79.76	2011-03-11	ER	Charleston (USA, SC)	2011-03-12	122

Download ballast tank records in: text format (CSV)

National Ballast Information Clearinghouse 2008. *NBIC Online Database*. Electronic publication. Smithsonian Environmental Research Center & United States Coast Guard. Available from http://invasions.si.edu/nbic/search.html; searched 10-June-2011.

Contact us: *nbic@ballastreport.org*

Exhibit 5

United States District Court

Southern District of Florida

MIAMI DIVISION

UNITED STATES OF AMERICA

v.

CARNIVAL CORPORATION

JUDGMENT IN A CRIMINAL CASE
(For Organizational Defendants)

Case Number: 1:02CR20350-001-MOORE

FILED by D.C.
APR 19 2002
CLARENCE MADDOX
CLER., U.S. DIST. CT.
S.D. OF FLA. - MIAMI

Counsel For Defendant: Mark Pomerantz, Esq., David Mandel, Esq. and Chris McAliley, Esq
Counsel For The United States: Eloisa Fernandez and Diane Patrick
Court Reporter: Randy Belsvik

The defendant organization pleaded guilty to Count 1,2,3,4,5 and 6, of the Information.
ACCORDINGLY, the court has adjudicated that the organizational defendant is guilty of the following offense(s):

TITLE/SECTION NUMBER	NATURE OF OFFENSE	DATE OFFENSE CONCLUDED	COUNT
18:1001(a)(3)	Knowingly and willfully discharged oil contaminated waste from their bilges into the sea and falsely represented in their Oil Record Books that the waste had been discharged using operational pollution equipment.	January 2001	1,2,3,4,5 and 6

The defendant organization is sentenced as provided in the following pages of this judgment.

IT IS FURTHER ORDERED that the defendant organization shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Federal Employer I.D. No. 59-1562976
Date of Incorporation: November 1974

Defendant's Mailing Address:
3655 N.W. 87th Avenue
Miami, FL

Defendant's Residence Address:
3655 N.W. 87th Avenue
Miami, FL

Date of Imposition of Sentence:
April 19, 2002

R. MICHAEL MOORE
United States District Judge
April 19th, 2002

15

DEFENDANT ORGANIZATION: CARNIVAL CORPORATION
CASE NUMBER: 1:02CR20350-001-MOORE

PROBATION

The defendant organization is hereby sentenced to probation for a term of 5 YEARS as to each of Counts 1,2,3,4,5 and 6, to run concurrently with each other.

While on probation, the defendant shall not commit another federal, state, or local crime.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant organization shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees;
7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer

DEFENDANT ORGANIZATION: CARNIVAL CORPORATION
CASE NUMBER: 1:02CR20350-001-MOORE

SPECIAL CONDITIONS OF SUPERVISION

The defendant organization shall also comply with the following additional condition(s) of probation:

The defendant shall make full and complete disclosure of its business finances/financial records, as required by the Probation Officer. The defendant shall submit to an audit of its business financial records as requested by the Probation Officer.

The defendant shall submit to a search and/or inspection of any of its properties and places of business conducted at a reasonable time and in a reasonable manner by the Probation Officer.

The defendant shall make a payment of $9,000,000.00 to the parties named in the plea agreement in the form of community service. The parties listed in the plea agreement are the following:

Florida Environmental Task Force Trust	$2,000,000.00
Sheriff's Foundation of Broward County- Domestic Security Task Force	$2,000,000.00
The National Park Foundation	$1,500,000.00
Florida Sea Grant Program	$1,500,000.00
Sanctuary Friends of the Florida Keys	$1,000,000.00
Florida Keys Land & Sea Trust	$ 500,000.00
The Nature Conservancy	$ 250,000.00
Miami Museum of Science	$ 250,000 00

The defendant shall develop, implement and enforce a world-wide Environmental Compliance Plan (ECP) and shall permit the U.S. Probation Officer to monitor and be involved in all phases of the program and pursue whatever steps are necessary to ensure the defendant's compliance with the ECP.

Within five days of imposition of sentence, the defendant shall, by corporate resolution name an organizational representative(s) to be the liaison with the U.S. Probation Office in regards to all matters pertaining to the defendant's probation, and the named party(ies) shall within five days thereafter meet with the Chief U.S. Probation Officer in order to ensure implementation of the Court's Orders.

Carnival Corporation agrees that any conduct or act performed by any of the operating cruise lines of the defendant in violation of the regulations pertaining to environmental matters, as prescribed by the U.S. Department of Transportation, the Environmental Protection Agency, and the United States Coast Guard shall be deemed a violatio of the Defendant's probation in this case. Individuals responsible for or associated with such conduct or act may also be subject to criminal prosecution.

DEFENDANT ORGANIZATION: CARNIVAL CORPORATION
CASE NUMBER: 1:02CR20350-001-MOORE

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

Total Assessment	Total Fine	Total Restitution
$2,400.00	$9,000,000.00	$

The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A. Lump sum payment of **$2,400.00** due immediately.

All criminal monetary penalties are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The assessment/fine/restitution is payable to the U.S. COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
301 N. MIAMI AVENUE, ROOM 150
MIAMI, FLORIDA 33128

The assessment/fine/restitution is payable immediately. U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs

Exhibit 6

CARNIVAL CORP (CVC1)

10-K
Annual report pursuant to section 13 and 15(d)
Filed on 01/31/2011
Filed Period 11/30/2010

THOMSON REUTERS

Westlaw BUSINESS

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

(Mark One)

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended November 30, 2010

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number 1-9610

Carnival Corporation
(Exact name of registrant as specified in its charter)
Republic of Panama
(State or other jurisdiction of incorporation or organization)
59-1562976
(I.R.S. Employer Identification No.)
3655 N.W. 87th Avenue Miami, Florida 33178-2428
(Address of principal executive offices and zip code)
(305) 599-2600
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:
Title of each class
Common Stock ($0.01 par value)
Name of each exchange on which registered
New York Stock Exchange, Inc.

Commission file number: 1-15136

Carnival plc
(Exact name of registrant as specified in its charter)
England and Wales
(State or other jurisdiction of incorporation or organization)
98-0357772
(I.R.S. Employer Identification No.)
Carnival House, 5 Gainsford Street, London SE1 2NE, United Kingdom
(Address of principal executive offices and zip code)
011 44 20 7940 5381
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act
Title of each class
Ordinary Shares each represented by American Depositary Shares ($1.66 par value), Special Voting Share, GBP 1.00 par value and Trust Shares of beneficial interest in the P&O Princess Special Voting Trust
Name of each exchange on which registered
New York Stock Exchange, Inc.

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrants are well-known seasoned issuers, as defined in Rule 405 of the Securities Act. Yes ☑ No ☐

Indicate by check mark if the registrants are not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

Indicate by check mark whether the registrants (1) have filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrants were required to file such reports), and (2) have been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark whether the registrants have submitted electronically and posted on their corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrants were required to submit and post such files). Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrants' knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K ☐

Indicate by check mark whether the registrants are large accelerated filers, accelerated filers, non-accelerated filers, or small reporting companies. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filers	☑	Accelerated Filers	☐
Non-Accelerated Filers	☐	Smaller Reporting Companies	☐

Indicate by check mark whether the registrants are shell companies (as defined in Rule 12b-2 of the Act). Yes ☐ No ☑

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold was $14.5 billion as of the last business day of the registrant's most recently completed second fiscal quarter.
At January 24, 2011, Carnival Corporation had outstanding 607,840,462 shares of its Common Stock, $0.01 par value.

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold was $6.7 billion as of the last business day of the registrant's most recent completed second fiscal quarter.
At January 24, 2011, Carnival plc had outstanding 214,412,366 Ordinary Shares $1.66 par value, one Special Voting Share, GBP 1.00 par value and 607,840,462 Trust Shares of beneficial interest in the P&O Princess Special Voting Trust.

DOCUMENTS INCORPORATED BY REFERENCE

The information described below and contained in the Registrants' 2010 annual report to shareholders to be furnished to the U.S. Securities and Exchange Commission pursuant to Rule 14a-3(b) of the Securities Exchange Act of 1934 is shown in Exhibit 13 and is incorporated by reference into this joint Annual Report on Form 10-K ("Form 10-K").

Part and Item of the Form 10-K	
Part II	
Item 5(a).	Market for Registrants' Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities—Market Information, Holders and Performance Graph.
Item 6.	Selected Financial Data.
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations.
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk.
Item 8.	Financial Statements and Supplementary Data.

Portions of the Registrants' 2011 joint definitive Proxy Statement, to be filed with the U.S. Securities and Exchange Commission, are incorporated by reference into this Form 10-K under the items described below.

Part and Item of the Form 10-K	
Part III	
Item 10.	Directors, Executive Officers and Corporate Governance.
Item 11.	Executive Compensation.
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.
Item 13.	Certain Relationships and Related Transactions, and Director Independence.
Item 14.	Principal Accounting Fees and Services.

PART I

Item 1. Business.

A. General

Carnival Corporation was incorporated in Panama in 1972, and Carnival plc was incorporated in England and Wales in 2000. Carnival Corporation and Carnival plc operate a dual listed company ("DLC"), whereby the businesses of Carnival Corporation and Carnival plc are combined through a number of contracts and through provisions in Carnival Corporation's Articles of Incorporation and By-Laws and Carnival plc's Articles of Association.

Carnival Corporation and Carnival plc are both public companies with separate stock exchange listings and their own shareholders. The two companies operate as if they are a single economic enterprise with a single executive management team and identical Boards of Directors, but each has retained its separate legal identity. See Note 3, "DLC Structure" to our Consolidated Financial Statements in Exhibit 13 to this Form 10-K. Together with their consolidated subsidiaries Carnival Corporation and Carnival plc are referred to collectively in this Form 10-K as "Carnival Corporation & plc," "our," "us" and "we."

We are the largest and financially-strongest cruise company and among the largest and most profitable vacation companies in the world. We have a portfolio of widely recognized cruise brands that are sold in all the major vacation markets of the world and are a leading provider of cruises to all major vacation destinations. We believe our multi-brand strategy is essential to our cruise industry leadership position. See Part I, Item 1. Business, B. "Cruise Operations" for additional information.

Each of our cruise brands is an operating segment that we aggregate into either the (1) North America or (2) Europe, Australia & Asia ("EAA") reportable cruise segments based on the similarity of their economic and other characteristics. Our North America segment cruise brands include Carnival Cruise Lines, Holland America Line, Princess Cruises ("Princess") and Seabourn. Our EAA segment cruise brands include AIDA Cruises ("AIDA"), Costa Cruises ("Costa"), Cunard, Ibero Cruises ("Ibero"), P&O Cruises (UK) and P&O Cruises (Australia). See Note 11, "Segment Information" to our Consolidated Financial Statements in Exhibit 13 to this Form 10-K.

As of January 31, 2011, the summary by cruise brand of our passenger capacity, the number of cruise ships we operate and the primary areas or countries in which they are marketed are as follows.

Cruise Brands	Passenger Capacity (a)	Number of Cruise Ships	Primary Markets
North America			
Carnival Cruise Lines	54,480	22	North America
Princess	37,608	17	North America
Holland America Line	23,492	15	North America
Seabourn	1,524	5	North America
North America Cruise Brands	117,104	59	
Europe, Australia & Asia ("EAA")			
Costa	29,202	14	Italy, France and Germany
P&O Cruises (UK) (b)	15,098	7	United Kingdom ("UK")
AIDA	12,054	7	Germany
Cunard	6,676	3	UK and North America
P&O Cruises (Australia)	6,322	4	Australia
Ibero	5,008	4	Spain and South America
EAA Cruise Brands	74,360	39	
	191,464	98	

(a) In accordance with cruise industry practice, passenger capacity is calculated based on two passengers per cabin even though some cabins can accommodate three or more passengers.

(b) Includes the 1,200-passenger capacity *Artemis*, which was sold in October 2009 to an unrelated entity and is being operated by P&O Cruises (UK) under a bareboat charter agreement until April 2011.

As of January 31, 2011, we had signed agreements with three shipyards providing for the construction of ten additional cruise ships scheduled to enter service between April 2011 and June 2014. These additions, net of the withdrawal of P&O Cruises (UK)'s *Artemis* are expected to result in an increase in our passenger capacity by 26,300 lower berths. The impact of these net additions is a 13.7% increase in passenger capacity compared to our January 31, 2011 passenger capacity. It is possible that some of our other older ships may also be sold, chartered or retired during the next few years, thus reducing the size of our fleet over this period. Alternatively, it is also possible that we could acquire more ships, thus increasing the size of our fleet over this period. Our North America cruise brands and our EAA cruise brands each have five ships scheduled to enter service by June 2014 and June 2013, respectively, which are expected to result in an increase in their passenger capacity of 14,950 and 12,550 lower berths, respectively. After adjusting for *Artemis* leaving the fleet,

R.002161

the impact on passenger capacity of these net additions is a 12.8% increase in our North America cruise brands and a 15.3% increase in our EAA cruise brands. See Part I, Item 1. Business, B. "Cruise Operations – Ships Under Contract for Construction" and Note 6, "Commitments" to our Consolidated Financial Statements in Exhibit 13 to this Form 10-K for additional information regarding our ship commitments

In addition to our cruise brands, we have a Cruise Support segment that includes our cruise port and related facilities located in Cozumel, Mexico, Grand Turk, Turks and Caicos Islands; Long Beach, California and Roatán, Honduras, which are operated for the benefit of our cruise brands. Cruise Support also includes other corporate-wide services that are provided for the benefit of our cruise brands.

In addition to our cruise operations, we own Holland America Princess Alaska Tours, the leading tour company in Alaska and the Canadian Yukon, which primarily complements our Alaska cruise operations. This tour company currently owns and operates, among other things, 15 hotels or lodges, with 3,420 guest rooms, 395 motorcoaches and 20 domed rail cars. This tour company and the two cruise ships we own and charter-out under long-term bareboat charter agreements to an unaffiliated entity comprise our Tour and Other segment.

Mission, Primary Financial Goal and Related Strategies

Our mission is to deliver exceptional vacation experiences through many of the world's best-known cruise brands that cater to a variety of different geographic regions and lifestyles, all at an outstanding value unrivalled on land or at sea. Our primary financial goal is to profitably grow our cruise business, while maintaining a strong balance sheet, which enhances our financial flexibility and allows us to return free cash flow to shareholders. Our ability to generate significant operating cash flows has allowed us to internally fund the majority of our capital investment program

To achieve our goals we build new and innovative ships and continue to invest in our existing ships to strengthen the leadership position of each of our brands. Our newbuilding program is the primary platform for our growth. We currently have ten cruise ships scheduled to enter service between April 2011 and June 2014, four of which will enter service in 2011. Our current intention is to have an average of two to three new cruise ships enter service annually in 2012 and beyond. We believe our strong balance sheet allows us to capitalize on the attractive newbuild prices that currently exist in the market place. Based on our current ship orders, our growth rate for our North America cruise brands, which is the most developed cruise region, is 3%, compounded annually through 2013. However, the majority of our growth over the next three years will come from our European brands, which are in an earlier stage of market development, and are expected to grow by 7%, compounded annually through 2013. We also currently intend to grow our presence in other markets, such as Australia, Asia and South America by redeploying some of our existing ships to these markets in order to develop an increasing awareness and appetite for cruising

Our operating structure is decentralized, with each of our major brands having its own headquarters and operating team, which helps create an ownership culture that is an important driver of our performance. We believe this approach results in delivering a product that is specifically tailored to identifiable geographic regions and lifestyles, which allows us to penetrate each market more effectively. Although we operate under this decentralized structure, we leverage our size to obtain economies of scale and synergies, which reduces costs by consolidating our purchasing power and implementing common cost-containment initiatives, such as common reservation systems, coordinated media buying, cross-selling, shared data centers and shared port facilities.

We believe the successful execution of these and other ongoing strategies has enabled us to become among the largest and most profitable companies in the vacation industry. We also believe we are well-positioned to achieve increasing returns as the global economy recovers. Since we have slowed down the pace of our newbuilding program, we currently believe this will lead to increasing free cash flows in 2011 and beyond.

Health, Environment, Safety and Security Policy

In conjunction with our mission, primary financial goal and related strategies discussed above, we are committed to:

- Protecting the health, safety and security of our guests, employees and all others working on our behalf, thereby promoting an organization that is free of injuries, illness and loss.
- Protecting the environment, including the marine environment in which our vessels sail and the communities in which we operate, by minimizing adverse environmental consequences and using resources efficiently.
- Fully complying with or exceeding all legal and statutory requirements related to health, environment, safety and security throughout our business activities.
- Assigning health, environment, safety and security matters the same priority as other critical business matters

B. Cruise Operations

1. Industry Background

a. Overview

The multi-night cruise industry has grown significantly, but still remains relatively small compared to the wider global vacation market, which includes a variety of land-based travel destinations around the world. For example, there are only about 215,000 cabins in the global cruise industry at November 30, 2010, which is less than the 265,000 rooms in just two North American vacation destinations -Orlando, Florida and Las Vegas, Nevada. Within the wider global vacation market, cruise companies compete for the discretionary income spent by vacationers. Within that context, a recent Nielsen Global Confidence Survey found that after providing for savings and living expenses, the number one global spending priority is for vacations. Because of these and other favorable cruise industry characteristics, we believe that the cruise industry has opportunities for growth.

The industry's and our net capacity serving the global cruise industry's guests have increased at a compound annual growth rate of 5.7% and 6.8%, respectively, from 2005 to 2010. The industry's and our compound annual net capacity growth rate is currently expected to be 4.2% and 4.5%, respectively, from 2010 to 2013 based on the assumptions discussed below. The weighted-average passenger capacities that have been or are expected to be marketed by the global cruise industry and us are as follows:

Fiscal Year	Global Cruise Industry	Carnival Corporation & plc
2005	321,000	134,000
2006	337,000	140,000
2007	359,000	150,000
2008	377,000	162,000
2009	397,000	174,000
2010	423,000	186,000
2011 (a)	443,000	195,000
2012 (a)	459,000	204,000
2013 (a)	479,000	212,000

(a) Our estimates of future capacity do not include any assumptions related to unannounced ship withdrawals due to factors such as the age of ships and, accordingly, our estimates could indicate a higher growth in capacity than will actually occur.

The number of cruise passengers carried in the global cruise industry increased at a compound annual growth rate of 5.3% from 2005 to 2010. The regions from which cruise passengers are sourced are North America, which has increased at a compound annual growth rate of 1.6% from 2005 to 2010, and Europe, Australia, Asia and Other where cruise passengers have increased at a compound annual growth rate of 12.1% over the same period. The number of cruise passengers carried in the global cruise industry by geographic regions from 2005 to 2010 is as follows.

Year (a)	Global Cruise Industry	North America	Europe, Australia, Asia and Other
2005	14,360,000	9,960,000	4,400,000
2006	15,150,000	10,380,000	4,770,000
2007	15,900,000	10,450,000	5,450,000
2008	16,240,000	10,290,000	5,950,000
2009	17,500,000	10,400,000	7,100,000
2010 (b)	18,600,000	10,800,000	7,800,000

(a) Our estimates of the total passengers carried for 2005 through 2009 were obtained from G.P. Wild (International) Limited, an independent cruise research company and are based upon where the passengers were sourced, and not the cruise brands on which they sailed.

(b) Our estimates of the total passengers carried for 2010 were based on internally developed global capacity growth rates.

We believe that the North American cruise vacation market continues to have growth potential because of its low market penetration levels and other favorable characteristics of the cruise industry, as discussed below. In Europe, cruising represents a smaller proportion of the overall vacation market than it does in North America and, accordingly, we believe the European cruise vacation market has significant growth potential. Other areas such as Australia, Asia and South America are currently a source of fewer cruise passengers but we believe these regions also have significant growth potential. As we continue to expand our global presence, our revenues generated

from passengers sourced outside the U.S. have grown to 54% in 2010, up from 52% and 50% in 2009 and 2008, respectively. See Note 11, "Segment Information" to our Consolidated Financial Statements in Exhibit 13 to this Form 10-K for financial information regarding our cruise segments.

Cruising offers a broad range of products to suit vacationing guests of many ages, backgrounds and interests. Cruise brands can be broadly classified as offering contemporary, premium and luxury cruise experiences. The contemporary experience typically includes cruises that last seven days or less, have a more casual ambiance and are less expensive than premium or luxury cruises. The premium experience typically includes cruises that last from seven to 14 days and appeal to the more experienced cruise guest who is usually more affluent and older. Premium cruises emphasize quality, comfort, style, more destination-focused itineraries and the average pricing is normally higher than contemporary cruises. The luxury experience is usually characterized by smaller vessel size, very high standards of accommodation and service, higher prices and exotic itineraries to ports which are inaccessible to larger ships. Notwithstanding these broad classifications, there generally is significant overlap and competition among all cruise products.

We are a leading provider of cruise vacations in all the largest vacation markets in the world, which are comprised of North America, Europe, Australia, Asia and South America. We have product offerings in each of the three classifications noted above. A description of the principal vacation areas where we source substantially all of our guests and our brands that market primarily to these vacationers is discussed in further detail in Sections III. "North America" and IV. "Europe, Australia & Asia" below.

b. Characteristics of the Cruise Industry

1. Exceptional Value Proposition

We believe that the cost to a guest for a cruise vacation represents an exceptional value in comparison to comparable land-based vacations. This is especially true when considering that a cruise provides its guests with transportation to various destinations, while also providing hotel accommodations, a generous diversity of food choices and a selection of daily entertainment options for one all-inclusive, competitive price. In order to make cruising even more cost effective and more easily accessible to our guests, we offer a number of drive-to-home ports, which enables some cruise guests to reduce their overall vacation costs by eliminating or reducing air transportation.

2. Relatively Low Market Penetration Levels

Based on industry data, the 2010 annual penetration rate, computed based on the number of annual cruise passengers as a percentage of the total population, is 3.1% for North America, 2.6% in the UK, 1.2% in continental Europe (continental Europe represents Germany, Italy, France, Spain and Portugal) and 1.8% for Australia. Based on industry data or our internal estimates, less than 20% and 10% of the U.S. and UK populations, respectively, and lower percentages of continental European and Australian populations have ever taken a cruise. In addition, the European and Australian markets have significantly more vacation days in a year than North Americans, which presents opportunities for increases in these penetration levels compared to the level in North America.

Elsewhere in the world, such as Asia and South America, cruising is at an early stage of development and has far lower penetration rates. However, there have been an increasing number of these relatively lower penetrated countries in the world where economic growth has fueled an increasing demand for vacations, including cruising.

3. Wide Appeal

Cruising appeals to a broad range of ages and income levels. The average age of a cruise guest in North America is 50 years old and we believe that it is a similar age for the rest of the world. However, cruising is designed to provide something for every generation, from the youth clubs for four to five year olds to the elegance, style and sophistication of a bygone era provided to our more senior guests. Cruising also offers a very broad range of ship types and sizes, as well as price points to attract guests with varying tastes from substantially all income levels. The range of pricing can vary from a three-day cruise from a local home port in an inside cabin on a contemporary line to a penthouse suite on a world cruise, on a premium or luxury brand.

4. Positive Guest Demographics

The age of populations in more developed countries is increasing, primarily as a result of the aging of the Baby-Boom generation and healthcare advancements. Therefore, between 2010 and 2020, the number of people in the cruise industry's primary age group of 45 years and older are expected to grow by 20 million, or 15%, in the U.S. and Canada, and 17 million, or 12%, in the major Western European countries. We believe the cruise industry is well-positioned to take advantage of these favorable demographic trends impacting its major markets.

5. High Guest Satisfaction Rates

Cruise guests tend to rate their overall satisfaction with a cruise-based vacation higher than comparable land-based hotel and resort vacations. According to industry surveys, North American cruise guests have a total satisfaction rating of 95%, with nearly 45% of cruise

guests stating that they are extremely satisfied with the experience, which is defined in the surveys as the highest satisfaction rating of any vacation alternative they have experienced. Based on our internal surveys, our European cruise guests are also very satisfied with their cruise vacations compared to other vacation alternatives.

6. Favorable Supply Versus Demand Balance

Our current intention is to have an average of two to three new cruise ships enter service annually in 2012 and beyond, which is below our recent growth levels, and to focus our growth toward the higher returning European brands. We believe that some of our competitors will also be slowing down their future capacity growth based on their recent public comments. Furthermore, we believe the industry's older ships will be retired from service as they near the end of their economic lives. Moreover, due to the significant amount of capital required to purchase a new cruise ship and the complexities surrounding their operation, the cruise industry has relatively high barriers of entry. Based on the above factors, among others, we expect long-term cruise industry supply growth to slow, and we expect demand to accelerate as global economies recover and emerging markets continue to develop. We believe this favorable supply versus demand balance will have positive impacts on our ability to profitably grow our business.

II. Passengers, Capacity and Occupancy

The number of cruise passengers we carried and our weighted-average passenger capacity have increased at a compound annual growth rate of 6.0% and 6.8%, respectively, from 2005 to 2010. Our cruise operations had worldwide cruise passengers, passenger capacity and occupancy as follows:

Fiscal Year	Cruise Passengers (a)	Year-End Passenger Capacity (b)	Occupancy (c)
2005	6,848,000	136,960	105.6%
2006	7,008,000	143,676	106.0%
2007	7,672,000	158,352	105.6%
2008	8,183,000	169,040	105.7%
2009	8,519,000	180,746	105.5%
2010	9,147,000	191,464	105.6%

(a) The number of cruise passengers we carried as a percentage of the global cruise industry's cruise passengers is estimated to have grown to 49.2% in 2010 from 47.7% in 2005.

(b) Our passenger capacity has grown from 136,960 berths at November 30, 2005 to 191,464 berths at November 30, 2010, net of disposals, primarily because of the deliveries of 24 new cruise ships during this five-year period.

(c) In accordance with cruise industry practice, occupancy is calculated using a denominator of two passengers per cabin even though some cabins can accommodate three or more passengers. Percentages in excess of 100% indicate that on average more than two passengers occupied some cabins.

The occupancy level on our ships during each quarter indicated below was as follows:

	Occupancy	
Quarters Ended	2010	2009
February 28	103.5%	103.9%
May 31	103.8%	103.3%
August 31	111.1%	111.4%
November 30	103.8%	103.2%

III. North America

Almost 58% of the cruise passengers in the world are sourced from North America, where cruising has developed into a mainstream alternative to land-based vacations. Approximately 10.4 million North American-sourced cruise passengers took cruise vacations for two or more consecutive nights in 2009, and we estimate that approximately 10.8 million passengers cruised in 2010. Historically the North American cruise vacation market has grown significantly, although recently growth in this market has been limited by the passenger capacity allocated to it. We believe the North American cruise vacation market continues to have growth potential, as previously discussed.

As of January 31, 2010, five ships or almost 15,000 berths under construction have been designated for our North American brands through 2014. Our North American brands represent 61% of our total capacity at November 30, 2010.

The most popular location visited by North American-sourced cruise guests in 2010 was the Caribbean (including The Bahamas).

followed by other locations, such as the Mediterranean Sea, Alaska, Northern Europe, Mexican Riviera, New England and Canada, Bermuda, Hawaii, the Panama Canal and other exotic locations, such as South and Central America, the South Pacific Islands, Australia, the Far East and India

Within Carnival Corporation & plc, Carnival Cruise Lines, Princess, Holland America Line and Seabourn source their guests primarily from North America. Costa and Cunard also source some of their guests from North America.

Carnival Cruise Lines, which began operations in 1972, is our largest brand and is a leader in offering fun, memorable vacations at affordable prices. This brand is widely recognized as the "Fun Ships," with 22 contemporary ships operating voyages generally from three to eight days. These ships call year-round in ports in the Caribbean, including The Bahamas, and the Mexican Riviera, with the Caribbean being the principal area of sailing. Carnival Cruise Lines is the predominant year-round cruise line in the Caribbean. In addition, they sail on seasonal cruises to Europe, Alaska, New England and Canada, Bermuda, Hawaii and the Panama Canal. Carnival Cruise Lines will operate from 15 North American home ports in 2011. Beginning in October 2012, Carnival Cruise Lines will deploy one 2120-passenger capacity ship, *Carnival Spirit*, on a year-round basis for cruises departing from its Sydney, Australia home port. The ship will primarily visit the South Pacific Islands and Australia offering cruises generally from eight to 12 days, and will source guests primarily from Australia.

Carnival Cruise Lines strives to reconnect guests to the fun in life and its brand promise of FUN FOR ALL. ALL FOR FUN.℠ captures the authentic spontaneous fun of the Carnival Cruise Lines experience. A Carnival Cruise Lines vacation offers award-winning dining, spectacular entertainment, spacious staterooms, innovative children's programming, revitalizing spa services and action packed casinos. Carnival Cruise Lines continues to add new features that fit its fun, memorable positioning. For example, in 2010 it launched Punchliner Comedy Club, offering a diverse array of comedians on multiple nights and SuperStar Live Karaoke, giving guests the center stage to sing with a live band further enhancing the onboard entertainment experience. This spirit, when combined with a culture that prides itself on innovation, positions the brand well to continue to retain and grow its standing as a cruise market leader.

In May 2011, Carnival Cruise Lines' next *Dream*-class ship, the 3,690-passenger capacity *Carnival Magic* will enter service. This new ship will offer a host of guest amenities including, among others, the RedFrog Pub, a Caribbean-inspired pub at sea, Cucina del Capitano, a family-style Italian restaurant inspired by its Italian ship captains, Carnival WaterWorks aqua park featuring a gigantic, 500-gallon water "dump bucket." *Carnival Magic* will also offer SportsSquare with the cruise industry's first ropes course, where thrill-seeking guests can traverse across ropes suspended above the ship offering spectacular views to the sea nearly 150 feet below. The line has one additional *Dream*-class ship, *Carnival Breeze*, scheduled to enter service in June 2012. With these two new ships additions, Carnival Cruise Lines' existing capacity will grow by 13.5%. Carnival Cruise Lines also continues to invest in its current fleet, which includes upgrades to guest accommodations, new water parks, resort-style pools and the addition of Serenity, an adults-only retreat area.

PRINCESS CRUISES

Princess, whose brand name was made famous by the *Love Boat* television show, has been providing cruises since 1965. Princess, the world's third largest cruise line, operates a fleet of 17 modern ships, with two additional ships scheduled to enter service, one in June 2013 and one in June 2014. The new ships will each have a 3,560-passenger capacity and will continue the evolution of the Princess product. With these two new ship additions, net of *Royal Princess* transfer to P&O Cruises (UK), Princess' existing capacity will grow by 17.0%. Princess offers 113 unique itineraries to 319 destinations, with cruises generally from seven to 14 days, and two world cruises in 2011 of 104 and 107 days. Princess is a leading cruise line in international and exotic regions all over the world, including Europe, Alaska, Australia, Asia, Panama Canal, Hawaii and South America. Some of Princess' Caribbean cruise offerings feature a private island destination that Princess leases and operates, known as Princess Cays® which is located on the island of Eleuthera in The Bahamas.

Princess is widely recognized as an innovative, premium cruise line committed to helping its guests Escape Completely® from their daily routine and responsibilities. Designed with a warm, welcoming "comfortable elegance," Princess' ships provide a relaxed, rejuvenating retreat at sea, with signature amenities offered consistently across most of its fleet befitting its mission to be The Consummate Host® to its guests. Its "Piazza" main atrium serves as the heart of the ship, featuring its International Café and specialty coffee bar, its Vines wine and seafood bar and a variety of entertainment throughout the day and evening. Its "Movies Under The Stars" outdoor theaters recreate the drive-in movie experience out on deck, with first-run Hollywood hits and major sporting events shown on a 330 square-foot poolside

third party at November 30, 2010.

VII. Cruise Pricing and Payment Terms

Each of our cruise brands publishes prices for the upcoming seasons primarily through the internet. Some of our cruise brands still use printed brochures, although their use is diminishing. Prices vary by cruise line, by category of cabin, by ship, by season and by itinerary. Cruise prices frequently change in a dynamic pricing environment. Some cruise prices are discounted through special promotions, early booking or loyalty programs.

Historically, our advance bookings have generally been taken from several months in advance of the departure date for all contemporary brand sailings, to more than a year in advance for some of our luxury and European brand sailings. Generally, the longer the cruise itinerary the further in advance the bookings are made. This lead-time provides us with more time to manage our prices in relation to demand for available cabins through the use of advanced revenue management capabilities and other initiatives, with the strategy of filling our ships while achieving the highest possible overall net revenue yields. Some of our fares, such as Carnival Cruise Lines' Early Saver, Costa's Pronto Price Savings and Holland America Line's Early Advantage and Mariner Savings fares are designed to encourage potential guests to book cruise reservations earlier. In addition, we have the ability to change ship itineraries over time to maximize our revenue yields. (See "Key Performance Non-GAAP Financial Indicators" in our Management Discussion and Analysis of Financial Condition and Results of Operations in Exhibit 13 to this Form 10-K)

If our guests do not pay a vacation protection premium for the ability to obtain a refund if they cancel their cruise within a pre-defined period before sailing, then they are subject to a cancellation fee if they subsequently cancel, which we recognize in cruise passenger ticket revenues upon cancellation. For those guests who pay a vacation protection premium for the ability to obtain a refund, they will receive all or a portion of their deposit value back in accordance with the terms of the program, while we will recognize this vacation protection premium in other revenues.

The cruise ticket price typically includes accommodations, most meals, some non-alcoholic beverages and most onboard entertainment, such as the use of, or admission to, a wide variety of activities and facilities, including nightclubs, theatrical shows, movies, parties; a jogging track, a health club, swimming pools, sun decks, whirlpools and saunas. Our brands' payment terms generally require that a guest pay a deposit to confirm their reservation with the balance due before the departure date, although some of our European brands provide certain of their travel agents and tour operators with credit terms even though these parties typically require the guest to pay for the entire cruise ticket price before sailing. Substantially all of our guests' payments are received via credit cards or through other electronic banking transfers.

As a convenience to our guests, we offer to arrange air transportation to and from the port. When a guest elects to purchase air transportation from us, both our revenues and expenses generally increase by approximately the same amount. Air transportation prices typically vary by gateway, destination and other ticket restrictions. Over the last several years, approximately 14% of our guests purchased air transportation from us. We believe this relatively low percentage is partially a result of having embarkation points close to our guests' homes and partially due to the wide availability of competitively priced air tickets sold by third parties. In addition, for some of our European brands' cruise itineraries we charter aircraft to facilitate our guests' travel to distant locations. We also offer transfers from and to the airport as part of these programs, as well as to other guests who may need this transfer service.

In 2007, we introduced a fuel supplement across substantially all of our cruise brands, which resulted in an additional fee being charged to the guests on these brands, commencing for the most part with cruises departing in early 2008. This temporary fuel supplement, which is included in cruise passenger ticket revenues, was introduced to partially offset a portion of the very high fuel costs we had been experiencing, and was usually charged on a daily basis, with established total maximum amounts per passenger. Currently, AIDA, Cunard and P&O Cruises (UK) are charging fuel supplements. We reserve the right to reinstate our fuel supplements in our other brands and will continue to monitor our markets and review our position based upon the appropriate facts and circumstances.

VIII. Onboard and Other Revenues

Onboard and other activities are provided either directly by us or by independent concessionaires, from which we receive either a percentage of their revenues or a fee. We earn onboard and other revenues from activities and services not included in the cruise ticket price consisting of, but not limited to, bar and some beverage sales, shore excursions, casino gaming, gift shop sales, photo sales, full service spas and internet and phone services. To maximize onboard revenues, we use various cross marketing and promotional tools and are supported by point-of-sale systems permitting "cashless" transactions for the sale of these onboard products and services. Substantially all of our onboard revenues are paid with credit cards.

Our casinos, which are operated directly by us, contain a variety of slot machines and gaming tables. The casinos are only open when our ships are at sea in international waters or when otherwise specifically permitted by law.

Sales to our guests of shore excursions at each ship's ports of call include, among other things, general sightseeing, adventure outings and local boat and beach parties. We typically utilize locally-owned operators who provide shore excursions based on the local price points and with guides who speak the same languages as most of our shore excursion guests. For the Holland America Line, Princess and Carnival Cruise Lines ships sailing to destinations in Alaska, shore excursions are operated by Holland America Princess Alaska Tours, as

well as locally-owned operators. We also offer revenue-producing activities on the private islands and the Caribbean ports we operate

In conjunction with our cruise vacations, substantially all our cruise brands sell pre-and post-cruise land packages of one to four nights. Vacation packages offered in conjunction with ships based in North America include nearby attractions or other vacation destinations, such as individual/multiple city tours of Boston, Massachusetts, New York City, New York; Seattle, Washington; San Diego, California and Vancouver, British Columbia. Vacation packages offered in conjunction with ships based in Europe include stays in well-known European cities such as Athens, Greece, Barcelona, Spain; Copenhagen, Denmark; London, England; Paris, France and Rome and Venice, Italy.

In conjunction with our Alaska cruise vacations, principally on our Holland America Line and Princess ships, we sell pre-and post-cruise land packages, utilizing, to a large extent, our hotel and transportation assets, which revenues are included in our Tour and Other segment

IX. Sales Relationships

We sell our cruises mainly through travel agents, including wholesalers and tour operators that serve our guests in their local markets. We believe our travel agent partners are an integral part of our long-term cruise distribution network. Our individual cruise brands' relationships with their travel agents are generally independent of each of our other brands, except for certain brands sourcing UK and Australian guests as discussed below. These travel agent relationships are not exclusive and most travel agents also sell cruises and other vacations provided by our competitors. We motivate travel agents to support our products with competitive sales and pricing policies and joint marketing and advertising programs. We also employ a wide variety of trade marketing techniques, including websites, seminars and videos, to familiarize agents with our cruise brands and products. Substantially all of our cruise brands offer interactive online and other continuing education courses for travel professionals who want to continue learning about the cruise industry and how to effectively sell our cruise products and services. As with our brands' travel agent relationships, each of our brands' trade marketing programs are generally independent of each other. In each of our principal markets, we have familiarized the travel agency community with our cruise brands and products

Travel agents generally receive standard commissions of 10%, plus the potential of additional commissions based on sales volume. During fiscal 2010, no controlled group of travel agencies accounted for 10% or more of our revenues.

We are a customer service-driven company and continue to invest in our service organization to assist travel agents and guests. We believe that our support systems and infrastructure are among the strongest in the vacation industry. Our investment in customer service includes the development of employees, processes and systems. We continually improve our systems within the reservations and customer relationship management functions, emphasizing the continued support and training of the travel agency community, while simultaneously developing greater contact and interaction with our high-value guest base. Each brand has its own consumer website, which provides access to information about our products to users throughout the world, and substantially all provide self-service internet booking engines to our travel distribution network and to our customers to enable them to more efficiently book our cruises, air transportation, land transfers, shore excursions, pre-and post-cruise tours and, in some cases, other onboard activities. We also support trade booking capabilities through global distribution systems, including Amadeus, Travelport and SABRE. We estimate that almost 60% of our bookings from travel agents are made electronically. Finally, as part of our efforts to increase efficiency and improve the embarkation process for our guests, most of our brands offer their guests the ability to generate their own electronic ticket documents via their websites.

To further stimulate demand, we offer a number of home ports that are closer to guests' homes as this enables them to lower the price of their cruise vacation by substantially reducing or eliminating the cost of air travel to and from the port.

In the UK and Australia, we have formed a sales alliance known as "Complete Cruise Solution," whereby our UK and Australian sales forces and back-office operations combine to provide travel agents with one-stop cruise shopping for a number of our brands. In North America, Italy and the UK, we also raise consumer and travel agent awareness through the "World's Leading Cruise Lines" alliances for our cruise brands that source guests from these markets. Most of our cruise brands offer their own past guest recognition programs, such as Princess' "Captain's Circle," Costa's "CostaClub" and Holland America Line's "Mariner Society," through which they reward repeat guests with special incentives such as discounted fares, expedited ship embarkation and disembarkation and onboard activities.

X. Marketing Activities

Each of our brands have comprehensive marketing and advertising campaigns to promote their brands to vacationers and their travel agent partners. They typically market and promote their brands, not their ships, as each brand strives to have a relatively consistent product, although their ships may differ. Each brand's marketing activities are designed to reach a local market in the local language while maintaining consistency within each brand's overall strategy and web presence. The principal media used for marketing and advertising are television, magazine, radio, outdoor, direct mail, e-mail, online websites, and other forms of social media.

We have recently expanded our use of online and social media (for example, Facebook, Twitter, YouTube, etc.) to help us cultivate guests as fans of our brands, ships, itineraries and onboard services. In January 2011, one of our North American cruise brands started accepting cruise bookings via Facebook, which has over 500 million users, and we believe Facebook will provide another source to attract cruise guests. We also have blogs that are hosted by ship captains, cruise and entertainment directors, executive pursers and special guests. We use Twitter to enhance our customer service and as part of our public relations strategies

existing legal requirements, but because a pristine environment is one of the key elements that bring our guests onboard our ships. Our environmental efforts are focused on, among other things, reducing greenhouse gases ("GHGs", such as carbon dioxide) and other emissions (such as sulfur oxide ("SOx") and nitrogen oxide ("NOx")) from the combustion of marine fuel oil consumed by our ships, which accounts for substantially all of our GHG and other emissions. Therefore, improving fuel consumption is a key business strategy. In addition to reducing fuel consumption, we actively monitor and investigate new abatement technologies for use onboard our ships or shoreside in order to reduce operating costs and GHG emissions.

If we violate or fail to comply with environmental legislation, regulations or treaties, we could be fined or otherwise sanctioned by regulators. We have made, and will continue to make, capital and other expenditures to comply with environmental legislation, regulations and treaties.

i. **International Regulations**

The most important environmental convention governing ships is the IMO International Convention for the Prevention of Pollution from Ships ("MARPOL"). This convention includes requirements designed to prevent and minimize both accidental and operational pollution by oil, sewage, garbage and air emissions. Many countries have ratified and adopted IMO Conventions which, among other things, impose liability for pollution damage, subject to defenses and to monetary limits, which monetary limits do not apply where the spill is caused by the owner's actual fault or by the owner's intentional or reckless conduct. All of our ships must carry an International Oil Pollution Prevention Certificate, an International Sewage Pollution Prevention Certificate and an International Air Pollution Prevention Certificate. These certificates are issued by the ship's state of registry indicating that our ships are operating in compliance with the MARPOL regulations regarding oil, sewage and air pollution prevention.

In jurisdictions that have not adopted the IMO Conventions, various national, regional or local laws and regulations have been established to address oil and waste pollution.

The International Organization for Standardization ("ISO") is an international standard-setting body which produces worldwide industrial and commercial standards. ISO 14001, an environmental management standard that was developed to help organizations manage their processes, products and services to minimize environmental impacts, presents a structured approach to setting environmental objectives and targets. It provides a framework for any organization to apply these broad conceptual tools to their own processes. During 2006, we completed a corporate-wide implementation of ISO 14001. The environmental management systems of all of our cruise brands are certified in accordance with ISO 14001, with the exception of Ibero, which is expected to be implemented by early 2012.

ii. **U.S. Federal and State Regulations**

The U.S. Act to Prevent Pollution from Ships, implementing the MARPOL convention, provides for severe civil and criminal penalties related to ship-generated pollution for incidents in U.S. waters within three nautical miles and in some cases in the 200-mile exclusive economic zone.

The U.S. Oil Pollution Act of 1990 ("OPA 90") provides for strict liability for water pollution, such as oil pollution or possible oil pollution incidents in the 200-mile exclusive economic zone of the U.S., subject to defined monetary limits. OPA 90 requires that in order for us to operate in U.S. waters, we must obtain Certificates of Financial Responsibility from the U.S. Coast Guard for each of our ships. These certificates demonstrate our ability to meet the maximum amount of liability that our ships could be subject to for removal costs and damages related to water pollution, such as from an oil spill or a release of a hazardous substance, up to each ship's statutory liability limit. Our financial responsibility under these certificates is covered by our insurance.

The Clean Water Act of 1972 and other laws and regulations provides the U.S. Environmental Protection Agency ("EPA") with the authority to regulate commercial vessels' incidental discharges of ballast water, bilge water, gray water, anti-foulant paints and others during normal operations into the U.S three mile territorial sea and inland waters. The EPA requires vessels to obtain permits and comply with inspection, monitoring, recordkeeping and reporting requirements.

Most U.S. states that border navigable waterways or sea coasts have also enacted environmental regulations that impose strict liability for removal costs and damages resulting from a discharge of oil or a release of a hazardous substance. These laws may be more stringent than U.S. federal law and in some cases have no statutory limits of liability.

In connection with certain of our Alaska cruise operations, Holland America Line, Princess and Carnival Cruise Lines rely on concession permits from the U.S. National Park Service to operate their cruise ships in Glacier Bay National Park and Preserve. Such permits must be periodically renewed. We cannot be certain that they will continue to be renewed or that regulations relating to the renewal of such permits, including preference or historical rights, will remain unchanged in the future. The U.S. National Park Service renewed our permits through the 2019 Alaska cruise season.

The state of Alaska enacted legislation which prohibits certain discharges in designated Alaskan waters, ports or near shorelines and requires that certain discharges be monitored to verify compliance with the standards established by the legislation. Both the state and

federal environmental regimes in Alaska are more stringent than the federal regime under the Federal Water Pollution Control Act with regard to discharge from vessels. The legislation also provides that repeat violators of the regulations could be prohibited from operating in Alaskan waters.

iii. **EU Regulations**

In the past 30 years the EU has adopted a substantial and diverse range of environmental measures aimed at improving the quality of the environment for European citizens and providing them with a high quality of life. To support the implementation and enforcement of European environmental legislation, the EU has adopted directives on environmental liability and enforcement and a recommendation providing for minimum criteria for environmental inspections.

In November 2002, the European Commission ("EC") adopted a strategy to reduce atmospheric emissions from seagoing ships. The strategy reports on the magnitude and impact of ship emissions in the EU and sets out a number of actions to reduce ship emissions. The EU strategy seeks to implement SOx Emission Control Areas set out in MARPOL Annex VI and in addition goes beyond the IMO in that in January 2010 it introduced requirements to burn low sulfur (less than 0.1%) marine gas oil in EU ports and other areas. The EC also seeks to press for tighter NOx standards.

The EU continues to pursue an aggressive policy towards environmental protection and we can expect to see legislation being implemented in the near future related to, among other things, limiting waste water discharges in the Baltic Sea and reducing GHG emissions.

iv. **Low Sulfur Fuel Regulations**

Limitations on the sulfur content of fuel are part of regulations approved in EU Directives and MARPOL Annex VI. On January 1, 2010, the EU directive became effective that requires the use of 0.1% sulfur content in all marine fuels used while ships are at berth or anchored in EU ports. This requires the use of distillate fuels, such as marine gas oil, which has not significantly increased our fuel costs because we use a relatively small quantity of marine gas oil while in EU ports.

MARPOL Annex VI currently limits global sulfur fuel content to 4.5%. On January 1, 2012, the limit will be reduced to 3.5%, which will not have a significant impact on our fuel costs, as we already comply with this requirement.

As part of the 2008 MARPOL Annex VI requirements, the concept of Emission Control Areas ("ECAs") was established with stricter limitations on sulfur emissions in these areas. Currently there are two ECAs in operation. The first ECA is in the Baltic Sea and the other is in the North Sea/English Channel. Specifically, ships that operate in these ECAs are required to use fuel with a sulfur content of no more than 1%. Compliance with these requirements in the existing ECAs did not significantly increase our fuel costs because we do not have a significant number of itineraries in these areas.

In 2010, the U.S. Maritime Pollution Prevent Act was passed, which established a North American ECA that will become effective around the U.S. and Canada out to 200 nautical miles on their east, west and gulf coasts, as well as the Hawaiian Islands, beginning on August 1, 2012. The U.S. has also submitted a proposal to the IMO to designate certain waters adjacent to the coasts of Puerto Rico and the U.S. Virgin Islands ("USVI") as an ECA. This proposal is expected to be adopted by the IMO in 2011 and would become effective at the end of 2013. Based on current itineraries, fuel prices and technologies and our 2011 capacities and projected fuel consumption, we estimate that the implementation of the North American, Puerto Rican and USVI ECAs will increase our annual fuel costs by approximately $25 million to $35 million. Other additional ECAs may also be established in the future, such as for areas around Australia, the Mediterranean Sea and Mexico.

From January 1, 2015 and thereafter the fuel sulfur content limit in ECAs will be further reduced to 0.1%. Compliance with these requirements will further increase our fuel costs. Commencing in 2015, based on current itineraries, fuel prices and technologies and our 2011 capacities and projected fuel consumption, we estimate that the implementation of the 0.1% low sulfur content requirement in the three existing ECAs and the proposed Puerto Rico and USVI ECAs would additionally increase our annual fuel costs by approximately $185 million to $205 million.

Based on current laws, the global limit on fuel sulfur content, excluding the ECA limits that will remain at 0.1%, will be further reduced to 0.5% from 3.5% on and after January 1, 2020. The 0.5% standard will be subject to an IMO review by 2018 to determine the availability of fuel oil to comply with this standard, taking into account the global fuel oil market supply and demand, an analysis of trends in fuel oil markets, and any other relevant issues. If the IMO determines that it is not possible to comply with the 0.5% standard on and after January 1, 2020, then this requirement will become effective on January 1 2025. We believe that compliance with the 0.5% standard in 2020, or 2025 at the latest, could significantly increase our fuel costs. However, the magnitude is not determinable at this time due to the length of time until the standard becomes effective and the other mitigating factors discussed below.

The cost impacts from implementing progressively lower sulfur content requirements globally may be mitigated by, among other things, the favorable impact of future changes in the supply and demand balance for marine and other fuels, future developments of and investments in sulfur emission abatement and propulsion technologies including more advanced engines, enhanced exhaust gas treatment

systems and propeller design, the use of alternative fuels and new fuel conservation initiatives, such as new itinerary options to reduce fuel consumption.

As part of our emission abatement program, we have partnered with local port authorities and the EPA to assist in the development and construction of shore power connections in Juneau, Alaska; Long Beach, California; San Francisco, California; Seattle, Washington and Vancouver, British Columbia and have equipped 14 ships with shore power technology. We expect to partner with other port authorities in the future to implement additional shore power connections. This technology enables our ships to use power from the local electrical grid rather than running their engines while in port to power their onboard services, and thus reduce air emissions.

v. Carbon Dioxide ("CO_2") Emissions

Our cruise brands have established objectives, targets and plans within their respective ISO 14001 environmental management systems to reduce fuel consumption, which is the most significant contributor to our carbon footprint. Our annual reduction targets for CO_2 emissions intensity ranges from 0.25% to 2.5%. We have targeted a 20% reduction in the intensity of CO_2 emissions (based on kilograms per available lower berth/kilometer) from our shipboard operations by 2015 compared to our 2005 baseline. The impact of any future legislation regulating the level of CO_2 emissions is not determinable at this time.

5. Maritime Health Regulations

We are committed to providing a healthy environment for all of our guests and crew. We voluntarily work with public health agencies throughout the world to monitor health and sanitary conditions on all of our ships. As an example, for ships visiting U.S. ports we collaborate with the Centers for Disease Control and Prevention - Vessel Sanitation Program of the Department of Health and Human Services. The Centers for Disease Control established the Vessel Sanitation Program in the early 1970s as a cooperative activity with the cruise industry.

We maintain frequent communication with the appropriate public health authorities and, as required, proactively report any communicable illnesses that are of public health concern. Through our collaborative efforts we work with the authorities to develop and revise guidelines, review plans and conduct on-site inspections for all newbuilds and significant existing ship renovations. In addition, we continue to maintain our ships by meeting, and often exceeding, applicable public health guidelines and requirements, complying with inspections, and conducting regular crew training and guest education programs.

See "Maritime Labor Regulations" below for additional discussion of health regulations.

6. Maritime Labor Regulations

In 2006, the International Labor Organization ("ILO"), an agency of the United Nations that develops and oversees international labor standards, adopted a new Consolidated Maritime Labor Convention ("MLC 2006"). MLC 2006 contains a comprehensive set of global standards based on those that are already found in 68 maritime labor Conventions and Recommendations adopted by the ILO since 1920. It brings almost all of these Conventions and Recommendations together in a single new Convention. MLC 2006 includes a broad range of requirements in areas, such as a broader definition of a seafarer, minimum age of seafarers, medical certificates, recruitment practices, training, repatriation, recreational facilities, health and welfare, hours of work and rest, accommodations and wages and entitlements. While many of the practices were widely adhered to by ships registered in different countries, MLC 2006 will add requirements not previously in effect, particularly in the area of occupational safety and health. The detailed requirements of MLC 2006 directly address many seafarers' issues and, therefore, if effectively implemented will provide worldwide standards to improve the health, safety and status of seafarers.

Thirty member countries representing 33% of the world's merchant ship tonnage are required to ratify MLC 2006 before it goes into effect 12 months after such ratification. We currently expect ratification in May 2011, and entry into force, requiring our implementation in May 2012. We estimate that compliance with MLC 2006 will not significantly increase our annual operating expenses.

b. Consumer Regulations

Our ships that call on U.S. ports are regulated by the Federal Maritime Commission ("FMC"). Public Law 89-777, which is administered by the FMC, requires all our cruise brands that call on U.S. ports and embark or disembark guests in U.S. ports to establish financial responsibility for their liability to passengers for non-performance of transportation, for personal injury and for loss of life. The FMC's regulations require that a cruise line demonstrate its financial responsibility for non-performance of transportation through a guarantee, escrow arrangement, surety bond or insurance. Currently, the amount required must equal 110% of the cruise line's highest amount of customer deposits over a two-year period, up to a maximum coverage level of $15 million. In order to comply with this requirement, we have an aggregate of $90 million of guarantees provided by some of our insurers. Our Protection and Indemnity ("P&I") coverages are used to establish our financial responsibility for personal injury and loss of life.

In the UK, in some cases we are currently required to obtain licenses from and post bonds with various organizations in connection with the conduct of our business and our ability to meet our liabilities in the event of non-performance of obligations to consumers. The most significant requirement relates to ABTA, formally known as the Association of British Travel Agents, which requires us to maintain approximately $130 million of sterling-denominated bonds to cover our brands' UK passenger deposit liabilities.

We are also required by German and French law to obtain a guarantee from a reputable insurance company to ensure that, in case of insolvency, our customers will be refunded their deposits and repatriated without additional cost if insolvency occurs after a cruise starts. Additionally, in Australia we are a member of the Travel Compensation Fund which provides compensation, as a last resort, to consumers who suffer losses in their dealings with travel agents. Finally, other jurisdictions may require the establishment of financial responsibility for passengers from their jurisdictions.

XIV. Financial Information

For financial information about our cruise reporting segments and geographic information with respect to each of the three years in the period ended November 30, 2010, see Note 11, "Segment Information" to our Consolidated Financial Statements in Exhibit 13 to this Form 10-K.

C. Employees

Our shoreside operations have approximately 10,200 full-time and 4,000 part-time/seasonal employees. We also employ approximately 75,000 crew members at any one time, including officers, onboard the 98 ships we currently operate. Due to the highly seasonal nature of our Alaskan operations, Holland America Princess Alaska Tours increases its work force during the late spring and summer months in connection with the Alaskan cruise season, employing additional seasonal personnel, which have been included above. We have entered into agreements with unions covering certain employees in our hotel, transportation and shipboard operations. We consider our employee and union relations generally to be good.

We source our shipboard officers primarily from Italy, the UK, Holland, Germany and Norway. The remaining crew positions are manned by persons from around the world. We utilize various manning agencies in many countries and regions to help secure our shipboard employees.

Our cruise brands are committed to providing appropriate marine-related training to ensure that our shipboard crew, including officers, has the knowledge and skills to perform their jobs properly. In July 2009, we built a maritime training facility near Amsterdam, Netherlands that employs state-of-the-art simulation equipment and instructional tools to provide our crew with training in fixed propeller and azipod maneuvering, bridge resource management, ship stability, emergency preparedness and other maritime skills. We are also in the process of integrating engine control room operations, education and training into the facility. In addition, we established the European Cruise Academy in Rostock, Germany in cooperation with the Wismar University of Technology and offer certified bachelor and master degree programs, as well as advanced training certificates, in the maritime sciences primarily related to the cruise industry.

D. Suppliers

Our largest purchases are for fuel, travel agency services, food and beverages, air transportation services, port facility utilization, repairs and maintenance, including dry-docking, advertising and marketing, hotel and restaurant products and supplies, communication services and for the construction and refurbishment of our ships. Although we utilize a select number of suppliers for most of our food and beverages, communication services, air transportation services and hotel and restaurant products and supplies, most of these products and services are available from multiple sources at competitive prices. The use of a select number of suppliers enables us to, among other things, obtain volume discounts. However, we purchase fuel and port facility services at some of our ports of call from a limited number of suppliers. We also perform our major dry-dock and ship improvement work at a limited number of dry-dock facilities in Australia, British Columbia, Canada, the Caribbean (including The Bahamas), Europe, Singapore, and the U.S. Finally, as of January 31, 2011, we have agreements in place for the construction of ten cruise ships with three shipyards. We believe there are sufficient dry-dock and shipbuilding facilities to meet our anticipated repair, maintenance, refurbishment and newbuild requirements.

E. Insurance

1. General

We maintain insurance to cover a number of risks associated with owning and operating our vessels and other non-ship related risks. All such insurance policies are subject to coverage limits, exclusions and deductible levels. Insurance premiums are dependent on our own loss experience and the general premium requirements of our insurers. We cannot be certain that affordable and viable direct and reinsurance markets will be available to us in the future. We maintain certain levels of self-insurance for all the below-mentioned coverages, some of which have increased in recent years, and we may increase our self-insurance levels further in the future to mitigate premium increases. We do not carry coverage related to loss of earnings or revenues from our ships or other operations.

We believe that we have made reasonable estimates and judgments in determining whether our cruise ships, goodwill and trademarks have been impaired. However, if there is a material change in assumptions used in our determination of fair values, or if there is a material change in the conditions or circumstances influencing fair values, then we may need to recognize a material impairment.

Contingencies

We periodically assess the potential liabilities related to any lawsuits or claims brought against us, as well as for other known unasserted claims, including environmental, legal, guest and crew, and tax matters. While it is typically very difficult to determine the timing and ultimate outcome of these matters, we use our best judgment to determine if it is probable, or more likely than not ("MLTN") for income tax matters, that we will incur an expense related to the settlement or final adjudication of such matters and whether a reasonable estimation of such probable or MLTN loss, if any, can be made. In assessing probable losses, we make estimates of the amount of probable insurance recoveries, if any, which are recorded as assets. We accrue a liability when we believe a loss is probable or MLTN for income tax matters, and the amount of the loss can be reasonably estimated in accordance with U.S. generally accepted accounting principles. Such accruals are typically based on developments to date, management's estimates of the outcomes of these matters, our experience in contesting, litigating and settling other similar non-income tax matters, historical claims experience, actuarially determined assumptions of liabilities and any related insurance coverages. See Notes 7 and 8 in the accompanying consolidated financial statements for additional information concerning our contingencies.

Given the inherent uncertainty related to the eventual outcome of these matters and potential insurance recoveries, it is possible that all or some of these matters may be resolved for amounts materially different from any provisions or disclosures that we may have made with respect to their resolution. In addition, as new information becomes available, we may need to reassess the amount of asset or liability that needs to be accrued related to our contingencies. All such revisions in our estimates could materially impact our results of operations and financial position.

Results of Operations

We earn our cruise revenues primarily from the following:

- sales of passenger cruise tickets and, in some cases, the sale of air and other transportation to and from our ships and cancellation fees. The cruise ticket price includes accommodation, most meals, some non-alcoholic beverages, most onboard entertainment and many onboard activities, and
- sales of goods and services primarily onboard our ships not included in the cruise ticket price including, among other things, bar and some beverage sales, shore excursions, casino gaming, gift shop sales, photo sales, spa services, internet and phone services and cruise vacation protection programs. These goods and services are provided either directly by us or by independent concessionaires, from which we receive either a percentage of their revenues or a fee.

We incur cruise operating costs and expenses for the following

- the costs of passenger cruise bookings, which represent costs that are directly associated with passenger cruise ticket revenues, and include travel agent commissions, air and other transportation related costs, port costs that vary with guest head counts and related credit card fees,
- onboard and other cruise costs, which represent costs that are directly associated with onboard and other revenues, and include the costs of liquor and some beverages, costs of tangible goods sold by us from our gift shop and photo sales, communication costs, costs of pre and post-cruise land packages and related credit card fees. Concession revenues do not have significant associated expenses because the costs and services incurred for concession revenues are borne by our concessionaires,
- payroll and related costs, which represent all costs related to our shipboard personnel, including deck and engine crew, including officers, and hotel and administrative employees,
- fuel costs, which include fuel delivery costs,
- food costs, which include both our guest and crew food costs, and
- other ship operating costs, which include port costs that do not vary with guest head counts, repairs and maintenance, including minor improvements and dry-dock expenses, hotel supplies, entertainment, freight and logistics and all other ship operating costs and expenses.

For segment information related to our North America and Europe, Australia & Asia ("EAA") cruise brands' revenues, expenses, operating income and other financial information see Note 11 in the accompanying consolidated financial statements.

Selected Cruise and Other Information

Selected cruise and other information was as follows:

	Years Ended November 30,		
	2010	2009	2008
Passengers carried (in thousands)	9,147	8,519	8,183
Occupancy percentage (a)	105.6%	105.5%	105.7%
Fuel consumption (metric tons in thousands)	3,319	3,184	3,179
Fuel cost per metric ton (b)	$ 489	$ 363	$ 558
Currencies			
U.S. dollar to €1	$ 1.33	$ 1.39	$ 1.49
U.S. dollar to £1	$ 1.55	$ 1.56	$ 1.90
U.S. dollar to Australian dollar	$ 0.91	$ 0.77	$ 0.87

(a) In accordance with cruise industry practice, occupancy is calculated using a denominator of two passengers per cabin even though some cabins can accommodate three or more passengers. Percentages in excess of 100% indicate that on average more than two passengers occupied some cabins.

(b) Fuel cost per metric ton is calculated by dividing the cost of fuel by the number of metric tons consumed.

Fiscal 2010 ("2010") Compared to Fiscal 2009 ("2009")

Revenues

Consolidated

Approximately 77% of 2010 total revenues are comprised of cruise passenger ticket revenues. Cruise passenger ticket revenues increased by $796 million, or 7.7%, to $11.1 billion in 2010 from $10.3 billion in 2009. This increase was caused by our 7.1% capacity increase in ALBDs, which accounted for $735 million, and a recovery in overall cruise ticket pricing, which accounted for $324 million. Our 2010 cruise passenger ticket revenue increase was partially offset by the impacts of lower air transportation revenues due to fewer guests purchasing their air travel through us, and a stronger U.S. dollar against the euro and sterling compared to 2009 (see "Key Performance Non-GAAP Financial Indicators").

The remaining 23% of 2010 total revenues is principally comprised of onboard and other cruise revenues, which increased by $219 million, or 7.6%, to $3.1 billion in 2010 from $2.9 billion in 2009. This increase was driven by our 7.1% capacity increase in ALBDs, which accounted for $206 million. Onboard and other revenues included concession revenues of $958 million in 2010 and $881 million in 2009.

North America Brands

Approximately 75% of 2010 total revenues are comprised of cruise passenger ticket revenues. Cruise passenger ticket revenues increased by $458 million, or 7.8%, to $6.3 billion in 2010 from $5.9 billion in 2009. This increase was caused by a significant recovery in cruise ticket pricing, which accounted for $338 million and our 3.4% capacity increase in ALBDs, which accounted for $197 million. Our 2010 cruise passenger ticket revenue increase was partially offset by lower air transportation revenues from fewer guests purchasing their air travel through us.

The remaining 25% of 2010 total revenues is comprised of onboard and other cruise revenues, which increased $106 million, or 5.4%, to $2.1 billion in 2010 from $2.0 billion in 2009. This increase was primarily driven by our 3.4% capacity increase in ALBDs. Onboard and other revenues included concession revenues of $628 million in 2010 and $589 million in 2009.

Exhibit 7

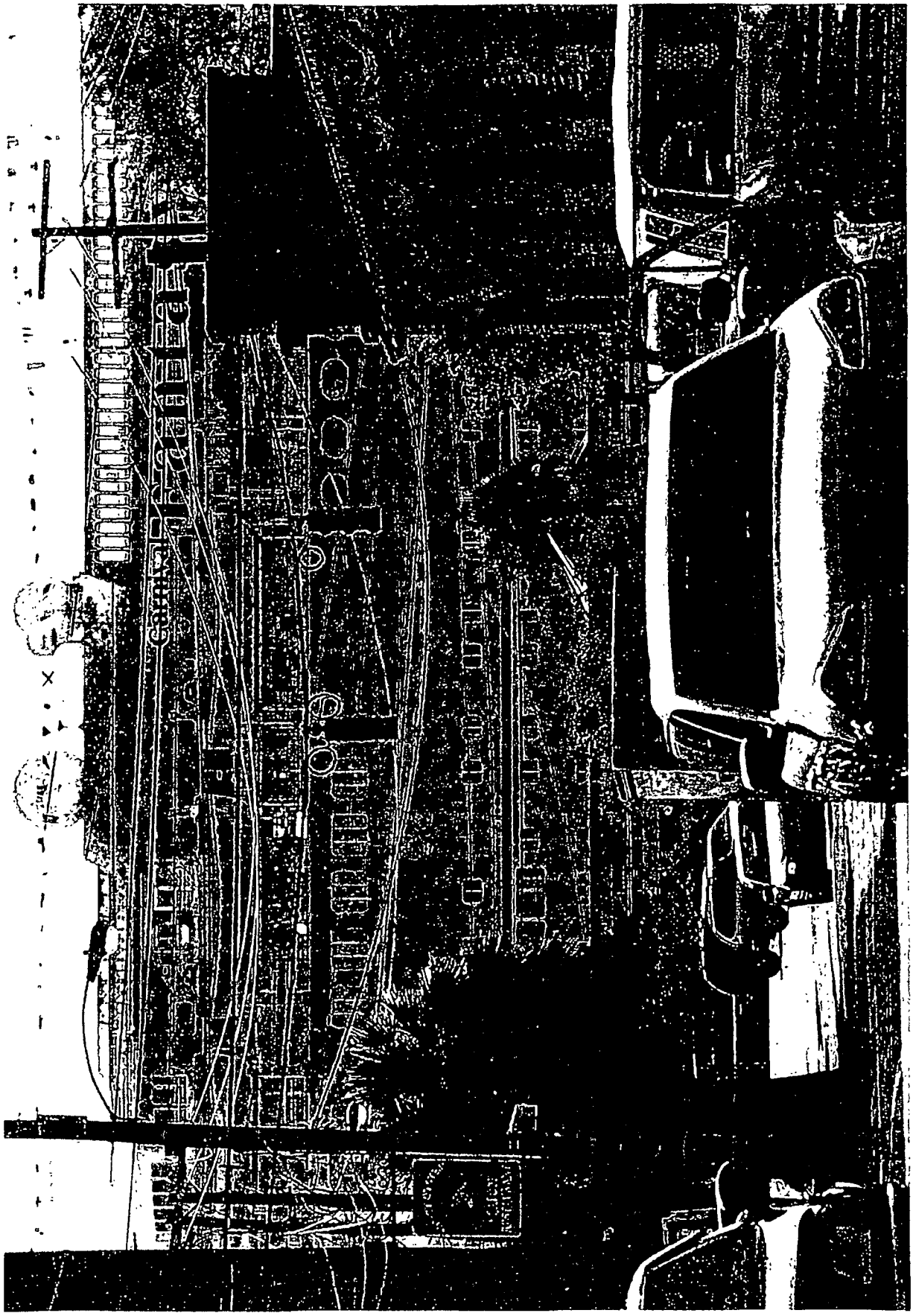
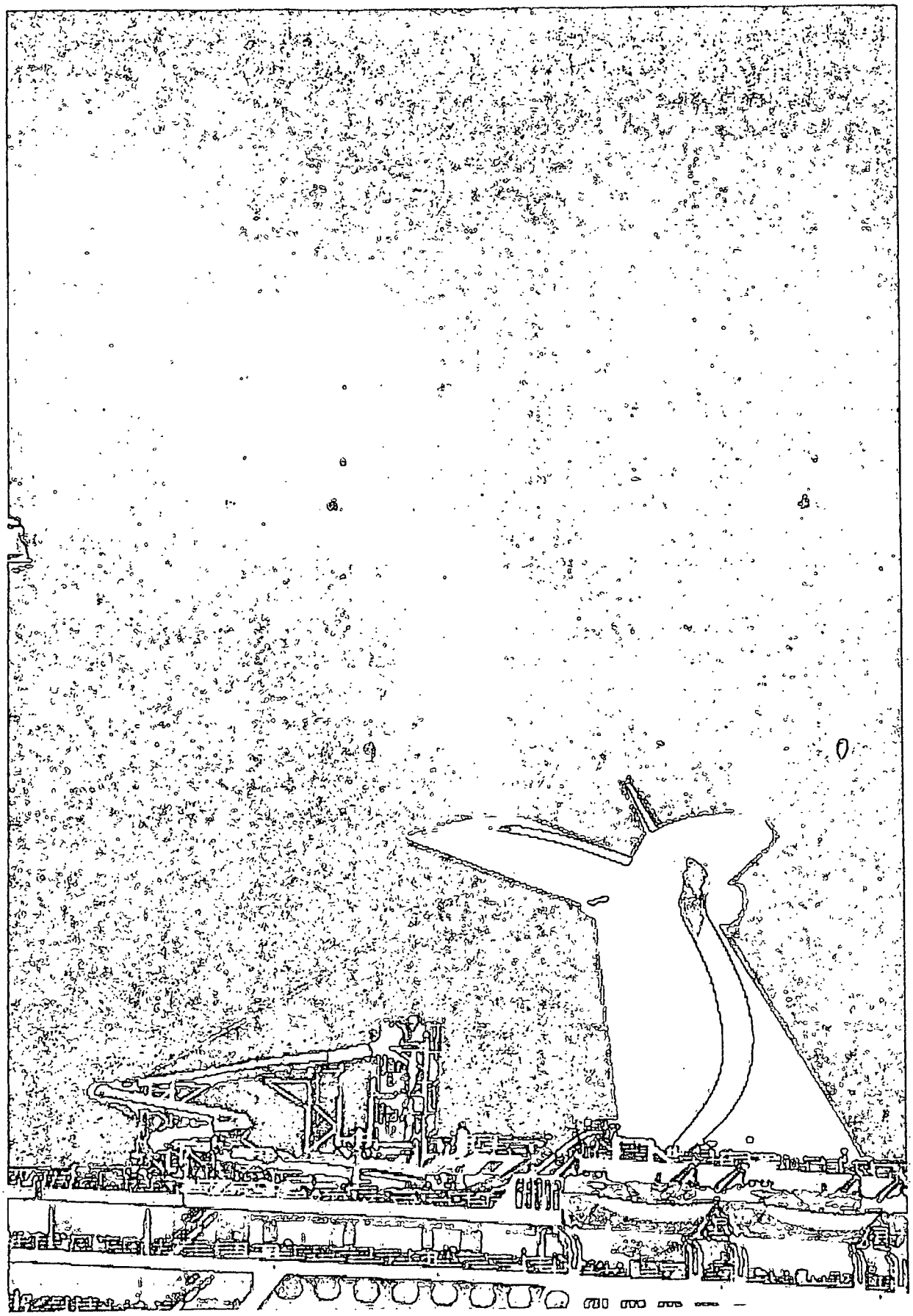


Exhibit 8



SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 843-720-5270 | 43 BROAD STREET, SUITE 300 CHARLESTON, SC 29401-3051 | Facsimile 843-720-5240

September 12, 2011

VIA HAND DELIVERY

Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: Historic Ansonborough Neighborhood Association, et al., v. Carnival Corporation D/B/A Carnival Cruise Lines, et al.
Case No. 11-CP-10-4139

Dear Ms. Armstrong:

Enclosed for filing in the above-referenced matter, please find the original and one copy of Plaintiffs' First Amended Complaint. Please file-stamp the copy and return it to me.

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

Very truly yours,

J. Blanding Holman IV

Enclosure

cc: All Parties of Record

Exhibit 74

71 Anson Street
Charleston SC 2[redacted]1
April 16, 2012

Mr. Steven Brooks
SC DHEC OCRM
1362 McMillan Ave. Suite 400
Charleston SC 29405

RE: P/N # OCRM-12-054-B

Dear Mr. Brooks,

I am writing in support of the above referenced application presented by the SCSPA, to be considered on April 18, 2012.

As a resident of Ansonborough I am aware of the endless scare tactics and misinformation circulated by those opposed to the cruise ships and the port.

The Coastal Conservation League (CCL) has accused the cruise ships of polluting our air and water, but has yet to conduct a single air or water quality test. In fact Dana Beach, Director of CCL and a member of the PEW commission on water quality is well aware that the single largest source of pollution impacting our waterways is farm run-off. Blan Holman of the Southern Environmental Law Center (and acting for the plaintiffs in a lawsuit against Carnival) attended the May 2011 Historic Ansonborough Neighborhood Association (HANA) meeting and when asked if his organization had any proof or evidence linking Carnival ships to water or air-pollution, answered "no."

We were told by CCL and its supporters that;

- "Hoards of cruise ship passengers in t-shirts and shorts carrying plastic bags" would descend on our streets and sidewalks causing harm to Charleston's "Brand"... a Brand that had taken so long to "cultivate." The cruise passengers were referred to as "trash" and "parasites."

- Cruise ships would cause traffic congestion along East Bay Street.
- People in Ansonborough would no longer be able to sell their houses because of the cruise ships, and quality businesses and people would no longer wish to call Charleston their home. The city would decline as a tourist destination.

They were wrong.

In the two years Carnival ships have been visiting Charleston, the city has received more awards and accolades than ever, even beating San Francisco as America's number one city.

Like any city, there is dust, pollen and grime. We have lived on Anson Street since 1987 and there is no discernable increase on our windowsills of any of the above.

The State of South Carolina does not require a vehicle emissions inspection for registration. CCL's office is located at the intersection of East Bay Street and George Street. There is a light at that intersection, with busses, garbage trucks, cars etc. stopping and idling. Before the SPA moved the BMW lot further north, two trains a day and hundreds of semi-trailer trucks transported goods to and from the port just one block from the CCL building. Yet in all those years, never was I aware of a complaint about the pollution or the noise. In fact, the only area where vehicle emissions are monitored is the port. New and tighter EPA fuel requirements, as well, will soon be implemented.

People visiting Charleston come in all shapes and sizes and dress in a variety of fashions from suits to t-shirts and shorts. Can I tell if they are cruise passengers or not? No. A City Councilman's mother has been a cruise passenger. A neighborhood association president's mother with a number of bridge-playing friends also enjoyed a cruise on the Fantasy. Would I ever refer to them, or anyone for that matter, as "trash?" As well, the number of people walking along Anson Street on any given day has no correlation with a cruise-ship activity.

After driving along East Bay Street to check out the congestion I discovered it was more likely due to double parked trucks delivering produce to the many restaurants than cruise passenger cars.
Houses not selling? Just this month in Ansonborough two houses have sold; a Bed and Breakfast on East Bay Street and another building at the corner of Calhoun St. and East Bay St. also have sold. A buyer is interested in a property on Wentworth Street... provided the neighborhood association doesn't give her any problems. If houses are not selling, it reflects the poor economy, not cruise ships.

Quality not coming to Charleston? Calypso St. Barths, the first of three new upscale shops, has opened on King Street with Kate Spade and Sperry Topsiders to soon follow. And let's not forget the new restaurants and developments on upper King Street and Meeting Street.

Just up the road from the new terminal a groundbreaking for a development at 7 Calhoun St. is to be celebrated on Tuesday. "The property will combine pricey residential condos with an upscale hotel at Concord and Calhoun Streets" states the Post and Courier.

The port is a vital element to the continued wellbeing of the City of Charleston. We are a port city. To paraphrase a sentiment attributed to San Francisco... *San Francisco (Charleston) was the city. The waterfront was where the work of the city was done.*

Sincerely,

Pat Jones
(843)722-2491

Exhibit 75

Posted on: August 29, 2011

Southern Environmental Law Center's Blan Holman

By Donna Tunney

Carnival Cruise Lines in June was the target of a lawsuit that claims the line's Fantasy is operating illegally in the port of Charleston, S.C. The ship is homeported there year-round. Four citizen groups represented by Southern Environmental Law Center charged that the ship violates local zoning and environmental rules. The line, along with the city of Charleston and the South Carolina Ports Authority, on Aug. 22 responded to the complaint by asking the state Supreme Court to dismiss the lawsuit. Cruise editor Donna Tunney spoke with Blan Holman, attorney for the Southern Environmental Law Center, about the case.

Q: *It appears your clients are trying to get Carnival to leave Charleston. Why?*

A: This case is not about stopping cruise operations or any other maritime business. It was not brought against South Carolina Ports Authority or the city of Charleston; it was brought against Carnival Cruise Lines to get that operation to abide by local standards. The city of Charleston could change those local ordinances whenever it likes.

Q: *The petition by Carnival, the city and the ports authority implies that if the suit is successful, it would have far-reaching effects on other maritime businesses, such as cargo operations. Is that true?*

A: The lawsuit was filed against Carnival only, and the allegations in the complaint refer to Carnival only. The relief sought is only from Carnival. ...We don't believe this is a threat to other operations, and if anyone really thought it was, the city could amend its ordinances tomorrow.

Q: *The city and the ports authority often cite figures from a financial report that says the Carnival Fantasy is responsible for an annual economic impact to the region of $37 million. Why would your clients turn away from that kind of money?*

A: We don't agree with that study, and it doesn't take into account the economic cost of traffic congestion and the concerns of other businesses in Charleston. ... No one wants to see Carnival go away. We just want to keep them in balance with other businesses.

Q: *Some people in the Charleston area say that the lawsuit's goal is really to derail the planned redevelopment of the Union Pier terminal. Is it?*

A: No. Frankly, I don't understand that. The Union Pier terminal is a decrepit area that needs to be redeveloped. The lawsuit alleges that Carnival is violating local ordinances. The remedy is to come into compliance, and there are a number of ways that could happen. For example, there's

an accommodations overlay requirement, and the cruise ship is essentially a floating hotel -- actually, it's much bigger than any hotel in Charleston. And there are rules that come with an accommodations overlay, such as for parking. If the court agrees with us, they'd have to get an overlay. ... In Carnival's case, they could probably show that most [passengers] take the shuttle from the parking lot to the ship. But the city would have oversight, and there are issues with cruise ship traffic that the city should be dealing with.

Q: *With regard to the environmental issues, the petition notes that other ships discharge wastewater, as the Fantasy does. Why target only one ship?*

A: I can't get into the merits of that claim. We disagree with their entire characterization of the environmental claim.

Q: *Why was the lawsuit filed against the cruise line rather than the ports authority?*

A: The Carnival operation is the one directly causing the injuries to the plaintiffs. They are the cause, and we thought they were the proper defendant.

Q: *Were you surprised by the petition asking the state Supreme Court to intervene?*

A: It wasn't a complete surprise. We're going to oppose the petition. We'll file a response to it in early September.

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Exhibit 76

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FOOD AND WATER WATCH and FRIENDS OF THE EARTH		
Plaintiffs,	Civil Action No.:	12-1639 (RC)
v.	Re Document Nos.:	35, 36
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and BOB PERCIASEPE, Acting Administrator		
Defendants.		

MEMORANDUM OPINION

GRANTING DEFENDANTS' MOTIONS TO DISMISS

I. INTRODUCTION

The plaintiffs in this action challenge the Environmental Protection Agency's ("EPA") "authorization" of pollution trading and offsets outlined in its 2010 Chesapeake Bay Total Maximum Daily Loads ("Bay TMDL"). They allege that the "authorization" of pollution trading and offsets is contrary to the Clean Water Act, and arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). They also allege that the "authorization" of pollution trading and offsets violates the APA's requirement for Notice and Comment Rulemaking. The defendants and defendant-intervenors[1] moved to dismiss the Complaint for lack of subject matter

[1] The Court granted two motions to intervene in this case on February 1, 2013: collectively to the American Farm Bureau Federation and the National Association of Home Builders, and collectively to the National Association of Clean Water Agencies, Virginia Association of Municipal Wastewater Agencies, Virginia Nutrient Credit Exchange Association, Inc., Maryland Association of Municipal Wastewater Agencies, Inc., North Carolina Water

jurisdiction because, they allege, the plaintiffs do not have standing. In addition, the defendants moved to dismiss the Complaint for failure to state a claim because, they allege, the plaintiffs do not challenge a final agency action in this case. For the reasons that follow, the Court will grant the defendants' motions to dismiss on both grounds.

II. FACTUAL BACKGROUND

A. Statutory Background

The Clean Water Act ("CWA") was implemented to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251 (a). The Act contemplates collaborative efforts between the Federal Government, through the EPA, and State governments "to develop comprehensive solutions to prevent, reduce, and eliminate pollution in concert with programs for managing water resources." *Id.* § 1251(g).

The CWA specifies that "the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. § 1311(a). The CWA recognizes two types of pollutant sources: point and nonpoint. Point sources are defined in the CWA as "any discernible, confined, and concrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). Nonpoint sources are not defined in the CWA, but in the regulations promulgating it, and are defined as "not traceable to a discrete identifiable origin, but [as] generally result[ing] from land runoff, precipitation, drainage, or seepage." 40 C.F.R. § 35.1605-4.

Quality Association, Inc., the West Virginia Municipal Water Quality Association, Inc., and CSO Partnership, Inc. *See* ECF No. 19. Though the latter group filed an answer, it never filed any dispositive motions, only the former group did. ECF Nos. 20, 34, 35. The latter group of intervenors will nevertheless still be bound by this Court's judgment. *See Schneider v. Dumbarton Developers, Inc.*, 767 F.2d 1007, 1017 (D.C. Cir. 1985) ("When a party intervenes, it becomes a full participant in the lawsuit and is treated just as if it were an original party. The intervenor renders itself 'vulnerable to complete adjudication by the federal court of the issues in litigation between the intervenor and the adverse party.'" (citation omitted)).

There are two main ways the CWA controls the discharge of these two sources into navigable waters of the United States: through technology-based controls and through water quality standards. *See, e.g.*, *Bravos v. Green*, 306 F. Supp. 2d 48, 50-51 (D.D.C. 2004). The main technology-based regulation implemented by the CWA is the National Pollutant Discharge Elimination System ("NPDES"). That system only regulates point sources, and does so by allowing the EPA Administrator, and/or the States, to issue permits for the discharge of a point source pollutant. 33 U.S.C. § 1342. The regulations implementing the NPDES system specify that "no permit may be issued [w]hen the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA." 40 C.F.R. § 122.4(a). States are authorized to adopt programs for issuing permits to point sources, but the EPA retains the authority to object to an inadequate State permit and to issue a federal permit instead. 33 U.S.C. § 1342(d). The anti-backsliding provision of the permit system provides that "a permit may not be renewed, reissued, or modified on the basis of effluent guidelines . . . to contain effluent limitations[2] which are less stringent than the comparable effluent limitations in the previous permit." 33 U.S.C. § 1342(o).

The other main way the CWA seeks to control the discharge of pollutants, point source and nonpoint source alike, is through the water quality standards ("WQS") process outlined in Section 303 of the CWA, and codified in 33 U.S.C. § 1313. Section 1313 specifies that "each State shall identify those waters within its boundaries for which the effluent limitations . . . are not stringent enough to implement any water quality standard applicable to such waters." 33

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[2] In order to carry out the objectives of the CWA, "there shall be achieved . . . effluent limitations. . . ." 33 U.S.C. § 1311(b)(1)(A). "Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of 'pollutants' which are 'discharged' from 'point sources' into the 'waters of the United States.'" *See* 40 C.F.R. § 122.2.

U.S.C. § 1313(d)(1)(A). "Each State shall [also] establish for the waters identified in paragraph (1)(A) . . . the total maximum daily load ("TMDL"), for those pollutants which the Administrator identifies . . . as suitable for such calculation." *Id.* § 1313(d)(1)(C). The regulations implementing the CWA specify that States are to "identify those water quality-limited segments ("WQLS")[3] still requiring TMDLs within its boundaries for which technology-based effluent limitations . . . are not stringent enough to implement any water quality standards applicable to such waters." 40 C.F.R. § 130.7(b)(1)(i)-(iii).

Under § 1313(d)(2), the State shall submit to the Administrator the waters identified and the loads established in sections (1)(A), (1)(B), and (1)(C), and the Administrator shall either approve those identifications and loads, or if the Administrator does not approve the identifications and loads, the Administrator "shall identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters," and then the State shall incorporate them into its "continuing planning process," as codified in § 1313(e). *See* 33 U.S.C. § 1313(d)(2). Each State is to "have a continuing planning process" to ensure that it comports with the TMDL that either it, or the EPA sets. *See* 33 U.S.C. § 1313(e).

Though there is no NPDES analogue for nonpoint sources, the EPA can use federal grants to encourage states to address nonpoint source pollution and implement the load allocations established in a TMDL. *See* 33 U.S.C. § 1329(h). *See also* Chesapeake Bay TMDL ES-8 ("nonpoint sources are not covered by a similar federal permit program; as a result,

[3] A water quality limited segment is defined as "[a]ny segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act." 40 C.F.R. § 130.2(j).

financial incentives, other voluntary programs and state-specific regulatory programs are used to achieve nonpoint source reductions").

Because this action arises specifically from the EPA's establishment of the Chesapeake Bay TMDL, it is useful to describe what, exactly, a TMDL is. A TMDL is the "total maximum daily load" of a given pollutant that can be added into a navigable water of the United States on a given day. It essentially "identifies the maximum amount of a pollutant that can be added to a body of water consistent with attaining applicable water quality standards." EPA's Mot. to Dismiss 4, ECF No. 36. The way this number is calculated is defined in 40 C.F.R. § 130.2(i), and it turns largely on the amount of point and nonpoint sources of pollution in that particular body of water. "The portion of a receiving water's loading capacity that is allocated to one of its existing or future *point* sources of pollution" is known as the wasteload allocation ("WLA"). 40 C.F.R. § 130.2(h) (emphasis added). "The portion of a receiving water's loading capacity that is attributed either to one of its existing or future *nonpoint* sources of pollution" is known as the load allocation ("LA"). *Id.* § 130.2(g) (emphasis added). The TMDL is the sum of the LA and the WLA, plus a "margin of safety." *Id.* § 130.2(i); 33 U.S.C. §§ 1313(d)(1)(C), (d)(1)(D). *See also* Chesapeake Bay TMDL 1-2.

B. The Chesapeake Bay TMDL

The Chesapeake Bay is the largest estuary in the United States and one of the largest and most biologically productive estuaries in the world. *See* Chesapeake Bay Protection and Restoration, 74 Fed. Reg. 23,099, 23,099 (May 12, 2009). Unfortunately, and despite decades-long efforts by federal and state regulators, the Bay remains widely polluted, which has prevented "the attainment of existing State water quality standards and the 'fishable and swimmable' goals of the Clean Water Act." *See id.* The main pollutants in the Bay are nitrogen,

phosphorus and sediment. *See* Chesapeake Bay TMDL 2-7, ECF No. 36-1.[4] These pollutants generally come from point sources such as municipal wastewater facilities and industrial discharge facilities; and from nonpoint sources such as agricultural lands and other runoff. *See id.* at 4-1.

On December 29, 2010, the EPA established the Chesapeake Bay TMDL because the State TMDLs were not achieving the water quality standards mandated by the CWA. *See* Chesapeake Bay TMDL ES-1. The TMDL establishes final load allocations (from both point and nonpoint sources of pollution) for the entire Chesapeake Bay and it "identifies the necessary pollution reductions of nitrogen, phosphorus, and sediment across Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia and sets pollution limits necessary to meet applicable water quality standards in the Bay and its tidal rivers and embayments." Chesapeake Bay TMDL ES-1.

Because the finality and legality of the TMDL are in dispute in this case, it is helpful to outline several of its key provisions. The Executive Summary of the TMDL explains EPA's process in establishing the numbers set out in the TMDL. *See* Chesapeake Bay TMDL ES-1–5. EPA collaborated with the Chesapeake Bay jurisdictions (Delaware, Maryland, Virginia, Pennsylvania, New York, West Virginia, and the District of Columbia) to arrive at the various loading allocations. Each State submitted its own Watershed Implementation Plan ("WIP") that details how each State will implement the TMDL in its own State to achieve its jurisdiction-specific pollutant loading allocations. The EPA and the Bay jurisdictions went back-and-forth exchanging drafts of loading allocations, and the draft TMDL was published for a 45-day public comment period. The EPA then evaluated each State's WIP, along with all the public comments

[4] *also available at* http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/tmdlexec.html.

to arrive at the TMDL it finally published on December 29, 2010. *Id.* at ES-5. The WIPs "are the roadmap for how the jurisdictions, in partnership with federal and local governments, will achieve and maintain the Chesapeake Bay TMDL nitrogen, phosphorus, and sediment allocations." *Id.* at 7-6.

Section 10 of the TMDL, whose provisions are most in dispute in this case, outlines EPA's expectations for how States will keep pollution levels down despite future population growth. Section 10 begins by discussing offsets, which "[f]or purposes of the Chesapeake Bay TMDL, means . . . compensating for the loading of a pollutant of concern from a point or nonpoint source with a reduction in the loading from a different source or sources, in a manner consistent with meeting WQS." Chesapeake Bay TMDL, Appendix S-2. Section 10.1.2 notes that the "EPA *expects* that new or increased loadings of nitrogen, phosphorus, and sediment in the Chesapeake Bay that are not specifically accounted for in the TMDL's WLA or LA will be offset by loading reductions and credits generated by other sources . . . ." *Id.* at 10-1 (emphasis added). The EPA also states that it "*encourages* and *expects* that the jurisdictions will generally develop and implement programs for offsetting new and increased loadings consistent with the definitions and common elements described in Appendix S . . . ." *Id.* (emphasis added).

Section 10.2 covers water quality trading. The EPA has defined trading as an approach that "allows one source to meet its regulatory obligations by using pollutant reductions created by another source that has lower pollution control costs. Trading capitalizes on economies of scale and the control cost differentials among and between sources." *See* United States Environmental Protection Agency, Final Water Quality Trading Policy 1, January 13, 2003 ("Final Water Quality Trading Policy").[5] With respect to water quality trading, "EPA *recognizes*

[5] *available at* http://water.epa.gov/type/watersheds/trading/upload

that a number of Bay jurisdictions already are implementing water quality trading programs. EPA *supports* implementation of the Bay TMDL through such programs, *as long as they are established and implemented in a manner consistent with the CWA*, its implementing regulations and the EPA's Water Quality Trading Policy and 2007 Water Quality Trading Toolkit for NPDES Permit Writers." *Id.* at 10-3 (emphasis added). The EPA also states that "an assumption of this TMDL is that *trades may occur* between sources contributing pollutant loadings to the same or different Bay segments, provided such trades do not cause or contribute to an exceedance of WQS in either receiving segment or anywhere else in the Bay watershed." *Id.* (emphasis added). In addition, EPA notes that it "does not support any trading activity that would delay or weaken implementation of the Bay TMDL that is inconsistent with the assumptions and requirements of the TMDL." *Id.*

Appendix S of the TMDL outlines the common elements from which the EPA "expects" the jurisdictions to develop and implement offset programs. *See id.* at S-1–S-2. Appendix S goes on to note that, "*[t]hose common elements are not presented here as regulatory requirements*. However, EPA believes that in the aggregate, they will help to ensure that offsets are achieved through reliable pollution controls and that the goals of the Bay TMDL are met . . . ." *Id.* (emphasis added).

The EPA's authority to oversee such a comprehensive management plan stems in part from 33 U.S.C. § 1313(e) and in part from 33 U.S.C. § 1267(g), which states that the "Administrator, in coordination with other members of the Chesapeake Executive Council, shall ensure that management plans are developed and implementation is begun by signatories to the

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Chesapeake Bay Agreement to achieve and maintain" the goals of the Chesapeake Bay Agreement.[6]

C. Plaintiffs' Allegations

Plaintiff Food and Water Watch is a non-profit organization that advocates for common sense policies that will result in access to safe and healthy food and clean water. Am. Compl. ¶ 6, ECF No. 29. Its "members live, work, recreate, and own property in the lands and waters of the Chesapeake Bay watershed." Am. Compl. ¶ 7. Plaintiff Friends of the Earth, Inc., is a non-profit environmental advocacy organization whose "mission is to defend the environment and champion a healthy and just world." Am. Compl. ¶ 8. Its members also live near and enjoy the area surrounding the Chesapeake Bay watershed. Am. Compl. ¶ 9. Plaintiffs allege that the Chesapeake Bay TMDL reflects the EPA's "authorization" of offsets and water pollution trading and that such "authorization of pollution trading is unlawful, arbitrary and capricious." Am. Compl. ¶¶ 88-96. In addition, they allege that "EPA's authorization of offsets for new and expanded pollutions sources is unlawful, arbitrary and capricious" and that "EPA's authorization of pollution trading and offsets violates notice and comment requirements under the APA." Am. Compl. ¶¶ 101-123.

Because of this "authorization," plaintiffs allege that their members' ability to enjoy the Chesapeake Bay will be impaired. For instance, Food and Water Watch member Paul Stern "lives near a new point source that will be allowed to discharge if and when it identifies offsets

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[6] The term "Chesapeake Bay Agreement" means "the formal, voluntary agreements executed to achieve the goal of restoring and protecting the Chesapeake Bay ecosystem and the living resources of the Chesapeake Bay ecosystem and signed by the Chesapeake Executive Council." *See* 33 U.S.C. § 1267(a)(2). The EPA explained in the TMDL that "[i]n establishing the Bay TMDL, EPA acted pursuant to the consensus direction of the Chesapeake Executive council's PSC [principal's staff committee] and in partnership with each of the seven Chesapeake Bay watershed jurisdictions." *See* Chesapeake Bay TMDL at 1-16.

as required by the TMDL." Pl.'s Opp. Mot. to Dismiss 15, Stern Decl. ¶ 6, ECF No. 39-1. Another member, Fred Tutman, alleges that "EPA's authorization of pollution trading has and will diminish his enjoyment of the beauty and natural resources of the Chesapeake Bay." Pl.'s Opp. Mot. to Dismiss 15, Tutman Decl. ¶ 5, ECF No. 39-5. Additionally, plaintiffs' members generally "are all concerned about the creation of hot[ ]spots in the Bay watershed where high levels of pollution will exacerbate existing impairments." Pl.'s Opp. Mot. to Dismiss 16, ECF No. 39. They allege that "hotspots" are "created when one source increases its discharges into a water body because it has purchased pollution credits from another source that has allegedly decreased its discharges." Pl.'s Opp. Mot. to Dismiss 14. The defendants have moved to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction, and under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The Court now turns to the relevant legal standards.

III. ANALYSIS

A. Legal Standards

1. Motion to Dismiss for Lack of Subject Matter Jurisdiction (12(b)(1))

Federal courts are courts of limited jurisdiction, and the law presumes that "a cause lies outside this limited jurisdiction . . . ." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also Gen. Motors Corp. v. E.P.A.*, 363 F.3d 442, 448 (D.C. Cir. 2004) ("As a court of limited jurisdiction, we begin, and end, with an examination of our jurisdiction."). It is the plaintiff's burden to establish that the court has subject matter jurisdiction. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

Because subject matter jurisdiction focuses on the Court's power to hear a claim, the Court must give the plaintiff's factual allegations closer scrutiny than would be required for a 12(b)(6) motion for failure to state a claim. *See Grand Lodge of Fraternal Order of Police v.*

Ashcroft, 185 F. Supp. 2d 9, 13 (D.D.C. 2001). Thus, the court is not limited to the allegations contained in the complaint. *See Wilderness Soc'y v. Griles*, 824 F.2d 4, 16 n.10 (D.C. Cir. 1987). Instead, "where necessary, the court may consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Herbert v. Nat'l Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992) (citing *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981)).

The D.C. Circuit has explained that a motion to dismiss for lack of standing constitutes a motion under Rule 12(b)(1) of the Federal Rules of Civil Procedure because "the defect of standing is a defect in subject matter jurisdiction." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987). *See also City of Harper Woods Employees' Retirement Sys. v. Olver*, 577 F. Supp. 2d 124, 128 (D.D.C. 2008) ("In this jurisdiction, a motion to dismiss for lack of standing is treated as a challenge to the subject matter jurisdiction of the court, and is properly analyzed under Rule 12(b)(1).").

2. Motion to Dismiss for Failure to State a Claim (12(b)(6))

The Federal Rules of Civil Procedure require that a complaint contain "a short and plain statement of the claim" in order to give the defendant fair notice of the claim and the grounds upon which it rests. Fed. R. Civ. P. 8(a)(2); *accord Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam). A motion to dismiss under Rule 12(b)(6) does not test a plaintiff's ultimate likelihood of success on the merits; rather, it tests whether a plaintiff has properly stated a claim. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), abrogated on other grounds by *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). A court considering such a motion presumes that the complaint's factual allegations are true and construes them liberally in the plaintiff's favor. *See, e.g., United States v. Philip Morris, Inc.*, 116 F. Supp. 2d 131, 135 (D.D.C. 2000). It is not

necessary for the plaintiff to plead all elements of her prima facie case in the complaint. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511–14 (2002); *Bryant v. Pepco*, 730 F. Supp. 2d 25, 28–29 (D.D.C. 2010).

Nevertheless, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This means that a plaintiff's factual allegations "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555–56 (citations omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are therefore insufficient to withstand a motion to dismiss. *Iqbal*, 556 U.S. at 678. A court need not accept a plaintiff's legal conclusions as true, *see id.*, nor must a court presume the veracity of the legal conclusions that are couched as factual allegations. *See Twombly*, 550 U.S. at 555.

B. Standing

The defendants first argue that the plaintiffs do not have standing to bring this case, and for that reason, the court lacks subject matter jurisdiction to hear it. In order to demonstrate Article III standing, a plaintiff must meet three requirements. 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." *Lujan*, 504 U.S. at 560 (citations omitted). "Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Id.* at 560-561 (citations omitted). Finally, "it must be likely, as opposed to merely speculative,

that the injury will be redressed by a favorable decision." *Id.* at 561. To establish standing to sue on behalf of its members, an organization must demonstrate that "its members would have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires members' participation in the lawsuit." *Consumer Fed'n of Am. v. F.C.C.*, 348 F.3d 1009, 1011 (D.C. Cir. 2003) (quoting *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)).

1. Injury

With respect to the injury, "[a] prospective plaintiff must show that it has suffered a concrete and particularized injury in order to convince the court that it is sufficiently involved in the current legal dispute to have a defined and personal stake in the outcome of the litigation." *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663 (D.C. Cir. 1996). The Supreme Court has "repeatedly reiterated that the threatened injury must be *certainly impending* to constitute injury in fact, and that allegations of possible future injury are not sufficient." *Clapper v. Amnesty Intern., USA*, 133 S. Ct. 1138, 1147 (2013) (emphasis in original, internal quotation marks omitted). The plaintiffs allege that their members are "fearful of using waters contaminated by NPDES permit holders who discharge excess pollutants pursuant to trading and offset programs." Am. Compl. ¶¶ 7, 9. To show that their injuries are particularized, the plaintiffs cite declarations by various members whose use and enjoyment of the Chesapeake Bay will be impaired because of EPA's "authorization" of the offset and trading program. For instance, one member alleges that EPA's "authorization" of pollution trading has and will diminish his enjoyment of the beauty and natural resources of the Chesapeake Bay, because the issuance of certain NPDES permits by state agencies will lead to the creation of "hotspots" and other over-polluted areas in the Bay. *See* Walls Decl. ¶ 25, ECF No. 39-3. Another individual member "is

concerned that increased pollution and sediments from new or increased discharges will impede his ability to enjoy" walking, hiking, and kayaking near the Chesapeake Bay. *See* Stern Decl. ¶¶ 11-12; *see also* Tutman Decl. ¶ 22. Such aesthetic, recreational injuries are cognizable injuries-in-fact. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Envt'l. Svcs. (TOC), Inc.*, 528 U.S. 167, 183 (2000) ("environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity." (citations omitted)); *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972).

The plaintiffs' standing problem, however, is not the lack of a particularized injury[7]—it is the lack of an actual or imminent one. To show that their injury is actual or imminent, the plaintiffs allege, through declarations by their members, that their use and enjoyment of the Chesapeake Bay will be affected by the creation of "hotspots" once various state agencies start granting new or modified NPDES permits to would-be polluters. Pl.'s Opp. Mot. to Dismiss 14-16. The plaintiffs also allege that the West Virginia Department of Environmental Protection's ("WVDEP") granting of a "NPDES permit to Mountain Springs Utility is one such offset that injures Plaintiffs' members." *Id.* at 18. They also allege that WVDEP has "permitted a permit modification on an offset for the Jefferson County Public Service District," and that Maryland "began a process to certify farms for credit generation." *Id.* at 19.

The creation of "hotspots" by the issuance of such permits is neither actual nor imminent. There is no indication that the trading and offset programs supported by—but not required or

[7] To the extent the plaintiffs allege that their injury is a procedural one in that the EPA violated the APA's notice-and-comment requirement (*see* Pl.'s Opp. Mot. to Dismiss 26, EPA's Mot. to Dismiss 18), it is clear that "the deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing." *Summers v. Earth Island Institute*, 555 U.S. 488, 496 (2009).

"authorized" by—the EPA will result in the creation of "hotspots" of pollution. The plaintiffs offer no support beyond their own conclusory allegations that "hotspots" have been, or necessarily will be created by the offset and trading programs. They describe "hotspots" as areas "where increased discharges of pollutants will occur resulting in water quality that is worse than other areas in the watershed."[8] *Id.* at 14. However, all the provisions of the TMDL and the Bay jurisdictions' WIPs specifically state that any implementation program must comply with the requirements of the CWA and the TMDL itself. To the extent trades and permits were and are granted by the various state agencies, such offsets would still have to comport with the TMDL and the CWA, and no offset or trade could be permitted if it would result in an "exceedance of WQS [water quality standard] in either receiving segment or anywhere else in the Bay watershed." Chesapeake Bay TMDL at 10-3. Nor could any trading or offsetting occur if it would "delay or weaken implementation of the Bay TMDL, [or be] inconsistent with the assumptions and requirements of the TMDL." *Id.* Nor could a permit issue "[w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States." 40 C.F.R. § 122.4(d). As the defendants aptly note, the plaintiffs "fail to explain how any trading or offsets authorized by a State could override the [CWA's] overarching command that a point source discharge that does not comply with a permit is a violation of the Act." EPA's Mot. to Dismiss 17, ECF No. 36. The creation of "hotspots" (to the extent such creation even results in an actionable injury) in other words, is highly speculative and therefore not "certainly impending" enough to show an actual or imminent injury for purposes of Article III. *See Clapper*, 133 S. Ct. at 1147.

[8] Plaintiffs do not explain whether this term is a term of art that derives from the CWA, its implementing regulations, or the case law interpreting them. In fact, it is not clear that the creation of a "hotspot" necessarily violates the CWA.

Additionally, the plaintiffs' complaints about the State agencies' actions do not establish an actual or imminent injury. As the EPA points out in its reply brief, the WVDEP has rescinded the certificate of convenience and necessity for the Flowing Spring Wastewater Treatment Plant that the plaintiffs indicated would lead to an offset of 500 lbs/year of nitrogen downstream. *See* EPA's Reply 15-16, ECF No. 42; West Virginia Department of Environmental Protection Letter from Scott Mandirola at 2, ECF No. 39-3 (explaining the modification of a permit for the Flowing Springs Wastewater Treatment Plant); EPA's Reply Brief Ex. A, Public Service Commission of West Virginia Commission Order at 22, ECF No. 42-1 (ordering that "the District petition for approval of revised financing and post-project rates for its Flowing Springs Project is denied and the previously issued certificate of convenience and necessity for the Flowing Springs project *is rescinded*." (emphasis added)). Therefore, the permit modification—issued in 2006, well before the creation of the TMDL—is moot because the plant whose loads it authorized will not be financed, and therefore will not be constructed.

The Mountain Springs Utility also poses no injury to the plaintiffs—actually or imminently. The plaintiffs essentially note this themselves saying that the Utility will be allowed to discharge extra pollutants "*once* it identifies an offset." Pl.'s Opp. Mot. to Dismiss 19 (emphasis added). *See also id.* at 15 ("Paul Stern . . . lives near a new point source that will be allowed to discharge *if and when* it identifies offsets as required by the TMDL." (emphasis added)). *See also* Stern Decl. ¶ 9 ("the agency does not allow any operation or discharge of any phosphorus or nitrogen from the wastewater treatment plant under any circumstances *until appropriate offsets have been obtained*" (emphasis added)). The permit the plaintiffs fear will cause increased levels of pollution, therefore, is not even in effect, and it will not be until the Utility identifies an offset that comports with the requirements of the Bay TMDL, and more

importantly the CWA. Thus, it is not "certainly impending" that any injurious discharges will occur if lawful offsets cannot be identified by the plant, and thus the plaintiffs may never suffer an injury. Moreover, and as set forth above, even if permitted discharges begin, there is no indication that such discharges will cause the plaintiffs any actionable injury. Each permit issuance and modification must comport with the requirements of the Bay TMDL and the CWA. *See, e.g.*, Pl.'s Opp. Mot. to Dismiss, WVDEP letter, ECF No. 39-1 ("the nitrogen and phosphorus loadings associated with this new discharge must be offset so that there is no net increase in loading to the Chesapeake Bay"); 33 U.S.C. § 1342(o) ("a permit may not be renewed, reissued, or modified on the basis of effluent guidelines . . . to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit"). There is no indication that, even if offsets are identified and permitted discharges begin, that such discharges will not comport with that relevant water segment's TMDL, contain higher pollutants than allowed under the previous permit, or not comport with the CWA. The purported injury that the plaintiffs envision is thus far too speculative, as the entire purpose of the Bay TMDL is to reduce the amount of pollution in the Chesapeake Bay—not to increase it.

2. Traceability

Even if the plaintiffs could show that their injury was actual or imminent, they would still have a serious traceability problem. The Supreme Court has stated that "[w]hen the suit is one challenging the legality of government action or inaction . . . [and] a plaintiff's asserted injury arises from the government's allegedly unlawful regulation of someone else . . . it becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such a manner as to produce causation and permit redressability of injury." *Lujan*, 504 U.S. at 561-62. *See also Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 29, 41-42 (1976) ("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."). The D.C. Circuit has explained that "[w]hen a plaintiff's asserted injury arises from the Government's regulation of a third party not before the court, it becomes 'substantially more difficult to establish standing.'" *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 938 (D.C. Cir. 2004) (citing *Lujan*, 504 U.S. at 562).

The plaintiffs make two arguments on causation. First, they argue that the EPA's references to offsets and trades in the Bay TMDL has *indirectly* caused their injury "through authorization," citing *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 440-44 (D.C. Cir. 1998) (en banc) and *Am. Road & Transp. Builders Ass'n v. E.P.A.*, 588 F.3d 1109 (D.C. Cir. 2009), for the proposition that even if the EPA itself did not directly cause the plaintiffs' injuries, it could still satisfy the traceability requirement through authorization of third party conduct that directly caused the plaintiffs' injuries.[9] *See* Pl.'s Opp. Mot. to Dismiss 20-21. Second, the plaintiffs argue that the EPA's references to offsets and trades in the Bay TMDL has *directly* caused their injury by coercing and "strong-arming" States into implementing offset and trading programs, thereby serving as a proxy for a command.[10] *See* Pl.'s Opp. Mot. to Dismiss 22-23. As to this point, the plaintiffs argue that "EPA *essentially* requires" States to adopt offsets and trading programs to comply with the Bay TMDL, and that the EPA's review of the States'

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[9] As another court explained: "[c]ausation and redressability thus are satisfied [where] . . . the intervening choices of third parties are not truly independent of government policy." *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 940-41 (D.C. Cir. 2004). Importantly, in the D.C. Circuit, "a federal court may find that a party has standing to challenge government action that permits or authorizes third-party conduct *that would otherwise be illegal in the absence of the Government's action*." *Id.* at 940 (emphasis added). In this case, the third party conduct "authorized"— offset and trading programs—would not "otherwise be illegal in the absence of the Government's action."

[10] Given the plaintiffs' litigation position that offset and trading programs violate the CWA, it appears that their "concern" about such coercion is strategic rather than empathetic.

implementation plans "constitutes de facto approval authority" of the offset and trading programs. *Id.* at 9, 22 (emphasis added).

The plaintiffs are incorrect on both counts for similar reasons. First, the Bay TMDL does not authorize offset or trading programs. The plaintiffs' repetition of that assertion throughout their opposition does not make it more true. The trading program being challenged here has been approved by the EPA since 2003 (at the latest), when the EPA established its Water Quality Trading Policy Statement. *See generally* Final Water Quality Trading Policy. Since (or even before) then, many States have engaged in trading and offset programs to achieve desired water quality levels, including States in the Chesapeake Bay. *See, e.g.*, VA. CODE ANN. § 62.1-44.19:12 (West 2013) (explaining that because of the *2000* Chesapeake Bay Agreement, the "General Assembly finds and determines that adoption and utilization of a watershed general permit and market-based point source nutrient credit trading program will assist" in achieving water quality) (emphasis added); 25 PA. CODE § 96.8 ([Oct. 9,] 2010) (outlining the use of offsets and tradable credits from pollution reduction in the Chesapeake Bay watershed); Chesapeake Bay TMDL 10-3 ("EPA recognizes that a number of Bay jurisdictions are already implementing water quality trading programs."). In addition, offset programs have been authorized and supported by the EPA since at least the 1980s. *See, e.g.*, Environmental Protection Agency, Office of Water, A Summary of U.S. Effluent Trading and Offset Projects, November 1999 (listing various offset programs, including several in the Chesapeake Bay States) [hereinafter "A Summary of U.S. Effluent Trading and Offset Projects"].[11] To the extent there is any cognizable injury caused by the offset and trading programs, then, it cannot be traced

[11] available at http://water.epa.gov/type/watersheds/upload/2000_01_21_watershed_trading_traenvrn.pdf.

to the 2010 Chesapeake Bay TMDL because the TMDL does not authorize or require such programs, as they already existed before the establishment of the 2010 TMDL.

Second, the plaintiffs mischaracterize the EPA's role in the supervision of the States' WIPs. The EPA does have an extensive role in helping States develop their respective implementation plans, as demonstrated in particular in this case. *See* Chesapeake Bay TMDL ES-5. But ultimately, it is up to the States to choose how to implement those plans. *See* 33 U.S.C. §1313(e). That being said, States are often left with the difficult choice of implementing the TMDL in accordance with EPA's suggestions, or face losing federal grants if they do not. *See Pronsolino v. Marcus*, 91 F. Supp. 2d 1337, 1340 (N.D. Cal. 2000) (explaining that "failure to implement the TMDL [established by the EPA] could imperil federal funding"); *id.* at 1355 ("[The State] is also free to moderate or to modify the TMDL reductions, or even refuse to implement them, in light of countervailing state interests. Although such steps might provoke EPA to withhold federal environmental grant money, [the State] is free to run the risk. A practical reality, of course, is that once federal environmental grant money begins to flow, state regulatory agencies become dependent on it [and] [t]hey become sensitive to threats to terminate it . . . ."). The EPA's extensive involvement in the planning process is not, however, tantamount to "authorization" of State action, but instead, a result of the structure of the CWA, which contemplates both State and federal involvement in the process. *See* 33 U.S.C. § 1251(g). Moreover, the difficult choices States face is just a reflection of the reality that if States wish to accommodate growth and development and meet the goals of the CWA, they may have to use offsets and trading programs to implement the Bay TMDL, which happen to be encouraged and supported—but not authorized—by the Bay TMDL.

The plaintiffs' coercion arguments similarly ignore the practical reality of the difficult choices States face—which, again, is not the result of EPA strong-arming or coercion in the Bay TMDL document—but of the balance States must strike if they want to—in an environmentally-friendly and cost-effective way— (1) comply with the TMDL numbers allotted to them, (2) comport with the CWA, and (3) accommodate population growth, and promote agricultural and industrial growth. Offsets and trades are but one option in the States' arsenal for achieving those goals—that the EPA encourages the use of trades and offsets does not make it the States' only option, or a coercive one at that, in achieving water quality.

Neither does the fact that the EPA retains supervisory authority over the TMDL implementation process amount to causation through coercion. As the EPA's supplemental authority notes, though "there may be a fine line between collaboration and coercion, the court finds this [TMDL] framework to be more indicative of collaboration. The purpose of the revision process . . . was to strengthen the WIPs to ensure attainment of water quality standards through the use of both federal and state resources and expertise . . . [and] the record is replete with numerous communications that demonstrate discussion, debate, and negotiation between the federal and state government, not coercion." *See American Farm Bureau Fed'n v. E.P.A.*, No. 1:11-cv-0067, 2013 WL 5177530, at *29 (M.D. Pa. Sept. 13, 2013). Thus, there is no coercion, commanding, or "strong-arming" here, but instead, a joint federal and state effort aimed at achieving a common objective: better water quality.

The plaintiffs' purported injury, then, is not ultimately caused by the Bay TMDL—directly or indirectly—because the Bay TMDL does not "authorize" any third party action, nor does it coerce States into implementing any programs they would not consider implementing on their own.

3. Redressability

Even if the plaintiffs could establish an injury that is traceable to the conduct of the EPA, it would still not be redressed by a decision in their favor. With respect to the redressability analysis, a court "examines whether the relief sought, assuming that the court chooses to grant it, will likely alleviate the particularized injury alleged by the plaintiff." *Fla. Audubon Soc'y*, 94 F.3d at 663-64. The plaintiffs seek a declaratory judgment from this Court "that the trading and offset provisions of the TMDL are in violation of the Clean Water Act and notice and comment procedural requirements of the APA and are null and void." Am. Compl. ¶ 124.

The relief the plaintiffs seek cannot be redressed by an order from this Court. As set forth above, the EPA did not "authorize" offsets and trading programs, as the plaintiffs repeatedly assert. Rather, the EPA made statements in the TMDL referencing already-existing (and state-implemented) trading and offset programs. This Court could only order those references removed from the Bay TMDL—but such an order would not change the legal landscape because (1) the authority to implement offset and trading programs is with the States themselves, (2) there is no WIP approval before the Court, and (3) the pre-existing 2003 EPA Water Quality Trading Policy remains in place. Therefore, any order from this Court removing all references in the Bay TMDL to offsets or trades would have no effect on the legal landscape, and would therefore not redress the plaintiffs' injuries.[12]

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[12] This is not to say that the approval of offsets and trades that violate the CWA could not be challenged. They certainly could be challenged—through the remedial scheme created by the CWA itself. If the EPA issues an NPDES permit that violates the CWA, that action is subject to judicial review in the Court of Appeals. *See* 33 U.S.C. § 1369(b)(1)(F). If it is issued by a State agency, the State is obligated under the CWA to provide a judicial review process. *See* 40 C.F.R. § 123.30. In addition, the citizen-suit provision of the CWA allows "any citizen" to "commence a civil action on his own behalf against any person [including the United States and other government agency] . . . who is alleged to be in violation of" the CWA. *See* 33

The plaintiffs have failed to show that they have an actual or imminent injury that is traceable to the EPA's conduct and redressable by an order of this Court. Therefore, the Court must dismiss this case for lack of subject matter jurisdiction. [13]

C. Ripeness

The defendants also argue that the plaintiffs' claims are not ripe for adjudication. The D.C. Circuit has explained that "[r]ipeness, while often spoken of as a justiciability doctrine distinct from standing, in fact shares the constitutional requirement of standing that an injury in fact be certainly impending." *Nat'l Treas. Employees Union v. United States*, 101 F.3d 1423, 1427 (D.C. Cir. 1996). *See also Wyo. Outdoor Council v. United States Forest Serv.*, 165 F.3d 43, 48 (D.C. Cir. 1999) ("Just as the constitutional standing requirement for Article III

U.S.C. § 1365(a)(1). Thus, there are other ways the plaintiffs can seek redress from the appropriate entities if, and when, a violation of the CWA, and in turn, an injury, occurs.

[13] The only other case considering the Chesapeake Bay TMDL's legality is *American Farm Bureau Fed'n v. E.P.A.*, No. 1:11-cv-0067, 2013 WL 5177530, at *1 (M.D. Pa. Sept. 13, 2013). In that case, the court found that the plaintiffs had standing to challenge the TMDL because the injury they alleged—economic injury from having to comply with the requirements of the TMDL—was traceable to the EPA's establishment of the TMDL. *Id.* at *18-19. The challenge in that case was to the legality of the TMDL itself—not its references to the permissive offset and trading program being challenged in the instant action. Additionally, the injury alleged there was an actual and imminent economic injury of having to comply with the TMDL requirements, which arose directly from the EPA's establishment of the TMDL itself. That court's reasoning is not inconsistent with this Court's logic because the plaintiffs here (1) do not allege an actual or imminent injury as set forth above, and (2) do not challenge the TMDL itself, but instead challenge EPA's "authorization of offsets and trading." Because as set forth above, such purported "authorization" does not arise from the Bay TMDL, that district court's finding on standing does not conflict with this Court's finding.

Also, the Court notes that the defendant-intervenors in this case were the plaintiffs in *American Farm Bureau*. They challenged the Bay TMDL as contrary to the Clean Water Act and as arbitrary and capricious in violation of the APA. The district court upheld the Bay TMDL in that case, whose decision is currently on appeal in the Third Circuit Court of Appeals. *See* Notice of Appeal, *American Farm Bureau Fed'n, et al. v. E.P.A.*, No. 11-0067 (M.D. Pa. October 7, 2013), ECF No. 153; Civil Case Docketed, *American Farm Bureau Fed'n, et al. v. E.P.A.*, No. 13-4079 (3d Cir. October 16, 2013). The plaintiffs in that case intervened in this case because, "to the extent the Bay TMDL survive[d] their lawsuit, Intervenors' members will depend on, and benefit from, state pollutant trading and offset programs during the states' implementation of the Bay TMDL." Def. Intervenor's Mot. to Dismiss 2 n.1, ECF No. 35-1.

jurisdiction bars disputes not involving injury-in-fact, the ripeness requirement excludes cases not involving present injury."). If a court establishes constitutional ripeness, it then goes on to analyze the prudential aspect of ripeness, which is "where a court balances 'the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" *Nat'l Treas.*, 101 F.3d at 1427-28 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). The Supreme Court has elaborated that with respect to the ripeness inquiry, the court must consider "(1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention would inappropriately interfere with further administrative actions, and (3) whether the courts would benefit from further factual development of the issues presented." *Ohio Forestry Ass'n Inc. v. Sierra Club*, 523 U.S. 726, 733 (1998). The "paradigmatic hardship situation is where a petitioner is put to the choice between incurring substantial costs to comply with allegedly unlawful agency regulations and risking serious penalties for non-compliance." *Natural Res. Def. Council, Inc. v. E.P.A.*, 859 F.2d 156, 166 (D.C. Cir. 1988). In addition, "neither the possibility that the petitioner may have to make capital budgeting decisions under a cloud of uncertainty, nor the fact that it may incur future expense in challenging the regulations in a later permit or enforcement proceeding, will qualify as hardship." *Id.* (citations omitted).

The ripeness requirement has been described as being designed "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Wyo. Outdoor*, 165 F.3d at 50 (quoting *Abbott Labs*, 387 U.S. at 148-49). In *Wyoming Outdoor*, for instance, the plaintiffs challenged U.S. Forest Service regulations that had designated certain lands as suitable for oil and gas leases. *Id.* at 45, 50. The

court found the plaintiffs' challenges (brought under the National Environmental Policy Act) unripe for review because of the multiple-stage nature of the agency action at issue—it was when the agency actually issued a lease under the regulations, after other phases of regulation it promulgated, that the agency action would be ripe for review, and that had not yet happened in that case. *See id.* at 50. *See also Cntr. for Biological Diversity v. Dep't of Interior*, 563 F.3d 466, 480 (D.C. Cir. 2009) (finding plaintiff's National Environmental Policy Act claims not ripe because the Department of Interior had only approved a leasing program and no leases had yet been issued under it).

In this case, the Court finds that none of the elements of the ripeness inquiry are satisfied. First, as set forth above, there is no injury that is certainly impending in this case to meet the constitutional ripeness requirement. Second, even if there were, the Court does not find that the plaintiffs can establish any prudential aspect of ripeness. To begin, there is no indication that the plaintiffs will suffer any hardship from the lack of judicial review at this stage in the litigation. The trading and offsets statements in the Bay TMDL impose no legal obligation on the plaintiffs—or any other actor for that matter—and therefore, there is no risk that plaintiffs will have to expend resources in order to comply with the EPA's "requirements." In addition, judicial intervention at this stage would be premature because any reviewing court could benefit from further factual development. For instance, there is currently no indication that the EPA (or any state actor) is issuing any permits in violation of the provisions of the CWA. Nor is there any indication that any permits have been issued by the EPA or state agencies that has actually, or imminently will, injure the plaintiffs. Because there are multiple stages to the implementation of the Bay TMDL at issue here, and the implementation occurs primarily through the actions of

state actors, who are not parties to this action, judicial intervention at this time would be inappropriate, as further factual development would better help a court adjudicate these issues.[14]

D. Failure to State a Claim

Even if the Court were to find that the plaintiffs had standing, this case must nevertheless be dismissed for failure to state a claim under the APA. Review under the APA requires final agency action. *See* 5 U.S.C. § 704 ("agency action made reviewable by statute and *final agency action* for which there is no other adequate remedy in a court are subject to judicial review" (emphasis added)). The plaintiffs have failed to challenge a final agency action.

Under the test articulated in *Bennett v. Spear*, "two conditions must be satisfied for agency action to be 'final:' First, the action must mark the 'consummation' of the agency's decision-making process—it must not be of a merely tentative or interlocutory nature." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citations omitted). And second, the action must be one by which "rights or obligations have been determined," or from which "legal consequences will flow." *Id.* The D.C. Circuit has given guidance as to the second prong of the *Bennett* test. "In determining whether an agency has issued a binding norm . . . we are guided by two lines of inquiry. One line of analysis considers the effects of an agency's action, inquiring whether the agency has (1) imposed any rights and obligations or (2) genuinely left the agency and its

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[14] The plaintiffs rely on *Time Warner Entm't Co. v. F.C.C.*, 93 F.3d 957, 974 (D.C. Cir. 1996), which held a challenge to FCC regulations ripe even though local franchise authorities had discretion whether to implement certain programming. The plaintiffs analogize that case to the instant action, where state authorities have discretion whether to implement the trading and offset programs "authorized" by the EPA. That case, however, is distinguishable because in that case, the plaintiffs were challenging a statutory provision that they alleged violated the First Amendment. Thus, the question presented was purely a legal question of statutory interpretation—having to do with the legal impact of an act of Congress. Here, the plaintiffs are not challenging *a statute*, but rather what they deem to be *agency action*, where the purely legal question cannot be reached if there is no *final* agency action. Because as explained in Part D of this opinion, there is no final agency action, the legal question cannot be reached and *Time Warner* is inapposite.

decisionmakers free to exercise discretion." *Cntr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 452 F.3d 798, 806 (D.C. Cir. 2006) (citations omitted). "The second line of analysis looks to the agency's expressed intentions. This entails a consideration of three factors: (1) the agency's own characterization of the action; (2) whether the action was published in the Federal Register or the Code of Federal Regulations;[15] and (3) whether the action has binding effects on private parties or on the agency." *Id.* at 806-807.

In *Cntr. for Auto Safety*, the plaintiffs challenged letters sent to various vehicle manufacturers which outlined NHTSA's "policy guidelines" for "regional recalls." *Id.* at 799-800. The court held that the NHTSA Guidelines did not constitute final agency action because, under the second prong of the *Bennett* test, NHTSA "has not commanded, required, ordered, or dictated," and the "agency remains free to exercise discretion in assessing proposed recalls and in enforcing the Act." *Id.* at 809. The court also went on to say that "it does not matter that agency officials have *encouraged* automakers to comply with the guidelines." *Id.* (emphasis in original). The guidelines still amounted to nothing more than a general statement of policy. *Id.* Moreover, the NHTSA Associate Administrator had no authority to issue binding regulations under the relevant statutory provision in that case. *Id.* at 810. Thus, the letters were really nothing more than guidelines. *Id.* Similarly, in *Nat'l Ass'n of Home Builders v. Norton*, the

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[15] The plaintiffs make much of the fact that the TMDL was published in the Federal Register as an indication that the "authorization for offsets and pollutant trading" represents final agency action. The Court notes that what was published in the Federal Register was EPA's "Notice for the Establishment of the Total Maximum Daily Load (TMDL) for the Chesapeake Bay"—not the TMDL itself. *See* 76 Fed. Reg. 549 (January 5, 2011). That notice gives a brief overview of the TMDL. The TMDL itself, however, is not published in the Federal Register or the Code of Federal Regulations. Importantly, the notice published in the Federal Register explains that "[o]ther provisions of the CWA, as well as the jurisdictions' Watershed Implementation Plans (WIPs), were developed to implement the Bay TMDL." 76 Fed. Reg. at 550. Thus, the only part of the TMDL published in the Federal Register recognizes that the TMDL itself is not self-executing, requires further implementation efforts by the States to come into effect, and therefore certain of its provisions are not final.

court found that a Fish & Wildlife Service Protocol that outlined recommendations for detecting the endangered Quino Butterfly was not a final rule because it did not establish a binding norm, but rather served as a recommendation. 415 F.3d 8, 11-12, 14 (D.C. Cir. 2005). The court explained: "[g]iven the voluntary nature of the language contained in the Protocols, it is futile for Home Builders to argue that the Protocols are binding on their face." *Id.* at 14.

Under either line of analysis, the Court finds that there is no final agency action here. The same problems that plague the plaintiffs' standing arguments also undermine their argument that the Bay TMDL document's reference to offsets and trading constitutes final agency action: such references do not impose any binding or legal obligations on any actor. The EPA's language in the Bay TMDL regarding offsets and trading does not legally require any conduct, but rather serves as an "informational tool."[16] *Pronsolino v. Nastri*, 291 F.3d 1123, 1129 (9th Cir. 2002). The Bay TMDL uses verbs such as: "EPA *expects*[17] that new or increased loadings

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[16] The agency action the plaintiffs contest is the purported "authorization of offsets and trades" in the Chesapeake Bay TMDL. *See* Am. Compl. ¶¶ 88-123, ECF No. 29. The plaintiffs do not challenge the legality of the TMDL itself—only the provisions purportedly authorizing what they deem to be illegal water pollutant trading. The parties—and the Court—are in agreement that the Chesapeake Bay TMDL is a final agency action in itself. That is not in dispute. *See Sierra Club v. E.P.A.*, 162 F. Supp. 2d 406, 420 (D. Md. 2001) ("approval or disapproval of state submissions under the Clean Water Act is not rule making; it is only the actual development of the list or load that is rule making"). *See also* EPA's Reply 9, ECF No. 42 ("nor is there any dispute that EPA's establishment of the Bay TMDL is a final agency action . . . ."). As defendants point out, though, "[t]he fact that EPA took final action to establish the Bay TMDL does not, however, mean that every associated statement is equally 'final' within the meaning of the APA." *See id.* (citing *Natural Res. Def. Council v. E.P.A.*, 559 F.3d 561, 564-65 (D.C. Cir. 2009) (finding the preamble statements were not final agency action because the EPA spoke in the conditional and the preamble statements had no legal consequences); *Interstate Natural Gas Ass'n of Am. v. F.E.R.C.*, 285 F.3d 18, 59-61 (D.C. Cir. 2002) (finding that the discussion of seasonal rates within a final rule "represents only a policy statement and therefore is neither binding on any party nor ripe for judicial review")).

[17] The word "expect" is the most forceful verb used in the TMDL, and even still, its use does not impose any requirement on the States. In the context of the EPA's relationship with the Bay States, it is clear that use of that word simply acknowledges the fact that States face difficult decisions when it comes to implementing TMDLs. Based on the conversations between

. . . will be offset by loading reductions . . . ." Chesapeake Bay TMDL 10-1 (emphasis added); EPA "*encourages* and *expects* that the jurisdictions will generally develop and implement programs for offsetting new and increased loadings . . . ." *Id.* at 10-2 (emphasis added); EPA "*recognizes* that a number of Bay jurisdictions *already are implementing* water quality trading programs. EPA *supports* implementation of the Bay TMDL through such programs, as long as they are established and implemented in a manner consistent with the CWA . . . ." *Id.* at 10-3 (emphasis added); "An *assumption* of this TMDL is that trades *may* occur between sources contributing pollutant loadings to the same or different Bay segments." *Id.* (emphasis added). In addition, in Appendix S, the EPA notes that the common elements (which include trading and offsets) it hopes each State will implement "*are not presented here as regulatory requirements*." *Id.* at S-2. These statements create no binding legal requirement on the States—even though the EPA "expects" (which is the strongest verb used in the Bay TMDL) the States will engage in offset and trading programs, ultimately, it is in the individual States' control whether or not to use offsets and trades as a method of complying with the Bay TMDL. Nothing in the Bay TMDL commands or requires States to engage in offsetting or trades, making this case similar to *Cntr. for Auto Safety* and *Nat'l Ass'n of Home Builders*, where the relevant agency language was voluntary and not mandatory. To be sure, a State has limited options if it wishes to implement the Bay TMDL, continue to comply with the CWA, accommodate population growth, and encourage economic expansion. But limited options does not mean no options. EPA's

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the States and the EPA, and the lead-up to the establishment of the Bay TMDL, the EPA expected that the States would carry out the offset and trading programs, as the States themselves pledged to do in their various WIPs. The States have limited options if they hope to (1) implement the Bay TMDL, (2) comply with the CWA, and (3) accommodate population growth and support economic expansion. EPA's "expectation," then, is just an acknowledgement of that difficult reality.

encouragement that one option might be the most logical one does not command a State to implement it.

Moreover, the EPA's language cannot be mandatory because the CWA does not confer on the EPA the authority to command or to require the States to take specific actions, with respect to their implementation plans. The supplemental authority submitted by the defendants serves them well on this point. *See American Farm Bureau*, 2013 WL 5177530, at *20 ("EPA is not authorized to establish or otherwise take over TMDL implementation plans."). The district court in that case found that while "it would go too far to say that EPA has no role in developing state implementation plans . . . EPA [does not have the] authority to enact its own implementation plan where it has determined that the state's effort has fallen short. EPA may not, for example, dictate to a state what measures the state must undertake to reduce pollution from a particular source." *Id.*[18]

There are two other reasons why the Bay TMDL document's references to offsets and trading do not constitute final agency action. First, such references do nothing to change the legal landscape, contrary to the plaintiffs' arguments that the 2010 TMDL marks "formal legal authorization by the EPA" of offsets and trading programs. *See* Pl.'s Mot. to Dismiss 9. The EPA approved of such methods for regulating water quality no later than 2003 and States have been engaging in such practices since then. *See generally* Final Water Quality Trading Policy 2 ("the policy is intended to encourage voluntary trading programs that facilitate implementation of TMDLs, reduce the costs of compliance with CWA regulations, establish incentives for

[18] Importantly, *American Farm Bureau* is the only case to date that has analyzed the Chesapeake Bay TMDL in depth. In a thorough opinion, the court found that "the record, when viewed as a whole, does not support a finding that the framework of federal and state interaction was coercive in nature so as to render the TMDL an unlawful federal implementation plan." *American Farm Bureau*, 2013 WL 5177530, at *30.

voluntary reductions, and promote watershed-based initiatives"); *see also* A Summary of U.S. Effluent Trading and Offset Projects, *supra* p. 19. Thus, the EPA's statements that it "expects" and "encourages" trading programs to occur does absolutely nothing new. *See Cntr. for Auto Safety*, 452 F.3d at 811 ("if the practical effect of the agency action is not a certain change in the legal obligations of a party, the action is non-final for the purposes of judicial review under the APA" (citation omitted)); *Indep. Equip. Dealers Ass'n v. E.P.A.*, 372 F.3d 420, 428 (D.C. Cir. 2004) ("By *restating* EPA's established interpretation of the certificate of conformity regulation, the EPA Letter [did not] tread . . . new ground. It left the world just as it found it, and thus cannot be fairly described as implementing, interpreting, or prescribing law or policy."). If the Bay TMDL document was entirely silent about offsets and trading, the legal landscape would not change. In light of the fact that the EPA has not imposed any new legal obligation on any actor, the fact that it still "expects," or "encourages" States to engage in certain behavior has no practical, legally-binding effect on the States whatsoever—because they were engaging in trades and offsets before the TMDL came into being, and can do so even without the statements contained in the TMDL.[19]

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[19] The plaintiffs rely extensively on *Natural Res. Def. Council v. E.P.A. ("NRDC")*, 643 F.3d 311 (D.C. Cir. 2011) and *Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015 (D.C. Cir. 2000). Those cases are distinguishable from the present action. In *NRDC*, the court found that an EPA Guidance Document was a final agency action because it "altered the legal regime" by resolving a question of statutory interpretation of the Clean Air Act. 643 F.3d at 320. That is not the case here because as set forth above, the EPA's language regarding offsets and trades does not alter the legal regime—that regime was in place before the Bay TMDL was established, is not binding on the States, and does not resolve a question of statutory interpretation. Meanwhile, in *Appalachian Power*, the court found that a Guidance Document was a final agency action because it "reads like a ukase. It commands, it requires, it orders, it dictates." 208 F.3d at 1023. The *Appalachian Power* court further found that "EPA has given States their 'marching orders' and EPA expects the States to fall in line . . . ." *Id.* That is not the case here, where, as set forth above, the language the EPA uses is permissive, not obligatory (nor, as set forth above, could it be under the CWA). Even though the EPA does "expect" that states will engage in trading and offset programs, in the context of the CWA, such an expectation is acknowledgment of the

In addition, this court has found that where agency action requires separate implementation plans to make its goals come to fruition, such agency action is not final for purposes of judicial review. *See, e.g.*, *Fund for Animals v. Williams*, 391 F. Supp. 2d 132, 139 (D.D.C. 2005) ("In sum, the FWS' publication of the Strategic Plan is not a final agency action because it does not mandate the creation or expansion of hunting opportunities and has no direct effect on those regulated. Because *actual implementation* of the goals announced in the Strategic Plan *occurs at a subsequent stage of decision[-]making*, judicial review of the Plan would prematurely interfere with the agency's decision[-]making process and would improperly substitute the court's discretion for that of the agency." (emphasis added)); *Fund for Animals v. U.S. Bureau of Land Mgmt.*, 357 F. Supp. 2d 225, 229 (D.D.C. 2004), *aff'd on other grounds*, 460 F.3d 13 (D.C. Cir. 2006) ("Because further decision[-]making on the part of the BLM's state offices is required prior to any implementation of the Strategy's goals or guidelines, the Court concludes that the Strategy, simply stated, is not a final agency action. So, despite the fact that any decision[-]making process related to setting the Strategy may in fact be 'final,' it is not the type of decision that will directly affect the parties because further agency action is necessary before any concrete action will be taken by the agency that might affect the rights of the plaintiffs."). Similarly here, there are other actors—state agencies—that must implement the TMDL established by the EPA. The plaintiffs' rights will not be affected until further implementation by the States begins to take shape. Thus, the EPA setting forth its "expectations" is the starting point, and the States end up with the final decision as to whether to

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limited options available, but imposes no binding obligation on the States, who are free to implement their respective TMDLs in whatever way they see fit (as long as their plans comport with the Bay TMDL itself and the CWA). In contrast, in *Appalachian Power*, the Guidance Document at issue interpreted certain provisions of the *Clean Air Act* that imposed various "requirements" on the States in the document itself. *Id.* at 1019-22 (explaining that "periodic monitoring [by States] *is required* for each emission point . . . ." (emphasis added)).

implement trading or offset programs and, if so, whether to approve a specific trade or offset when it approves a new or modified permit. Any final agency actions, then, that could potentially injure the plaintiffs' members are in the future—i.e., down river from this point in time.

IV. CONCLUSION

The plaintiffs want the Bay TMDL statements about offsets and trading to be declared null and void. But the plaintiffs can only mount such a challenge if such statements constitute (1) final agency action, and (2) if plaintiffs can show they have standing to challenge them. The plaintiffs cannot do that, and as such the Court must dismiss their action for lack of subject matter jurisdiction and for failure to state a claim.

For the foregoing reasons, the defendants' motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim are granted. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: December 13, 2013

RUDOLPH CONTRERAS
United States District Judge

Exhibit 77

PNC Outline 02-24-2011.pdf

Union Pier Concept Plan - Background & Benefits

More details at: http://www.UnionPierPlan.com

Background

Cruise operations in the Port of Charleston are part of the South Carolina State Ports Authority's legislated mandate to increase maritime commerce and port-related jobs.

To better handle ships, passengers, traffic and security requirements, the SCSPA identified a need to improve and enhance the cruise terminal, which opened in 1973.

We began working with the community on how best to accomplish this in October 2009. Initially, we considered just upgrading the existing cruise terminal, which sits at the end of Market Street in a rather congested area.

Through an exhaustive public process, including more than 60 meetings with neighbors and other groups, we were encouraged to:

- study the entire site
- improve traffic flow
- shift the cruise business north
- limit the terminal to one ship
- develop a more appropriate and appealing terminal
- recognize an historic façade
- provide public access to the waterfront
- develop new uses for the property

Each of these concerns and others were incorporated into the Union Pier Concept Plan, which was presented to the community and endorsed by City Council in September.

The new cruise terminal would be relocated north on Union Pier Terminal to an existing structure that would be renovated and modernized, freeing much of Union Pier for public uses and other non-industrial development.

This presents an opportunity to re-knit about 35 acres of current industrial property into the fabric of the city, while also re-connecting the city to the waterfront. The Union Pier Concept Plan offers many benefits for those that live, work and visit in downtown Charleston.

Union Pier Concept Plan Benefits

* Direct Jobs and Purchases – every day a cruise ship is in port, more than 200 local workers are directly employed in support activities. These jobs include longshoremen, check-in agents, baggage handling and other operations personnel. The ship also buys other services and products – many of them locally – including flowers, milk, water and fuel. In 2010, the total annual contributions of the cruise business to the Tri-County were more than $37 million, as well as 407 jobs with a total of $16 million in wages.

* Reduced Cargo Operations Union Pier – shifting cruise operations north on Union Pier Terminal will result in a much smaller industrial footprint on the Peninsula. All BMW and other rolling stock cargo operations are being shifted north to Columbus Street Terminal. This

PNC Outline 02-24-2011.pdf

removes about 200 cargo ships a year, 1,800 car and truck trips a week and multiple train switches a day from the lower Peninsula.

* Streamlined Operation – while the current cruise operation works, it is exceptionally cumbersome due to the antiquated facilities. The existing cruise operation is land intensive and split between facilities, inhabiting more than 600,000 square feet of industrial space on cruise days. The new cruise terminal will be much more compact and easier to manage, requiring only one-fourth the space and adjacent parking, eliminating the need for shuttles between the ship and parking areas.

* Attractive New Terminal – the newly redesigned cruise facility, inside and out, will be much more representative of this fine city. The area around the existing cruise terminal is unattractive and in some cases dilapidated, presenting neither a good face on our city nor an appropriate welcome to arriving ships.

* Reduced Traffic - the new cruise terminal will be much more efficient and enhance traffic flow, eliminating the road closure on Washington Street during embarkations. In addition, north-south traffic flow capacity on the Peninsula will be increased due to improvements of Washington and the re-opening of Concord Street.

* Cruise Remains in Scale – the new cruise terminal will be a one-berth/one-ship facility, consistent with the size of ships that have called Charleston in the past, ensuring that the cruise business remains in scale with the city and surrounding neighborhoods.

* Pace of Cruise Activity – the market for cruises in Charleston can support an average of about two ships per week, or about 104 ships a year, and 2011 activity is consistent with the pace of activity since last May. The Ports Authority has committed in writing to consult with the City should this change.

* Union Pier Redevelopment – once the new cruise terminal is completed, the balance of Union Pier will be master planned with public involvement for public and other uses. Much like the 1996 Union Pier Master Plan, the plan will receive all necessary approvals from planning and council.

* Preservation of Bennett Rice Mill – the Union Pier Concept Plan stabilizes and incorporates the historic Bennett Rice Mill façade in place, tying the industrial structure into the waterfront's past and future.

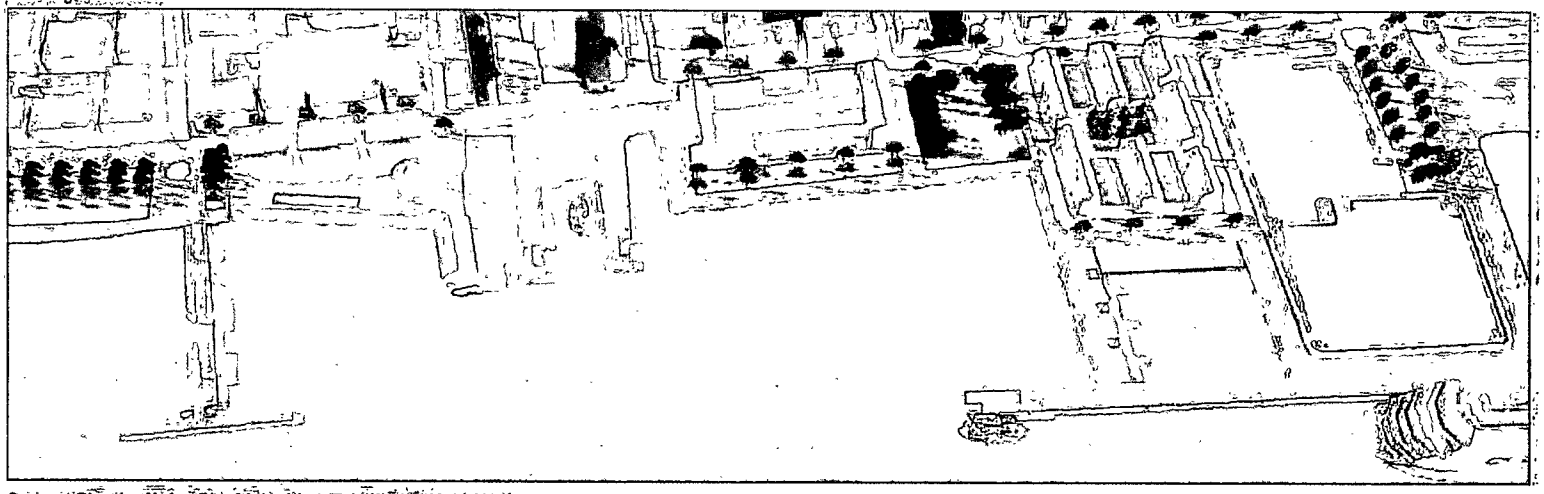
* Tourism Benefits to Local Business – in addition to the direct maritime-related jobs and benefits, the cruise business has an important tourism dimension. Cruise passengers stay in local hotels, eat in restaurants, visit attractions and spend in shops.

Next Steps & Timeline

* Hire Design Team 3/15
* Begin Construction 4th Quarter 2011
* Open New Terminal 4th Quarter 2012
* Master Plan Non-Maritime/Industrial Properties

For More Details on the Union Pier Concept Plan...
http://www.UnionPierPlan.com

Existing Conditions



Concept Plan for Union Pier Waterfront - an illustrative concept

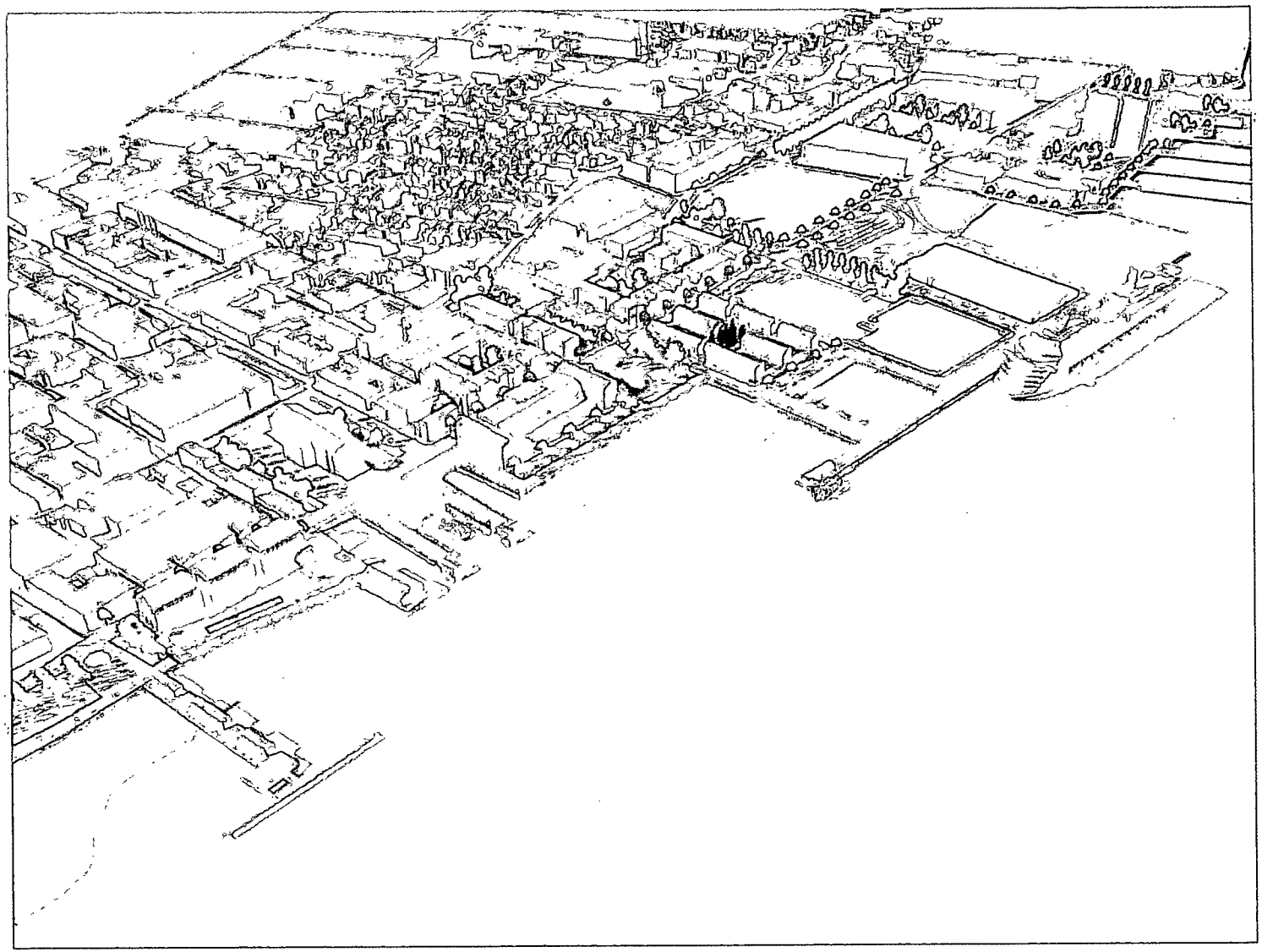


Exhibit 78

A Case for the Redevelopment of Union Pier

Presented by

South Carolina Coastal Conservation League

with

Dover Kohl and Partners
and
Urban Advisors Ltd

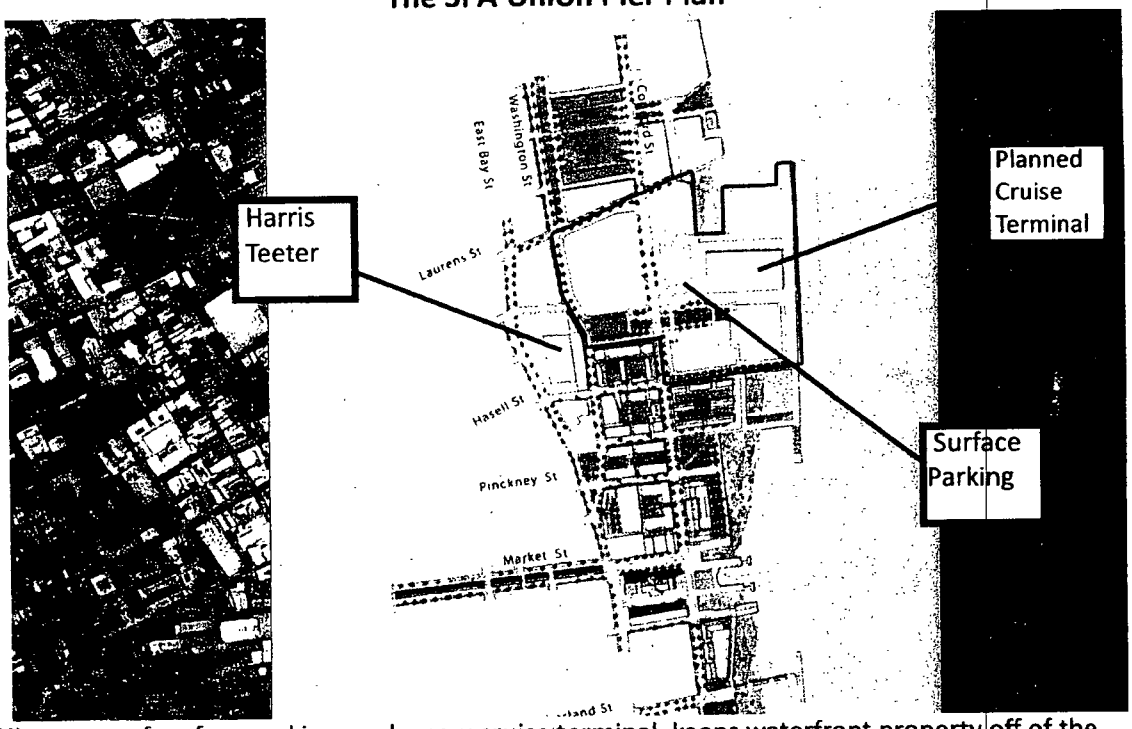
May 2011

The Dover Kohl Plan:

- Is an alternative development plan for the northern portion of Union Pier
- Extends the Cooper Robertson concept plan for the southern portion of Union Pier northward.
- Extends Waterfront Park and public access to the water
- Adds valuable waterfront property back to the tax rolls
- Provides 994 new residential units and 80,000 square feet of commercial space
- Generates $100 and $130 million to the SPA in raw land value.
- Creates a real estate value between $502 and $532 million dollars
- Contributes between $29 and $35 million annually in new consumer spending
- Generates new residential annual tax revenue between $4 and $7 million for taxing agents in Charleston County*

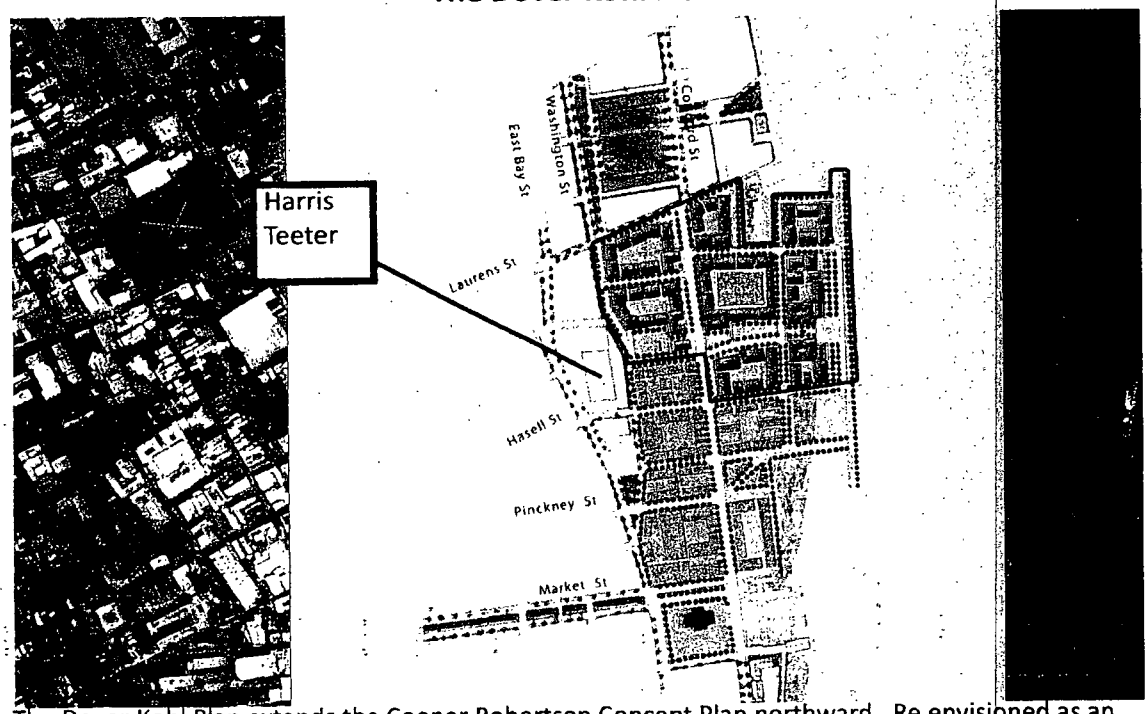
*This includes Charleston County, the City of Charleston, Charleston County School District, Trident Technical College, Parks and Recreation. It excludes available tax credits.

The SPA Union Pier Plan

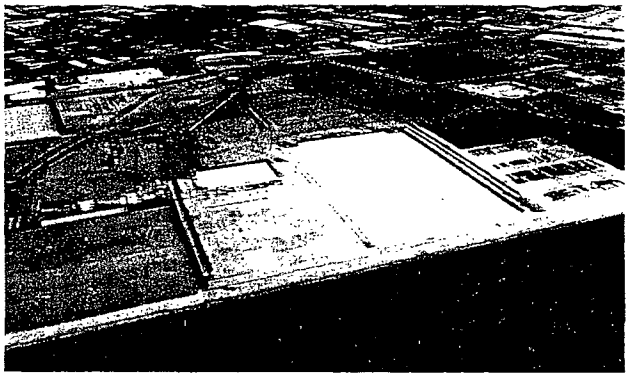


Nine acres of surface parking, and a new cruise terminal, keeps waterfront property off of the tax rolls and limits possible revenue for the City, County and School Board. The financial impact of this scenario is parking and passenger fees to the SPA, between $7 and $12 million.

The Dover Kohl Plan

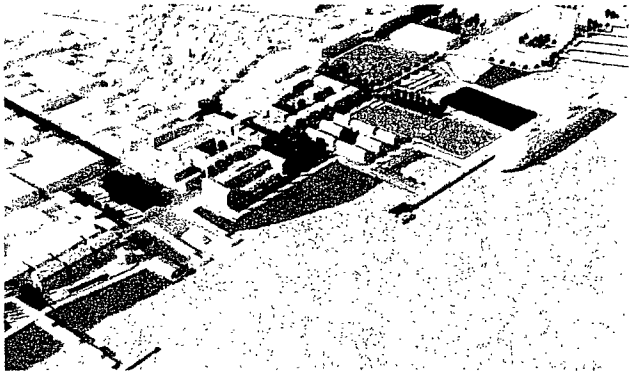


The Dover Kohl Plan extends the Cooper Robertson Concept Plan northward. Re envisioned as an extension of our historic City center, this property would generate $4-$7 million in new tax revenue, over $500 million in real estate value and over $100 million in land value to the SPA.

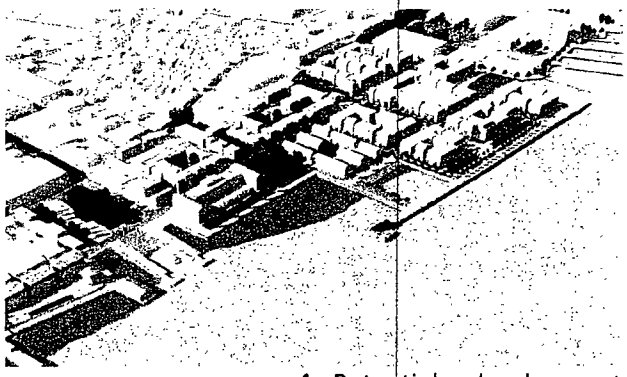


1. Current aerial of the northern portion of Union Pier

3. Build out opportunity



2. Cooper Robertson plan and footprint



4. Potential redevelopment

Over the years, this historic area has seen population and households decline, but is now experiencing a revitalization that can be reinforced with this project. By extending the plan that Cooper Robertson and Partners has planned for the southern portion of Union Pier, the City of Charleston can attract new residents and revenue, revitalize the waterfront and generate income for the State Ports Authority.

The scenario for Union Pier by *Dover Kohl and Partners* envisions the addition of 994 housing units 80,000 square feet of new commercial space, 6.5 acres of open space including a new waterfront park, walkways that provide public access to the waterfront, courtyards and public plazas.

This adds valuable waterfront property back onto the tax rolls and generates $4 and $7 million dollars in new residential tax revenue. Redevelopment represents real estate value between $500 and $532 million. Residual land value to the State Ports Authority is between $100 and $130 million, or otherwise equivalent of $3.28 million per acre for the northern portion alone.

The amount of commercial space envisioned is limited to what can be supported on-site so that this plan does not detract from existing downtown businesses or from the proposed development in earlier area plans.

This Dover Kohl Plan is feasible because of Union Pier's unique location. The market for real estate at this location spans the eastern seaboard and extends into the Midwestern states and perhaps further. The combination of a nearly national market with local construction pricing yields demand that enables feasibility.

Plans to build a passenger terminal on this site will add annual revenue to the local economy, in the form of fees to the SPA and tourist spending estimated at $37 million*, however, those benefits are not specific to Union Pier and could be achieved at other locations. The opportunity for the city to add to the vitality of its core area is location specific; there is only one site like this in Charleston.

*SPA study as completed by Professors Crotts and Hefner

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, Petitioners, v. South Carolina Department of Health and Environmental Control and South Carolina State Ports Authority, Respondents.	)	Docket No. 13-ALJ-07-0056-CC

RESPONSE TO MOTION TO RE-OPEN DISCOVERY
(AND MOTION FOR CONTINUANCE)

On December 23, 2013, the Cruise Opponents filed a motion entitled "Motion to Expand Discovery" which requests a re-opening of discovery and implicitly requests a continuance of the merits hearing currently scheduled for the week of January 27, 2014 (Motion). For the reasons set forth herein, the Ports Authority opposes re-opening discovery and consents to the request for a continuance.[1]

HISTORY OF DISCOVERY IN THIS CONTESTED CASE

Given the scant information provided in the Motion, it is worth reviewing the history of discovery production in this case. The request for contested case was filed on February 11 and

[1] There was no pre-motion consultation under Rule 19.C, RPALC.

this matter was assigned to the Honorable Ralph King Anderson, III on February 19, 2013. Pursuant to Rule 21.A, Rule of Procedure of the Administrative Law Court,

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

On May 6, 2013, the Court issued an order for prehearing statements requiring the parties to include, among other things, a "statement regarding the necessity for discovery, if any...." The respective responses in the prehearing statements filed in May 2013 are as follows:

Ports Authority: "Discovery may take between six to nine months to complete. Interrogatories, requests for production, requests to admit, and an expanded number of depositions are appropriate for this matter. The large number of witnesses already listed by Petitioners in discovery demonstrates that the case will require the scope of discovery as to depositions should be expanded beyond the limitations set forth in Rule 21, RPALC, and discovery should be allowed to proceed in accordance with the Rules 26-37, SCRCP."

DHEC: "Discovery is necessary and the parties are in the process of conducting discovery."

Cruise Opponents: "Discovery, including interrogatories, request for production of documents, and depositions, will be necessary. The parties have already filed initial written discovery requests, but anticipate that more discovery will be needed to adequately prepare this matter for hearing."

Indeed, below is a table reflecting the discovery requests and responses exchanged between the Ports Authority and the Cruise Opponents that demonstrates discovery was ongoing at the time of the prehearing statements and that supplemental responses and updates have continued.

REQUESTING PARTY	DATE OF REQUEST	RESPONDING PARY	DATE OF RESPONSE
Ports Authority	February 22, 2013 (Interrogatories)	Cruise Opponents	April 22, 2013; Supplemental, April 23, 2013; Supplemental, Sept. 11, 2013
Ports Authority	March 28, 2013 (Document Production)	Cruise Opponents	June 14, 2013; Supplemental, Sept. 11, 2013; Supplemental, Nov. 19, 2013
Cruise Opponents	April 26, 2013 (Interrogatories; Document Production)	Ports Authority	June 28, 2013; Supplemental, Aug. 12, 2013; Supplemental, Aug. 28, 2013; Supplemental, Sept. 5, 2013; Supplemental, Sept. 12, 2013; Supplemental, Sept. 25,2013; Supplemental, Oct. 4, 2013; Supplemental, Oct. 9, 2013; Supplemental, Oct. 18, 2013; Supplemental, Oct. 4, 2013; Supplemental, Dec. 9, 2013; Supplemental, Jan. 6, 2014.

On May 31, this Court issued an order setting the merits hearing for the week of November 12, 2013. Cruise Opponents' counsel had a conflict and further informed the Court that they "agree with the statement made in Respondent SPA's prehearing statement that discovery will likely take between 6-9 months." Ex. A, Email dated May 31, 2013, Armstrong Email of 2:28 pm. The Court responded that "[a]s the scheduled date provided over four months for discovery, the Court was hopeful the parties could complete discovery within the time

period." Ex. A, Email dated May 31, 2013, Fair Email of 2:45 pm. The Court rescheduled the merits hearing for the week of January 27, 2014.

There was some discussion amongst counsel regarding an expansion of discovery. Ports Authority counsel drafted a proposed scheduling order and proposed protective order that would have modified and expanded discovery and circulated those drafts for comment on July 10, 2013. On August 13, 2013, Cruise Opponents' counsel responded, objecting to any protective order, any additional interrogatories, and expanded depositions. Ex. B, Email dated Aug. 13, 2013; Ex. C, Armstrong Redline. The Ports Authority would not agree to these changes. At that time, given the delay in the response, the pending and developing motions, and the desire to move forward without any additional discovery outside that permitted by the Rules, the issue was dropped by the Ports Authority. Indeed, no party raised the issue of additional discovery and no additional discovery requests were served after the May 20 deadline. The issue of discovery was dropped and was not raised again until December 18 when the Ports Authority pointed out that discovery had closed by Rule on May 20, 2013. Ex. D, Email dated Dec. 18, 2013, Lowell Email of 12:31 pm.

ARGUMENT

I. THE PARTIES HAVE BEEN AFFORDED A FULL AND FAIR OPPORTUNITY TO CONDUCT DISCOVERY AND NO ADDITIONAL DISCOVERY IS NECESSARY.

The burden is upon the Cruise Opponents to demonstrate good cause as to why the discovery period should be re-opened. The Motion contains unsubstantiated assertions without any support or citation, and the Motion fails to even identify the standard and burden they must meet. *See Truehart v. Blandon*, 684 F. Supp. 1368, 1372 (E.D. La. 1988) ("The Court simply cannot accept plaintiff's unsupported statement that further factual discovery would be unnecessary."). Indeed, seven months after the close of discovery, a month away from the

scheduled merits hearing, the Motion was mere reflex. On Wednesday, December 18, the Ports Authority stated that discovery was closed (which recognized the applicable rule) and that the Ports Authority would be filing motions for summary judgment in the near term (again a recognition of the applicable rule). Ex. D, Email dated Dec. 18, 2013, Lowell Email of 12:31 pm. On Monday, December 23, Cruise Opponents counsel filed the instant Motion. The only reason Cruise Opponents now seek to re-open discovery that has been closed for over seven months is to make the argument that summary judgment is inappropriate because they want more discovery, despite having participated in the discovery process when it was open and failing to request that discovery be re-opened before now. This is purely a tactic to try and defeat summary judgment and prolong this contested case.

The Rule requires a showing of "good cause" to alter the discovery provisions in the Rule. Rule 21.A, RPALC. Generally, "good cause" is a "[a] legally sufficient ground or reason." *S.C. Dep't of Revenue v. Zakia*, Docket No. 12-ALJ-17-0395-CC (Jan. 3, 2013) (Robinson, J.) (quoting Black's Law Dictionary); *S.C. Dep't of Revenue v. Marker*, Docket No. 12-ALJ-17-0110-CC (Sept. 6, 2012) (McLeod, J.) (same); *Verde Bio Fuels, Inc. v. S.C. Dep't of Revenue*, Docket No. 09-ALJ-17-0145-CC (April 21, 2009) (Anderson, J.) (same); *Hill v. S.C. Dep't of Health & Envtl. Control*, Docket No. 08-ALJ-07-0183-CC, 2008 WL 38635393 (July 10, 2008) (Matthews, J.) (same); *S.C. Dep't of Motor Vehicles v. Gibson*, Docket No. 07-ALJ-21-0384-AP, 2008 WL 1740065 (March 5, 2008) (Gossett, J.) (same). The Honorable Paige J. Gossett further expounded that "good cause" is a "substantial reason amounting in law to a legal excuse for failing to perform an act required by law." *S.C. Dep't of Motor Vehicles v. Lajuenesse*, Docket No. 06-ALJ-21-0270-AP, WL 2008 1740063 (March 4, 2008) (Gossett, J.). Other courts have similarly addressed what is required to show "good cause" to alter scheduling deadlines.

> Properly construed, ***"good cause" means that scheduling deadlines cannot be met despite a party's diligent efforts.*** 6A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Procedure § 1522.1 at 231 (2d ed. 1990). In other words, this court may "modify the schedule on a showing of good cause if [the deadline] cannot be met despite the diligence of the party seeking the extension." Advis. Comm. Notes for 1983 Amend.; *Forstmann,* 114 F.R.D. at 85. ***Carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief.*** *Johnson,* 975 F.2d at 609.

Dilmar Oil Co., Inc. v. Federated Mut. Ins. Co., 986 F. Supp. 959, 980 (D.S.C. 1997) *aff'd sub nom. Dilmar Oil Co. v. Federated Mut. Ins. Co.*, 129 F.3d 116 (4th Cir. 1997) (emphasis added); *see Whitlock v. Stewart Title Guar. Co.*, 4:10-CV-01992-RBH, 2012 WL 6138227 (D.S.C. Dec. 11, 2012) (unpublished) ("'Good cause' means that scheduling order deadlines cannot be met despite a party's diligent efforts" and also determining that "[n]o good cause has been shown to reopen the expert period or to modify the deadlines concerning experts."); *Derrick v. Johnson Controls, Inc.*, 3:10-CV-3295-CMC, 2012 WL 2072782 (D.S.C. June 8, 2012) (unpublished) ("'Good cause' means that scheduling order deadlines cannot be met despite a party's diligent efforts.). "**If a party was not diligent, the good cause inquiry should end.**" *Johnson Controls, Inc.*, 3:10-CV-3295-CMC, 2012 WL 2072782 (D.S.C. June 8, 2012) (emphasis added); *see also Bachman v. M. Lowenstein & Sons, Inc.*, 85 F.R.D. 10, 13 (D.S.C. 1979) ("Since her present motion also fails to address these issues, this court has been presented with no grounds for vacating its prior order." Further finding that a failure to provide good cause, unusual circumstances, or discuss discovery undertaken in original discovery period precludes re-opening discovery.); *cf. Glass v. Philadelphia Electric Co.*, 64 F.R.D. 559 (E.D. Pa.1974) (when a party is dilatory in pursuing discovery and the time period for discovery has expired, any attempt to reopen discovery must be denied).

Here no good cause exists. The Motion offers no explanation or excuse as to why the Cruise Opponents took no action and otherwise failed to diligently act during the original discovery period and for over seven months thereafter. Discovery has been conducted pursuant to the Rules. No party ever made any request to schedule a deposition during the discovery period. The Cruise Opponents made no attempt in any way conduct any discovery beyond that provided in the Rule. Only a month away from trial, and mere days before the dispositive motions deadline and after notified that the Ports Authority would be filing summary judgment motions, did the Cruise Opponents decide that additional discovery was necessary.

The Ports Authority indicated that six to nine months would be needed for discovery in its prehearing statement. The Cruise Opponents counsel agreed. Ex. A, Email dated May 31, 2013, Armstrong Email of 2:28 pm. The Court expressed a preference for a four-month window on discovery. Ex. A, Email dated May 31, 2013, Fair Email of 2:45 pm. Three hundred seven (307) days from the notice of assignment in this case (on February 19, 2013) was December 23, 2013 (when the Motion was filed). That is more than the nine months indicated in the prehearing statements and more than twice the four-month period the Court indicated that it believed to be sufficient for discovery. In fact, the Cruise Opponents admit that "this case is ready to proceed toward a hearing." Motion at 2. And yet the Cruise Opponents now seek more delay to conduct discovery[2] that they could have sought before the close of the discovery period and could have moved before this Court much sooner than the eve of trial. The Cruise Opponents failed to act

[2] In the prior discussions, the Cruise Opponents refused to allow more than standard interrogatories but did want 15 depositions. Ex. C, Armstrong Redline at 2. In other words, the Cruise Opponents eschewed the most efficient, convenient, and timely form of discovery and desired the most time-consuming and most expensive form of discovery. Indeed, additional interrogatories—which the Cruise Opponents previously refused to expand—could have helped narrow the focus of the issues in dispute which would have allowed for quicker depositions, but this is not the goal or objective of the Cruise Opponents.

with any diligence, and have foregone any claim to additional discovery or to re-open the discovery period. *See Trotter v. Trane Coil Facility*, 393 S.C. 637, 649, 714 S.E.2d 289, 295 (2011) ("We conclude the commissioner did not abuse her discretion in denying Trane's motions for a continuance or to hold the record open for the taking of Dr. James's deposition."); *see Smith v. Reynolds Transport Co.*, Civil Action No. 3:11–cv–2728–CMC, 2013 WL 247714 (D.S.C. Jan. 23, 2013) (unpublished) (plaintiffs delay in seeking to name additional expert until after discovery period had closed and dispositive motions deadline had passed would "entail significant prejudice both to Defendants and the administration of justice"); *see also Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 253, 734 S.E.2d 161, 165 (2012); *DeAcetis v. Whitley*, 14-08-00429-CV, 2010 WL 1077904 (Tex. App. Mar. 25, 2010) (Mem. Op.) (affirming the trial court's denial of a motion to re-open discovery, stating "[t]he trial court could have reasonably concluded that [movant] should have diligently brought motions to compel, instead of waiting until one week before the summary judgment hearing" and "[i]t is well established that the failure of a litigant to diligently utilize the rules of civil procedure for discovery purposes will not authorize the granting of a continuance.").

Indeed, this contested case is not unlike *Savannah Bank, N.A. v. Stalliard.* There, the parties entered into a consent scheduling order stipulating that discovery would be completed by February 15, 2011. *Stalliard*, 400 S.C. at 249, 734 S.E.2d at 163. On May 2, 2011, after the discovery deadline expired, the Appellant filed a motion seeking additional discovery time and a continuance of the Respondent's summary judgment motion. *Id.*, 400 S.C. at 249-50, 734 S.E.2d at 163. The master-in-equity denied the Appellant's motion for additional discovery time and the Appellant appealed, arguing that the denial was improper. *Id.*, 400 S.C. at 248, 734 S.E.2d at

162. The South Carolina Supreme Court concluded that the Appellant's motion was properly denied reasoning that the

> Record indicates that Appellant had ample time during discovery to uncover evidence and speak with any potential witnesses.... If Appellant believed he did not have sufficient time, Appellant should have promptly filed a motion seeking additional discovery time. Instead, Appellant waited until ... two months after the deadline for discovery expired to request an extension ... Thus, we hold that the master properly denied the Appellant's motion.

Id., 400 S.C. at 253, 734 S.E.2d at 165.

The facts and circumstances in this contested case weigh far heavier against the Cruise Opponents than those in *Savannah Bank*. Here, Cruise Opponents seek to re-open discovery after the original discovery period expired after having had ample time and opportunity to conduct discovery and/or to file a motion to expand discovery during the initial ninety (90) day discovery period. Moreover, whereas the South Carolina Supreme Court found the denial of motion to extend discovery proper after the appellant waited "two months after the deadline for discovery expired to request an extension," Cruise Opponents have waited for ***over seven (7) months*** after the close of discovery before filing a motion to re-open discovery in this contested case and mere weeks before the scheduled merits trial date.

Actually, the Cruise Opponents have no pre-hearing discovery rights *per se*, and are only entitled to the procedures afforded by rule, which may be limited and curtailed. *MacDonald v. S.C. Dep't of Labor, Licensing & Regulation*, Docket No. 97-ALJ-11-0598-AP, 1998 WL 166272 (March 25, 1998) (Anderson, J.) ("While contested case litigants are entitled to fundamental due process considerations, there is no constitutional right to prehearing discovery in administrative cases."); *Woodward v. S.C. Dep't of Labor, Licensing, & Regulation*, Docket No. 99-ALJ-11-0333-IJ, 1999 WL 1016099 (June 1, 1999) (Stevens, J.) ("Pre-hearing discovery

in administrative cases is not a constitutional right *per se.*"); *Zimmerman v. S.C. Dep't of Labor, Licensing, & Regulation*, Docket No. 97-ALJ-11-0427-IJ, 1998 WL 141701 (March 9, 1998) (Bates, J.) ("While contested case litigants are entitled to fundamental due process considerations, there is no blanket constitutional right to pre-hearing discovery in administrative cases."); *cf. Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984) ("proof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice"); Charles H. Koch, Jr., *Administrative Law & Practice* 142 (3d ed. 2013) ("Therefore failure to provide an opportunity to obtain discovery does not render an administrative hearing unconstitutional.").

This Court has specifically found that denial of a discovery deposition "does not automatically constitute a due process violation." *Brown v. S.C. Dep't of Labor, Licensing, & Regulation*, Docket No. 99-ALJ-11-0333-IJ, 1999 WL 1016099 (Sept. 17, 1999) (Anderson, J.); *Zimmerman*, Docket No. 97-ALJ-11-0427-IJ, 1998 WL 141701 (March 9, 1998) (Bates, J.) (denial of request to take a deposition is not, in and of itself, an abuse of discretion). In this case, Cruise Opponents have been afforded ample opportunity to conduct discovery and in no way have been hindered from seeking to expand the length and/or scope of discovery *within* the applicable ninety (90) day discovery period. In other words, Cruise Opponents were afforded both a meaningful opportunity to conduct discovery and a meaningful opportunity to expand discovery, upon a motion for good cause shown, *before* discovery closed on May 20, 2013. *See Zaman v. S.C. State Bd. of Medical Examiners*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it.") (citing *Dusanek v. Hannon*, 677 F.2d 538 (7th Cir. 1982))).

The Cruise Opponents' arguments are inconsistent with their own conduct. For example, they criticize the Ports Authority claiming that it should have either produced every document within 30 days or requested an extension. Motion at 2. The Ports Authority did, in fact, request an extension to respond to the discovery. Ex. E, Email Exchange dated May 22, 2013. The Ports Authority timely responded and has been supplementing the production as additional documents are reviewed and deemed responsive.[3] But the Cruise Opponents failed to either timely respond within 30 days or request an extension in responding to the Ports Authority production requests. They simply ignored the response date. It was up to Ports Authority counsel to reach out to Cruise Opponents counsel to inquire of the status of the discovery and offer an extension when it became clear that the Cruise Opponents could not comply. Ex. F, Email Exchange dated May 7-8, 2013. A second extension of time to respond was then granted by Ports Authority counsel upon request. Ex. G, Email Exchange dated May 29, 2013. And the Cruise Opponents have continued to supplement their discovery responses just as the Ports Authority has with additional documents.[4]

The Cruise Opponents try and excuse their failure to conduct discovery pursuant to the Rules on the grounds that it "would have been impractical for the [Cruise Opponents] to expend the time and expense required to proceed with depositions ... until this Court ruled on the Motion to Dismiss." Motion at 2. Then the Cruise Opponents complain that the Ports Authority has

[3] The Cruise Opponents complain about the Ports Authority's rolling production. Of course, the Cruise Opponents counsel could have consulted with Ports Authority counsel to discuss deadlines and dates, but chose not to. The Ports Authority has spent hundreds of hours working through tens of thousands of pages to determine responsiveness, privilege, confidentiality, etc. A rolling production is the nature of this type of production, and even the Cruise Opponents are engaging in a rolling production with additional supplementation of responses.

[4] The Cruise Opponents drop a footnote chastising the Ports Authority for producing documents dated 2010 in a supplemental discovery response. Yet the Cruise Opponents produced documents dated 2010 in their supplemental discovery response.

continued to update and supplement its production responses. Motion at 2-3. Under the Cruise Opponents theory, the Ports Authority would have been fully justified in not providing any responses after the filing of the Motion to Dismiss or even now with a motion for summary judgment pending. The only explanation for this inconsistency is that they want to attack the Ports Authority and delay the contested case.

Moreover, while the Cruise Opponents complain about receipt and review of the discovery production, they contributed significantly to any perceived delay. The Cruise Opponents have filed a plethora of frivolous and meritless motions, including a motion to remand, a motion to strike inflammatory references, a motion to quash a subpoena, a second motion to remand styled as a motion to vacate, motions for surreplies, and improper surreplies. The Cruise Opponents conduct demonstrates a lack of respect for the time and expense created by their meritless motions and inflicted upon the Court and respondents. While the Cruise Opponents talk about conservation of resources, they have no hesitation about wasting three state agencies' time and money and stand in the way of the efficient administration of justice and judicial economy.

Finally, the Motion provides clear prejudice to the Ports Authority. The Motion only requests that the Cruise Opponents be allowed to conduct 10 depositions. There is no allowance or provision for the Ports Authority or DHEC to conduct depositions or engage in further discovery. Moreover, a request for "10" depositions appears arbitrary. Is this meant to depose experts? Fact witnesses? Both? All witnesses to be called at trial? It is unclear, and no justification or explanation is proffered.

The Cruise Opponents have had the opportunity to conduct discovery. During the ninety day discovery period, Cruise Opponents failed to notice a single deposition and failed to file a

motion to expand discovery beyond the originally prescribed period and scope or otherwise seek to revise or amend the discovery process that they now complain of as being "extensive and protracted." *See Zaman v. S.C. State Bd. of Medical Examiners*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it.") (citing *Dusanek v. Hannon*, 677 F.2d 538 (7th Cir. 1982))).

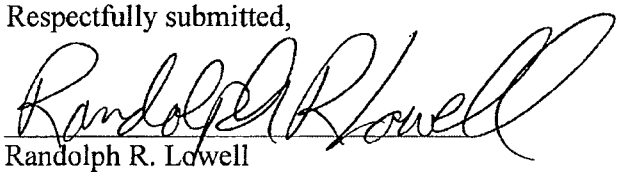
In truth, the parties have exchanged thousands of pages of documents. Discovery has been conducted pursuant to the Rules, and this case is ready for a merits hearing should the Cruise Opponents survive the pending summary judgment motion. Any failure to obtain discovery is the direct result of the failure of the cruise Opponents to act diligently and they waited until over seven months after the discovery period had closed to try and re-open the discovery period. Further delay, time, and expense is unwarranted and the Cruise Opponents have failed to demonstrate good cause to reopen discovery. The Motion should be denied.

II. GIVEN THE MOTIONS FILED, A CONTINUANCE IS WARRANTED.

Through the Motion, the Cruise Opponents implicitly request a continuance of the merits hearing by asking for an additional discovery period of 90 days. Motion at 3. The Ports Authority indicated in its Email exchange with the Court and opposing counsel on December 18, 2013, that given the pending and forthcoming (now filed) motions for summary judgment that it believed a merits hearing the last week of January would be difficult, and at this point is not practical even without additional discovery.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



Randolph R. Lowell
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Philip L. Lawrence
General Counsel
S.C. STATE PORTS AUTHORITY
Post Office Box 22287
Charleston, South Carolina 29413-2287
plawrence@scspa.com

Attorneys for the Respondent
South Carolina State Ports Authority

January 7, 2014
Columbia, South Carolina

EXHIBIT A

From:	Amy Armstrong
To:	Harvin Fair; Chad N. Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Randy R. Lowell
Subject:	Re: Preservation Socelty et al v. SCDHEC and SCPA, 13-ALJ-07-0056-CC
Date:	Friday, May 31, 2013 4:11:00 PM

Thanks, Harvin.

The Petitioners are available from January 6th through February.

Amy

On Fri, May 31, 2013, at 02:45 PM, Harvin Fair wrote:

> The Court will consider rescheduling the hearing. Randy was the only one who indicated a time period for discovery. As the scheduled date provided over four months for discovery, the Court was hopeful the parties could compete discovery within the time period.
>
> In order to schedule a week for a hearing, please provide dates the parties will not be available the later part of January 2014 and the month of February 2014.
>
> Thank you for your attention to this matter.
> Sincerely,
> Harvin Fair
> Law clerk to the Honorable Ralph King Anderson, III
> office phone 803-734-6409

From: Amy Armstrong [mailto:amy@scelp.org]
Sent: Friday, May 31, 2013 2:28 PM
To: Harvin Fair; Chad N. Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Randy Lowell (rlowell@willoughbyhoefer.com)
Subject: Re: Preservation Socelty et al v. SCDHEC and SCPA, 13-ALJ-07-0056-CC

Harvin,

I went to put the hearing dates on my calendar and see that I am scheduled to be at the Southeastern Council of Foundations (SECF) Conference from November 13-15 in Homestead, Virgina. I serve on the Board of the Bunnelle Foundation and am attending the conference in that capacity. I have just checked with Bunnelle staff and understand that reservations for my attendance were made, including payment for the conference and hotel, on May 3.

I would have indicated that I was unavailable on those dates, except the Order for Prehearing Statements only asked for availability in the next 90 days. I could cancel these plans, but I would prefer not to back out on this obligation I made to Bunnelle.

In addition, Petitioners agree with the statement made in Respondent SPA's prehearing statement that discovery will likely take between 6-9 months, which could make a hearing in November difficult.

For these reasons,I respectfully request that the Court consider rescheduling the hearing.

Thank you for your consideration,
Amy

On Fri, May 31, 2013, at 01:51 PM, Harvin Fair wrote:

> Attached please find the Notice of Hearing in the above-captioned case that is hereby served upon you.
> The Court has set aside five(5) days for this hearing from Tuesday, November 12, 2013- Monday, November 18, 2013.
> You will not receive a copy of this notice by mail.
> Thank you for your attention to this matter.
> Sincerely,
>
> Harvin Fair
> Law clerk to the Honorable Ralph King Anderson, III
> office phone 803-734-6409

Email had 1 attachment:

- 13 Preservation Society - Hearing Notice.pdf
- 152k (application/pdf)

--
Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078
FAX: (843) 527-0540
amy@scelp.org

--
Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078

FAX: (843) 527-0540
amy@scelp.org

EXHIBIT B

From:	Amy Armstrong
To:	Randy Lowell
Cc:	jl@leathbouchlaw.com; jessie@scelp.org; Bradley Churchar; Philip Lawrence
Subject:	Preservation Society, et al. v. SPA & DHEC
Date:	Tuesday, August 13, 2013 5:00:45 PM
Attachments:	Consent Scheduling Order aea edits.docx

Randy:

I have reviewed your proposed consent scheduling order and have made proposed edits, attached. As far as the protective order is concerned, the Petitioners cannot consent to a blanket protective order and cannot imagine what documents a state agency would have that are entitled to protection. If there are documents you believe are entitled to protection, we ask that you identify the author, the subject matter and the date of those documents, and counsel will review and consider whether we consent to protecting documents on a case-by-case basis.

You indicate in your responses to discovery requests that SPA will make available additional responsive documents at its Charleston office. I would like to set up a time for this review. We are available on August 16, 19-23, 28, 29 and 30th. Let me know which of these dates we can review SPA's production.

Finally, will you consent to a 5 day extension for our reply to your response to our motion to strike?

Thanks,
Amy

--
Amy E. Armstrong
S.C. Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585
Phone: (843) 527-0078
FAX: (843) 527-0540
amy@scelp.org

EXHIBIT C

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, Petitioners, v. South Carolina Department of Health and Environmental Control and South Carolina State Ports Authority, Respondents.	)	Docket No. 13-ALJ-07-0056-CC **CONSENT SCHEDULING ORDER**

The Court, based upon the consent of the parties finds that it is appropriate to set forth the following schedule for the conduct of this matter. Therefore, it is hereby **ORDERED** that:

1. Except as otherwise modified or set forth in this order, discovery may be had by each party in accordance Rules 26-37 of the South Carolina Rules of Civil Procedure (SCRCP). The limitations on discovery set forth in Rule 21, RPALC are hereby modified accordingly. We can't agree to completely eliminate the limitations placed on discovery under the ALC rules, but we are agreeable to expanding the number of depositions to 15 per side.

2. Any party may depose any witness listed by any party or any person identified as having information relevant to the subject matter of the disputes and issues in this matter. The parties and their counsel shall work together and cooperate to schedule depositions in a convenient and reasonable manner and timeframe. See above. Petitioners provided names of all

persons that have factual information related to the issues in this case and that list was significant because of the far-reaching impacts of SPA's operation of Union Pier terminal: however Petitioners do not intend to present all of those individuals as witnesses. Petitioners would agree to the taking of 30(b)(6) depositions of all the Petitioners, in addition to all of Petitioners' expert witnesses.

3. Each party may serve upon any other party written interrogatories pursuant to Rule 21, RPALC and Rule 33, SCRCP, provided, however, that the number of interrogatories posed to a party by another party shall be limited to 75, including subparts and excluding standard interrogatories. We will not agree to expanding interrogatories.

4. Each party may serve upon any other party requests for admission pursuant to Rule 21, RPALC and Rule 36, SCRCP, provided, however, that the number of requests for admission posed to a party by another party shall be limited to 30, including subparts.

5. Petitioners shall designate their expert(s) no later than October 15 ~~August 2~~, **2013**.

6. Respondents shall designate their expert(s) no later than October 31 ~~August 16~~, **2013**.

7. Any motions challenging expert qualifications shall be filed no later than ten (10) days following the deposition of the expert in question.

8. All discovery in this matter shall be served in sufficient time to allow for all responses to discovery to be received and all depositions concluded no later than December 31 ~~November 15~~, 2013.

9. Parties shall file any dispositive motions no later than **December 13, 2013.**

10. The parties shall exchange exhibits intended to be introduced into evidence no later than **January 13, 2014.**

11. The parties shall exchange final witness lists no later than **January 13, 2014.**

12. The parties shall file any objections to exhibits no later than **January 20, 2014.**

13. Any prehearing motions must be filed no later than **January 18, 2014.**

14. Pursuant to the Amended Notice of Hearing issued by the Court on June 12, 2013 in this matter, this case is set for hearing **January 27-31, 2014.**

15. The foregoing discovery schedule and framework is subject to the right of any party to move for a continuance upon good cause shown and to seek a protective or other order on any grounds available under Rule 21 of the Rules of Procedure for the Administrative Law Court and under Rules 27-37, SCRCP.

AND IT IS SO ORDERED.

Ralph K. Anderson, III
Chief Administrative Law Judge

Columbia, South Carolina
June ____, 2013

EXHIBIT D

From:	Harvin Fair
To:	Blan Holman; Randy Lowell
Cc:	Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Tracey Green; Kelly Rainsford
Subject:	RE: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC
Date:	Wednesday, December 18, 2013 2:22:33 PM

At this point in time, Judge Anderson no longer wishes to have a conference regarding the Motion to Vacate.
Judge Anderson is scheduling a status conference for January 9, 2014 at 2:00 pm in Columbia.
The parties need to be prepared to discuss the status of the case and the impact of all pending motions on the trial currently scheduled for the week of January 27, 2014.
Thank you for your cooperation.

Harvin Fair
Law clerk to the Honorable Ralph King Anderson, III
office phone 803-734-6409

From: Blan Holman [mailto:bholman@selcsc.org]
Sent: Wednesday, December 18, 2013 1:43 PM
To: Randy Lowell
Cc: Harvin Fair; Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Tracey Green; Kelly Rainsford
Subject: Re: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC

Ms Fair -

I have a trial Jan 6 and 7, and our response to SPA's forthcoming motion for reconsideration is due Jan 8. (I offered to accelerate our response time if that would help the Court in its scheduling a hearing January 2. Inasmuch as SPA has objected to that proposal, we would stick with the earlier agreed date.) Mr. Lowell has, in his email, asked the Court for an extension of time in which to file a reply. While he did not consult with us, but we have no objection.

I've not had a chance to check with my co counsel, but I could attend a scheduling conference January 9 if that would suit the Court. We would respectfully ask that the Court include a hearing on our motion then, since it involves a narrow dispositive issue of law and has been fully briefed.

Thank you,

Blan

Sent from my iPhone

On Dec 18, 2013, at 12:31, "Randy Lowell" <RLowell@Willoughbyhoefer.com> wrote:

Ms. Fair:

The Ports Authority still has the opportunity for a reply to the Cruise Opponents'

response. As this Court may recall, in the oral argument on the pending motions the Court postponed argument on the Cruise Opponents' motion to quash the subpoena at the request of Cruise Opponents' counsel because they still had time to reply (which they never filed).

Further, Cruise Opponents' counsel previously requested an extension to respond to the motion for reconsideration until January 8. Now they say they may file sooner. The Ports Authority has the right to a reply. Given prior history and opposing counsel's statement that it may file the response sooner, the Ports Authority respectfully request that the reply be due either 10 days after filing of the response or January 15, whichever is later.

Although discovery has closed, with several motions pending and awaiting orders, a motion for reconsideration to be filed tomorrow, a motion to vacate pending, forthcoming motions for summary judgment, and a forthcoming opinion from the South Carolina Supreme Court that may resolve this case, it seems unlikely that this case will be ready (or even appropriate) for a trial on the merits the week of January 27. *See* ALC Order, dated Dec. 2, at 15 n.7 ("Our courts have not resolved the question of whether increased truck and car traffic as well as increased noise and congestion are legally sufficient to establish standing. This Court is not ignoring these allegations but rather is delaying any ruling on these until this question is resolved in this case or by the appellate courts.").

In light of the pending and impending motions and the impending decision of the Supreme Court, it may be appropriate to hold a status conference the week of January 6.

Randy

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.

From: Blan Holman [mailto:bholman@selcsc.org]
Sent: Wednesday, December 18, 2013 10:08 AM
To: Randy Lowell; Harvin Fair; Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; Jefferson Leath; Michael Corley; Philip L. Lawrence; Tracey Green
Cc: Kelly Rainsford
Subject: RE: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC

Ms. Fair -

We would respectfully request that the Court not wait on possible future summary motions from SPA before dealing with our motion, which was already filed. We would be happy to file our response to the motion for reconsideration before January 8.

Thank you,

Blan

Blan Holman
Southern Environmental Law Center
43 Broad St. - Suite 300
Charleston, SC 29401

p. 843 720 5270
www.southernenvironment.org

From: Randy Lowell [RLowell@Willoughbyhoefer.com]
Sent: Wednesday, December 18, 2013 9:57 AM
To: Harvin Fair; Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; Blan Holman; Jefferson Leath; Michael Corley; Philip L. Lawrence; Tracey Green
Cc: Kelly Rainsford
Subject: RE: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC

Unfortunately, that week is scheduled as vacation for me and I will not be available.

However, it appears that such a hearing is premature. A motion for reconsideration of the denial of the motion to dismiss will be filed by the Ports Authority tomorrow, and the Cruise Opponents have requested (and the Court has consented) to an extension on the response date until January 8. Further, the Ports Authority intends on filing at least one motion for summary judgment, one ground of which will be lack of jurisdiction. It would be in the best interests of the Court and the parties to argue all of these motions at one time. Additionally, unless the Court has jurisdiction, then it has no authority to rule on the motion to vacate. Therefore, the motion for reconsideration and the jurisdictional argument in the forthcoming motion for summary judgment must be resolved prior to ruling on the motion to vacate.

Thank you.

Randy

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.

From: Harvin Fair [mailto:hfair@scalc.net]
Sent: Wednesday, December 18, 2013 9:38 AM
To: Amy Armstrong; Chad Johnston; Churdar, Bradley; Denise Crawford; J. Blanding Holman IV (bholman@selcsc.org); Jefferson Leath; Michael Corley; Philip L. Lawrence; Randy Lowell; Tracey Green
Cc: Kelly Rainsford
Subject: Preservation Society of Charlestonet al v. SC HEc and SC SPA, 13-ALJ-07-0056-CC
Importance: High

Judge Anderson would like to have a hearing on the Petitioners' Motion to Vacate. The Court has time available on Thursday, January 2, 2014 at 10:00 am for a hearing. Would the parties be available for a hearing on that date?
Thank you for your attention to this matter.

Harvin Fair
Law clerk to the Honorable Ralph King Anderson, III
office phone 803-734-6409

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court. South Carolina Administrative Law Court Trusted Root Certificate https://cn.arx.com/?options=7&bselected=MTU2

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court. South Carolina Administrative Law Court Trusted Root Certificate https://cn.arx.com/?options=7&bselected=MTU2

EXHIBIT E

From: Amy Armstrong [mailto:aascelp@fastmail.fm]
Sent: Wednesday, May 22, 2013 10:47 PM
To: Chad N. Johnston; amy@scelp.org
Cc: Randy R. Lowell
Subject: RE: Preservation Society of Charleston et al. v. SCSPA et al.; 13-ALC-07-056-CC

Of course, that's fine.

Amy

Sent from my Samsung Epic™ 4G Touch

Chad Johnston <cjohnston@willoughbyhoefer.com> wrote:

Amy,

I am writing to see if you would consent to a thirty (30) extension to your clients' First Set of Interrogatories and Requests for Production in the above-captioned matter. The Ports Authority's responses are currently due on May 26, 2013, and I calculate our new due date would be June 25, 2013. Please advise as to your amenability to our request.

Thanks and best regards,

Chad

Chad N. Johnston, Esquire
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202
Telephone #: (803) 252-3300
Facsimile #: (803) 256-8062
E-mail address: cjohnston@willoughbyhoefer.com

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EXHIBIT F

From: Randy R. Lowell
To: Amy Armstrong
Cc: michael@scelp.org; jl@leathbouchlaw.com; Lawrence, Philip; Chad N. Johnston
Subject: RE: Preservation Society v. Ports Authority, Docket No. 13-ALJ-07-0056-CC
Date: Wednesday, May 08, 2013 8:58:00 AM

So the bottom line is that you need an extension of time. I will treat your response to my inquiry regarding compliance with the deadline as an extension request and grant a 30-day extension for the response and production. That places your responses due on Monday, June 3.

If you have any difficulties or issues meeting another deadline in the future, please contact me before the deadline passes and I'm sure we can work something out.

Randy

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.

From: Amy Armstrong [mailto:amy@scelp.org]
Sent: Tuesday, May 07, 2013 7:27 PM
To: Randy Lowell
Cc: michael@scelp.org; jl@leathbouchlaw.com; Lawrence, Philip; Chad Johnston
Subject: Re: Preservation Society v. Ports Authority, Docket No. 13-ALJ-07-0056-CC

Randy:

We have been gathering and organizing Petitioners' documents for the last several weeks. As you might imagine, there is a significant volume of documents that are responsive to your requests dating back to 2009, and it is taking a significant amount of time to review, organize and bates label everything. For example, we have 1,800 emails from the Preservation Society alone..

To date all of the discovery responses from Charleston Communities for Cruise Control are bates labeled and organized. That is the only Petitioner for which I have production nearly ready to go. I also have a privilege log near completion with approximately 430 email communications. Most of my clients have provided me all of the requested documents, but even though I am awaiting some documents, I still have a great deal of review and organization before they are ready to be produced.

I anticipate at least 2 more weeks before I can have production completed, particularly since I'm at the top of the trial roster in Horry County next week. I had planned on sending all the responses together, but if you would like I am happy to send them for each petitioner separately as we have them completed.

Amy

On Tue, May 7, 2013, at 02:02 PM, Randy Lowell wrote:

Amy:

I wanted to check on the status of the petitioners' discovery production to the Ports Authority. The Ports Authority served requests for production of documents on the petitioners on March 28, and the response deadline was last Thursday, May 2. I have not received a request for an extension nor have I received any documents. Could you please advise as to the status of the response?

Thanks.

Randy

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.
(930 Richland Street)
Post Office Box 8416
Columbia, South Carolina 29202 (29201)
Telephone #: (803) 252-3300
Facsimile #: (803) 256-8062
E-mail address: rlowell@willoughbyhoefer.com

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EXHIBIT G

From:	Randy R. Lowell
To:	Amy Armstrong
Cc:	Jeff Leath; Michael Corley; jessie@scelp.org; Chad N. Johnston
Bcc:	Lawrence, Phillip
Subject:	RE: Preservation Society, et al.discovery
Date:	Wednesday, May 29, 2013 3:17:00 PM

Sure. Not a problem.

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.

-----Original Message-----
From: Amy Armstrong [mailto:amy@scelp.org]
Sent: Wednesday, May 29, 2013 3:06 PM
To: Randy Lowell; Chad Johnston
Cc: Jeff Leath; Michael Corley; jessie@scelp.org
Subject: Preservation Society, et al.discovery

Randy:

Since we last communicated about Petitioners' overdue discovery, I have had a date certain trial set for June 3rd-4th and the supreme court schedule oral arguments in our Kiawah case on June 5th. I also have a s.ct. brief on cert due on June 7th. These three things have occupied nearly all of my time for the past two weeks and I haven't been able to spend the time preparing discovery responses. I don't see how I will be able to meet the June 3 deadline that you graciously offered.

Would you be willing to extend the date until June 14th?

Thanks,
Amy

--
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, Petitioners, v. South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	)	Docket No. 13-ALJ-07-0056-CC **CERTIFICATE OF SERVICE**

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

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Breanna M. Karns

Columbia, South Carolina
This 7th day of January 2014.

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 **PETITIONERS' REPLY ON MOTION TO EXPAND DISCOVERY**

FILED
JAN 16 2014
COURT

The Petitioners submit this reply in support of the Motion to Expand Discovery following the response submitted by Respondent South Carolina State Ports Authority ("SPA") and to respond to issues raised in the status conference and hearing held by this Court on January 9, 2014.

The only reason to deny the Petitioners request to allow a limited number of depositions on the heels of over 10,000 pages of (ongoing) document production would be to disadvantage the Petitioners. Considerations of fairness overwhelmingly support the requested relief. So does the complete absence of prejudice to Respondents, who proposed, recently, a merits hearing date almost six months from now. The Court has now adopted the Respondents' proposed schedule, with Petitioners' consent. Given that schedule, and given the understanding of the parties that discovery would (and did) extend beyond the nominal 90 day period noted after the matter was

assigned to this Court, there is overwhelming good cause to allow limited depositions now that voluminous document production is apparently coming to a close.

The arguments made by Respondent in opposition to the Petitioners' request are set forth below, but a matter brought up by the Court at the recent hearing deserves to be addressed at the outset. The Court indicated concern about the Petitioners' motion because the S.C. State Ports Authority ("SPA") has alleged that this contested case was brought merely for reasons of "delay." This is part and parcel of SPA's continuing campaign to paint every citizen who seeks to ensure that cruise operations in Charleston have minimal environmental and health impacts – as provided for by law – as "Cruise Opponents" irrationally bent on eradicating all cruise ships from Charleston harbor.

One might expect that SPA would wish to conduct depositions of the Petitioners to see if this is really the case, instead of relying on a few fragments uttered by citizens facing an aggressive SPA campaign to construct a new cruise terminal at an accelerated schedule under the guise of "maintenance" permits issued without public notice. SPA's lawyers suggested that DHEC should issue a maintenance permit, based on their representation to DHEC that all work would take place "within the four walls" of Building 322, which is blatantly incorrect. Exhibit A, SCSPA 09650. SPA's request for accelerated treatment followed its having obtained a U.S. Army Corps of Engineers authorization – issued with no public notice – for SPA's proposed $35 million terminal pursuant to a Nationwide Permit (NWP 3) reserved for "maintenance." Exhibit A. That citizens impacted by SPA's proposed cruise terminal would oppose unlawful fast-tracking of SPA's proposal is both unsurprising and completely appropriate. Nevertheless, SPA has attacked the motives and integrity of the citizens it serves repeatedly, in this forum and in federal court. But the developments in federal court are instructive. As this Court knows, the United States District

Court of South Carolina struck down SPA's federal "maintenance" permit last September. The court did so despite SPA's ad hominem attacks, and found that the Corps violated federal law in pretending that SPA's project was limited merely to five piling clusters, rather than considering the actual project that SPA proposes to construct, and operate, a new, 25-acre, 100,000-square foot cruise terminal engineered to home base vessels with up to 3500 passengers aboard.

As has been done repeatedly here, SPA contended that the citizens' federal case had no merit, and was brought merely for delay. However, on summary judgment, the federal court concluded that the citizens had standing and it set aside the authorization that they challenged as unlawful. Subsequently, the Corps' lawyers – the Department of Justice – decided to dismiss the government's appeal, an implicit recognition that the citizens' position, and the federal court's judgment, was substantially justified. Exhibit B. Thus, SPA no longer has a federal permit, and the Corps must decide how it will evaluate SPA's proposal consistent with federal law, a process that could take many months if not a year. The Petitioners bring this to the Court's attention to drive home the point that SPA's attacks on citizens as seeking only delay and lacking any meritorious claims has been proven wrong in the only court to pass upon the merits.

The present motion is not interposed for delay; if granted, it would cause no delay whatsoever, much less any prejudice. Petitioners made the request after learning that SPA, despite earlier having said it intended to conduct depositions and could need until February 20, 2014 to do so, changed tack and announced it deemed discovery to be closed, even as it continued to produce thousands and thousands of pages of documents and fully expected that the hearing date would be set back several months.

I. The Community Groups' Request is Supported by Good Cause

SPA contends no good cause exists because the Citizen Groups should have known that discovery closed on May 20, 2013, citing ALC Rule 21. SPA Resp. 4-7. But as SPA's response recounts, all the parties in this case and the Court understood that the complexities of this matter would result in discovery extending for months into the future. Indeed, as this case was getting underway, SPA claimed in its prehearing statement that it "anticipate[d] discovery may take between six to nine months to complete" and that "an expanded number of depositions are appropriate for this matter." Exhibit C, Prehearing Statement of SPA, 8, and First Amended Prehearing Statement of SPA, 14. SPA also urged the Court to allow "discovery . . . to proceed in accordance with the Rules 26-37, SCRCP," rules which contain no limitations on the number of depositions nor the time-frame within which discovery must be completed. Id.

Under the discovery proposed as needed by SPA, then, discovery would have been open until February 20, 2014, and there would have been no limits on depositions. Moreover, its proposal for up to nine months of discovery and "an expanded number of depositions" was made on May 20, 2013 – the day SPA (now) claims that discovery *closed.*

Like SPA (then), Petitioners understood that discovery would progress, and had progressed, beyond the 90-day time period provided for in South Carolina Administrative Law Court ("SCALC") Rule 21. SPA's communications on May 20, 2013, led Petitioners to believe, and agree, that the discovery period could extend as late as February 20, 2014, which could necessitate a continuance of the hearing – as has transpired. The Petitioners made it clear that they shared SPA's view that discovery would be extensive and potentially extend into 2014. *See* SPA Response, Ex. A (Armstrong email agreeing with SPA view that "that discovery will likely take between 6-9 months."). Petitioners explicitly stated "that more discovery will be needed to adequately prepare this matter for hearing," but SPA made no objection. Exhibit D, Prehearing

Statement of Petitioners, 6.[1] SPA's suggestion that the Petitioners should have moved to expand discovery before they filed their prehearing statement and before SPA and DHEC's Prehearing Statements were filed demonstrates the absurdity of its current position, since Petitioners would not have then known the identity of DHEC and SPA's proposed witnesses, much less had access to the thousands of pages that would form the foundation of depositions.

That discovery would extend past May 20 was thus well understood by both sides of this case. This Court accordingly and generously recognized on May 31 that discovery was ongoing, observing that a hearing date it had proposed in November "provided over four months for discovery" and that it was "hopeful the parties could complete discovery within the time period."[2] Id. Thus, *no one* understood discovery to have closed on May 20, 2013.

It was not until SPA's email on December 18, 2013, that Petitioners learned, that SPA had decided – apparently for tactical reasons – to depart from its earlier representations and had retroactively declared discovery closed. Exhibit E. SPA's reversal came as a surprise, given its earlier representations and actions, not to mention its ongoing and incomplete production of nearly ten thousand pages of documents with no privilege log. In an abundance of caution, the Petitioners quickly filed the present motion to guarantee their right to depositions that all parties had understood until SPA's abrupt change of view just before the holidays. It remains Petitioners position that discovery has not in fact closed, and that the motion was not strictly required. Given

[1] DHEC also acknowledged the necessity of discovery in this case. See Ex. F, DHEC's Prehearing Statement, 2.

[2] Section 1-23-320(E) states that "Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved." ALC Rule 10 guides the procedure that will allow the parties the opportunity to respond and present evidence in compliance with Section 1-23-320(E). Rule 10 requires this Court to "determine the procedure appropriate to the complexity of the issues presented and the types of proof likely to be introduced so that the matter may be fully and fairly presented without unnecessary burden on either the agency or individuals involved in the hearing. The administrative law judge may . . . take such reasonable measures so that the burdens of procedure do not unfairly prevent the presentation of the facts." In a complex case such as this, the Court recognized that expanded discovery is necessary.

the stage of ongoing disclosures and the general recognition that the trial date should be extended, Petitioners decided to file the motion out of an abundance of caution, and given that no prejudice would result, did not anticipate SPA's obstreperous objection.

Since SPA has chosen to object, however, Petitioners will proceed with noticing depositions for February to advance this case toward the June hearing. Granting the motion for good cause shown would avoid the need for yet more briefing – and delay – when SPA seeks to quash depositions that it earlier advised would be needed in this case.

As a final point, and as the Court is aware, to show good cause, Petitioners do not need to show that they will be prejudiced if depositions are not allowed. SCALCR 21(B) establishes "substantial prejudice" as an explicit requirement for movants seeking to expand discovery in Certificate of Need cases. Rule 21(A), by contrast, omits that requirement, and simply allows for expanded discovery upon motion "for good cause" shown.

In deciding whether "good cause" is present, courts seek to ensure that "justice is promoted," and "strive for disposition of cases on their merits." Ricks v. Weinrauch, 293 S.C. 372, 375, 360 S.E.2d 535, 536 (S.C. Ct. App. 1987). Public policy generally supports disposition of cases "on their merits rather than on technicalities." Mictronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App.2001) citing Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct. App.1986).

Good cause has been shown because Petitioners seek limited depositions that all parties understood would take place, in a time frame discussed by the parties and which should cause no

delay. Further, as explained below and contrary to SPA's baseless contention otherwise, the motion is justified because Petitioners will suffer prejudice if depositions are not allowed.[3]

II. The Citizen Groups Will be Severely Prejudiced if the Depositions Earlier Envisioned By The Parties Are Now Disallowed.

While this case may not be the most complex ever undertaken by the ALC, a proposed $35 terminal to home base 1,000 foot long, 100-foot high cruise ships and the thousands of persons and vehicles associated therewith – and the attendant pollution – is far from simple. The Respondents have produced over 10,000 pages of documents over the course of many months, including, most recently, a 2,000 page package sent the day before this Court's status conference on January 9, at which time SPA announced that it still has not completed production. And while it is also true that motions get filed during discovery as a matter of course, this case – as the Court knows all too well – has seen what might charitably be called an overabundance of motions.

These motions were exhaustively briefed over the space of five months. Six of the motions had or have the potential to significantly winnow if not altogether remove, the issues for review in a contested case hearing. For this reason, Petitioners anticipated that moving aggressively with depositions would have been viewed askance by SPA and perhaps the Court as it deliberated on matters that might make depositions unnecessary. At the same time, the cascade of motions also slowed the review and production of documents. Production from SPA and DHEC has come in large waves, with the latest one crashing after SPA had filed motions for summary judgment and after it announced its view that discovery had closed.

Depriving the Citizen Groups of their right to depose key witnesses would undermine

[3] SPA cites a number of federal cases, and a state case of Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 734 S.E.2d 161 (2012), in support for its argument that there is no "good cause" to modify discovery. Each of those cases involved an explicit scheduling order that was violated, and none of the cases involved a circumstance where all of the parties had operated with the understanding that discovery was ongoing until one party reversed course and announced otherwise.

substantive justice by inhibiting their ability to prepare for the contested case hearing. Among other things, depositions are needed to enable the Citizen Groups to understand the significance and full meaning of the voluminous evidence thus far produced and prepare a proper, professional and efficient presentation to this Court.

SPA has contended that the Citizen Groups will not be prejudiced by lack of depositions because witnesses can be called at the contested case hearing itself. But our Supreme Court has recognized that "[d]epositions are widely recognized as one of the 'most powerful and productive' devices used in discovery." In re Anonymous Member of S. Carolina Bar, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (quoting A. Darby Dickerson, The Law and Ethics of Civil Depositions, 57 Md. L. Rev. 273, 277 (1998)) see Burgess v. Costco Wholesale Corp., CIV.A. 4:10-1678-RBH, 2012 WL 315638 (D.S.C. Jan. 31, 2012) ("The deposition of a plaintiff is an essential part of the discovery process.")

This is particularly true on the substantive issue cited by SPA itself at the hearing. Petitioners noted that they would like to depose DHEC to determine the nature of any communication between staff at the Office of Coastal and Resource Management ("OCRM") and the Bureau of Water ("BOW") concerning the propriety of issuing a Water Quality Certification ("WQC") for SPA's project. The Citizen Groups believe that OCRM did not consult with BOW on water quality impacts, and instead was operating on the assumption that a WQC for SPA's project had been obtained via SPA having obtained Nationwide Permit 3 coverage (now-rescinded) from the U.S. Army Corps of Engineers. At the hearing, SPA contended that if evidence of communication and consultation is lacking in the record, then Petitioners would gain nothing by deposing DHEC to confirm that no consultation took place.

But SPA has also argued that Petitioners have the burden to demonstrate that DHEC failed to follow the law in reviewing SPA's project (even while contending, inconsistently, that this Court is free to issue WQCs directly through an extreme form of "de novo review"). It would be unfair, not to mention inefficient, to prevent the Citizen Groups from deposing DHEC to determine what in fact happened in the case, including phone calls, conversations and understandings regarding SPA's project and the required WQC. Petitioners believe that depositions would demonstrate that OCRM did not consult with BOW staff as the law requires, and the only reason the agency departed from its longstanding practice of consultation was due to NWP coverage that is now non-existent. With deposition evidence to that effect, the Citizen Groups would be entitled to summary judgment on that issue, which could, in turn, greatly narrow if not obviate the need for a contested case hearing at all. Notably, the absence of the NWP WQC did not arise until well after the date that SPA retroactively declared that discovery closed; the federal government and SPA waited to dismiss their appeals of the order removing NWP coverage until mid-January, 2014.

Another example of prejudice, should limited depositions be disallowed, is SPA's litigation claim that its plan to spend $35 million of public money on a new cruise terminal will *change nothing*. This counter-intuitive proposition rests on a number of dubious factual claims, made principally by SPA witness and employee Peter Lehman. SPA recently submitted Mr. Lehman's barebones affidavit to support its claim that Citizen Groups lack standing; Lehman claims that SPA's operation, and its impacts, will not change with or without a new terminal. In addition to defying common sense, however, Mr. Lehman's claims appear facially and dangerously at odds with the thousands of documents that SPA has dumped and continues to dump throughout 2013 and into 2014. Mr. Lehman himself touted the "practical *opportunities that we can unlock* with the new facility" to Carnival Cruise Lines, Ex. A, SCSPA 6509 (emphasis added), and he and his

superior, Mr. Newsome, repeatedly have recognized the significant practical, operational, security, and aesthetic shortcomings of SPA's existing operation, which includes tents, e.g., SCSPA 456 (Newsome stating existing "facility is clearly out-of-date"); SCSPA 9327 ("we have an urgent need to improve our passenger terminal facility"). Exhibit A. Whereas the existing terminal is stretched beyond its seams accommodating the Carnival Fantasy, with about 2500 passengers, Mr. Lehman's boss has said that the new terminal is "designed to handle ships up to 3,500 passengers," SCPA 9317. Exhibit A.

Notably, this last admission was contained in a 2,000 page document production served by SPA on January 6, 2014, and received the day before this Court's recent hearing on scheduling matters. It is necessary to allow the Petitioners an opportunity to depose Mr. Lehman and Mr. Newsome to determine the full truth and narrow issues for trial so that the parties and this Court do not have to spend needless hours if not days as witnesses are cross-examined on issues that could have been covered, and narrowed, through depositions. Waiting for trial would further prejudice the Citizen Groups by all but removing the ability to check witness testimony against the voluminous record and produce documents at trial for impeachment.

While SPA may favor that outcome, justice does not. Removing the right to depositions within a time frame that the parties anticipated and that would not delay the proceedings would serve only one purpose: to prejudice the Citizen Groups. For that reason, to the extent required, discovery should be expanded to allow a limited number of depositions.

III. SPA's Filing of Summary Judgment Motions Makes Depositions Essential

SPA contends that the Petitioners seek discovery merely "to make the argument that summary judgment is inappropriate" and this is "purely a tactic to try and defeat summary judgment." (SPA Response, p. 5). As explained above, however, the timing of the Citizen

Groups' request was driven by a common understanding among the parties concerning the months of discovery that would be required before trial; by SPA's ongoing voluminous document productions (and ongoing lack of privilege log) that would have made premature depositions a waste of time and resources; and, finally, by SPA's unilateral claim that discovery had closed back before SPA itself acknowledged that discovery would take up to nine months. Moreover, counsel for Petitioners believed, correctly, that all parties recognized that ongoing production in this case and intensive, voluminous briefing on numerous dispositive motions had made a January trial impractical and improvident, and that the inevitable pushing back of the trial date would accommodate depositions in January and February with no delay.

SPA's announcement, in December, that it would one day be filing summary judgment motions, hardly justifies depriving the Citizen Groups a right to conduct limited depositions. Quite the opposite: it is black letter law that summary judgment should not be considered until the opposing party has a chance to complete discovery of the issues underlying the summary judgment motion. And, because summary judgment motions can be filed at any time, including well before discovery has closed, it is obviously *not* the case that one party's announcement that it will be filing a summary judgment immediately ends discovery for all other parties. Endorsing that rule would ensure unfairness and gamesmanship that are directly at odds with liberal discovery rules intended to promote resolutions on the merits rather than technical decisions uninformed by adequate and fair factual development.

And while the Court noted concern that the motion to expand discovery was filed after SPA filed motions for summary judgment, in fact, the motion to expand discovery was filed on December 23, 2013, several days before SPA's motion for partial summary judgment and summary judgment were filed on December 27, 2013. SPA indicated its intent to file a motion

for summary judgment, but Petitioners had no way of knowing when those motions would be filed, and it would be improper to limit discovery for one party simply because another party files a summary judgment motion that would benefit from further discovery. Furthermore, the instant motion was filed after SPA's counsel communicated to this Court in a December 18, 2013, email that SPA deemed it "unlikely that this case will be ready (or even appropriate) for a trial on the merits the week of January 27."

SPA cites Smith v. Reynolds Transport Co., Civil Action No. 3:11-cv-2728-CMC, 2013 WL 247714 (D.S.C. Jan. 23 2013) in support of it allegation that Petitioners' "delay" in seeking depositions precludes any depositions. But the court in that case looked at whether granting relief would "entail significant prejudice both to the Defendants and the administration of justice." SPA has not asserted that expanding discovery to allow for the taking of depositions would cause any harm or prejudice to it, this Court or any other party to the case. Rather, SPA proposed, and this Court adopted, a schedule of deadlines for this case which culminates in a merits hearing starting on June 13, 2014. The hearing is six (6) months from the date of this reply, which allows more than ample time within which the parties can conduct depositions.

Petitioners are certainly cognizant of this Court's desire to move as promptly as possible to a contested case hearing. However, the undersigned are confident that limited depositions can be conducted quickly and well in advance of a June hearing. In that connection, Petitioners respectfully note that in Kiawah Development Partners, Inc., DHEC filed a motion for continuance based, in part, upon the fact that it needed to conduct four (4) depositions on August 20, 2009, a mere four (4) days before trial. *See* Exhibit H. This Court orally denied DHEC's motion for continuance of the week-long merits hearing concluding that depositions could be conducted on the virtual eve of trial without prejudice. Far from the circumstances in that case where

depositions were conducted the week before the hearing, in this case we have six months until the hearing. And similarly, in this case, no prejudice would result in taking depositions months in advance.

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that this Court grant its motion for expanded discovery and the relief sought therein.

Respectfully submitted,

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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, Charleston Communities for Cruise Control, Petitioners, vs. South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	Docket No. 13-ALC-07-056-CC **CERTIFICATE OF SERVICE**

I hereby certify that on this date I served the Petitioners' Motion for Leave to File Sur-Reply on SPA's Motion to Dismiss for Lack of Standing on Respondents SC State Ports Authority and SCDHEC by placing copies of same in the U.S. Mail addressed to:

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January 16, 2014

FILED
JAN 16 2014
COURT

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 **PETITIONERS' RESPONSE TO SPA'S MOTION FOR PARIAL SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT**

The Petitioners hereby submit this response to the South Carolina State Ports Authority's ("SPA") motion for partial summary judgment. As discussed below, SPA's motion must be denied.

BACKGROUND

Section 401 of the federal Clean Water Act requires any applicant for a federal license or permit to receive a water quality certification ("WQC") from the State:

> Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate. . . . that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this section.

33 U.S.C § 1341. In this case, SPA applied for a Rivers and Harbors Appropriations Act permit, which triggered the Clean Water Act's requirement for a Section 401 Water Quality Certification from DHEC. 33 U.S.C. §403 and §1341; 33 C.F.R. Pt. 330.4(c); 23A S.C. Code Ann. Regs. 61-101(A)(2). SPA has not contested that it needs a WQC.

The Clean Water Act also authorizes the issuance of general permits on a State, regional, or nationwide basis for any category of activities, after notice and opportunity for public hearing. 33 U.S.C.A. § 1344. As with individual permits, Section 401 of the Clean Water Act requires state certifications of the general or nationwide permits. On April 20, 2012, the Corps of Engineers authorized SPA's terminal project pursuant to Nationwide Permit 3 ("NWP #3"), which is available for "maintenance" projects. DHEC's regulations implementing its WQC requirements enable it to issue WQCs for groups or classes of activities. S.C. Code Ann. Reg. 61-101(A)(3). DHEC issued its WQC for NWP #3 on April 23, 2012. *See* Motion, Exhibit F. The Corps' authorization of SPA's project anticipates that NWP 3 would receive state-wide certification in South Carolina, but states that until or unless this occurs, SPA would need an individual WQC. Exhibit A.

I. A 401 Certification is a Requirement Under Federal Law and Neither the Petitioners Nor This Court Have the Ability to Waive That Federal Requirement

It is undisputed that the Clean Water Act mandates that SPA have a water quality certification from DHEC for its project.[1] It is also undisputed that SPA sought a federal permit

[1] This Court's Order denying the motion to vacate recognizes that federal requirement. Order, p. 3.

and received NWP #3 coverage from the Corps,[2] and that a federal District Court vacated the Corps' authorization for SPA's proposed cruise terminal project, concluding that the Corps' NWP 3 authorization for SPA's project was "unlawful and void." C/A No. 2:12-cv-02942-RMG (Sept. 18, 2013).[3] Finally, there is no dispute that the rescission of the Corps' NWP 3 authorization for SPA's project left SPA without required federal approval, and without the WQC that had been issued for the Corps' NWPs in South Carolina. Accordingly, as of today, SPA is without the State approval mandated by Section 401 of the Clean Water Act. Neither the Petitioners nor the Court can "waive" this federal requirement and give SPA a "valid and binding" water quality certification, as requested in the motion. Motion, p. 2.

This Court's Order denying the Community Groups' motion to vacate was based in part on its applying a motion to dismiss standard and thus did resolve underlying facts.[4] The Court recognized that there must be some "water quality certification analysis" and attendant "authorization" to be merged with the critical area permit. Order, p. 5. But this Court concluded

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[2] SPA acknowledges that the 401 Certification in this case arose from DHEC's review and certification of Corps Nationwide Permits ("NWP") and that "for projects which are deemed to fall under a NWP reviewed and issued by the Corps, the 401 Certification required of DHEC under the CWA has also been issued." (Motion, p. 5).

[3] The Corps and SPA recently abandoned their appeal of that order, and the appeal was dismissed. Exhibit B, Order of Dismissal, No. 2:12-cv-02942-RMG (Jan. 6, 2014).

[4] DHEC's regulations cannot be interpreted in a manner that overrides, alters or amends the Clean Water Act's requirement for a water quality certification from the State. **Error! Main Document Only.***Milliken and Company v. South Carolina Department of Labor*, 275 S.C. 264, 269 S.E.2d 763 (1980) (an administrative order which materially alters or adds to the law is void); **Error! Main Document Only.***Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984) (**Error! Main Document Only.**"Although a regulation has the force of law, it must fall when it alters or adds to a statute.") To the extent that this Court's interpretation of DHEC's regulations is inconsistent with the federal statute, Petitioners preserve this argument.

that vacatur of SPA's Critical Area Permit appears to be "premature" because there was "insufficient evidence for this Court to determine the extent of DHEC's review or the procedures that were followed in issuing the permit." Order, pp. 6-7. An examination of the facts shows that DHEC did not purport to consider or issue an individual WQC in issuing SPA's Critical Area Permit.

The public notices issued for the proposed project give no indication that SPA was seeking, or DHEC was reviewing, the project for compliance with the water quality certification regulations at 61-101, et seq. Exhibit C. The public notices specifically state that the DHEC decision will be based on "the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program." *Id.* The agency's "Regulatory Programs Division Decision Document," which purports to be the "Administrative Summary of Review" further establishes that DHEC did not conduct an individual 401 certification or otherwise review the project for compliance with its water quality regulations at 61-101, et seq. Exhibit D. The Decision Document contains a space for identifying commenting agencies. *Id.* One of the agencies on that list is "DHEC – 401." The line next to "DHEC – 401" says "N/A." *Id.* Page 5 of the Decision Document requires the agency to identify the "Applicable Regulations and Policies (list those that apply only)." *Id.* DHEC listed the following as the applicable regulations and policies:

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 . . . [listing all of the CMP policies for Port facilities]

Priority of Uses . . . [listing priorities for state ports]

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.

Exhibit D. Notably, Regulation 61-101, et seq., is not mentioned anywhere in this agency Decision Document, much less mentioned in the section setting forth the regulations and policies that the agency utilized in its review.

Similarly, the actual permit on appeal indicates on its face that it encompasses only a "CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION." Exhibit E. This decision document is in stark contrast to the case cited by SPA, *S.C. Coastal Conservation League v. S.C. DHEC*, No. 07-ALJ-070107-CC (March 9. 2007). In that case, the permit on appeal indicated on its face that it encompassed a "CRITICAL AREA PERMIT/COASTAL ZONE CONSISTENCY/WATER QUALITY CERTIFICATION." Exhibit F. The Coastal Conservation League in that case properly raised a challenge to that 401 water quality certification and DHEC's application of R. 61-101, et seq., because the agency decision

document told the world that DHEC was issuing a water quality certification pursuant to the Clean Water Act, giving the League the opportunity to challenge that decision.[5] Here no such opportunity has been presented since DHEC did not issue, nor purport to issue, an individual 401 certification that would have been appealable, as evidenced by the agency's own documents contained in the DHEC file.[6]

II. The Community Groups' Attack on the Lack of WQC Is Not Barred By a Failure to Exhaust Administrative Remedies.

SPA claims that the Community Groups should not be allowed to point out the lack of a WQC for this project – which is fatal to the Critical Area Permit – because the Groups failed to attack the lack of WQC before DHEC. This is an interesting theory coming from SPA, which holds that the ALC's power to conduct "de novo" review encompasses the authority to consider each and every issue anew, as if DHEC did not exist. If this Court has the "de novo" powers attributed to it by SPA, there can be no exhaustion argument *viz.* the WQC issue in any respect.

Putting aside SPA's "ALC-as-agency-of-one" theory, even under the correct view of the

---

[5] "Each state or interstate agency concerned with certification must establish procedures for public notice and, to the extent it deems appropriate, procedures for public hearings in connection with certification requests." 61C Am. Jur. 2d Pollution Control § 695. Article 1, Section 22 of the South Carolina Constitution states that no person shall be finally bound by a decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard. *Stono River Environmental Protection Ass'n v. SCDHEC*, 305 S.C. 90, 406 S.E.2d 340 (1991) Thus, DHEC is required to give public notice of any water quality certification decision, along with an opportunity to be heard.

[6] That SPA submitted an application form that *can* be issued for a variety of programs – including a number not applicable here, even by SPA's own reasoning – does not mean that DHEC or the public were on notice or understood that DHEC was considering issuance of an individual 401 WQC for SPA's project. DHEC's documents show just the opposite.

law, SPA's failure to exhaust argument is meritless here since the remedy that SPA says the Community Groups should have exhausted did not, in fact, exist back when SPA says it should have been utilized. This is because at the time that DHEC issued its Critical Area Permit, the agency understood – as did everyone else – that SPA's project was authorized pursuant to NWP 3 and had obtained its WQC through that authorization. Had the Community Groups challenged a "potential" or "future" WQC that SPA would attempt to impute to the Critical Area Permit a year later, its challenge would have been deemed unripe. In short, if there is no administrative agency action the Petitioners would have nothing to challenge. Thus there was no administrative remedy available that the Community Groups failed to exhaust, and any attempts to invoke such procedures would have been futile, making exhaustion unnecessary.

III. The Community Groups' Claims are Not Barred by Waiver.

SPA argues that Petitioners cannot challenge the 401 certification because the Community Groups waived and abandoned their rights to challenge that certification by not raising compliance with the 401 Regulations in their request for final review conference, request for contested case hearing or prehearing statement.

The DHEC staff decision to issue certification for NWP #3 was made on April 23, 2012, and Petitioners did not file a request for final review conference of that NWP certification decision. Rather Petitioners intended to challenge – and succeeded in challenging – SPA's NWP 3 coverage granted by the Corps. The WQC certification issued by DHEC for a NWP that SPA does not have is irrelevant.

SPA cites to the case of *Town of Arcadia Lakes, et al. v. DHEC & Roper Pond*, Op. No. 5095 (Ct. App. June 12, 2013), *cert. pending*, for the proposition that Petitioners claims are waived

because they should have challenged the NWP certification as part of this appeal. But the question in that case was whether the project met the conditions to qualify for the WQC certification issued for a specific NWP, not whether that specific NWP or the certification for that NWP was properly issued. Id. Here, a federal court has declared that SPA has no NWP coverage whatsoever.

Waiver is the relinquishment of a *known* right. *Kelly v. U.S. Health & Acc. Ins. Co.*, 84 S.C. 95, 65 S.E. 949 (1909). One of the essential elements of waiver is "knowledge of the pertinent facts, since no one can be presumed to have waived what was not known to him at the time of the alleged waiver." *Gov't Emp. Ins. Co. v. Chavis*, 254 S.C. 507, 523, 176 S.E.2d 131, 139 (1970). Since there was no administrative decision that the Community Groups could have known about, much less could have challenged, there is no waiver.

Notwithstanding this Court's ruling on the motion to vacate, it is now evident that the only reason that DHEC did not notice, consider or issue an individual WQC for SPA's project was its understanding that SPA had such certification via its NWP 3 coverage. A federal court has now declared that coverage void, and SPA has abandoned its appeal of that ruling after the Department of Justice decided not to contest Judge Gergels' ruling. Accordingly, SPA lacks the required WQC for its project, and its individual Critical Area Permit, which must be issued simultaneously with a project's individual WQC, is improper and must be set aside.

SPA will likely re-argue various inconsistent creative paths this Court could take to circumvent this requirement, but there is only one proper path under the circumstances and given the facts. SPA is not entitled to an imputed WQC retroactively created long past the period when DHEC would have issued the legally required public notice. Yet almost certainly that is what SPA

will likely invite the Court to *imagine* DHEC did. This fundamental failure cannot be remedied by post-hoc decision making in this tribunal, since only DHEC has the legal power to accept, notice, evaluate and issue WQCs for the state of South Carolina.

CONCLUSION

WHEREFORE, the Petitioners request that this Court deny Respondent South Carolina State Ports Authority's motion for partial summary judgment.

Respectfully submitted,

Amy E. Armstrong
Michael G. Corley
Jessie A. White
SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585
Office address: 430 Highmarket Street
Georgetown, SC 29440
Telephone (843) 527-0078

J. Blanding Holman IV
Southern Environmental Law Center
43 Broad Street
Charleston, SC 29401
(843) 720-5270

Jefferson Leath
Leath, Bouch & Seekings, LLP
92 Broad Street
Charleston, SC 29401
(843) 937-881

Attorneys for the Petitioners

Georgetown, South Carolina
January 21, 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

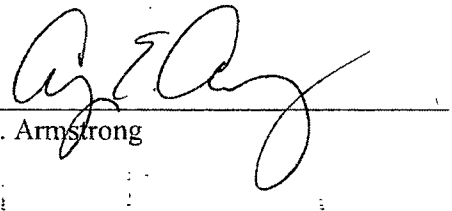
Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, Charleston Communities for Cruise Control, Petitioners, vs. South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	Docket No. 13-ALC-07-056-CC **CERTIFICATE OF SERVICE**

I hereby certify that on this date I served the Petitioners' Response to Respondent South Carolina State Ports Authority's Motion for Partial Summary Judgment on Respondents SC State Ports Authority and SCDHEC by placing copies of same in the U.S. Mail addressed to:

Randolph R. Lowell, Esquire
Chad N. Johnston
Willoughby & Hoefer, PA
Post Office Box 8416
Columbia, SC 29202

Philip L. Lawrence
General Counsel
S.C. State Ports Authority
Post Office Box 22287
Charleston, SC 29413-2287

Bradley Churdar, Esquire
SC DHEC/OCRM
1362 McMillan Avenue, Suite 400
Charleston, SC 29405



Amy E. Armstrong

Georgetown, South Carolina

January 21, 2014

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF

RECEIVED
APR 24 2012
DHEC - OCRM
CHARLESTON OFFICE

April 20, 2012

Regulatory Division

Mr. Derrick L. Bellamy
South Carolina State Ports Authority
Post Office Box 22287
Charleston, South Carolina 29413-2287

Dear Mr. Bellamy:

This letter is in response to a Pre-Construction Notification (PCN) dated January 23, 2012, which was determined to be complete on April 16, 2012. By submittal of the PCN, you requested verification that the proposed project is authorized by a Department of the Army Nationwide Permit.

The PCN contains the following identifying information for this project. The work affecting waters of the United States is part of an overall project known as Building No. 322 Renovation. The project involves impacts to not more than 0.01 acres of waters of the United States associated with the installation of additional pilings underneath an existing pile supported structure. The project is located on the Cooper River at Union Pier Terminal, 32 Washington Street in the City of Charleston, Charleston County, South Carolina. The PCN also includes the following supplemental information:

COPY

a. Drawing sheets 1 and 4 of 4 titled "Project No.: CIF11E006B; File Name: Upcptp1" and dated December 2011, and sheets 2 and 3 of 4 titled "Project No.: CIF11E006B; File Name: Upcptp1" and dated March 2012;

b. The location of the DHEC/OCRM Critical Line is shown on sheet 3 of 4. Based on this information, the proposed pilings are located in navigable waters of the United States.

Based on a review of the PCN, including the supplemental information indicated above, it has been determined that the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, the activity meets the terms and conditions of Department of the Army Nationwide Permit # 3.

As of the date of this letter, the Corps has not received Section 401 Water Quality Certification (WQC) and the Coastal Zone Management Act (CZMA) consistency determination from the State of South Carolina for the NWPs; therefore, **this NWP verification is provisional**. The permittee must either obtain individual WQC and/or CZMA consistency determinations from the State prior to beginning work or the permittee may elect to postpone beginning work until the State has reached a final position on WQC and CZMA for the NWPs.

For this authorization to remain valid, the project must comply with the enclosed Nationwide Permit General Conditions and the following special conditions:

Exhibit A

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APR 24 2012
DHEC - OCRM
CHARLESTON OFFICE

1. That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit). If the permittee fails to obtain the necessary state certifications and/or authorizations prior to beginning work, this will be considered a willful and knowing violation of the Clean Water Act and appropriate enforcement action will be taken.

2. That impacts to aquatic areas do not exceed those specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee;

3. That the construction, use, and maintenance of the authorized activity is in accordance with the information given in the PCN, including the supplemental information listed above, and is subject to any conditions or restrictions imposed by this letter;

4. That the permittee shall submit the attached signed compliance certification to the Corps within 30 days following completion of the authorized work.

5. That the permittee agrees to provide all contractors associated with construction of the authorized activity a copy of the permit and drawings. A copy of the permit will be available at the construction site at all times.

6. That the permittee shall submit a signed compliance certification to the Corps within 60 days following completion of the authorized work and any required mitigation. The certification will include:

a) A copy of this permit;
b) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
c) A statement that any required mitigation was completed in accordance with the permit conditions;
d) The signature of the permittee certifying the completion of the work and mitigation.

7. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

8. It is recognized that this structure is to be constructed on/or adjacent to an area subject to a prism and/or disposal easement held by the United States in perpetuity in conjunction with a Congressionally authorized project for the maintenance and improvement of Charleston Harbor. This permit does not convey any property rights either in real estate or material or any exclusive use privileges; nor does it relinquish any right the United States has for the use of its easement or the maintenance and future widening or deepening of Charleston Harbor pursuant to its easement rights.

RECEIVED
APR 24 2012
DHEC - OCRM
CHARLESTON OFFICE

9. It is understood and agreed that if the District Commander determines that the structure shall in any way in the future conflict with the improvement, operation, maintenance and widening or deepening of Charleston Harbor, the owners themselves, their heirs, successors and assigns will remove said structure within 45 days from the date that written notice is given by the District Commander, and there shall be no entitlement to compensation from the United States for damage or injury.

10. Conveyance of this permit applies only to the structure authorized and does not authorize the construction of any permanent structure or any structure suitable for habitation or any utility leading either to permanent structures suitable for habitation or to permanent structures within the bounds of areas on which the Corps of Engineers enjoys easement rights.

11. That the permittee agrees that no permanent structures, beyond those authorized by this document, will be placed on the prism easement or on any adjacent disposal easement without written approval of the District Commander.

12. That the Secretary of the Army, representing the United States of America, hereby consents to the herein authorized facilities or structures to be located on or across easement lands vested in the United States of America for the construction and operation of Charleston Harbor. The permittee shall not engage in any act which may interfere with or abridge the easement interests of the United States, except those specifically authorized herein.

This verification is valid until the Nationwide Permits (NWP) expire or for two (2) years, whichever comes first. The time specified for this authorization will remain valid if the Nationwide Permit(s) is reissued without modification, or the activity complies with any subsequent modification; however, the provisions of 33 CFR 330.6(b) will apply if the Nationwide Permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the original terms and conditions. In general, these provisions provide that if the work authorized by this letter has commenced in accordance with the requisite terms and conditions or you, acting in reliance of this Nationwide Permit, have entered into a contract to have the work performed prior to such date, this authorization will remain in effect if the work can be completed within twelve months of the date of the Nationwide Permit's expiration, modification or revocation unless discretionary authority has been exercised in accordance with 33 CFR 330.4(c) or (d).

Your cooperation in the protection and preservation of our navigable waters and natural resources is appreciated. In all future correspondence concerning this matter, please refer to our file number SAC 2003-13026. A copy of this letter is being forwarded to certain State and/or Federal agencies for their information. If you have any questions concerning this matter, please contact Mr. Nat Ball at 843-329-8044, or toll free at 1-866-329-8187.

Sincerely,

Edward P. Chamberlayne, P.E.
Lieutenant Colonel, U.S. Army
Commander and District Engineer

Enclosures:
Permit Drawings
Nationwide Permit General Conditions
Nationwide Permit Regional Conditions
Compliance Certification Form

Copy Furnished:

South Carolina Department of Health
and Environmental Control
Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

FILED: January 6, 2014

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-2280 (L)
(2:12-cv-02942-RMG)

PRESERVATION SOCIETY OF CHARLESTON; SOUTH CAROLINA COASTAL CONSERVATION LEAGUE

Plaintiffs - Appellees

v.

UNITED STATES ARMY CORPS OF ENGINEERS; JOHN M. MCHUGH, In his Official Capacity as the Secretary of the U.S. Army; THOMAS P. BOSTICK, In his Official Capacity as Chief of Engineers

Defendants

and

SOUTH CAROLINA PORTS AUTHORITY

Intervenor/Defendant - Appellant

No. 13-2401
(2:12-cv-02942-RMG)

PRESERVATION SOCIETY OF CHARLESTON; SOUTH CAROLINA COASTAL CONSERVATION LEAGUE

Plaintiffs - Appellees

Exhibit B

v.

UNITED STATES ARMY CORPS OF ENGINEERS; JOHN M. MCHUGH, In his Official Capacity as the Secretary of the U.S. Army; THOMAS P. BOSTICK, In his Official Capacity as Chief of Engineers

Defendants - Appellants

and

SOUTH CAROLINA PORTS AUTHORITY

Intervenor/Defendant

ORDER

Upon consideration of the stipulated motion to voluntarily dismiss, the court dismisses this appeal, upon such terms as have been agreed to by the parties, pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
PERMIT APPLICATION PUBLIC NOTICE

March 9, 2012

Permit Number: OCRM-12-054-B
Permit ID: 75114

The SCDHEC Office of Ocean and Coastal Resource Management has received an application for a permit for the alteration of a critical area. This application was submitted pursuant to the Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The application, in brief, is described as follows:

APPLICANT: South Carolina State Ports Authority
C/O Derrick Bellamy
PO Box 22287
Charleston, SC 29413

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

WORK: 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. The work as described is to provide a passenger facility satisfactory of the continued handling of cruise vessels at the Union Pier Terminal. The purpose of the pilings for the elevators and escalators is to provide ADA compliant access to the mezzanine level for boarding passengers.

This public notice is being distributed to all known interested persons and agencies to assist in developing facts on which a decision by OCRM can be based. Comments concerning the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

The decision to issue or deny a permit will be based on the individual merits of the application, the policies specified in the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program. Interested parties who wish to be notified of final permit action must notify OCRM in writing of this request.

To assure review by OCRM, comments regarding this application must be received by OCRM on or before April 8, 2012. For further information please contact the project manager for this activity, Steve Brooks at 843-953-0235.

PLEASE REPLY TO:

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

Please refer to P/N# OCRM-12-054-B

Tess Turnbull, Wetland Section Coordinator

M

Exhibit C

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
PERMIT APPLICATION PUBLIC NOTICE

August 3, 2012 (Revision)

Permit Number: OCRM-12-054-B
Permit ID: 75114

The SCDHEC Office of Ocean and Coastal Resource Management has received an application for a permit for the alteration of a critical area. This application was submitted pursuant to the Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The application, in brief, is described as follows:

APPLICANT: South Carolina State Ports Authority
C/O Derrick Bellamy
PO Box 22287
Charleston, SC 29413

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

WORK: The work as proposed and shown on the attached plans consists of making improvements to an existing waterfront building. Previously, this project was advertised as a proposal to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. This project is being revised to include proposed modifications, in accordance with the attached plans dated July 24, 2012, that are associated with this project. Specifically, these modifications consist of additional structural changes that are 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. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322. **Please Note:** This notice will only address the improvements to building 322 and the construction of two covered staging areas.

This public notice is being distributed to all known interested persons and agencies to assist in developing facts on which a decision by OCRM can be based. Comments concerning the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

The decision to issue or deny a permit will be based on the individual merits of the application, the policies specified in the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program. Interested parties who wish to be notified of final permit action must notify OCRM in writing of this request.

To assure review by OCRM, comments regarding this application must be received by OCRM on or before September 2, 2012. For further information please contact the project manager for this activity, Steve Brooks at 843-953-0235.

PLEASE REPLY TO:

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

Please refer to P/N# OCRM-12-054-B BW

Steven Brooks

Steven Brooks, Wetland Section Project Manager

M

Revised

Regulatory Programs Division Decision Document
Impact Assessment for UTILITIES
Office of Ocean and Coastal Resource Management - SCDHEC

ADMINISTRATIVE SUMMARY OF REVIEW

Commenting Agencies

DHEC – 401: N/A
SCDNR: NOBJ
SPA NOBJ
SCDAH
SCDAA
Others: See Attached Lists

Adjoining Property Owners

See 1 of 1

Agent or Contact

Business Ph:
Fax Number:

*NOTE: See list of Interested Persons on Reverse
APO's Notified...Initial & Date: VH 3-9-12.
Local Government Notified...Initial & Date: VH 3-9-12
Revised APO's VH 3-23-12
Govt VH 3-23-12

APPLICATION REQUIREMENTS

Please Circle When Complete YES		Letters to Applicant	Clock Stop/Start Dates (PM)
Administrative Fee received	N/A	1.	
Aff. Of Ownership received	3-2-12	2.	
Certified Deed, plat or lease	3-2-12	3.	
State Newspaper ad received		4.	
Date Published		5.	
Which Paper		6.	
County News ad received	10/18/12	7.	
Date Published	3/12/12	8.	
Which Paper	P&C	9.	

LETTER OF OBJECTIONS SUMMARY

Objector(s) name and address that must be notified by certified mail and copy of the decision.
(has to specifically request a copy of the decision in the letter)

See next page 1/3 C1, C2, C3

Steven Brooks 12/18/12

Objector(s) name and addresses that must be notified by issue memo with no copy of the decision
(does not specifically request a copy of the decision in the letter)

I1 through I14

See next pages

Steven Brooks 12/18/12

Exhibit D

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

TECHNICAL SUMMARY OF REVIEW

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

Permit:
Permit with Conditions: X
Deny:

I. Background Information:

Database ID# 75114

Permit Number: OCRM-12-054-B

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

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

County: Charleston Water Body: Charleston Harbor/Cooper River

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

II. Project Description and Stated Purpose:

Description:

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

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

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

Federal Agencies: **None**

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

Local Agencies: **None**

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

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

IV. **Environmental Assessment:**

A. Describe the coastal resources (i.e., vegetation, habitat, etc.), which will be impacted:

Open water areas beneath an existing wharf and existing building over the water.

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

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

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

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

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

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

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

V. **Policy Assessment:**

A. Regulatory History:

1) Previous OCRM authorizations (land disturbance, Federal cert.)

SC STATE PORTS AUTHORITY	**90-4T-172-P**
FLEET LANDING RESTAURANT, LLC	**OCRM-04-339-R**
SC STATE PORTS AUTHORITY	**99-1P-261-P-C**

2) Previous Enforcements (is project in compliance w/all previous permits, etc.): **None**

3) Master Plans (dock, archaeological, wetland): **No**

4) Date of O & M: **N/A**

5) Navigable tributary crossings proposed: **None**

6) Property frontage at highground and water, offsets these lines: **N/A. The existing commercial pier is a SC State Port Authority pier. It is also a permitted/grandfathered structure with permitted/grandfathered activities (including cruise ship operations), that will be modified within the existing pier footprint.**

7) Community or public marina: **Commercial Pier**

8) Water quality sampling/monitoring program required: **No**.

9) Stormwater permit submitted or approved for highground dev: **No. Facility is an existing commercial pier with buildings that have been approved in the past.**

10) Bathroom numbers: **N/A. Facility is an existing commercial pier.**

11) Dock masters office location and number: **No.**

12) SAMP restrictions: **N/A**

13) NERRS review area: **N/A**

14) Deed restrictions: **N/A**

15) Wetland delineation approved by ACOE: **N/A**

16) Development plan and parking approved by local government: **N/A**

17) Valid critical area line certified: **Yes**

18) Marsh ownership claims: **None**

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

1) CZMA:

Approval or denial of permits; appeal to council	**48-39-150**
Legislative declaration of state policy	**48-39-30**
Legislative declaration of findings	**48-39-20**

2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards):

Mitigation Criteria	**R.30-4(G)(2)**
General Considerations	**R.30-11(B)**
Further Guidelines	**R.30-11(C)**

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

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

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

3) CZ Policies (Management Program Document):

Policies for Port Facilities

1) **New port development should take place in existing industrialized areas where sufficient support facilities are available including public utilities, rail and highway transportation access, and navigational channels which are already maintained, unless there are no feasible alternatives or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

2) **Port development should occur in areas that have adequate high ground (non-wetland) acreage for proposed current development and near-term expansion plans, and related facilities. Port development should be located in areas where the filling of productive salt, brackish or freshwater wetlands will not be required or can be minimized. If site preparation does require filling in these wetlands, it must be clearly demonstrated that no other feasible alternatives exist or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

3) **To the extent feasible, port development and expansion should locate on existing channels so that the need for initial and maintenance dredging can be minimized.**

4) **New port development that will require maintenance dredging must identify adequate upland (non-wetland) spoil areas, ocean disposal, or other environmentally-acceptable alternative disposal techniques to meet the long-term demands for spoil disposal.**

5) **Port areas must provide for the handling of dangerous and volatile cargoes and materials in relatively isolated or restricted areas, so that in the event of accident, measures can be implemented to contain any spills or other contamination with minimal environmental damage and limited threat to the health, safety and welfare of the public.**

6) **Wharves, piers, mooring dolphins and other port-related structures should not restrict or block navigation or alter the natural pattern of water currents.**

7) **Proposed port development or expansion and operation must meet existing air and water quality standards, as regulated by the Federal Environmental Protection Agency and the South Carolina Department of Health and Environmental Control.**

8) **Port facilities developed by the State Ports Authority (SPA), as well as by private developers, must be sited, constructed and operated in a manner that is consistent with local and State development**

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

9) **Potential negative impacts on navigation which might restrict port and harbor activities in the area will be considered in evaluation of permits for marinas, docks and piers, transportation facilities (especially bridges), cables and pipelines and other relevant activities.**

10) **Port development or expansion plans must include provision for necessary breakwater or other wake protection measures along major navigable ship channels where appropriate in order to reduce erosion damage. These structures must be in compliance with other applicable policies and Rules and Regulations.**

11) **All bulkheads associated with a port area must meet the policies as stated in the Erosion Control Program [Chapter IV(C)].**

12) **All dredging and dredge spoil disposal policies, as stated in VIII (A) and (B) of the Resource Policies will be applied to port activities.**

13) **All piers and dockage must meet the policy requirements as stated in VI (C) of the Resource Policies.**

14) **Transportation projects associated with port development must follow the transportation policies stated in II (B)-(E) of the Resource Policies.**

15) **The policies for manufacturing will apply to port development and related industrial development (III (D) of the Resource Policies).**

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

Priority of Uses

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

1) Uses which require water access or uses for which the water orientation is the central purpose of the activity, such as maritime shipping, fishing, marine industry, and recreational boating. Included in the uses of highest priority for state ports are provisions to assure safety within the ports. These water-dependent uses should have no prudent or feasible alternative;
2) Water-related uses which do not reduce or degrade the natural value or resources within the port;
3) Nonwater-dependent or nonwater-re1ated uses which retain future flexibility of the port for water-dependent needs.

Designated Sites

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

C. Does the project contravene any coastal zone regulations?

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

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

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

See attached Special Conditions

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

N/A

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

(Name) **(Date)**

VIII: Reviewed By:

1. Project Manager: Steven Brooks 12/17/12

(Signature) **(Date)**

2. Section Manager 12/17/12

(Signature) **(Date)**

IX. Notes:

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

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

LONGTERM CUMULATIVE AFFECTS

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

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

NEW LOCATION POTENTIAL IMPACT A DESIGNATED HISTORIC AREA

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

CRUISE SHIP CALLS AFTER SHIFT TO NEW TERMINAL

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

AIR EMISSIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

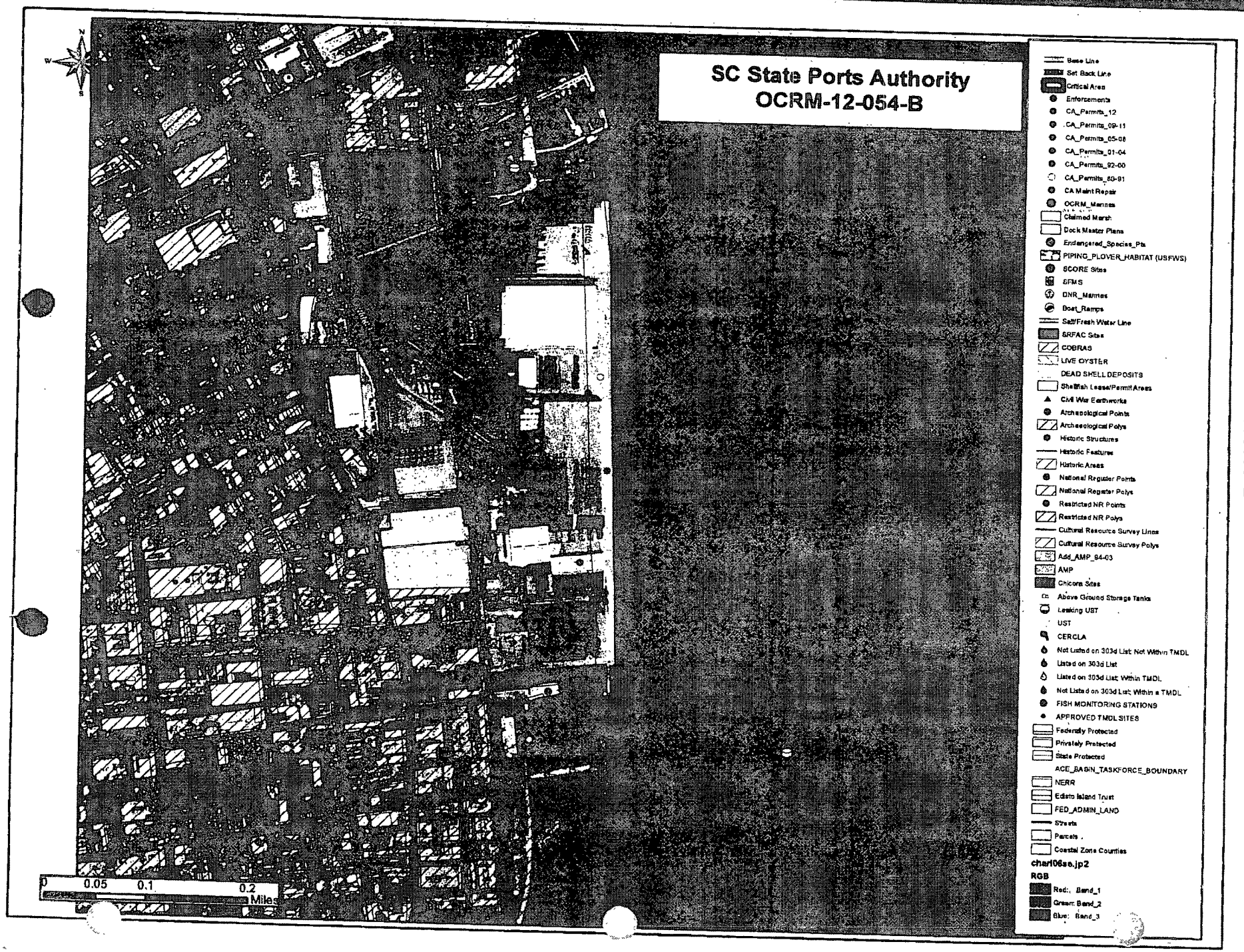
6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must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

System equipment.

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

X. **Attachments Required:**

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


SC State Ports Authority
OCRM-12-054-B
N
W
S
0 0.05 0.1 0.2
Miles
Base Line
Set Back Line
Critical Area
Enforcements
CA_Permits_12
CA_Permits_09-11
CA_Permits_05-08
CA_Permits_01-04
CA_Permits_92-00
CA_Permits_80-91
CA Maint Repair
OCRM_Marshes
Claimed Marsh
Dock Master Plans
Endangered_Species_Pts
PIPING_PLOVER_HABITAT (USFWS)
SCORE Sites
SFMS
DNR_Marshes
Boat_Ramps
Salt/Fresh Water Line
SRFAC Sites
COBRAS
LIVE OYSTER
DEAD SHELL DEPOSITS
Shellfish Lease/Permit Areas
Civil War Earthworks
Archaeological Points
Archaeological Polys
Historic Structures
Historic Features
Historic Areas
National Register Points
National Register Polys
Restricted NR Points
Restricted NR Polys
Cultural Resource Survey Lines
Cultural Resource Survey Polys
Add_AMP_94-03
AMP
Chicora Sites
Above Ground Storage Tanks
Leaking UST
UST
CERCLA
Not Listed on 303d List; Not Within TMDL
Listed on 303d List
Listed on 303d List; Within TMDL
Not Listed on 303d List; Within a TMDL
FISH MONITORING STATIONS
APPROVED TMDL SITES
Federally Protected
Privately Protected
State Protected
ACE_BASIN_TASKFORCE_BOUNDARY
NERR
Edisto Island Trust
FED_ADMIN_LAND
Streets
Parcels
Coastal Zone Counties
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Red: Band_1
Green: Band_2
Blue: Band_3

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

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

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

SEE SPECIAL CONDITIONS(S)

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

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

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

SPECIAL CONDITIONS

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

Exhibit E

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

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

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

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

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

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

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

SEE SPECIAL CONDITIONS!

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

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

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

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

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

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

SEE SPECIAL CONDITIONS(S)

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

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

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

1/2/13
(DATE)

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

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

12/18/12
(DATE)

RECEIVED
JAN 03 2013
DHEC-OCRM
CHARLESTON OFFICE

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

CRITICAL AREA PERMIT/COASTAL ZONE CONSISTENCY/WATER QUALITY CERTIFICATION

Exhibit F

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

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

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

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

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

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

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

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

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

CRITICAL AREA PERMIT SPECIAL CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COASTAL ZONE CONSISTENCY CONDITIONS

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

WATER QUALITY SPECIAL CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. The SCSPA will maintain a log detailing manatee sightings, collisions or injuries should they occur during construction. Following construction completion a report summarizing incidents and sightings must be submitted to Endangered Species Biologist, US Fish and Wildlife Service, 176 Croghan Spur Road, Suite 200, Charleston, SC, 29407.

28. The SCSPA must obtain the necessary permits, including dig permits, from the U.S. Navy prior to construction and will comply with the notification provisions of those permits and other requirements.

29. The SCSPA will require ships at their berths to appropriately manage their crew and cargo to ensure that non-indigenous species will not be released into the environment at the proposed project site, as required by the SC State Ports Authority's Tariff Rule 34-165.

30. Should the refinement of the TMDL for the Cooper River find the dredging and backfilling impacts and stormwater impacts impacts to be inconsistent with State water quality standards when considered with the other point and nonpoint sources, the SCSPA and SCDHEC will enter into an agreed-upon MOA after consulting/coordinating with appropriate resource agencies and conservation groups, to outline the goals and objectives and to mitigate appropriately for its impact.

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

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

Permit Number: **2003-1T-016-P-C**

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

_____ _____

(PERMITTEE(S)) (DATE)

South Carolina State Ports Authority

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

_____ _____

(MANAGER, CRITICAL AREA PERMITTING) (DATE)

Curtis M. Joyner
Or his Designee
Other Authorized State Official

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Socicty of Charleston, 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 **PETITIONERS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT FOR LACK OF STANDING**

INTRODUCTION

The Motion for Summary Judgment filed by the S.C. State Ports Authority ("SPA") is long on pages (70), footnotes (63), and insults (*passim*), but lacks the substance needed to disturb this Court's conclusion that the Community Group Petitioners have adequately alleged standing. SPA seeks to reargue the applicable legal tests in its latest motion – even after this Court denied its motion for reconsideration on largely similar grounds – but the only real question is whether the Community Groups' allegations are supported by sufficient evidence to survive summary judgment.

The answer to that question is yes.

At the heart of SPA's factual attack on standing is a central factual premise: that because SPA has conducted cruise operations in the past, there can be no standing to challenge a permit for a new terminal for home basing cruise ships in the future. As

explained below, that factual position is, at a minimum, strongly contested. The record shows that SPA seeks to build a new terminal because it cannot continue operating at its existing terminal, and a new terminal would allow it not only to continue operations, but to home base larger vessels and conduct a larger cruise operation with greater impacts on the environment, human health, and historic resources. Because the Community Groups have adequately alleged and supported a reasonable belief that the proposed terminal would allow SPA to both continue and expand its injurious cruise operation, SPA's motion for summary judgment on that basis must be denied.

SPA's central legal position harkens back to its motion to dismiss. SPA contends that because the Community Groups' claimed injuries – severe traffic that impedes access to homes, air and water pollution that impact the environment and public health, and a large industrial cruise operation that erodes the integrity of a National Historic Landmark District – do not emanate *directly* from the South Carolina Department of Health and Environmental Control's ("DHEC") permit decision (i.e., from the paper itself), citizens have no standing to contest the decision's legality. But the notion that citizens can challenge a permit only if the document itself causes them injury has no basis in law, is contrary to this Court's rejection of SPA's motion to dismiss, and if adopted would remove the ability of any citizen to challenge any permit whatsoever. While that may be SPA's goal, it is not the law, and SPA's motion based on it must be denied.

THE STANDING ANALYSIS

As this Court has recognized, in South Carolina "there are three ways" in which a party can acquire standing: "(1) by statute; (2) through what is called 'constitutional standing'; and (3) under the public importance exception." December 2 Order

("Order") at 3 (*quoting 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)). "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." Order at 11 (citing *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317,741 S.E.2d 515, 518 (2013)).

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), -60(G) (Supp. 2012). This remedy is available for all DHEC decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions. S.C. Code Ann. § 44-1-60(A), -60(G) (Supp. 2012). As the Court has noted, this statute is "clear that if DHEC had denied the Ports Authority's application for a permit, the Ports Authority would have been able to establish statutory standing simply by alleging it was the applicant and it was challenging DHEC's decision to deny the Ports Authority's application." Order at 11 (citing *Freemantle v. Preston*, 398 S.C. 186, 195, 728 S.E.2d 40, 45 (2012)). "Similarly, in the case at hand, Petitioners should be able to establish statutory standing by alleging they are affected persons and are challenging DHEC's decision to grant the permit to the Ports Authority." Order at 11.

The Court has concluded that if Petitioners sufficiently show "Article III" standing – that is, "injury-in-fact, with a causal connection between the injury and the conduct complained of, which is redressable by a decision of this Court" – then they qualify as "affected persons" under the statute. Order at 12. The Community Groups agree, but would

respectfully submit that the statutory term "affected person" turns more on the injury element than causation and redressability, since the statute uses the term "affected person" to delineate the universe of citizens entitled to notice of a DHEC decision and to invoke administrative review of it. By proscribing in detail the administrative procedure for those "affected" by a DHEC decision, the statute presumes that the provided procedure could provide redress. That said, the Community Groups satisfy three elements of Article III standing, and also public importance standing.

STANDARD OF REVIEW

As provided in Rule 56(c), summary judgment is proper only 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 the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "[T]he evidence must be construed in the light most favorable to [the] respondent," *Montgomery v. CSX Transp., Inc.*, 376 S.C. 37, 53,656 S.E.2d 20, 28 (2008), and "all reasonable inferences" must be drawn in the respondent's favor, *Ray v. Austin*, 388 S.C. 605, 611; 698 S.E.2d 208, 211 (2010) (quoting *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006)). The movant "has the burden of clearly establishing" the lack of any triable issue of fact. *Brandt v. Gooding*, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006).

FACTUAL BACKGROUND

SPA's "Urgent" Need For Terminal Upgrades

In 2009, SPA identified the "need to improve and enhance the cruise terminal, which opened in 1973" and began investigating upgrades needed "to better handle ships,

passengers and safety requirements." SCPA 004752 (relevant discovery excerpts attached in sequential order as Exhibit A, and hereafter referenced by Bates Number only). According to SPA, the existing terminal, Building 325, is not only "desolate and undistinguished," SCPA 009738, and "out-of-date and unattractive" SCPA 009740, but "urgently needs upgrades to properly serve passengers and ships and to conform to post-9/11 security standards," SCPA 009711. Even with this limited facility, SPA has greatly expanded the level of cruise operations beyond anything that occurred previously. SCPA 003459. This growth is due to the advent of year-round home basing of cruise ships, starting with the Carnival *Fantasy* in 2010.

The need for "immediate upgrades," SCPA 009363, arose because the existing "facility must be updated to comply with the Maritime Transportation Security Act of 2002 (post-9/11 requirements)." SCPA 009362. SPA's materials show that the Customs and Border Protection's ("CBP") Cruise Terminal Design Standards ("CTDS") require about 28,600 square feet of space in any terminal servicing a 3,500 passenger vessel. SCPA 007504. The existing terminal at Building 325 has far less space than would be required overall for a compliant terminal. The structure itself is only 30,216 square feet. SCPA 007484. A cruise terminal must include many functions in addition to those required to fulfill CBP requirements, such as passenger lounges, concessions, and restroom facilities. *See* SCPA 003454, 003459 (citing CBP space requirements for terminal as "existing issues and challenges" and noting current terminal is "non-conforming to current industry standards"); SCPA 009321(SPA: Building 325 "urgently needs upgrades to properly serve passengers and ships and to conform to post-9/11 security standards").

In addition to creating noncompliance with security requirements, the existing terminal's small size, combined with its being "antiquated," has made home basing of the Carnival *Fantasy* "exceptionally cumbersome" in SPA's eyes. SCPA 006793. SPA is currently forced to use tents for its home basing operation of the 2,500 passenger *Fantasy*. SCPA 007124 (mentioning "luggage collection tent"). *See* SCPA 009327 (SPA: "we've made it very clear that we have an urgent need to improve our passenger terminal facilities").

Accordingly, SPA proposed to convert an old warehouse, Building 322, into a new cruise terminal. Building 322 is approximately 108,000 square feet, SCPA 007496, or more than three times larger than Building 325. SPA has been forceful in stating that it "need[s] the new terminal for our cruise ship business." SCPA 004294. Its lead contractor, CH2M Hill, relayed SPA's belief that the larger terminal "design will provide relief to the current security operational staffing requirements." SCPA 007257. SPA has stated that making "necessary improvements on our existing terminal" would be a "much less desirable option" than constructing a new terminal. SCPA 009328. Among other things, adding capacity there to meet operational and security requirements would require impacts to waters of the U.S. and South Carolina. DHEC-SCPA 000170-1.

SPA views its Building 322 plan as essential to maintaining its existing business and developing that business further. The 2,500-passenger Carnival *Fantasy* is the first cruise ship to conduct year-round home basing in Charleston, after Carnival determined that the region was "under-penetrated" by cruise marketing. SCPA 009051. SPA believes that constructing the new terminal is important to maintaining its business with Carnival, and in connection with seeking a new contract for *Fantasy* home basing, its

executives consistently contacted Carnival to convince it that SPA is serious about "moving forward with our new terminal." SCPA 003482. SPA's Peter Lehman has touted the increased efficiencies of a new terminal to various cruise executives, stating that SPA has "been very very mindful of the practical operational opportunities we can unlock with the new facility," and claiming "the new terminal will transform the cruise experience for passengers out of Charleston." SCPA 006477. SPA believes that Charleston is a "very attractive destination for cruise ships from all over the world," and to "meet this demand, we need to modernize and update" its cruise facility "to meet security requirements and cruise ship customer expectations." SCPA 009363.

SPA's proposed terminal has been designed to home base "one 3,500-passenger ship visiting twice a week." SCPA 007256. According to SPA's Union Pier Redevelopment Plan ("UPRDP"), the terminal would have capacity to handle vessels with 3,500 passengers, up to 1,100 feet length overall ("LOA"), and with a 160-foot beam. SCPA 007493. These specifications are substantially larger than those of the Carnival *Fantasy* or even of Carnival's *Conquest* class vessels, with the length and beam figures fitting the Norwegian *Epic*, which has 4,100 passengers.[1] The *Conquest* class vessels hold around 3,000 passengers, or almost 20% more than the *Fantasy*, and the terminal's mooring and bollard analysis assumes this larger vessel size based on information provided by Carnival Cruise Lines. SCPA 007330-1. *See* SCPA 007271 (stating that existing bollards, fender system and ships water services will need to be removed and replaced "to hold the larger vessels common in today's cruising industry").

[1] *Compare* http://en.wikipedia.org/wiki/Conquest-class_cruise_ship (*Conquest* statistics) *with* http://en.wikipedia.org/wiki/Norwegian_Epic.

SPA has repeatedly stated that the planned ship capacity for the terminal is about 3,500 passengers. SCPA 009317 (SPA President Jim Newsome – SPA planning a terminal "designed to handle ships up to 3,500 passengers"); SCPA 008460 (SPA communication to Carnival: new terminal designed for 3,430 passenger-ship capacity). This expanded capacity, according to SPA, would "remake" Charleston's cruise operation, SCPA 008462, allow SPA to build "an appropriately scaled cruise business," SCPA 009329, and "better accommodate the *growing* demands of the cruise industry," SCPA 007254 (emphasis added). SPA has stressed "the tremendous opportunity this project brings to our cruise clients." SCPA 007021. When asked whether its proposed investments would lead to increased cruise activity, SPA responded that while it wouldn't disclose "sensitive commercial details," "you can be sure we wouldn't pursue the business if it didn't make economic sense." SCPA 009754.

SPA's Application

In applying for a Critical Area Permit from DHEC's Office of Coastal and Resource Management ("OCRM"), SPA's attorneys wrote that the project should be considered mere maintenance since "[a]ll work performed to renovate Building 322 is interior within the existing four walls and dimensions of the building." SCPA 009650 (July 17, 2012 Letter from M. Shahid to S. Brooks). Even a cursory review of SPA's plans and studies shows this statement to state permitting officials to be materially false and misleading. Extensive renovation work is proposed for the exterior of Building 322, including a new mezzanine added to the East façade, SCPA 003640, a new mechanical support structure, SCPA 003632-3, and a new ship stores building, SCPA 003631. Indeed, the statement appears to have been part of a scheme to mislead regulators into

thinking the project was "maintenance" when SPA and its agents understood that it was anything but. Among the "assumptions and directives" that SPA gave to its main contractor, CH2M Hill, was the plan to have the U.S. Army Corps regulators *not* consider cruise terminal development a "change of use" even though "*[s]tate code will require upgrades associated with a 'change of use'.*" SCPA 007257 (emphasis added). SPA's instructions to its contractors regarding participation in a legal fiction relates to the Corps' Nationwide Permit 3, which is available for maintenance projects but not where there is a "change of use." Yet despite SPA's efforts to coach its contractors, C2HM Hill's assessment demonstrates that this is, in fact, a massive project to convert a warehouse to a different use – not a cruise terminal maintenance project:

- SPA's project to "*convert an existing warehouse building . . . into a modern passenger cruise terminal*" required analysis of the existing site "*for conversion to an operational cruise terminal*, utilize existing components where practical, identify gaps and deficiencies, while addressing the structural and seismic upgrades to the building and wharf that are *necessary to support the resulting increases in passenger traffic loads and specifically, the "change of use" for the building.*" SCPA 007254 (emphasis added).

- "*Considering the age of the facility and the 'change of use,'* it is anticipated that the mechanical, plumbing and fire protection systems serving the existing building will be demolished. Removal of existing mechanical equipment includes all appurtenances including, but not limited to, ductwork, equipment supports, curbs, electrical services and controls. Removal of existing plumbing piping, fixtures and equipment includes all appurtenances including, but not limited to, valves, water supply piping, and drainage piping to minimum 6 inches below finished floor. Existing water supply and sanitary drainage lines will be removed to the point of service or be capped for future connections to the new building." SCPA 007267 (emphasis added).

- "*Due to the age and condition of the building, and the fact that the building function is changing*, we are recommending removal of the building envelope components, including but not limited to, the metal wall panels and metal roof panels (neither of which are insulated,) and windows and doors." SCPA 007265 (emphasis added).

- "The existing sewage lift station serves three very small toilet rooms and is inadequate in size and condition to provide the 50 GPM design flow rate required for the Project." SCPA 007276.

- "The new terminal is expected to *serve a 3,000+ passenger vessel, porting twice a week.* It is anticipated the *new facility* will include a two-story vertical circulation core consisting of stairs, elevators, escalators and access to the passenger boarding corridor. . . . The rigid frame of the existing warehouse that remains will be *structurally modified* to meet the seismic criteria dictated by state law, as well as to support the *new exterior wall assemblies and roof system.*" SCPA 007281.

- "The *addition of a horizontal boarding corridor*, connected to a point on the building and extending perpendicular and parallel to the wharf's edge, will provide the necessary horizontal range of movement of the gangway north and south along the wharf." SCPA 007288.

- "The South Carolina State Ports Authority (SCSPA) is evaluating the costs and impacts associated with *converting* portions of the Union Pier Terminal *from current industrial cargo use to a cruise terminal facility*.... This *change in use* results in a change in Occupancy Category from Category II to Category III under the International Building Code (IBC), triggering the requirement that the building be brought up to current code requirements." SCPA 0007297. Notably, C2HM Hill understood Building 322 to be a *separate* "pile-supported wharf structure" in addition to "five other pile-supported wharf structures that comprise the proposed Union Pier Terminal (UPT) project: North Wharf, Open Storage 1, Truck Ramp, Access Bridge, and Open Storage 2. SCPA 007320. No mention is made of Building 325.

Compliance with the Americans with Disabilities Act ("ADA") is required not because the existing terminal is out of ADA compliance, but because SPA's project is "new" construction, not maintenance. SCPA 007283. Even SPA's insurance consultant understood the project to be "new construction" rather than maintenance. SCPA 005253 ("Plans are to completely renovate and modernize the existing Building 322. New construction includes the Ship Storage Canopy to the north of Building 322.").

SPA's lack of candor to regulators about the extent of new construction appears matched by its representations concerning its ownership of the project site. SPA's "affidavit of ownership" claims SPA is record owner of the land and makes no mention

of other ownership interests on the property. SCPA 005257. However, SPA told its contractor that Concord Street, which runs through the project, "is not owned by the SCSPA." SCPA 007258. Further, it later submitted a request to the S.C. Department of Transportation to have portions of Concord and Hasell Streets removed from the state highway system. SCPA 005185. There is no evidence in the record that this occurred.

SPA's PR Campaign: Fake Input, Crush Dissent, Attack Citizens

SPA's "messaging" plan for the project was to make the public "FEEL" involved in the redevelopment of the terminal and surrounding property, but to avoid discussing the larger context. Employees were directed to discuss the "17 acres" of the cruise terminal itself (rather than all of Union Pier, or other terminals) "only if asked," and to avoid any "pro-active reference" to a 1996 Concept Plan which envisioned that maritime uses should stop at Union Pier. SCPA 009379. SPA attempted to get maintenance permits with no public notice and circulated, as "facts," that "[t]he deal is done." (attached hereto as the final document of discovery excerpts; SPA Bates Stamp Illegible).

When citizens questioned SPA's plan and raised objections to the damage being done by cruise operations, SPA assured Carnival that the state agency was "putting the hammer down" on citizens. SCPA 004606. SPA contacted media, seeking to polarize the cruise issue by claiming that all citizens seeking enforceable standards to control cruise pollution, traffic, and scale were elitists seeking to attack cruise tourists, SCPA 006773, even as SPA elsewhere touted the "luxury" nature of its cruise business and the wealth of its patrons. SPA's chief executive reported to a Carnival executive that SPA's plan to "develop" its cruise business in Charleston had borne "quite some fruit,"

including media coverage, "heavily painting" SPA's detractors "as elitist snobs." SCPA 006754.

SPA also attempted to paint local citizens as "job killers" even though a main point argued by the Community Groups was that unregulated cruise tourism posed a threat to existing jobs, and documented the serious economic impacts of such displacement. A study conducted for the Historic Charleston Foundation, for example, looked into SPA's economic claims and found limited benefits and significant downsides, and concluded that the study conducted by SPA's economic consultants (Croft and Hefner) "overstates" the economic impacts that are a "fraction" of what was claimed since their study did not consider displacement of other tourists who spend ten times as much on a one-to-one basis. SCPA 006808. The study called for limits to prevent damage to Charleston's overall tourism brand. SCPA 006810.

SPA also sought to intimidate citizens by threatening that large scale roll-on, roll-off ("Ro-Ro") cargo operations would "continue" at Union Pier if SPA failed to get its fast-track cruise terminal. *See* SCPA 009724, 9743 (SPA claiming that construction of new terminal would allow roll-on/roll-off cargo to be moved from Union Pier and stating that interference with terminal would ensure that cargo operations remain). SPA made those threats even though the Community Groups had not complained about cargo operations at Union Pier.

Moreover, by September 2010, SPA was well underway planning to move Ro-Ro operations to Columbus Street Terminal to meet the demands of its main customer (BMW), with SPA's spokesman Byron Miller betting a steak dinner that it would happen by April 2011. SCPA 007114. In explaining why the move was taking place, SPA stated

to Charleston Mayor Joe Riley that the Union Pier Terminal "footprint would not accommodate the growth of our major roll-on, roll-off customer [BMW]," "so it was decided to move them to Columbus Street Terminal." SCPA 009435. SPA completed a $22 million project to relocate "roll-on, roll-off cargo operations from Union Pier Terminal to the larger Columbus Street Terminal" by 2011, such that "daily trainloads of vehicles will no longer cross streets south of Columbus Street Terminal." SCPA 009802. In March of 2011, SPA announced that "BMW's growing export business, along with other rolling stock and non-container cargoes, was moved to a new and improved Columbus Street Terminal," meaning that "daily trainloads of vehicles will no longer enter Union Pier Terminal." SPA 007148. By 2012, SPA's counsel admitted to DHEC that "movement of cargo operations from Union Pier to the Columbus Street terminal" had already significantly reduced the maritime emissions at Union Pier. SCPA 009651.

SPA's spin campaign also involved contrived listening sessions wherein staff was instructed to dismiss and summarily reject alternatives for the terminal that could reduce impacts on citizens, the environment, and historic resources. SPA publicly ridiculed the option of using shore side power ("SSP") to reduce harmful air pollution as impractical, and discounted any claim that diesel pollution from ships was a concern. Yet SPA's own internal documents showed that SSP could be less costly than fuel upgrades and that SPA should consider SSP next to "residential populations" since "proximity matters when it comes to diesel emissions." SCPA 008671. Even though SPA's contractor submitted drawings showing how shore power could be installed at the new terminal, SCPA 007337, and estimated the cost to be $5.3 million, SCPA 007369, SPA continued to claim publicly that SSP was infeasible and that it would not reduce air pollution beyond the

reductions caused by use of less-dirty marine fuel as required under a federal Emissions Control Area ("ECA"). However, a September 2013 study commissioned to look at the issue concluded that shore-side power would significantly reduce the emissions of harmful air pollutants from cruise ships home based in Charleston far beyond the reductions associated with the use of lower sulfur fuel. *See* Corbett, J. et al., "Clearing the Air," (September 9, 2013) [Attached as Exhibit C to Zimmerman Affidavit (Exhibit J)]. Even more recently, a proposal to install SSP for cruise ships in Charleston was unveiled by a bipartisan pair of S.C. Legislators, Representatives Jim Merrill and Leon Stravrinakas. *See* T. Richards, "Proposed legislation to bring shore-side power to Charleston cruise terminal," Charleston Post & Courier (Jan 17, 2014) [Exhibit B].

SPA's spin campaign also sought to suppress consideration of SPA's large Columbus Street Terminal ("CST") for cruise operations. SPA's guidelines for moderators of community meeting directed that moderators, if asked why terminal wasn't being moved to CST, simply respond that it would be "impractical" and would result in cargo coming back to UPT so that the site "stays exactly as it is," SCPA 006907, though presumably without a cruise terminal. Yet earlier SPA had completed drawings showing how a cruise terminal could be located at the south end of CST. SCPA 008297. And SPA had reviewed a detailed study completed by Dover Kohl Plan consultants showing that relocating the cruise terminal from Union Pier and allowing development there would produce far greater economic returns for Charleston and South Carolina than SPA's proposed terminal plan. SCPA 009746-009749 (showing plan would yield $500 Million in real estate value, $4-7 Million in annual tax revenue, and $100 Million for SPA).

Moving the terminal to Columbus Street could significantly mitigate the traffic impacts that would otherwise be caused by building a larger terminal that home-bases larger vessels and attracts many more vehicles to nearby streets. The current home-basing of a ship with only 2,500 passengers has a traffic count that is, according to SPA, "considerably lower" than that associated with the home-basing of a 3,450 passenger vessel. SCPA 007461. In fact, a 3,450 passenger visit would bring up to 1,600 cars, 20 tractor-trailers, 16 trucks, 32 buses, and 90 taxis into the downtown area around the proposed terminal. SCPA 007507.

SPA also publicly dismissed concerns that cruise ships discharge pollution into the water, but internally recognized that the limits it claimed as prohibiting discharges of things like food waste, and sink and shower water were merely "voluntary," SCPA 009301, and gray water can be discharged 3 miles out, and within 4 miles if the vessel is moving a certain speed. SCPA 006644. Multiple studies show that discharges from cruise ships into the water can contain high levels of bacteria and other harmful pollutants. *See* Zimmerman Affidavit [Exhibit J] at ¶ 9.

SPA's counsel stated to DHEC that there were no possible potential impacts on, or interaction with, historic assets from the proposed project, even though it would be constructed next to a National Historic Landmark District. But SPA has also claimed that the new terminal would "fit within the historic, aesthetic, and community context," SPA 007021, a recognition that such a large facility and operation will necessarily interact with and affect the fabric and scale of what is widely recognized as the most intact Colonial city in the nation. SPA has admitted that its existing terminal, in addition to being "clearly out-of-date," is "not contextual with its historic location," SCPA 006890,

and has repeatedly recognized that a new terminal must interact with its "context." *E.g.*, SCPA00 6899 (SPA contractor stating structure will be designed "to fit within the context of the place – in this case, the great port city of Charleston."); SCPA 006900 (SPA architect: "We know the cruise terminal must fit within the context of Charleston and reflect our unique character."). Indeed, despite the claims by SPA counsel, almost everyone has recognized that a new large industrial cruise terminal will impact the historic district's scale, feel, and integrity. *See* DHEC-SCPA 001659-98 (*Amicus Curiae* brief of the National Trust for Historic Preservation and exhibits thereto).

SPA's final spin measure was to deflect concerns about cruise impacts with a Voluntary Cruise Management Plan, agreed to by SPA and the City of Charleston in 2011. But internally, SPA conveyed a different story, telling Carnival that the ordinance "does not limit or impact in any way the cruise business in Charleston." SCPA 006999.

ARGUMENT

I. SPA's Article III Standing Argument is Precluded

As this Court is aware, SPA was party to a parallel case concerning the federal permit for its proposed cruise terminal in the United States District Court, District of South Carolina. SPA moved for summary judgment in that case on grounds that the plaintiffs lacked standing, asserting the same factual and legal arguments pressed here. *See* SPA, Mot. Sum. J. and Memo in Support, *Preservation Soc'y of Charleston v. U.S. Army Corps of Eng'rs and S.C. State Ports Auth.*, No. 2:12-cv-02942-RMG (D.S.C. July 15, 2013), ECF No. 57 and 57-1; SPA Reply to Plaintiffs' Opp. to Defs.' Mot. for Summ. J. (Aug. 5, 2013) ECF No. 74 [Exhibits C and D]. U.S. District Judge Richard Gergel rejected SPA's standing argument and entered summary judgment against it. *See* Order

(Sept. 18, 2013) ECF No. 83 [Exhibit E]. SPA's standing argument is therefore precluded by collateral estoppel because the Community Group's Article III standing was actually litigated in federal court, directly determined against SPA, and was necessary to support the prior judgment, since a finding of no standing would have precluded the District Court's order on the merits. *Judy v. Judy,* 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct.App. 2009); *Beall v. Doe,* 281 S.C. 363, 369 n.1, 315 S.E.2d 186, 189–90 n.1 (S.C. Ct. App. 1984); *see Smith v. Volunteer State Life Ins. Co.*, 201 S.C. 291, 22 S.E.2d 885 (1942).

II. The Community Groups Have Demonstrated Article III Standing

SPA has previously acknowledged the Community Groups' allegations that the streets are congested due to cruise ship traffic; that increased cruise operations will increase congestion; that members are concerned about the noise impacts; that members breathe air in which cruise ship emissions are discharged and that degradation of air quality will result from increased cruise ship operations; and, that property values will be degraded because of the new cruise ship terminal. Each of these issues will be exacerbated by the activity at the new cruise ship terminal, authorized under the permit. SPA Mot. to Dismiss for Lack of Standing, 11. SPA nonetheless attacks these complaints as insufficient, contending they set forth merely "generalized grievances," and contending that none of the Community Groups claimed injuries would be made worse by DHEC's permit decision since approval of a new terminal is immaterial to SPA's cruise operation, and even if it weren't, any injuries caused by SPA's cruise operation are caused by the cruise operation itself, not the permit document that allows such operations to continue or expand.

Petitioners are submitting Affidavits from members of each of the Petitioner groups describing in detail the concrete and imminent injuries that they will suffer but-for the permit issued by DHEC to SPA authorizing the construction of new cruise ship terminal on the North end of Union Pier terminal. *See* Exhibits F-K, M. This Court has already detailed the elements of the Article III standing test in detail and found that the Community Groups' standing allegations satisfied them at the motion to dismiss stage. The SPA's submittals do not alter that conclusion, and the Petitioners have produced materials sufficient to withstand a motion for summary judgment on lack of standing.

A. Injury in Fact

The first consideration to determine if a party has Article III standing is whether the person has suffered an "injury in fact." An "injury in fact" is "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (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. South Carolina courts have found that "even those concerns reflecting aesthetic or recreational interests have been recognized as 'judicially cognizable injur[ies] in fact'." *Town of Arcadia Lakes*, 404 S.C. at 531, 745 S.E.2d at 394 (quoting *Sea Pines*, 345 S.C. at 602, 550 S.E.2d at 292); *see also Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 698 S.E.2d 612 (2010); *Smiley v. S.C. Dep't of Health & Envtl. Control*, 374 S.C. 326, 649 S.E.2d 31 (2007).

In *S.C. Wildlife Federation v. S.C. Coastal Council*, 296 S.C. 187, 371 S.E.2d 521 (1988), a case cited with approval in *Sea Pines*, the Supreme Court held that where

parties "alleged an individualized injury in the adverse effect of a specific decision of the Coastal Council on their members' use and enjoyment of the fish and wildlife of the wetlands" that would be affected by a Coastal Council certification, "these allegations are sufficient to show standing." 296 S.C. at 190, 371 S.E.2d at 523. In *Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000), the United States Supreme Court found the plaintiffs had standing where affidavits and testimony asserted that "Laidlaw's discharges, and the affiant members' reasonable concerns about the effects of those discharges, directly affected those affiants' recreational, aesthetic, and economic interests." 528 U.S. at 183-184. The Court explained that "[t]hese submissions present dispositively more than the mere 'general averments' and 'conclusory allegations' found inadequate" in *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990).

The United States Supreme Court has stated that the injury required for standing purposes need not be a substantial injury:

> The Government urges us to limit standing to those who have been "significantly" affected by agency action. But, even if we could begin to define what such a test would mean, we think it fundamentally misconceived. "Injury in fact" reflects the statutory requirement that a person be "adversely affected" or "aggrieved," and it serves to distinguish a person with a direct stake in the outcome of a litigation – even though small – from a person with a mere interest in the problem. We have allowed important interests to be vindicated by plaintiffs with no more at stake in the outcome of an action than a fraction of a vote, . . . a $5 fine and costs, . . .; and a $1.50 poll tax . . . . [W]e see no reason to adopt a more restrictive interpretation of "adversely affected" or "aggrieved." As Professor Davis has put it: "The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." Davis, Standing: Taxpayers and Others, 35 U.Chi.L.Rev. 601, 613. See also K. Davis, Administrative Law Treatise ss 22.09--5, 22.09--6 (Supp. 1970).

United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 93 S.Ct. 2405, 37 L. Ed. 2d 254 (1973) (Internal citations omitted).

This standard was re-affirmed by the Fourth Circuit. *Friends of the Earth, Inc. v. Gaston Copper*, 204 F.3d 149, 156 (4th Cir. 2000) ("the claimed injury 'need not be large, an identifiable trifle will suffice.'") (*quoting Sierra Club v. Cedar Point Oil Co.*, 73 F.3d 546, 557 (5th Cir. 1996)) (internal quotation marks omitted). *See also Conservation Council of North Carolina v. Costanzo*, 505 F.2d 498, 501 (4th Cir. 1974). As this Court recognized, in this case, the Community Groups allege that the challenged DHEC permit will:

> ...enable cruise ship home-basing operations to expand the number and size of the ships at the UPT. Petitioners allege that as a result of the expansion, there will be environmental and social impacts including increased air shed emissions, traffic volumes, traffic noise, and health impacts. Petitioners specifically express concern about emissions from docked cruise ships of nitrogen oxides and sulfur dioxide, which are known to negatively impact human health. Petitioners assert that in addition to increased emissions, there will be increased truck and car traffic, increased noise and congestion, decreased property values, and adverse health impacts. Petitioners have asserted they will suffer an injury to their aesthetic and recreational interests as well as their property interests. Petitioners, therefore, have alleged an injury-in-fact.

Order at 12. SPA has produced nothing to substantively alter the Court's conclusion and the submitted affidavits sufficiently support the allegations of injury to support standing. Christina Dodd testifies that she has lived at 42 Hassell Street within the Ansonborough neighborhood of Charleston for 12 years. Exhibit F. Ms. Dodd is a member of the Preservation Society of Charleston, the Historic Ansonborough Neighborhood Association and Charleston Communities for Cruise Control. *Id.* Ms. Dodd testifies that since the Carnival *Fantasy* home based in Charleston, she has found soot on the window sills inside her home, on her porch and outdoor furniture. In addition to being hard to

clean, she is concerned that residue from burned sulfur-heavy fuel is damaging her lungs and overall health, as she is breathing the pollution both inside and outside of her home. *Id.* at 2. Ms. Dodd also notes that she has "difficulty completing everyday errands and reaching my own residence" due to the traffic congestion on days when the cruise ship is in town. *Id.* The increased traffic and congestion when the cruise ship is in town makes it "very difficult to navigate and enjoy [her] neighborhood and community," and the new terminal authorized by the permit would make these problems worse. *Id.*

Virginia Lane testifies that she lives and works at 10 Gillon Street in the historic district of Charleston. Exhibit G. Mrs. Lane's building is located approximately two blocks from the Union Pier Terminal. *Id.* She serves on the Board of Trustees for the Historic Charleston Foundation ("the Foundation"), and is also a member of the Preservation Society of Charleston and Charleston Communities for Cruise Control. Collectively, these groups represent her interests, as well as the interests of other members, in seeking to preserve the rich cultural resources, air and water quality, and quality of life for those living, working and visiting historic Charleston. *Id.* Mrs. Lane testifies that "the 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." *Id* at 3. She explains that the "Carnival Fantasy holds close to 3,000 people who collectively have a tremendous detrimental impact on traffic and congestion in historic district." *Id.* Among other things, her "enjoyment and pleasure viewing Charleston's unique architecture" is reduced by the large cruise ship at SPA's terminal that "overshadows the beauty of the architecture." *Id.* She believes SPA's proposed new terminal would "kill[] the golden egg" of "Charleston as a beautiful, small historic

town," since cruise ships "visually overpower the historic district, lessening my enjoyment in viewing the architecture." *Id.* at 4. She testifies that the "height, scale and mass of the cruise ship overpowers the colonial fabric of historic Charleston," negatively impacting her enjoyment of the City. *Id.*

Mrs. Lane also testifies that the proposed terminal would likely impact her architecture business. Clients, interior designers, employees, engineers and others coming to her office located blocks from the terminal have had difficulty accessing her office due to cruise-related traffic. *Id.* Mrs. Lane testifies that if "there is an increase in size and number of ships porting in Charleston, my business would stand to suffer even more harm because my clients' ability to access my office will be hindered even more than it is now." *Id.* Finally, Mrs. Lane is concerned about the loss in property value due to the decreased quality of life in the historic district of Charleston caused by expanded cruise ship operations. *Id.*

Tommie Robertson testifies that she lives at 2 Laurens Street, Unit 2C, which is "within a few hundred feet of the proposed cruise ships's smokestacks . . ." Exhibit H. Mrs. Robertson is a member of the Coastal Conservation League and the Charleston Communities for Cruise Control. *Id.* Mrs. Robertson testifies that, on multiple occasions, she has been on her porch while the Carnival *Fantasy* was docked and experienced the "negative effects of the thick smoke being emitted from the ship's smokestacks," as "within seconds of breathing the emissions, my throat immediately began to hurt and I was forced to retreat indoors." *Id.* Mrs. Robertson testifies that due to the harmful emissions she can no longer open windows or enjoy her porch while the cruise ships are in town due to health impacts including sore throat and difficulty

breathing. *Id.* She believes these problems will only get worse with increased and prolonged exposure, and she is concerned that these problems will be exacerbated if there are more and bigger cruise ships coming into Charleston as a result of the new cruise terminal authorized by the permit in dispute. *Id.* at 2-4. In contrast to the repeated SPA accusations that the Petitioners' complaints arise from "their single goal of stopping cruise operations," Mrs. Robertson explains that she has "never been opposed to cruise ships, but based on my personal experiences, I strongly believe there must be some enforceable limits and protections in place, including operating from a less-dense historic residential area." *Id.* at 4.

Stephen F. Gates testifies that he has lived at 59 Meeting Street for the past thirteen years. Exhibit I. He is the President and a member of the Charlestowne Neighborhood Association. *Id.* Mr. Gates testifies that since the Carnival *Fantasy* began home basing operations at Union Pier, he has experienced increased unbearable and unmanageable traffic congestion around the cruise terminal area downtown on the days the *Fantasy* is in port. He has also experienced heavy and oily soot deposits on his porch and windows, and believes the city's historic integrity is being eclipsed by the disproportionately large cruise ships based in the middle of the historic downtown district. *Id.* The Carnival *Fantasy*'s home base operations, Mr. Gates testifies, have seriously detracted from the traditional historic city feel of Charleston to the point that it has interfered with the use and enjoyment of his property and the historic district of Charleston. *Id.* at 2. Mr. Gates goes on to describe how his daily activities are impeded when the cruise ships are docked in town, stating that the main arterial street of East Bay becomes gridlocked with cruise ship traffic heading for the Union Pier terminal, diverting

him and most local drivers through the surrounding small residential streets to reach their destination, and clogging the entire downtown peninsula. *Id.* What normally would be a 5-minute trip ends up taking 45 minutes, which has prevented Mr. Gates from undertaking "activities that I otherwise enjoy," and has decreased his use and enjoyment of historic Charleston, including his access to a convenient grocery store due to cruise traffic. *Id.* at 2-3. Rather than being able to enjoy "the quiet walks and quick drives" that used to be part of his daily routine, he states he is now forced to waste his time, energy, gas and peace of mind on a regular basis because of proximity of cruise ship operations. *Id.* at 3. Like Ms. Dodd and Ms. Robertson, Mr. Gates has to scrub his porch and windows more often and more vigorously as a result of the soot deposited from the Carnival *Fantasy*, and he is concerned about the real and substantial risks posed by this soot and additional air emissions on his health, on the value of his property, and on the historic integrity of his neighborhood and the historic district of Charleston on the whole, particularly if cruise ship operations are increased and expanded as a result of the permit at issue in this case. *Id.*

Katie Zimmerman testifies that she is a Program Director at the Coastal Conservation League ("CCL") focusing on community efforts to bring balance and reasonable limits to cruise operations in Charleston. Exhibit J. CCL's mission is "protect the natural environment of the South Carolina coastal plain and to enhance health and the quality of life in our communities by working with individuals, businesses, and government to ensure balanced solutions." *Id.* Ms. Zimmerman and others at CCL have attempted to raise awareness about the impacts that cruise operations in Charleston have on the environment, historical resources, and neighborhoods, as well as alternatives for

reducing those impacts. *Id.* They have also sought to correct some of the assertions made by the SPA to the public downplaying the impacts to environmental and historical resources and the availability of practical alternatives and mitigation measures. For example, CCL commissioned a study by Dr. James Corbett which demonstrated that the use of shore-side power would significantly decrease emissions of sulfur dioxide and other major pollutants. *Id.* Ms. Zimmerman also fact-checked SPA's claim that a new cruise terminal would significantly reduce air pollution compared to a current baseline because it would displace Roll-on/Roll-off ("Ro-Ro") operations at Union Pier Terminal. *Id.* Ms. Zimmerman found that cargo ship calls have already significantly decreased at Union Pier Terminal, and that the only ship making routine calls there is a relatively small vessel, not large Ro-Ro ships. *Id.* Therefore, she concluded that emissions would in fact decrease if cruise ship operations were relocated to an alternate viable location. *Id.* Raising public awareness about issues related to a new cruise terminal and potential solutions is fundamental to CCL's mission, and CCL and its members have been harmed by DHEC's failure to consider any of these impacts or alternatives.

This testimony is more than sufficient to support the Community Groups' allegations of injury from ongoing and expanded cruise operations at Union Pier. And because particularized injury is present, it matters not that some of the injuries are widespread. *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); *Pye v. U.S.*, 269 F.3d 459, 469 (4th Cir. 2001) ("merely because an injury is widely held does not necessarily render it abstract and thus not judicially cognizable. . . . So long as the plaintiff himself has a concrete and particularized injury, it does not matter that

legions of other persons have the same injury.") (internal citations omitted).[2] Nor is this case akin to *Town of Arcadia Lakes, et al. v. Roper Pond, LLC and SCHEC*, Opinion No. 5095 (S.C. Ct. App. filed March 6, 2013), (Shearouse Adv. Sht. No. 11 at 38-55), withdrawn, substituted and refiled (Ct. App. filed June 12, 2013) (Shearouse Adv. Sht. No. 26 at 110-127) (*cert. pending*). The court did not hold that injury is speculative because the project has yet to be implemented, as stated by SPA, but rather held that concerns regarding mismanagement or potential violations were insufficient to challenge as-of-yet unimplemented project. Here, the Community Groups have not made allegations related to implementation of the permitted project or potential future violations of the permit. Rather Petitioners allege that if the proposed new terminal is constructed it will result in ongoing and increased harms to their health, welfare, recreational and aesthetic interest, as well as their quality of life.

Similar allegations of harm have been found sufficient in key environmental standing cases. In *Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc.* 528 U.S. 167, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000), the plaintiffs were held to have standing where affidavits and testimony asserted that "Laidlaw's discharges, and the affiant members' reasonable concerns about the effects of those discharges, directly affected those affiants' recreational, aesthetic, and economic interests." *Friends of the Earth*, 528 U.S. 167, 183-184, 120 S.Ct. 693, 705, 145 L.Ed.2d 610 (2000). The Court held that "[t]hese submissions present dispositively more than the mere 'general

[2] Unlike the plaintiffs in *Citizens for Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992), who could not differentiate themselves from the general public and could point to no particular legal interest in the county procurement decision, the Petitioners have demonstrated that they are among the class of users of the historic district of Charleston and its surrounding waterways that have a personal stake in the outcome of this case.

averments' and 'conclusory allegations' found inadequate" in *Lujan v. National Wildlife Federation*, 497 U.S. 871, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990). The Court also held that the affiants' "conditional statements – that they would use the [river] for recreation if Laidlaw were not discharging pollutants into it" – could not be equated with the speculative "'some day' intentions" to visit endangered wildlife species halfway around the world that the Court had held insufficient to show injury in fact in *Lujan v. Defenders of Wildlife*. 528 U.S. 167, 184, 120 S.Ct. 693, 705-706 (2000). SPA does not challenge the reasonability of the Community Groups' members' concerns so much as simply dismiss them as inconsistent with SPA's litigating positions, which are themselves undercut by SPA's extensive record showing that SPA's cruise operation has real pollution, transportation and historic preservation impacts, and that granting of the permit will cause those impacts to continue and expand. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 183-185 (2000) ("environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity").

As for *Beaufort Realty*, SPA misstates that case for the proposition that prospective concern of future harm is insufficient to satisfy the *Lujan* test. The South Carolina Supreme Court addressed this point and flatly rejected it in *Smiley*: "to read *Beaufort Realty* as denying standing to an individual unless and until the 'injury' has been inflicted ignores the 'actual or imminent' requirement of *Lujan/Sea Pines* and elevates dicta in *Beaufort Realty* over its two holdings: that the environmental group was asserting speculative concerns rather than injury, and had failed to demonstrate a causal

connection." *Smiley v. S. Carolina Dep't of Health & Envtl. Control*, 374 S.C. 326, 331, 649 S.E.2d 31, 33-34 (2007). The Petitioners need not show that injury has already occurred, they simply need to assert that the injuries alleged are actual or imminent once the permitted activity is conducted.

B. Causation and Traceability

The second element of Article III standing is the requirement that there "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.'" *Lujan*, 504 U.S. at 560 (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976)). As the Court has recognized, in this case, the conduct complained of is the permit authorizing the construction of pilings in the critical area which are necessary for a new cruise ship terminal at the UPT. Petitioners allege the new pilings are necessary for the construction of SPA's new cruise terminal, which will result in the alleged injuries of increased emissions, increased traffic congestion and noise, and adverse health impacts. Petitioners, therefore, allege that without the permitted pilings to provide necessary structural support for the cruise terminal, the Ports Authority will not be able to continue or expand cruise services or serve larger cruise ships. The Court earlier concluded that the Community Groups' had alleged sufficient facts to show a causal connection between DHEC's permit action and the conduct causing them injury. The affidavits more than bear this out as does record evidence showing that SPA cannot continue its cruise operation, much less expand it, without an authorization from DHEC necessary to construct the pilings necessary for the new terminal. *E.g.*, DHEC-SCPA 000002 (OCRM evaluation

showing pilings needed for relocation of cruise terminal); *see supra* at 5-7. SPA has not countered that evidence with any demonstration that it could construct the new terminal without the required pilings. Nor has it countered the showing that, aside from a temporary accommodation with Customs and Border Protection, it can continue home base operations at its existing terminal without undertaking significant upgrades that would also require a permit from DHEC. SPA has stated that renovation of its existing terminal is a less desirable outcome, and any such project would have greater impacts on waters of the U.S. and South Carolina and thus be more difficult, not less, to permit. *See* DHEC-SCPA 000171 (SPA claiming that renovation of Building 325 would have greater impacts to jurisdictional waters).

SPA cites to *Town of Arcadia Lakes* in an attempt to argue that the Petitioners must establish proof on the merits in order to prove traceability. To the extent that the court in *Town of Arcadia Lakes* required proof on the merits in order to establish standing, such a holding is in conflict with a long line of cases holding just the opposite. For example, in *Pitt County v. Hotels.com, L.P.*, 553 F.3d 308, 312 (4th Cir. 2009), the Fourth Circuit reversed the lower court noting that "the district court's analysis improperly conflated the threshold standing inquiry with the merits of the County's claim." *Id.* at 312. A plaintiff need not prove the merits of the case in order to prove an injury in fact sufficient to establish standing. *Id.* (citing *Am. Library Ass'n v. FCC*, 401 F.3d 489, 493 (D. C. Cir. 2005)). A "court has jurisdiction if 'the right of the [plaintiffs] to recover under their complaint will be sustained if the [applicable laws] are given one construction and will be defeated if they are given another'...." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (quoting *Bell v.*

Hood, 327 U.S. 678, 685, 66 S.Ct. 773, 90 L.Ed. 939 (1946)). To hold that a plaintiff must prove the merits in order to prove an injury in fact "would reduce all merits inquiries in cases of this type into standing inquiries." *Pitt Cnty. v. Hotels.com, L.P.*, 553 F.3d 308, 312 (4th Cir. 2009).

The "fundamental aspect of standing" is that it focuses primarily on the party seeking to get his complaint before a court rather than "on the issues he wishes to have adjudicated," *Allen v. Wright*, 468 U.S. 737, 791-92, 104 S. Ct. 3315, 3345-46, 82 L. Ed. 2d 556 (1984) (citations omitted). Thus the "relevant showing" is "not injury to the environment but injury to the plaintiff. To insist upon the former rather than the latter as part of the standing inquiry" would improperly raise "the standing hurdle higher than the necessary showing for success on the merits" in the case. *Friends of the Earth*, 528 U.S. at 181, 120 S. Ct. at 704.

The causation principle is further illustrated by analogy to a similar case. In *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, the merits of the case involved the validity of the provisions of the Price-Anderson Act, which limited maximum liability in the event of any single nuclear incident to $560,000,000. 438 U.S. 59 (1978). The plaintiffs, who lived near the proposed construction site for two nuclear power plants, challenged the constitutionality of that Act. *Id.* at 67. For purposes of standing, the plaintiffs asserted injuries related to the possibility of a nuclear accident, as well as injuries related to the normal operation of the plants. *Id.* at 73-74. First, the Supreme Court concluded that it need not determine whether the injuries based on the possibility of a nuclear accident were "sufficiently concrete to satisfy constitutional requirements." *Id.* at 73. Rather, "several of the 'immediate' adverse effects'" of the nuclear plants,

including "environmental and aesthetic consequences" were of "the type of harmful effect which has been deemed adequate in prior cases." *Id.* at 73-74. In the same way, Petitioners have asserted immediate adverse effects resulting from completion of the permitted activity, i.e., excavation of the pond leading to loss of aesthetic enjoyment.

As to causation, the *Duke Power* Court applied the but-for standard. *Id.* at 74-75. The plaintiffs position on causation was that but for the Act's limitation on liability, the nuclear plants would not be constructed, and the "immediate adverse effects" would then not occur. *Id.* at 74. The Court found a "substantial likelihood" of this "but for" relationship, and upheld causation and standing.. In the same way, the Petitioners have identified aesthetic, health and recreational injuries that would not occur but for the permit at issue in this case. Those injuries form a sufficient basis for standing, apart from any reference to the merits of the case, but the Community Groups have also been injured directly by DHEC's failure to publicly evaluate less damaging alternatives, as this damages their procedural rights provided by law and decreases the chances of a less damaging project being selected..

C. Redressability

The third and final element of the *Lujan* test is 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). As the Court has recognized, the Community Groups request this Court 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. Order at 12.

They further allege that the permit will allow the Ports Authority to relocate and expand the cruise ship terminal, resulting in increased emissions, increased traffic congestion and noise, and adverse health impacts. Petitioners, therefore, also allege that if the permit is denied, the Ports Authority will not be able to expand cruise services or serve larger cruise ships. *Id.*

The Court concluded that while the existing injuries allegedly suffered by Petitioners will not be altered by the denial of the permit in this case, Petitioners sufficiently had alleged that the exacerbation of those injuries will be redressed. *Id.* The Court's finding that Community Groups' had alleged redressability is now bolstered by factual submissions documenting those allegations in detail, as summarized above. Moreover, these materials show that denial of the permit could reduce existing injuries since they show that SPA, for commercial and regulatory reasons, needs a new terminal to continue its cruise business. SPA's own motion admits that the new cruise terminal is needed to "in order to comply with both current terminal security requirements mandated by federal law under the oversight of the United States Customs and Border Protection (CBP)," Mot. 3. Thus, SPA has admitted that, if the new cruise terminal is not built, SPA's existing terminal will be out of compliance with the law and operating unlawfully.

Furthermore, even if DHEC could somehow issue another permit for SPA, the Community Groups' injury could be redressed by having DHEC do so in a legal manner, which should allow for identification of specified historic, health and environmental impacts, and adoption of measures to reduce them, such as shore power, standards for cruise operations and discharges, terminal redesign (e.g., less impervious parking) and terminal relocation away from the most congested and historically intact part of

Charleston.[3] This Court is empowered to grant that relief, should it agree with Petitioners on the merits. If Petitioners succeed in challenging the new pilings, the terminal will likely not be built. "No more is necessary to establish standing." *Am. Bottom Conservancy v. U.S. Army Corps of Engineers*, 650 F.3d 652, 658-60 (7th Cir. 2011) (Posner, J.)(citing *Massachusetts v. EPA,* 549 U.S. 497, 525–26 and n. 23, 127 S.Ct. 1438, 167 L.Ed.2d 248 (2007); *Clinton v. City of New York,* 524 U.S. 417, 432–33, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998); *Village of Elk Grove Village v. Evans,* 997 F.2d 328, 329 (7th Cir.1993) ("even a small probability of injury is sufficient to create a case or controversy—to take a suit out of the category of the hypothetical—provided of course that the relief sought would, if granted, reduce the probability," quoted approvingly in *Massachusetts v. EPA, supra,* 549 U.S. at 525 n. 23, 127 S.Ct. 1438). The present case is unlike *Bailey v. SCDHEC*, in which the same boats that had been docked for years would continue to be docked at the same location regardless of the permit decision. 388 S.C. 1, 693 S.E.2d 426 (Ct. App. 2010). Petitioners here have identified health, property, aesthetic and recreational injuries that would not occur but for the permit at issue in this case.

IV. Petitioners Meet the Test for Organizational or Associational Standing

[3] See S.C. Code Ann. Reg. 30-11.C.(1) (requiring DHEC to consider the "extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area,"); S.C. Code Ann. §48-39-150(A)(9), S.C. Code Ann. Reg. 30-11(B)(9) and S.C. Code Ann. Reg. 30-12.F(2)(b) (requiring DHEC to evaluate feasible alternatives to both avoid adverse environmental impacts and to avoid critical areas); S.C. Code Ann. §48-39-150(A)(7) and S.C. Code Ann. Reg. 30-11(B)(7) (directing DHEC to weigh the benefits of preserving the historic district of Charleston and the economic benefits); S.C. Code Ann. §48-39-150 (requiring DHEC to consider how the project will effect the value and enjoyment of adjacent owners); and Coastal Management Program at IV-25 (directing DHEC to give the highest priority to uses "which preserve the historical or cultural values for which" the historic district of Charleston "was placed on the National Register of Historic Places,")

An organization has representational standing when (1) at least one of its members would have standing to sue in his own right; (2) the organization seeks to protect interests germane to the organization's purpose; and (3) neither the claim asserted nor the relief sought requires the participation of individual members in the lawsuit. *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 155 (4th Cir. 2000) (citing *Hunt v. Washington State Apple Adver. Comm'n,* 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977)). As recognized in the Court's earlier standing order, the Community Groups allege they represent diverse and broad interests, including seeking protection for Charleston's historic neighborhoods and residents; protection of air and water quality; protection of the architectural, historical, and cultural character of Charleston; appropriate management of mass tourism downtown; appropriate location of the terminal to provide broad regional preservation and economic benefit; and protection of the quality of life in historic Charleston. Order at 14. The Court concluded that these were sufficient to allege that the organizations have standing in that they assert their members will suffer an individualized injury and the protection of the members' interests is germane to the organizations. *Id.* The Court gave as an example the Historic Ansonborough Neighborhood Association ("HANA"), created to address matters of importance to this historic residential neighbourhood, which could have standing by virtue of and an individual Ansonborough resident alleging increased emissions, decreased property values, and adverse health impacts as a result of the permit allowing the relocation and expansion of the cruise terminal at UPT. *Id.* at 14-15.[4]

[4] SPA's conflicting citation to the dissenting opinion in *Georgetown County League of Women Voters v. Smith Land*, 393 S.C. 350, 713 S.E.2d 287, for the proposition that the interest and injury of an organization must be shared by all members was properly

The record before the Court shows that the organizations in this case have sufficiently alleged and supported standing to defeat summary judgment.

While SPA contends that the Preservation Society does not allege how this challenge serves to inspire involvement in historic preservation, or even that the permitted conduct affects historic materials or Charleston's cultural heritage, in fact the Petitioners have alleged that the cumulative impacts of the permitted activity will adversely impact the historic buildings in the surrounding downtown area as well as the historic ambiance that makes Charleston the city that it is. *See* Exhibits G and I. That is not changed by the reality that much smaller vessels called on Charleston in the past: the Carnival *Fantasy* is no clipper ship, and modern day cruise ships are alleged to be and self-evidently are far more vast in scale and radically different in design than the vessels that docked in Charleston in the 18th and 17th Century.

SPA attempts to attack HCF's standing as being unrelated to the permitted activity, which it says does not call for the modification or destruction of any historic building or site. But the permitted activity calls for modification of the Union Pier terminal and the cruise operations it supports, and those changes will impact the architectural and historical character of the downtown district, which is a central interest of the Historic Charleston Foundation.[5] As Mrs. Lane explains, the Board of the Historic

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rejected and cannot be reargued. Prevailing law holds that as long as one member has the right to sue in his or her own name, the organization has the right to sue on behalf of that member. *Friends of the Earth,* 204 F.3d at 155; *Hunt v. Washington State Apple Adver. Comm'n,* 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977).

[5] SPA's notion that Petitioners simply seek to impose their own vision on peninsula, would, if true, support standing, not detract from it.

Charleston Foundation[7] commissioned a study from Miley & Associates, Inc., entitled "The Cruise Industry in Charleston: A Clear Perspective." Exhibit L. The study focuses on the benefits and costs associated with the cruise ship industry and its impacts on Charleston, concluding that there is a "non-alignment" of the benefits and costs since the bulk of the cruise industry benefits go the SPA while the bulk of the costs are borne by residents and businesses located in the surrounding downtown area. *Id.* The Foundation's challenge to the permit authorizing a new cruise ship terminal at Union Pier seeks to require adequate controls to preserve and protect the historical, architectural and material culture that make up Charleston's rich and irreplaceable heritage. This goal is most certainly germane to the Foundation's mission as bearing directly on quality of life, preservation of historic resources and environmental impacts. *Id.*

SPA's attack on HANA as seeking to end cruise operations in Charleston is inaccurate, as the Dodd Affidavit shows, and even if true would not detract from standing. Ms. Dodd's affidavit is more than sufficient proof of standing under this Court's proper conception of the law. As for the Conservation League, Mrs. Robertson's testimony clearly sets forth the Coastal Conservation League's organizational purpose in

[7]The Foundation is the only non-member organization of the Petitioner groups. Federal courts have rejected challenges to plaintiff's capacity to assert organizational standing on the basis that an organization does not have members. *Public Interest Research Group v. Magnesium Elektron, Inc.*, 123 F.3d 111,125 (3d Cir. 1997). The court in *Public Interest Research Group* cited to *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977), for the proposition that "to meet the requirements of organizational standing, [the organization].. need only prove that their members possess the 'indicia of membership' in their organizations." The Court in *Hunt* described those "indicia of membership" as (1) who elected the governing body of the organization and (2) who financed its activities. The purported members of the Foundation meet both these elements. *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333 (1977). The Board of Trustees both elects the governing body, as well as bears responsibility for funding the organization.

that it "seeks 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" and that such interests "would be adversely affected if the SPA is permitted to construct the pilings as currently proposed because the pilings are merely a preliminary step for the SPA in expanding the Union Pier terminal and increasing the cruise ship operations it will support." (Exhibit H, 1-2).

SPA attempts to disparage the League because it has had the audacity to suggest that one way to reduce the injury caused by a cruise terminal would be to move it further away from the most congested, densely populated portion of a historic city laid out in the days of horse travel. Indeed, exhibiting further proof of its inability to actually consider options other than the ones it has deemed best by decree, SPA cannot even bring itself to recognize the common sense notion that moving the cruise terminal elsewhere might be a superior option from not just the health and environmental perspective, but from an economic perspective, since it would free up 30 acres of the most valuable real estate owned by the State of South Carolina for redevelopment into something other than a parking lot and industrial cruise operation. *See* Zimmerman Affidavit [Exhibit J]. SPA presents the community groups' ability to multi-task as something of an illicit revelation, but the League has made no secret of its desire to examine all options, commissioning a study to examine shore side power and one examining the economic value that would be generated if Building 322 and its surrounds were used for mixed use development rather than a cruise building and parking lot. One might think that a state agency would be

interested in a study showing great returns for the citizens of South Carolina, but SPA appears to view engagement by lowly citizens as akin to treason.

SPA's conception of the Charlestowne Neigborhood Association is unduly narrow. While it is true that CNA members reside south of Broad Street, they also *live* in the city of Charleston, particularly in the historic downtown district. As Mr. Gates testimony states, members of the Charlestowne Neighborhood Association are impacted on a daily basis by cruise ship operations, their properties located all the way south of Broad Street are being damaged and dirtied by soot deposits from the cruise ship's smokestacks, and they possess interests both north and south of Broad Street related to the permitted activity.

SPA attacks the Surfrider Foundation's standing by saying cruise ships have no effect on the world's oceans, but Marty Morganello, the President and a member of the Charleston Chapter of the Surfrider Foundation testifies that he is:

> concerned with the issuance of the permit for the State Ports Authority to install pilings and modify the Union Pier Terminal because that activity is a precursor to expanded cruise ship operations. The permit and the modifications it entails will allow the Union Pier Terminal to accommodate larger and more frequent cruise ships than it already does. With larger and more frequent ships calling on Union Pier, the amount of waste being dumped into the waters will increase as will the risks posed by contamination of those waters.

Exhibit M.

Further, Mr. Morganello states that he regularly enjoys the ocean and waterways for recreational and aesthetic uses and that "if the State Ports Authority installs the pilings to modify and expand cruise ship operations at Union Pier, it will decrease my ability to use and enjoy the waterways for fear of health impacts from increased cruise ships discharges." *Id.* SPA's own documents confirm why he should be concerned, since they

show that kitchen and bathroom waste from what are in essence floating hotels with thousands of persons aboard can be discharge within sight of the area's beaches.

Finally SPA attacks C4 because it supposedly seeks eradication of the cruise industry from Charleston. Again, that aim, if true, would support, not remove, standing. But of course it isn't true, as the organization's name – which is not Charleston Citizens for Cruise Elimination – reveals. As Mrs. Robertson's testimony explains:

> C4 represents members like myself who are concerned with the delicate balance between the historical residential port City of Charleston and the tourist experience of the City. These interests would be directly impacted if the SPA is permitted to construct the pilings as currently proposed because the pilings will allow the SPA to expand the Union Pier terminal rather than an alternative site and will increase cruise operations at Union Pier accordingly.

Exhibit H, at 2.

V. Public Interest and Statutory Standing

SPA argues that statutory and public importance standing are procedurally barred, but there is nothing that would prevent the Community Groups from arguing those grounds in response to a motion for summary judgment. The Community Groups properly made these arguments in briefing on SPA's misguided motion to dismiss on standing, and those arguments are incorporated herein in their entirety as if set forth in full. As noted above, statutory standing could be shown even if Article III redressability and causation are not, given the statutory scheme that provides administrative procedures for an "affected person." Public Importance standing is present because SPA, a state agency, proposes to build a very large $35 million cruise terminal in the heart of the most historic area in all of South Carolina and impact that area for generations to come. SPA has itself invoked public importance standing in other cases involving ports. In *S.C. State Ports Authority v. Jasper County*, SPA contended that determination of the issues there

would guide future port development in South Carolina and affect "statewide uniformity in the management of the State's ports and harbors," thereby "clearly" providing the public interest standing this Court has "recognized time and again" as being "conferred upon a party in cases of important public interest like this one 'when an issue is of such public importance as this one require its resolution for future guidance.'" Br. Pet./Pl. *S.C. State Ports Authority at 33, Jasper Cnty.*, (S.C. Orig.) (Jun 14, 2005) (citing *Sloan v. Wilkins*, 362 S.C. 430, 608 S.Ed 579 (2005)). The Supreme Court heard that case in its original jurisdiction but rejected SPA's claim to having a sole power over this State's seaports to the exclusion of municipal authority in that arena. *See Jasper Cnty.*, 368 S.C. at 397.

The Community Groups realize that if the Court finds they have Article III standing, these alternative grounds for standing need not be addressed.

CONCLUSION

SPA's motion for summary judgment mainly reargues points rejected in this Court's order denying SPA's motion to dismiss for lack of standing and its motion for reconsideration of same. There is, at minimum, a disagreement at the base of every factual claim made by SPA. The present motion should be denied.

Respectfully submitted,

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January 21ST, 2014
Charleston, SC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

I hereby certify that I have on this 21st day of January, 2014, served a copy of the foregoing Response in Opposition to the Motion for Summary Judgment for Lack of Standing upon all parties and counsel of record in the above-captioned case, via United States Mail, postage pre-paid, addressed as follows:

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Exhibit A

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

TECHNICAL SUMMARY OF REVIEW

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

Permit:
Permit with Conditions: X
Deny:

I. Background Information:

Database ID# 75114

Permit Number: OCRM-12-054-B

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

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

County: Charleston Water Body: Charleston Harbor/Cooper River

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

II. Project Description and Stated Purpose:

Description:

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

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

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

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

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

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

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

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

33. Overall Project Purpose...

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

39. Describe measures taken to avoid...

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

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

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.

AMICUS CURIAE BRIEF OF THE NATIONAL TRUST FOR HISTORIC PRESERVATION

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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues 1

Facts 1

Argument 8

I. THE RESPONDENTS/PLAINTIFFS HAVE STANDING TO SUE BECAUSE CARNIVAL'S ACTIVITIES ADVERSELY AFFECT THEIR PROPERTY INTERESTS IN HISTORIC OVERLAY ZONES. 9

II. THE NATURE AND EXTENT OF CARNIVAL'S ACTIVITIES, AS ALLEGED IN THE COMPLAINT, SUPPORT THE ELEMENTS NEEDED TO ESTABLISH A NUISANCE CLAIM BECAUSE FORCING HISTORIC PROPERTY OWNERS TO BEAR THE COSTS OF THESE ACTIVITIES IS UNREASONABLE 12

Conclusion 15

TABLE OF AUTHORITIES

Cases

Baird v. Charleston Co., 333 S.C. 519, 511 S.E.2d 69 (1999)..... 10

Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 589, 589 (Ct. App. 2001)..... 10

City of Newport News v. Hertzler, 221 S.E.2d 146 (Va. 1976)..... 13

Deason v. Southern R. Co., 142 S.C. 328, 140 S.E. 575 (1927) 12

Dover Historical Soc'y, Inc. v. City of Dover Planning Comm'n, 838 A.2d 1103 (Del. 2003)..... 10

Galveston Historical Found. v. Zoning Bd. of Adjustment, 17 S.W.2d 414 (Tex. Ct. App. 2000)..... 10

Gardner v. Sailboat Key, Inc., 295 So. 2d 658 (Fla. 1974)..... 13

Home Sales, Inc. v. City of North Myrtle Beach, 299 S.C. 70, 382 S.E.2d 463 (Ct. App. 1989)..... 13, 14

Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977)..... 10, 11

Lombard Historical Comm'n v. Village of Lombard, 852 N.E.2d 916 (Ill. Ct. App. 2006)..... 10

Overcash v. South Carolina Electric & Gas, Co., 364 S.C. 569, 614 S.E.2d 619 (2005)..... 14

Sea Pines Ass'n for Prot. of Wildlife, Inc., v. South Carolina Dep't of Natural Res., 345 S.C. 594, 550 S.E.2d 287 (2001)..... 13

Society Hill Civic Assn. v. Philadelphia Bd. of License & Inspection Review, 905 A.2d 579 (Pa. Commw. 2006), *review denied*, 923 A.2d 412 (Pa. 2007)..... 10

Unisys Corp. v. S.C. Budget & Control Bd., 346 S.C. 158, 551 S.E.2d 263 (2001)..... 13

United States v. County Bd. of Arlington, 487 F. Supp. 137 (E.D. Va. 1979)..... 13

Wyly v. Preservation Dallas, 165 S.W.3d 460 (Tex. App. 2005)..... 10

Statutes, Regulations, & Local Ordinances

16 U.S.C. §§ 470-470w..... 6

36 C.F.R. § 60.15..... 6

36 C.F.R. § 60.2..... 6

Charleston City Code § 54-230..... 3, 14

Charleston City Code § 54-241..... 3, 14

Art. 10, § 42, INDEX OF THE JOURNAL OF CITY COUNCIL OF CHARLESTON, S.C. 707 (Oct. 13, 1931)..... 3

Other Authorities

CAROLINA ART ASSOCIATION, HISTORIC CHARLESTON FOUNDATION, AND THE PRESERVATION SOCIETY OF CHARLESTON, S.C., THIS IS CHARLESTON—A SURVEY OF THE ARCHITECTURAL HERITAGE OF A UNIQUE AMERICAN CITY (3rd ed. 1964)..... 1

David C.R. Heisser, *Warrior Queen of Ocean: The Story of Charleston and its Seal*, 93 SOUTH CAROLINA HISTORICAL MAGAZINE 167-195 (1992)..... 3

Garrett Hardin, *The Tragedy of the Commons*, SCIENCE 1243-1248 (1968)..... 2

HISTORIC PRESERVATION PLAN FOR THE CITY OF CHARLESTON 2 (June 1974)..... 4, 5, 6

JONATHAN H. POSTON, THE BUILDINGS OF CHARLESTON: A GUIDE TO THE CITY'S ARCHITECTURE 23 (1997)..... 1

Kenneth A. Manaster and Daniel P. Selmi, Public and Private Nuisances, 1 STATE ENVTL. L. § 3:1 n.17 (Nov. 2011)..... 12

Miley & Associates, Inc., Executive Summary, THE CRUISE INDUSTRY IN CHARLESTON: A CLEAR PERSPECTIVE (Feb. 2012)..... 11, 14

VISION | COMMUNITY | HERITAGE: A PRESERVATION PLAN FOR CHARLESTON, SOUTH CAROLINA (2008)..... 5

W. Thomas Lavender, Jr. and Thomas G. Eppink, *Public Nuisance*, 23 S.C. JUR. § 2 (Mar. 2012)..... 12

STATEMENT OF ISSUES

Do neighborhood associations of historic property owners have standing to sue Carnival under theories of nuisance law in order to enjoin the adverse effects of Carnival's cruise ship operations next to their property in an historic overlay zone?

FACTS

This lawsuit presents novel issues because it is the first time this Court has been asked to determine whether a cruise ship company can conduct its operations with immunity from common law or other limits, even if the conduct of its business unreasonably infringes on the property rights of adjacent homeowners who reside in legally-protected historic overlay zones. Moreover, the fact of this lawsuit's uniqueness is not a weakness. To the contrary, the claims it raises did not arise in a vacuum, but rather in an intensely regulated environment that magnifies the harm alleged.

As observed by one of the nation's most respected experts on Charleston's architectural history, Charleston—America's "best preserved city"—is unique among cities because it has maintained "an urban landscape that still largely reflects its individual history and development." JONATHAN H. POSTON, THE BUILDINGS OF CHARLESTON: A GUIDE TO THE CITY'S ARCHITECTURE 23 (1997). In recognition of this landscape, Charleston's architecture, building materials, small-scale street grids, church steeples, historic skylines, and water vistas are examples of the types of places or things protected by law or private regulation.[1]

[1] For an earlier treatment of Charleston's architectural history, see also CAROLINA ART ASSOCIATION, HISTORIC CHARLESTON FOUNDATION, AND THE PRESERVATION SOCIETY OF CHARLESTON, S.C., THIS IS CHARLESTON—A SURVEY OF THE ARCHITECTURAL HERITAGE OF A UNIQUE AMERICAN CITY (3rd ed. 1964).

Unregulated cruise tourism, however, has started to jeopardize the maintenance of this fragile environment that generations of Charlestonians have worked hard to protect. Notwithstanding the repeated requests by nearby property owners, Carnival has refused to place reasonable limits on the size and frequency of its ships. In fact, Carnival has refused to be regulated at all or shoulder any part of the burden it creates. And it has done so with the approval of the State and City.[2] In economic terms, this is a classic free rider, or freeloader, problem.[3] This lawsuit seeks to reallocate some of these costs in a more equitable manner.[4]

Local Preservation Law and Its History

Charleston, South Carolina, is recognized as a national leader in historic preservation efforts. Charleston has one of the oldest officially recognized historic preservation policies in the country and is home to the nation's oldest membership-based

[2] This position is perplexing. In the absence of regulation, Charleston's historic resources—especially aesthetic ones—will become over-consumed and destroyed. Charleston's historic resources are an example of the type of "commons" described by Garrett Hardin in his famous essay, which has great currency across disciplines as a useful metaphor. Garrett Hardin, *The Tragedy of the Commons*, SCIENCE 1243-1248 (1968). Hardin's conclusion argues for regulation in situations where, as here, unlimited numbers of actors, such as Carnival, claim unfettered use of a resource that no one owns. In the absence of regulation, the commonly owned resource will inevitably be depleted by over-consumption and destroyed (the "tragedy"). Charleston's unique aesthetics and quality of life, which thousands come to experience every year, represent a type of commons. Ironically, although the Respondents/Plaintiffs are subject to regulation over aesthetic resources because they live within Charleston's historic overlay zones, Carnival and its customers are free from all restrictions, even though they profit from the aesthetic commons that Charleston's historic property owners are required by law to maintain.

[3] The purported "remedy" is to close city streets to all but Carnival's passengers, avoid parts of the city where one works and lives, and adjust living patterns in accordance with Carnival's activities and the scheduled cruise vacations of others.

[4] In this way, this lawsuit is no different than the legal proceedings involving the original plans for Charleston Place convention center and Federal Judicial Center in Charleston, both of which were redesigned to fit more harmoniously within the scale of Charleston's historic built environment to maintain its historic character.

advocacy group, the Preservation Society of Charleston, a Respondent/Plaintiff here, founded in 1920. As evidence of its preservation ethic, Charleston's motto—adopted shortly after the city's incorporation in1783 and found on the face of its official seal—states that "she guards her buildings, customs, and rights."[5] In 1931, Charleston passed the nation's first historic preservation ordinance, which was particularly significant because it protected an entire neighborhood, not merely individual structures. Art. 10, § 42, INDEX OF THE JOURNAL OF CITY COUNCIL OF CHARLESTON, S.C. 707 (Oct. 13, 1931) (establishing the nation's first board of architectural review and creating the "Old and Historic Charleston District "[i]n order to promote general welfare through the preservation and protection of historic places and areas of historic interest[.]"). This ordinance represents official efforts by Charleston's citizens through their city government to protect the historic look, feel, and context of the city's preservation districts, the boundaries of which have expanded several times. Each of the Respondents/Plaintiffs is comprised of members who reside within one of these districts.

The owners of historic properties who live in these areas, whose interests are represented by the neighborhood associations and other advocacy groups who brought this litigation, maintain their properties at great personal expense because of local and federal legal requirements that apply to them as a result of the historic designations. See Charleston City Code §§ 54-230 and 54-241 (Board of Architectural Review has the power to order owners of historic properties to "preserve and protect" their structures in a manner consistent with the "economic and general welfare of the city and of the public

[5] Translated from the Latin, "AEDES MORES JURAQUE CURAT." David C.R. Heisser, *Warrior Queen of Ocean: The Story of Charleston and its Seal*, 93 SOUTH CAROLINA HISTORICAL MAGAZINE 167-195 (1992).

generally . . . [so] that the qualities relating to the history of the city and a harmonious outward appearance of structures which preserve property values and attract tourists and residents alike be preserved; some of these qualities being the continued existence and preservation of historic areas and buildings . . . which serve as visible reminders of the historical and cultural heritage of the city, the state, and the nation").

Further evidence of the City's official preservation policy is contained in its HISTORIC PRESERVATION PLAN FOR THE CITY OF CHARLESTON 2 (June 1974) (hereafter "1974 PRESERVATION PLAN").[6] The 1974 PRESERVATION PLAN describes early concerns about inappropriate land uses, which are relevant to this lawsuit today: "Substantial areas are in jeopardy through encroachment by incompatible land uses . . . and by other proposed large scale "improvements." The 1974 PRESERVATION PLAN provides additional detail concerning the historic streetscape and views down narrow streets,[7] the protection of vistas,[8] the orientation functions served by steeples,[9] and the need to protect

[6] This plan and accompanying report were sponsored by the City of Charleston, with financial assistance by the U.S. Department of the Interior, and administered by the South Carolina Department of Archives and History. It is publicly available at http://online.wsj.com/article/SB10001424053111903454504576486303965790900.html.

[7] "Some of the most fascinating features of Old Charleston are the views down narrow streets. Neverending surprises delight the eye. The turn of a corner reveals an unexpected vista where the rhythm of the buildings leads the eye to the water, then to a ship in the distance." 1974 PRESERVATION PLAN at 14.

[8] "The basic form of Old Charleston is a legacy from past generations. The street patterns, many of the buildings and important vistas—even the magnificent street trees—resulted from the vision of our forefathers. They had a better eye for proportion than we do, a better sense of scale and a finer appreciation of the nuances of rhythm and detail in the architectural expressions of their culture. . . . Whatever the reason, Charleston is one of the most visually appealing cities in the Nation—far surpassing newer cities in harmony of scale and variety of form." 1974 PRESERVATION PLAN at 8.

[9] "Church spires punctuate other vistas. St. Philip's, St. Matthew's and St. Michael's are the most prominently placed. The soaring height of these and other churches form major

river and harbor views.[10] One of the most often-quoted passages provides: "A vital part of the total city scene—and not to be rudely tampered with—is the skyline, which is punctuated with the beautiful steeples of historic churches. They contribute immeasurably to the general harmony of buildings heights, which is only occasionally spoiled by modern intrusions." 1974 PRESERVATION PLAN at 12. This summation encapsulates Charleston's legacy of protecting its historically appropriate low-rise scale, indicated by accompanying illustrations. Exhibit A.

Following careful study, the City updated its preservation plan in 2008, which the City Council adopted. VISION | COMMUNITY | HERITAGE: A PRESERVATION PLAN FOR CHARLESTON, SOUTH CAROLINA (2008) (hereafter "2008 PRESERVATION PLAN").[11] In describing historic preservation's evolution in Charleston, the 2008 PRESERVATION PLAN explains it as "an everyday matter," encompassing more than "bricks and mortar." 2008 PRESERVATION PLAN at 3. Preservation in Charleston is a "social, economic, and cultural endeavor." *Id.* Significantly, the 2008 PRESERVATION PLAN renews calls for protecting the City's skyline—"a vital part of the total city scene"—with increased enforcement of height limits. *Id.* at 47. The 2008 Plan also echoes the need to address unchecked

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landmarks, providing a visual reference point for motorist and pedestrian alike." 1974 PRESERVATION PLAN at 15.

[10] "Occasional intrusions, such as the Sargent Jasper Apartment Building next to Colonial Lake, looms starkly on the horizon nearby. This 14-story building is a harsh and unfortunate contrast to its environs, and blocks the view of the Ashley River." 1974 PRESERVATION PLAN at 13.

[11] This information is publicly available at http://www.charleston-sc.gov/dept/content.aspx?nid=1247.

growth, recalling the 1974 Plan's recordation of the damaging effects of traffic gridlock on streets that were not designed to accommodate today's traffic loads.[12]

Charleston's Federal Preservation Law Overlay

In addition to its local preservation law, Charleston is regulated by federal preservation law. The National Register of Historic Places represents the official list of historic places worthy of preservation in the United States. Authorized by the National Historic Preservation Act, and managed by the National Park Service of the U.S. Department of the Interior, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources. 16 U.S.C. §§ 470-470w. The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups, and citizens to identify the Nation's cultural resources and to indicate which properties should be considered for protection from destruction. 36 C.F.R. § 60.2. Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation and other federal and state financial incentives, such as historic rehabilitation tax credits. *Id.* § 60.2(b) & (c). A property or district can be removed from the National Register if the qualities which caused it to be originally listed have been lost or destroyed. 36 C.F.R. § 60.15.

In Charleston, a National Historic Landmark District was designated on October 9, 1960. A larger district, incorporating the Landmark District, was listed in the National

[12] "Environmental problems also exist. . . . [T]he spillover of automobiles . . . is a major problem. . . . This reduces the traffic-carrying capacity of the streets and is thoroughly disruptive of the historic residential character of the [historic] areas." 1974 PRESERVATION PLAN at 17.

Register of Historic Places as the Charleston Historic District on October 15, 1966. Within this district are thirty individually listed National Historic Landmarks and twenty-one sites individually listed in the National Register of Historic Places. The homeowners represented by the Respondents/Plaintiffs live or own property within one of these protected zones: the Old and Historic District or the Old City District. This fact is not contested. The Complaint describes, among other things, how Carnival harms these zones, such as skyline disruptions, blocking of water and street views, and traffic that creates gridlock on Charleston's small, historic streets. Amended Compl. ¶¶ 10-11. The Complaint also highlights the potential for losing Charleston's National Register designations, should the industrial scale of Carnival's ships and operations jeopardize the context and setting that caused Charleston to be listed in the first place. *Id.* ¶10(D).

Charleston and Cruise Tourism

The tourism industry in Charleston—of which Carnival is one of the largest, and simultaneously the only unregulated member—depends upon the maintenance of private, living, non-museum historic neighborhoods maintained through private investment of local residents. Carnival advertises or markets the fruits of this private investment made by the residents of Charleston's historic districts in order to attract customers to Charleston's "niche market." Exhibit B. As recorded extensively in the popular press[13] and as recognized by the National Trust[14] and World Monuments Fund,[15] the increase in

[13] *See, e.g.*, Keith Schneider, *Historic City at Odds With Its Popularity as Cruise Port*, N.Y. TIMES, Apr. 19, 2011, available at: http://www.nytimes.com/2011/04/20/realestate/commercial/20charleston.html?pagewanted=all; Anthony Paletta, *How Charleston Is Handling the Cruise Ship 'Threat,'* WALL St. J., Aug. 6, 2011, available at: http://online.wsj.com/article/SB10001424053111903454504576486303965790900.html.

[14] As part of its 2011 announcement of America's 11 Most Endangered Historic Places,

cruise tourism has started to tip the balance between preservation and economic development previously established by the City's Tourism Management Ordinance. Although the City and the Port disagree with this characterization, their position ignores relevant facts. Moreover, their position assumes—wrongly--that Charleston and its historic property owners can absorb unlimited numbers of tourists in a limited geographic space at an increasing intensity and rate. Note 2, *supra*. This lawsuit, therefore, seeks to address the harmful effects caused by Carnival's operations, which the Respondents/Plaintiffs bear without any benefit to offset their loss.

ARGUMENT

The gist of Carnival's argument, which the State Ports Authority and the City repeat almost verbatim, is that the Respondents/Plaintiffs lack standing to sue for a private nuisance because they complain of conduct that amounts to a public nuisance under Charleston's public nuisance law. In addition, Carnival argues that Respondents/Plaintiffs cannot sue for public nuisance because there is no private right of action for injuries suffered by the public at large and the plaintiffs have not pled or suffered any special injury. These arguments, however, conflate standing with the elements needed to plead a colorable claim. They also mischaracterize the law of standing as it applies to owners of properties within historic overlay zones. Moreover,

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the National Trust placed the Port of Charleston on a special "watch status," based on concerns about the potential adverse impacts of cruise ship tourism on the historic character of the city. See 11 Most Endangered Places—Watch Status: City of Charleston, http://www.preservationnation.org/travel-and-sites/sites/souther-region/watch-status-charleston-1.html. Exhibit C.

[15] The World Monuments Fund, a leading organization devoted to saving the world's architectural heritage of significant monuments, listed the Charleston Historic District on its 2012 Watch Site. See http://www.wmf.org/project/charleston-historic-district. Exhibit D.

Carnival overlooks the substantial overlap between public and private nuisance theory, and ignores the plain language of the Complaint relative to the pleading requirements for nuisance law.[16] The Court should deny the Motions to Dismiss.

I. THE RESPONDENTS/PLAINTIFFS HAVE STANDING TO SUE BECAUSE CARNIVAL'S ACTIVITIES ADVERSELY AFFECT THEIR PROPERTY INTERESTS IN HISTORIC OVERLAY ZONES.

The Respondents/Plaintiffs have standing to sue under nuisance law for injuries they have suffered as a result of Carnival's activities next to their property. In fact, each of the Respondents/Plaintiffs represents members who own property in the two historic districts immediately adjacent to Carnival's docking area at the Port of Charleston. Moreover, the Coastal Conservation League's headquarters is almost immediately adjacent to Carnival's operations. In case of the Preservation Society of Charleston, in addition to representing the property interests of its membership, a review of local property records demonstrate that the Preservation Society owns historic preservation easements in all of the affected areas.[17] Therefore, Carnival's statement on page five of its Motion to Dismiss—that Respondents/Plaintiffs are not property owners—is wrong.

In the context of historic preservation issues, such as the nuisance claims raised in this lawsuit, it is generally accepted in courts throughout the country that property owners, or associations that represent them, have standing to sue for harm to their

[16] If Carnival is right, no one would ever be able to sue for private injuries if injuries are coincidentally sustained at the same time by either the public at large or a subset of it. This position, however, would create an absurd result.

[17] The Preservation Society's easement properties include: In the East Bay area: 159 East Bay St.; 186-192 East Bay St.; 297–301 East Bay St.; 30 Vendue Range (just off East Bay); 2 Unity Alley (just off East Bay). In Ansonboroough: 39 Society St.; 64 Hasell St.; 4 George St. In the French Quarter: 143-145 Church St.; 6 Chalmers St. Other properties close to waterfront: 18 South Adger's Wharf; 10 Elliott St.; 7 Broad St.; 9 Broad St.

property. South Carolina law is in accord. *E.g., Baird v. Charleston Co.*, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). In the case of an associational plaintiff, this Court has supplemented the analysis to require that (1) members would have standing individually; (2) the interests at stake relate to the association's interests and purpose; and (3) neither the claim nor the relief sought requires the participation of individual members. *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977) (cited in *Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 589, 589 (Ct. App. 2001)).

For examples of analogous non-federal historic preservation standing cases, see *Dover Historical Soc'y, Inc. v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1114 (Del. 2003) (holding that landowners in the Dover Historic District had an enforceable right to the aesthetic benefits derived from the historic district as a whole); *Galveston Historical Found. v. Zoning Bd. of Adjustment*, 17 S.W.2d 414, 418 (Tex. Ct. App. 2000) (holding that "persons who reside or operate a business in a restricted zone are persons who have 'an interest peculiar to themselves and distinguishable from the public generally'"); *Society Hill Civic Assn. v. Philadelphia Bd. of License & Inspection Review*, 905 A.2d 579, 586 (Pa. Commw. 2006), *review denied*, 923 A.2d 412 (Pa. 2007) (ruling that Society Hill Civic Association had standing to challenge the decision of the Preservation Commission, where the association had been involved in the project at proceedings before the city and its purpose was to promote the preservation and restoration of historic buildings); *Wyly v. Preservation Dallas*, 165 S.W.3d 460, 464-65 (Tex. Ct. App. 2005) (holding that preservation organizations had standing to challenge the demolition of a house in a local historic district because their members resided or owned property in the district); *Lombard Historical Comm'n v. Village of Lombard*, 852

N.E.2d 916, 918 (Ill. Ct. App. 2006) (finding that preservation groups had standing to seek a writ of mandamus as taxpayers to enforce the legal duties of the Village regarding its stewardship of public property).

Here, applying the *Hunt* factors in the order cited above, Respondents/Plaintiffs' members, who reside in historic districts next to Carnival's cruise ship operations, have standing to sue individually, especially where they have alleged facts, if taken as true, that demonstrate property-based injuries. Amended Compl. ¶¶ 1, 9-10, 11-19, 75. Pollution, noise, soot, protected view and skyline encroachments, traffic gridlock, road closures, and large crowds in their neighborhoods are examples of the injuries suffered. *Id.* Next, Respondents/Plaintiffs are commonly recognized and long-standing neighborhood associations, preservation, or conservation advocacy groups. Their missions, therefore, include property-based, preservation, and conservation interests that relate directly to each one of the lawsuit's claims, each designed to "protect Charleston's historic assets and environment from uncontrolled and incompatible cruise industry operations[.]" Amended Compl. ¶ 1. See also Miley & Associates, Inc., Executive Summary, THE CRUISE INDUSTRY IN CHARLESTON: A CLEAR PERSPECTIVE (2012) (identifying historic preservationists and a variety of property owners as "primary stakeholders" in the cruise tourism debate). A copy of this study's Executive Summary is attached as Exhibit E (hereafter "CRUISE INDUSTRY STUDY").

Finally, the injunctive relief sought—a declaratory judgment determining the illegality and unreasonableness of Carnival's operations and enjoining legal violations and conduct that amounts to a nuisance—does not require the participation of individuals.

Amended Compl. pp. 24-25 (Prayer for Relief). Therefore, South Carolina's standing requirements are met.

II. THE NATURE AND EXTENT OF CARNIVAL'S ACTIVITIES, AS ALLEGED IN THE COMPLAINT, SUPPORT THE ELEMENTS NEEDED TO ESTABLISH A NUISANCE CLAIM BECAUSE FORCING HISTORIC PROPERTY OWNERS TO BEAR THE COSTS OF THESE ACTIVITIES IS UNREASONABLE.

Taking the facts alleged as true, Respondents/Plaintiffs have pled valid nuisance claims under applicable law. By contrast, Carnival's arguments depend on a misunderstanding of the law of nuisance, a common law cause of action that does not depend on the violation of any statute or ordinance.

It is hornbook law in South Carolina, and throughout the United States, that a private nuisance is the "substantial" and "unreasonable" interference with the use and enjoyment of the land of another. Although public nuisances tend to affect a broader number of people, W. Thomas Lavender, Jr. and Thomas G. Eppink, *Public Nuisance*, 23 S.C. JUR. § 2 (Mar. 2012), the elements required to establish liability for either claim are virtually identical. *Id.* § 3. As SOUTH CAROLINA JURISPRUDENCE explains:

> The same thing or act may, at the same time, be both a public and private nuisance. South Carolina recognizes this circumstance as a "mixed nuisance" which "is one which, while producing injury to the public at large, does some special damage to some individual or class of individuals." In other words, a mixed nuisance is "one which is both public and private in its effects—public because it injures many persons or all the community, and private in that it also produces special injuries to private rights." 23 S.C. JUR. § 4 (citing *Deason v. Southern R. Co.*, 142 S.C. 328, 338, 140 S.E. 575, 579 (1927) (recognizing coexistence of public and private nuisance law theories)).

See also Kenneth A. Manaster and Daniel P. Selmi, *Public and Private Nuisances*, 1 STATE ENVTL. L. § 3:1 n.17 (Nov. 2011) ("As a practical matter, in environmental cases the overlap between public and private nuisance is great."). This is especially true in this case where the unique nature of the harm alleged is experienced

individually and collectively. "Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process." *Sea Pines Ass'n for Prot. of Wildlife, Inc., v. South Carolina Dep't of Natural Res.*, 345 S.C. 594, 602 n.3, 550 S.E.2d 287, 591 n.3 (2001).[18]

The only case cited by Carnival—*Home Sales, Inc. v. City of North Myrtle Beach*, a nuisance *per se* case, is factually and procedurally distinguishable. 299 S.C. 70, 382 S.E.2d 463 (Ct. App. 1989). First, *Home Sales* involved complaints about opening a street to create a beach parking area in Myrtle Beach. No specific local, state, or federal law protected the area. Second, *Home Sales* did not address whether plaintiffs had pled valid nuisance claims, but rather examined whether plaintiffs met their burden of proof at trial. This case, by contrast, is before the Court on motions to dismiss and involves a completely different standard of review: the facts as pled in the Complaint should be taken as true and not dismissed, especially where conflicts exist and additional factual discovery is needed to evaluate the lawsuit's merits. *E.g., Unisys Corp. v. S.C. Budget & Control Bd.*, 346 S.C. 158, 164, 551 S.E.2d 263, 267 (2001) (noting general rule that

[18] Legal research does not reveal any reported decisions analogous to the facts or procedural posture presented here, which is not surprising given the recent timing and unique nature and extent of Carnival's conduct. There are three aesthetic nuisance cases that were decided on the merits, not at the motion to dismiss stage. In addition to the difference in procedural posture, these cases are factually distinct from this lawsuit in that one involved a complaint about temporary portable toilets (*City of Newport News v. Hertzler*, 221 S.E.2d 146 (Va. 1976)) and the other involved building construction on an undeveloped island (*Gardner v. Sailboat Key, Inc.*, 295 So. 2d 658 (Fla. 1974)). In addition, neither of these two cases involved an historic overlay zone. The final case, brought in federal court, was dismissed for failing to bring a timely claim. See *United States v. County Bd. of Arlington*, 487 F. Supp. 137 (E.D. Va. 1979) (visual intrusions on areas near the National Mall).

important questions of novel impression should not be decided on a motion to dismiss if development of the factual record is needed to aid in resolution of the issues). See also CRUISE INDUSTRY STUDY, *supra* (illustrating disputed issues of fact and identifying a disconnect between costs and benefits) (Exhibit E).

Here, by contrast, Respondents/Plaintiffs have alleged injuries arising from the operation of huge cruise ships near their properties located in historic overlay zones, areas that are regulated on the federal, state, and local levels. In addition, because of the unique nature of the rights, duties, and liabilities of historic property owners that require them to maintain the physical artchitecture, historic context, and setting for which Charleston is known, Carnival's activities affect them in a way that is not experienced by property owners who are not subject to these laws. The harm suffered by Respondents/Plaintiffs is heightened as compared to property owners outside the historic districts. Charleston City Code 54-230 and 54-241, *supra*. *Home Sales* is therefore inapposite. Moreover, the CRUISE INDUSTRY STUDY, *supra*, at 3, has already identified a "non-alignment" of benefits of cruise tourism relative to costs, and highlights for the Court the types of factual evidence that would assist the Court in resolving the merits of this lawsuit if it is allowed to proceed. And notwithstanding Petitioners/Defendants' assertions, private parties may bring public or private nuisance claims. *E.g., Overcash v. South Carolina Electric & Gas. Co.*, 364 S.C. 569, 577, 614 S.E.2d 619, 622 (2005). Carnival cites no case to the contrary.

CONCLUSION

For the reasons discussed above, the Court should deny the pending Motions to Dismiss.

March 30, 2012

Respectfully submitted,

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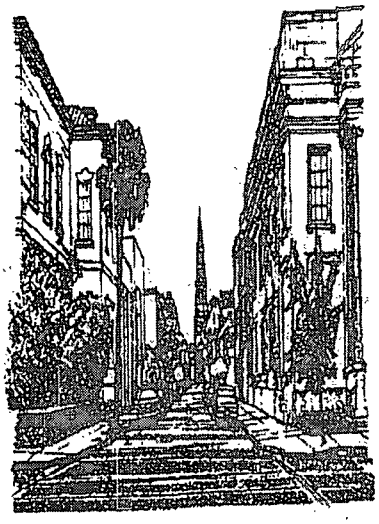
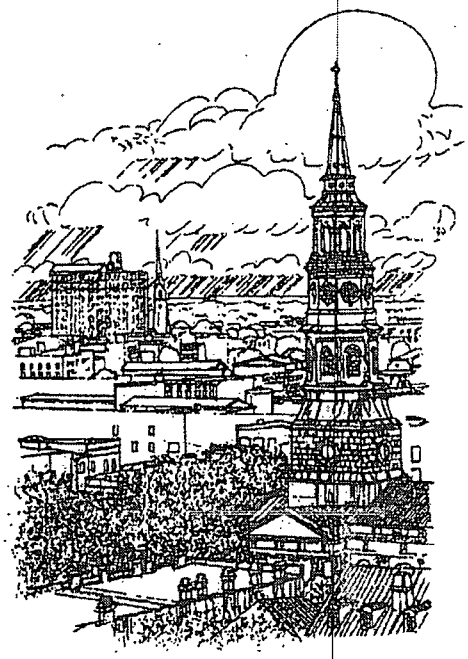
EXHIBIT A





A vital part of the local city scene is the skyline.

EXHIBIT B

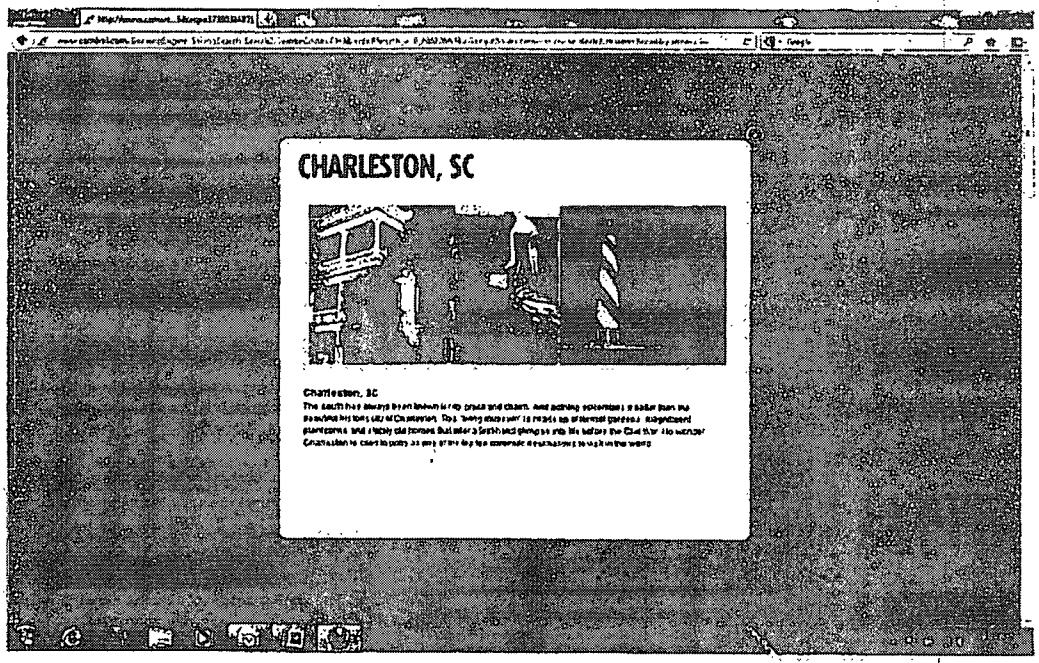

CHARLESTON, SC
Charleston, SC

EXHIBIT C

Like 142 people like this. Be the first of your friends.

Tweet 6

11 Most Endangered Historic Places

Watch Status: City of Charleston

Year Listed: 2011
Location: Charleston, South Carolina

Significance

For the first time in its history, the list of America's 11 Most Endangered Places has been supplemented with a site placed on "Watch Status": the city of Charleston. The Watch Status means that a specific threat to a historic site appears to be growing, but can be avoided or controlled through collaboration and innovation. In the case of Charleston, expanding cruise ship tourism could jeopardize the historic character of the city, historic downtown Charleston and its surrounding neighborhoods. The Watch Status designation is accompanied by an offer from the National Trust to assist with finding a balanced solution that benefits the community and its rich cultural heritage.

While there are many proposals at play in the Charleston cruise tourism issue, including relocation of the cruise docking pier, the National Trust believes that defining enforceable limits on the size, number and frequency of cruise ships visiting the downtown piers is central to a positive resolution. The National Trust wants to play a constructive role in addressing this issue by offering its assistance in three ways:

- **Helping sponsor a Tourism Impact Study for Charleston.** The study would provide a deeper understanding of the economic, social and cultural impacts that current tourism and the increased levels of cruise traffic will create on the historic peninsula of Charleston. The study should be commissioned by parties with an interest in the issue, including the City, preservation organizations and the state ports authority. The National Trust's participation can provide assurance that the study responsibly reflects the concerns of all parties. In addition, the National Trust plans to support such a study with a grant to help defray costs.
- **Funding an Enforcement Authority Legal Review.** The National Trust can bring its significant legal resources to better understand the issue of authority in setting enforceable limits on cruise tourism. Precedent from other coastal communities, role and scope of potential city ordinances and state regulation and oversight are all considerations in the complex process of setting cruise limits. Parties engaged in this issue will ultimately need to understand what legal basis exists for management of cruise tourism levels. The National Trust can play a useful role in helping clarify the options available.
- **Launching a Community Forum on Cruise Tourism.** The National Trust plans to tap into its social networking and online presence to encourage continued discussion of the cruise tourism issue, both within the Charleston community and interested public audiences.

The National Trust believes that a positive, solution-oriented approach to the issues surrounding the city of Charleston is the only viable solution.

Endangered Places

Homepage
Explore Places
About the Program
Donate Online

2011 Most Endangered Historic Places

Bear Butte
Belmead-on-the-James
China Alley
Fort Gaines
Greater Chaco Landscape
Isaac Manchester Farm
John Coltrane Home
National Soldiers Home Historic District
Pillsbury "A" Mill Complex
Prentice Women's Hospital
Sites Imperiled by State Actions

NATIONAL TRUST FOR HISTORIC PRESERVATION®

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EXHIBIT D

INFORMATION

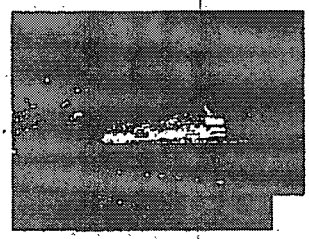
Charleston was founded in 1670 by English colonists and relocated in 1680 to its present location, where the Ashley and Cooper rivers meet the Atlantic Ocean. Charleston's importance as a port is reflected in the fine collection of buildings that epitomize American social and architectural history. Residential, commercial, administrative, and ecclesiastical buildings in Georgian, Regency, Federal, Adamesque, Classical, Greek and Gothic Revival, and Italianate styles dot the historic city. Charleston pioneered urban preservation in the United States as the first city in the country to enact a local historic district ordinance in 1931, its protection is of national importance, not only because of its diverse architectural heritage, but also because of its critical role in the development of historic preservation policy in the United States.

Charleston Historic District lies on a peninsula in Charleston harbor, which now accommodates cruise ships of a substantial size. The waves of increased visitors impact the city's urban and social fabric, and the concerns in Charleston echo challenges faced in many historic port cities with cruise ship tourism. More tourists bring economic benefits, but they also create increased traffic that requires careful planning to assure the continuing protection of the historic urban center, which has evolved over the centuries but retains the distinct character of a city formed in an earlier time. Balancing the preservation of heritage, quality of life needs, and new economic opportunities is a constant and complex dialogue. As witnessed in many places around the world, the rapid, unregulated growth in cruise ship arrivals compels the development of a sustainable plan that will encourage tourism and a thriving historic center. It is hoped that such a plan can serve as a model for many other historic port cities and towns worldwide that confront similar issues.

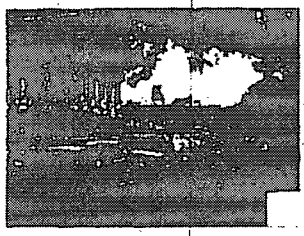
Download a 2012 Watch poster of this site (see download instructions).

IN THE MEDIA

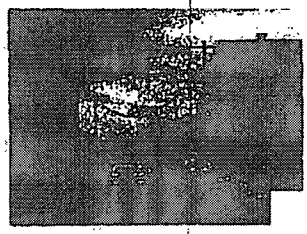
- Historic District on new watch list
  The Post and Courier, October 6, 2011
- Mayor disagrees with assessment of Charleston as endangered city (video)
  Live5News, October 6, 2011
- Fixing Charleston's Cruise Problems
  Cruisemates, October 7, 2011
- Charleston, S.C., lands on a list of endangered sites – again
  Los Angeles Times, October 7, 2011
- Peak cruising season: Charleston will have hosted 13 cruise ship visits from Oct. 16 through Nov. 4
  The Post and Courier, October 20, 2011



Cruise ship in Charleston, 2011



Cruise ship in Charleston, view from United States Custom House, 2011



Cruise ship in Charleston, view from Meeting Street with Market Hall on the left, 2011

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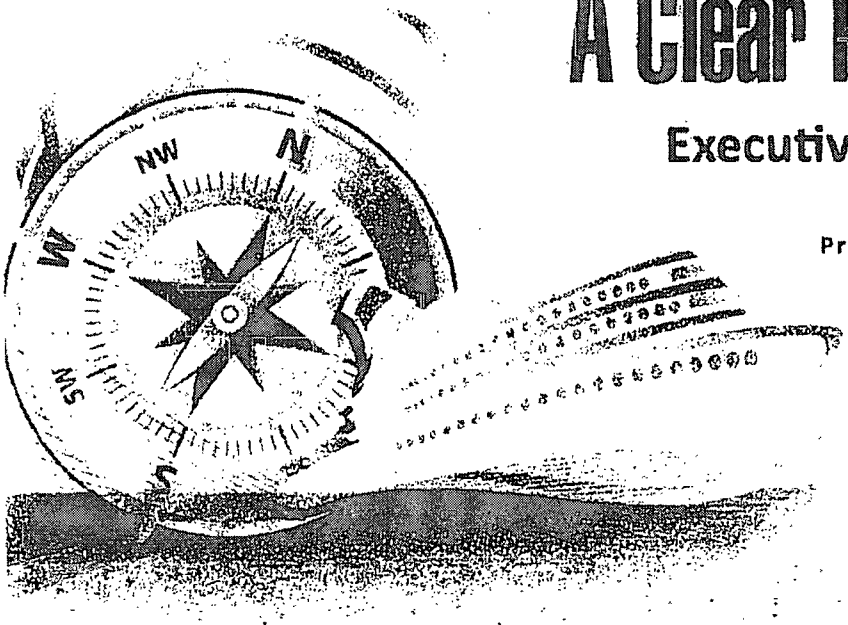
EXHIBIT E

The Cruise Industry in Charleston:

A Clear Perspective

Executive Summary



Prepared for

Historic Charleston Foundation

Prepared by
Miley & Associates Inc
Columbia, SC
February 2012

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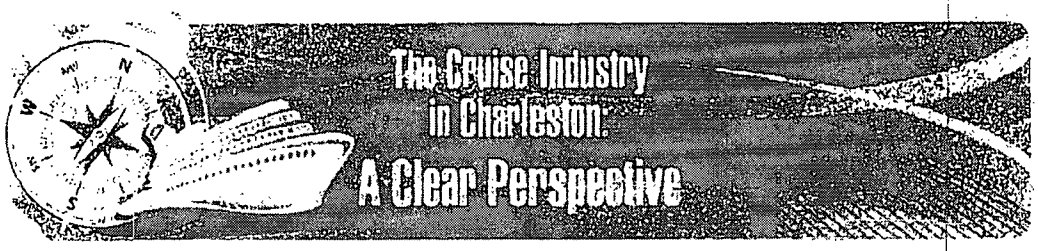

Executive Summary

1. Introduction

In the fall of 2011, Historic Charleston Foundation (HCF) commissioned Miley & Associates, Inc. (M&A) to conduct an impartial analysis of the impact of the cruise industry on the City of Charleston. HCF directed M&A to provide an assessment of the positive and negative, short-term and long-term impacts that the cruise industry has, or may have, on Charleston's economy and quality of life as they relate to the historical, architectural and cultural character of the city. Funding for this report was made possible in part through a contribution from the National Trust for Historic Preservation.

This report is intended to provide analysis and perspective on the cruise industry's impacts on the City so that community leaders can establish policies to address the cruise industry's presence in the historic district. It is important to note that while other groups and studies have focused on the benefits to the Charleston region from the cruise industry, this study also considers the cost to the City of Charleston from the cruise industry. This report provides Historic Charleston Foundation with findings related to the cruise industry, economic impacts, opportunity costs and quality of life issues which are an inherent part of accepting the cruise industry into Charleston's cultural fabric. Included are examples, case studies, analysis of third party data, expert testimony and observations of solutions both deployed and avoided by other similar communities.

Central to the issue is the volume of the cruise industry (number and size of cruise ships) in Charleston and the proposed development of the Union Pier Passenger Terminal to be built by the South Carolina State Ports Authority

(SPA). The SPA has proposed renovating an older building on SPA property at a cost of $35 million. The SPA's proposed new terminal is supported by many in the Charleston area. The SPA and its supporters have focused attention on the assertion that the cruise industry and the new passenger terminal provide (and will provide) a boost to the City's economy. The SPA has commissioned numerous studies supporting these economic impacts, and two of the more recent ones are discussed in this report.

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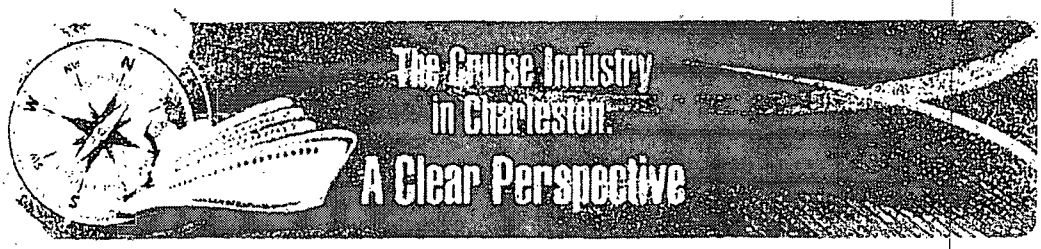

Executive Summary
(continued)

Concerns about the cruise industry are multi-pronged. Some think that the cruise industry is hurting the historic character and cultural fabric of Charleston that has made the city one of the most attractive places to visit in the country. Others believe that, while the cruise industry hasn't yet negatively impacted the city, it could if allowed to go unchecked. This issue is frequently referred to as "killing the goose that lays the golden egg." Charleston has a well-known legacy of thoughtful and comprehensive tourism regulation that has protected the character and livability of the city thus far, and many in the community would like to see the cruise industry regulated in the same manner.

In addition, some believe that the new terminal is in the wrong place and creates additional traffic congestion in an area of the city that is already congested. They think that there are other options for its location and that, given its location in the middle of the historic district, Union Pier is not the optimal choice.

It is critically important to acknowledge that all stakeholders involved in the cruise discussion have different perspectives on the benefits and costs of the cruise industry in Charleston.

While not exhaustive, the following list highlights the primary groups of stakeholders in the cruise industry's future in Charleston:

- The City of Charleston government
- The taxpayers in the City of Charleston
- Historic preservationists
- The City residents who live and work near the Union Pier
- The businesses that sell and serve the cruise passengers
- Longshoremen
- Other visitors to Charleston who are impacted by the traffic congestion
- The SPA and its employees
- The Carnival Cruise Line
- The other cruise operators that call on Charleston
- The residents and businesses located in surrounding areas such as Mt. Pleasant, North Charleston, Summerville, and the rest of Charleston County outside the peninsula
- The hotel industry on and off the peninsula
- The Charleston Area Convention and Visitors Bureau
- The local governments of the surrounding areas such as Mt. Pleasant, North Charleston, Charleston, Berkeley and Dorchester County governments, and Summerville
- Chambers of Commerce
- Companies and users of other services such as container shipping at the Charleston port
- Environmentalists concerned with water and air pollution

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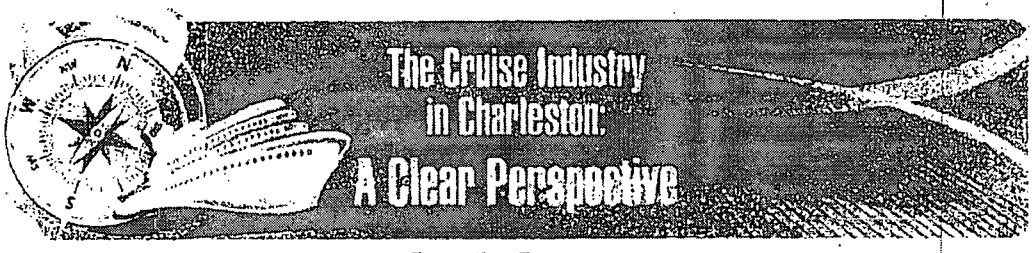

Executive Summary
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Within each group of stakeholders there may not be complete consensus. For example, some in the hotel industry see the cruise passenger business as a positive because it fills empty rooms in the off-season. However, some see the cruise industry passengers as potentially displacing other visitors.

To date, no such cost benefit analysis has been conducted. The analysis and discussion that has occurred has completely ignored the fact that whatever benefits may accrue to one or more groups or to certain jurisdictions may not be shared with all the groups, and that some of the groups that may bear some or all of the costs may not receive any of the benefits that might be generated.

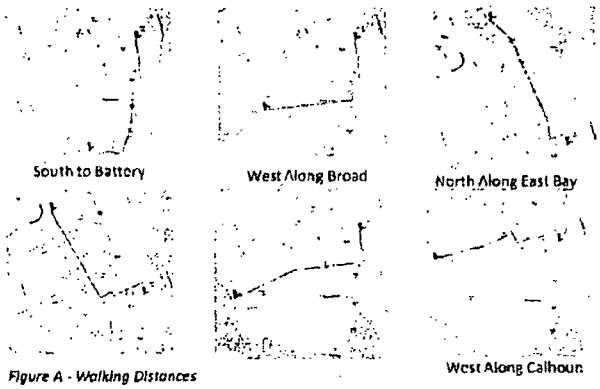

Figure A - Walking Distances

This non-alignment of benefits and costs can be seen in the relatively minor economic impacts to the City of Charleston from the industry. For example, it is estimated in this report that the SPA will collect as much as $10 million in parking and head tax fees in a typical year from the cruise industry. However, none of these revenues goes to the City of Charleston, yet almost all of the services to meet the needs of the passengers once they are off the ship fall on the City of Charleston or other local governments. The SPA released a study purporting to show that the cruise industry has made a large impact on local hotel occupancy. However, it is estimated that the vast majority of these impacts is on hotels outside the City of Charleston.

There are many reasons to support the cruise industry. For one, the cruise business generates revenues and profits for the SPA. The cruise business helps diversify the SPA's operations and may help offset declines in revenue over the last few years.

The SPA is a well-respected, well-run port operator and has served the Charleston area, the state of South Carolina, the many exporters and importers in the region exceptionally well for many years. As in other cruise ports, the SPA is one of the largest and most vocal supporters of the cruise industry in Charleston. This report should not be interpreted as a negative report on the SPA or the cruise industry.

The purpose of this report is to help clarify the key issues that concern the City of Charleston and its residents. This report focuses on the most visible reasons that the SPA and others support the cruise industry --- the claims by the SPA and others that the cruise industry generates major positive impacts on the Charleston economy. In addition, this report addresses the issue of whether the cruise industry could grow so large that it could harm the overall tourism industry in the city. And finally, this report provides recommendations for the City of Charleston and its leaders to consider in future cruise industry negotiations.

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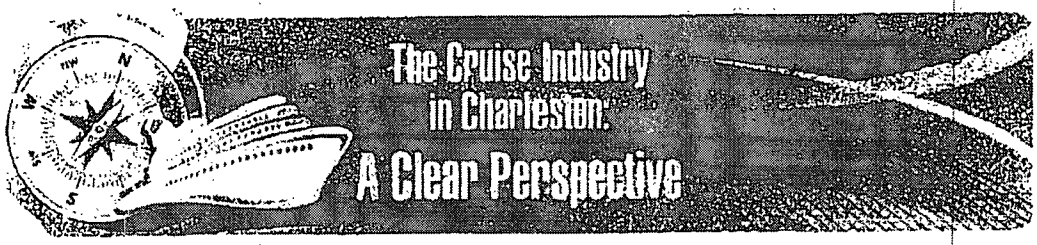


Executive Summary
(continued)

2. What is the actual economic impact of the cruise industry on Charleston?

There has been a great deal of discussion about the economic impacts that the cruise industry has on the Charleston economy. In order to reach a consensus about its value and impact it is important for all stakeholders to accept the estimates utilized when discussing the industry. The de facto data regarding the economic benefits of the cruise industry is the February 2010 report ***"An estimate of the economic contributions of the SC State Ports Authority's 2010 cruise ship activity to the region's economy"*** prepared by John Crotts and Frank Hefner, two professors in the School of Business at the College of Charleston. The figures of $37 million per year and 407 new jobs presented in that report have been widely cited by the SPA, the City of Charleston, and the General Assembly and in other important discussions. Our assessment casts considerable doubt about these estimates, and we believe that it is important for all parties to fully understand the methods and assumptions used to generate these numbers. The following is a list of factors addressed in this report:

- The estimate of $37 million annual impacts by Crotts and Hefner (C&H) overstates the impacts on the City of Charleston due to the study area used in the analysis. C&H use the 3-county area of Charleston, Dorchester and Berkeley counties. The impacts on the City of Charleston are a fraction of that $37 million.[i]
- The passenger spending estimates by Crotts and Hefner are larger than other comparable studies and represent above average spending compared to research of spending by cruise passengers.
- The majority of passengers embarking on cruises originating from Charleston (77% of all passengers served by the SPA in 2011 and projected to be 83% in 2012 are on Carnival Cruises.[ii]
- The estimated impacts from Carnival purchases of supplies in the Charleston area are overstated and contradict industry procedures and other research. Industry standard operating procedures are for long-term, national contracts with established cruise industry suppliers that serve multiple ports in multiple countries. The industry typically leverages its large-scale spending by ordering many products directly from the manufacturers and not from local merchants.

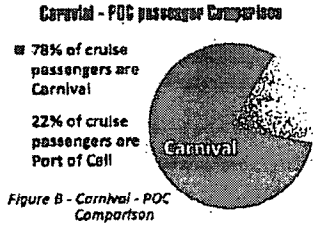
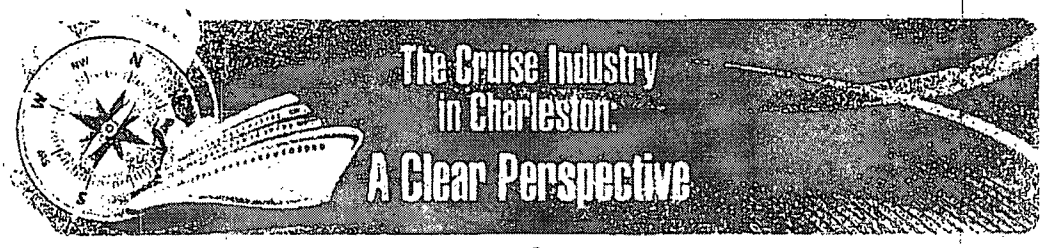


Figure 8 - Carnival - POC Comparison

- Based on the volume and timing of the embarking and disembarking of passengers and the SPA's security procedures once passengers are on SPA property, the potential for spending in the city by Carnival passengers (78% of all passengers using the port of Charleston) is relatively limited.
- Based on the volume and timing of port-of-call passengers, there are only three ships per year that stay in port longer than four hours. These three ships have a maximum stay of eight hours. This relatively short time period leaves very little time for large scale spending or dining.
- It is most likely that the majority of any spending by port of call (POC) passengers

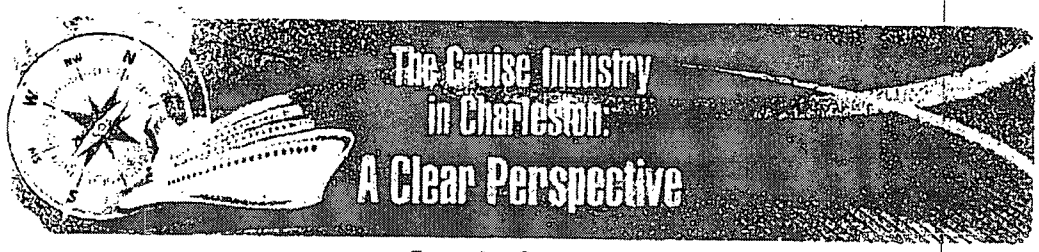


Executive Summary
(continued)

is within a 15 to 30 minute walking distance of the SPA terminal.

- Carnival (as well as the entire cruise industry) is an extremely well-organized and managed business. The industry typically attempts to maximize the spending by the passengers onboard the ship and minimize the spending by the passengers when they are off the ship. The industry is well known for being vertically integrated to a very high degree. Industry averages suggest that typical passengers spend 40%-50% above the price of their tickets on-board or through the cruise ship.[iii]
- In addition to being vertically integrated, the cruise industry also pre-sells many of the off-ship excursions when they are in port and negotiates heavy discounts on many attractions. The result is that even if passengers spend a dollar in Charleston, a large portion of that dollar goes back to the cruise line and does not impact the Charleston economy.
- The analysis released by the SPA on the cruise industry's impacts on the hotel industry in Charleston has the same geographic and government jurisdiction shortcomings as the Crotts and Hefner study. The hotels that are most impacted are not in the City of Charleston. Supporting this conclusion is the preponderance of hotels that are all outside the peninsula that offer cruise passenger packages (including free parking and shuttle to the terminal for the 5-day cruise).[iv]
- Whatever positive spending and lodging impacts may occur, it is not clear that they are net increases to overall tourism spending, i.e., there is most likely some displacement of spending and visitors that would visit Charleston but do not due to the volume of cruise visitors.
- The displacement issue is significant in that it may not be a one-to-one displacement. Research indicates that the average visitor to Charleston spends an estimated $718.00 --- 10 times more than the typical day visitor from a cruise ship.[v]
- Even if one assumes Crotts and Hefner's estimate of $37 million a year in impacts to the area from the cruise industry are correct and that they are all net benefits and there is no displacement effect, that level of spending is only about 2% of the total tourism industry in Charleston. If adjusted for overestimates and displaced activity, it is estimated to be less than 1% of the total tourism business in Charleston.

One final aspect of the economic impact of the cruise industry that needs to be addressed is the proposed redevelopment of the waterfront property south of the new terminal as outlined in the Union Pier Concept Plan and its relationship to the new Union Pier terminal. Our research indicates that, at this time, there is no contractual relationship between the SPA, who owns and controls the property, and the City of Charleston or any other public or private entity. In addition, the redevelopment of the proposed waterfront property would cost millions, perhaps hundreds of millions of dollars to develop. It is unclear at this time who will pay for the property's development. Therefore, it is recommended here that the discussion of the cruise industry and the Union Pier should not include any discussion of the redevelopment of the waterfront property until these funding and property ownership issues are resolved.



Executive Summary
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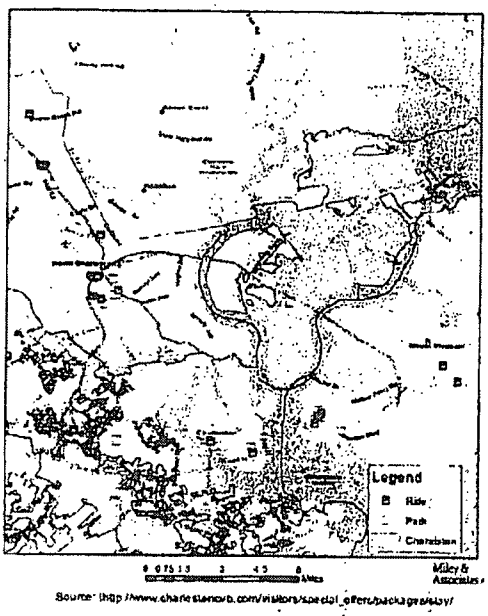
3. What are the risks presented by the cruise industry on Charleston?

While there has been a great deal of attention paid to the potential positive economic impacts of the cruise industry on the Charleston, there has been little discussion about the costs and risks of the cruise industry on the city. There are many costs associated with serving the visitors and passengers on cruise ships. Estimating the costs of these services is beyond the scope of this analysis. However, it is strongly recommended that the City undertake such an analysis. This is especially important given that the City receives no revenues directly from the cruise ships or the SPA but is responsible for providing City services that benefit visitors.

Figure C - Hotels and/or Transportation

Hotels With Free Parking and/or Transportation

(21 Offer Free Parking - 13 Also Provide Free Transportation)



Source: http://www.charlestoncvb.com/visitors/special_offers/packages.asp/

Perhaps the greatest risk of the cruise industry is that it becomes a negative influence on the historic "charm" of Charleston. As stated earlier, the average visitor staying in Charleston spends a longer time and more money than the typical cruise ship visitor or passenger. The major concern is that if the cruise business becomes too large it could choke off and displace other visitors to Charleston. If the reputation/perception of Charleston is damaged in the national and international tourism market (even if the reality is different), the overall tourism industry in Charleston could suffer. It is unclear what the level of cruise activity would need to be to reach that "tipping" point. However, it is clear that the reputation of Charleston today in the industry is as high as it has ever been. Recent ratings by Condé Nast and others cite Charleston as one of the best places to visit. The qualities and infrastructure that have produced this wonderful place did not happen by accident or overnight. However, the City's reputation could be harmed by the perception that is has been overrun by the cruise industry.

And finally, there is the risk of the cruise lines leaving Charleston as quickly as they have come. Mobile, Alabama; San Diego, California; and Norfolk, Virginia are three recent cases of communities that spent millions of dollars trying to lure the cruise industry and building expensive new terminals – only to see the cruise companies leave their ports – leaving the communities holding the bag (and the bill) for the new multi-million dollar facilities. There is certainly no reason to expect Carnival to do that in Charleston, yet it did happen to two of Charleston's southern neighbors and there is no guarantee that it will not happen to Charleston.

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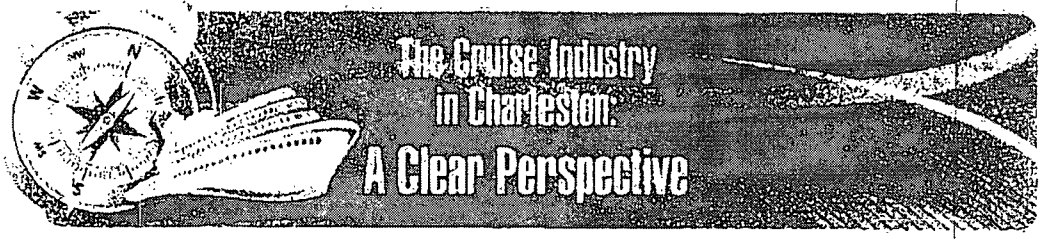

Executive Summary
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4. Recommendations

1. The City should create a separate citizens monitoring board/commission to oversee and provide advice to the City Council on issues related to the cruise industry. This monitoring board should be comprised of individuals representing the wide variety of stakeholders identified in this report.

2. It is of utmost importance that the City, the SPA, and other stakeholders cooperate in a transparent, unified manner. All stakeholders need to work together. As a major stakeholder in the process, the City should become more involved with the negotiations with the cruise industry and the SPA.

3. To protect the "goose that lays the golden eggs" the City should ensure that the cruise industry is managed and controlled like virtually all other attractions and activities governed by the City to the best of its ability.

4. The City should undertake an extensive service level study to determine the resources it allocates to managing the costs of the cruise industry.

5. The City should negotiate with the SPA and cruise industry to impose a reasonable passenger fee to help offset costs that the City may incur serving the cruise industry. One suggestion is that with these funds the City could create an "Infrastructure Fund" to offset the cost of infrastructure improvements that will be required for the redevelopment of the southern portion of Union Pier and the special initiatives presented in the Union Pier Concept Plan. Such improvements could benefit the cruise industry as well as other sectors of the local economy.

6. The stakeholders should sponsor a new economic impact study conducted by an impartial organization with real-time data. This study should obtain information that is representative of the entire spectrum of passengers throughout the year. It should also include an in depth analysis of firms that may have hired new employees to meet the additional demand from visits by the cruise ships. Of particular interest would be a thorough understanding of the supply chain network.

i. Crotts and Hefner, February 2010 report "An estimate of the economic contributions of the SC State Ports Authority's 2010 cruise ship activity to the region's economy"
ii. Charleston Welcomes First Cruise Port-of-Call of 2012, Press Release, SCSPA, 2.2.12
iii. http://funcruisedeals.us/Articles/HowMuchDoesACruiseCost.aspx
iv. The Impact of Cruise Ship Embarkations and Debarkations on Hotel Demand in Metro Charleston's Major Hotel Markets, January 1, 2009 - October 1, 2011, John C. Crotts Consulting, November 2011
v. 2020 Economic Impact of Tourism on the Charleston Economy, Bing Pan, Ph.D., School of Business, College of Charleston, April 12, 2011, http://prezi.com/elt7xkf6u6_/2010-impact-of-tourism-on-the-charleston-economy
vi. Cooper Robertson & Partners, Concept Plan for Union Pier, September, 2010, www.unionpierplan.com
vii. See: http://blog.al.com/live/2011/03/carnival_jumping_ship_from_mob.html; http://www.wvec.com/news/local/Royal-Caribbean-Cruise-Line-is-saving-good-bye-to-Norfolk-95194539.html; http://www.sdnews.com/view/full_story/9625087/article-Will-economy%E2%80%99s-choppy-seas-calm-for-cruise-ship-industry

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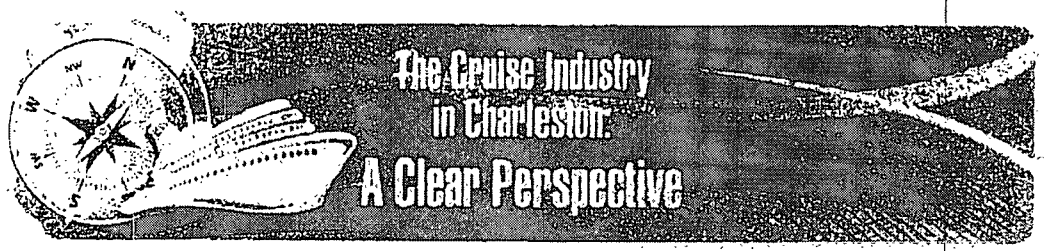

Miley & Associates

Miley & Associates is one of the Southeast's leading economic and financial consulting firms. The firm specializes in economic impact analyses, fiscal impact analyses, feasibility reports, impact fee studies and benefit/cost modeling. Our clients include national and prominent local real estate developers, school districts, local governments, regional development agencies, and other private sector development firms. Miley & Associates partners appear regularly before decision-makers at all levels of government and understand the values, needs and desires of the clients they represent. With offices located in Columbia, South Carolina, the firm is well positioned to provide clients with hands-on service for projects throughout the entire Southeast region.

Miley & Associates appreciates that every research project is unique and deserves a custom solution. Public policy decisions are not made overnight, and we excel at providing advice and counsel along the way. We represent our clients. Our business plan is simple: we focus on exceeding our client's expectations and building long-term relationships.

Miley & Associates, Inc. was founded in 1993 by Harry W. Miley, Jr. Ph. D. The Company is an economic and financial consulting firm providing a range of analytical services to public and private sector clients. Miley & Associates conducts fiscal and economic impact analyses of proposed new developments and has extensive experience in assisting clients with their economic development and community revitalization projects.

Dr. Miley served as Chairman of the South Carolina Board of Economic Advisors (BEA) under two Governors. The BEA is responsible for estimating the State's revenues for the Governor and the General Assembly to use in formulating the State's annual budget. Dr. Miley was originally appointed as Chairman by Governor Carroll Campbell and continued to serve as Chairman for Governor David Beasley.

Dr. Miley was the Senior Executive Assistant for Economic Development to Governor Campbell from 1987 to 1989. Dr. Miley served as principal advisor to Governor Carroll Campbell on the state's policies for economic development, employment and training, work force and adult illiteracy, technical education and transportation issues.

Prior to joining the Governor's Office, Dr. Miley was on the faculty of the Moore School of Business at the University of South Carolina and Associate Director of the Division of Research at the School.

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R.002406

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 30, 2012, copies of the *Amicus Curiae* Brief of the National Trust for Historic Preservation filed in this matter were served by U.S. mail on:

J. Blanding Holman, IV Southern Environmental Law Center 43 Broad St. Charleston, SC 29401 *Attorneys for Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, and Coastal Conservation League*	Timothy C. Dargan Brown & Varnado, LLC P.O. Box 1127 Mt. Pleasant, SC 29464 *Attorney for Historic Ansonborough Neighborhood Association*
John A. Massalon Wills, Massalon & Allen, LLC 97 Broad St. Charleston, SC 29401 *Attorney for Preservation Society of Charleston*	Julius H. Hines Gordon D. Schreck Womble, Carlyle, Sandridge & Rice P.O. Box 999 Charleston, SC 29402 *Attorneys for Carnival Corporation, D/B/A Carnival Cruise Lines*
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Dated: March 30, 2012

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Counsel for the National Trust for Historic Preservation

Since then, the Committee has undertaken the following research:
• Met with State Ports Authority (SPA) representatives
• Confirmed with City staff their understanding of next steps (the regulatory oversight of the city and the eventual adoption of Union Pier concept plan by City Council)
• HCF staff fully reviewed the concept plan – www.Unionpierplan.com and advised Committee on key points of concern for future discussion
• Toured Union Pier property
• Met with a Southern Environmental Law Center lawyer to discuss applicable legal and regulatory issues concerning cruise ships
• Considered methods that would permit HCF to influence redevelopment efforts
• William Cogswell met with CCL staff to confirm environmental regulations and opportunity for use of standards and monitoring
• Reviewed Economic Impact studies (2003 and 2010)
• Considered political advocacy strategies – Sam Applegate met with Councilman Gary White, and Bachman Smith met with Councilman Mike Seekings.

Facts & Findings
HCF is known for its sound approach to issues and for considering its positions on a factual and objective basis. The Committee's goal was to develop a thorough understanding of the facts, so that it could bring a comprehensive plan of action to the Board. The proposed plan is based upon the following facts and findings:

a. HCF's position on Cruise Ships and Union Pier should be consistent with its mission:
"To preserve and protect the historical, architectural and cultural character of Charleston and its historic environs, and to educate the public about Charleston's history and the benefits that are derived from preservation."

b. HCF strongly supports the SPA and its core work. It also recognizes that the Port is a vital economic engine for the entire state. Concern for the impacts of the cruise ship industry does not indicate a broader concern with other aspects of the SPA. We need to emphasize that these are two very distinct issues.

c. Downtown residents, especially those living on the east side of the Peninsula and below Calhoun, feel the greatest impact. This is in-part because Washington and Concord Streets make up a very important north-south corridor, and the existing terminal is near Harris-Teeter, a primary grocery store for downtown residents.

d. The SPA's statement, "no more than two ships per week," was derived from a 52-week average, i.e. no more than 104 ships per year. As the cruising "high season" occurs mostly in the fall and spring, the approximately 90 ships scheduled for 2011 will mean a greater concentration of ships than the community was led to believe during those months of the year. The 2011 cruise ship activity and its impacts must be measured and monitored - objectively and creatively - so that the impacts - good and bad - can be determined.

e. Beginning in winter 2011, SPA will move its BMW operations from Union Pier to the Columbus Street terminal; this allows for the removal of the freight train south of Columbus Street and its requisite street closings. Also, the queuing, luggage drop-off, and parking for the embark/debark cruise passengers will be more efficiently handled on SPA property. This should be the first step toward mitigating some of the impacts of the cruise ships.

f. The Union Pier Concept Plan includes some great ideas for extending the urban fabric to the water's edge and increasing public access. It does not provide details about future land use and development options, short or long term. There is little discussion of how it will advance the overall quality of life and economic development of the site itself and the surrounding community. Since

RESOLUTION OF THE SOUTH CAROLINA STATE PORTS AUTHORITY APPROVING AND AUTHORIZING CONTINUATION OF THE UNION PIER PASSENGER TERMINAL AND REDEVELOPMENT PLAN

WHEREAS, the city of Charleston has been a working port city for over three centuries, and maritime commerce is an integral part of its historic heritage; and,

WHEREAS, the South Carolina State Ports Authority has, as its mission and purposes, among others, to contribute to the economic development of South Carolina by fostering and stimulating waterborne commerce, including both cargo and passengers, to develop and improve the harbors or seaports of the State and to construct, equip, maintain, develop and improve such harbors or seaports and their port facilities, to the increase of water-borne commerce, foreign and domestic, through such harbors and seaports; and,

WHEREAS, the South Carolina State Ports Authority has a history of handling cruise ships at a dedicated passenger terminal at Union Pier in the City of Charleston for more than thirty years, and is committed to this cruise business segment as an ongoing part of its activities, and within its purposes as set forth by the South Carolina General Assembly; and,

WHEREAS, in the discharge of its duties, the South Carolina State Ports Authority wishes to be a good partner with the City of Charleston through managing the cruise business in a way that is compatible with the size and the unique character of Charleston, including agreeing to voluntary limits as to number of ships per annum, size of ships and the fact that only one ship will be accommodated at the berth at a time; and,

WHEREAS, the South Carolina State Ports Authority has actively evaluated alternatives for a new cruise terminal to support its cruise business with the assistance of professional consultants and, in so doing, has engaged the City and the community at large in its planning to bring this to fruition; and,

WHEREAS, as a by-product of that consultation, the South Carolina State Ports Authority was encouraged to place the cruise terminal at a location further north on Union Pier and to plan the redevelopment of the entire Union Pier footprint, including the southern end for non-maritime redevelopment; and,

WHEREAS, through careful business, economic and financial evaluation, the combination of retrofitting an existing cargo facility at Building 322 on the northern end of Union Pier combined with a non-maritime redevelopment of the southern end of Union Pier provided the best economic outcome for the port in the utilization of its assets, and that in arriving at this decision, the Board has fully considered the reports of experts, Authority management, the mission and purposes of the Authority, good business practice and preserving both the financial integrity and the ongoing operations of the Authority, the economic development opportunities, and has considered the

transportation are not allowed. The crowds, pollution, and traffic associated with these unlawful operations create a nuisance for Charleston citizens. This lawsuit aims to protect Charleston's neighborhoods, families and the environment by having Defendant Carnival play by the longstanding rules and norms that have made – and make – Charleston a wonderful place to work, live, and visit. Relief sought includes a declaration that Defendant is not above local laws as well as injunctive relief to obtain compliance with those laws and to abate the nuisance caused by Defendant's operations.

BACKGROUND

New Charleston Cruise Ship Operations

2. Charleston has recently experienced an explosion of cruise ship activity that goes far beyond prior cruise operations in scale, kind and intensity. Prior to 2008, no cruise ships used Charleston as a home-port, *i.e.*, the land-base at which passengers, crew and supplies load and unload. While ships making port-of-call visits release and retrieve passengers over the entire docking period, vessels that home-port require that passengers, supplies and crew come to and from Charleston by land or air for embarkations and debarkations on a single day in concentrated windows of time. In 2009, cruise ships docked at the South Carolina Ports Authority's ("SPA") Union Pier Cruise Terminal in Charleston some 33 times. In 2010, the number more than doubled, to 67. For 2011, the number is expected to be 90 – 68 of which will be home-port calls.

3. The SPA is an instrumentality of the State of South Carolina, created by S.C. Code Ann. § 54-3-10, *et. seq.* SPA owns and operates Union Pier Terminal and contracts with Defendant Carnival for the use of portions of that facility, which includes the Union Pier Cruise Terminal, for home-porting operations. Union Pier Terminal is located

health, or to animal, plant or aquatic life, pursuant to 35 Ill Adm. Code 302.210, 302.410, and 302.540.

6. No bilge or ballast water from vessels covered by the Vessel General Permit which fails to meet the effluent standards of Part 304 shall be discharged to waters of the State pursuant to 35 Ill. Adm. Code 308.103.

7. Except as provided in Condition No. 8, discharges of ballast water from vessels covered by the Vessel General Permit to the Illinois portion of Lake Michigan must meet the International Maritime Organization certified treatment standard according to the following schedule:
   a. For vessels constructed prior to January 1, 2012, meeting the applicability criteria in the federal NPDES permit, treatment shall be installed an operational to meet the performance standards for organisms included in Table A by January 1, 2016.
   b. For vessels constructed after January 1, 2012, meeting the applicability criteria in the federal NPDES permit, treatment stall be installed and operational to meet the performance standards for organisms included in Table A prior to commencement of vessel operation.

Table A. Biological Performance Standards for Ballast Water Treatment Technology

Parameter	Limit	Limit Type	Sample Type
Organisms > 50um in minimum dimension	<10 viable/m^3	Daily Average	Composite
Organisms 10-50 um in minimum dimension	<10 viable/ml	Daily Average	Composite
Escherichia coliform	<250 cfu/100ml	Daily Average	Composite
Intestinal enterococci	<100 cfu/100 ml	Daily Average	Composite

Analysis required by the above table shall be performed consistent with current protocols.

8. If ballast water treatment technologies, standards or limitations are adopted or approved by the USEPA, the U.S. Coast Guard, or other duly authorized Federal Agency and incorporated into the Vessel General Permit, the Agency will review the new or modified Vessel General Permit to ensure compliance with applicable Illinois laws and regulations. Based on that review, the Agency will waive, modify the existing certification or issue a new certification pursuant to Section 401 of the Clean Water Act.

9. If the IEPA determines that vessel discharges covered by the Vessel General Permit cannot comply with the conditions of this certification or the Illinois Water Quality Standards, then this certification may be amended to include different limitations, conditions, or requirements which are consistent with applicable laws, regulations, or judicial orders. The Agency will public notice any proposed amendments to the certification.

10. The issuance or this certification pursuant to Section 401 of the Clean Water Act does not release any dischargers from responsibilities or liabilities for past or future violations of federal, state, or local laws or regulations, nor does it release any potential dischargers from the responsibility of obtaining permits, including any from the IEPA, or other approvals from other units of government as may be required by law.

6.11 Indiana:

Indiana certified the VGP with the following additional permit conditions:

The following conditions shall apply to any activity that qualifies under this general permit.

1. Permittee shall allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials:
   a. to enter and inspect covered vessels;
   b. to have access to and copy at reasonable times any records that must be kept under the conditions of this certifications;
   c. to inspect, at reasonable times, any monitoring or operational equipment or method; collections, treatment, pollution management or discharge facility or device; practices required by this certification; and
   d. to sample or monitor any discharge of pollutants from covered vessels.
2. This granting of WQC does not relieve permittee from the responsibility of obtaining any other permits or authorizations that may be required for the project or related activities from the IDEM or any other agency or person.
3. This certification does not:
   a. Authorize impacts or activities outside the scope of this certification;
   b. Authorize any injury to permittees or private property or invasion of other private rights, or any infringement of federal, state, or local laws or regulations;
   c. Convey any property rights of any sort, or any exclusive privileges; or
   d. Preempt any duty to obtain federal, state or local permits or authorizations required by law.
4. The IDEM, for any vessel that qualifies under the terms and conditions of this certifications, may choose to require an individual WQC if it determines that the vessel would have more than minimal impacts to water quality, either viewed individually or collectively with other activities that may affect the same waterbody.
5. Activities authorized by the general permit shall not violate or exceed Indiana's Water Quality Standards at 327 IAC 2.
6. Discharges of ballast water to the Indiana portion of Lake Michigan must meet the International Maritime Organization certified treatment standard according to the following schedule:
   a. For ocean-going vessels constructed prior to January 1, 2012, and meeting the applicability criteria in the federal NPDES permit, treatment shall be installed and operational to meet the performance standards for organisms included in Table 1 by January 1, 2016.
   b. For ocean-going vessels constructed after January 1, 2012, and meeting the applicability criteria in the federal NPDES permit, treatment shall be installed and

operational to meet the performance standards for organisms included in Table 1 prior to commencement of vessel operation in Indiana State waters.

Analysis required by Table 1 shall be performed consistent with the protocols currently being validated by the EPA Environmental Technology Verification Program (EPA/U.S. Coast Guard/Naval Research Laboratory) and/or the following Great Ships Initiative protocols: The Procedure for Algae/Small Protozoan Sample Analysis, the Procedure for Zooplankton Sample Analysis, the Procedure for the Detection and Enumeration of E. coli by Membrane Filtration available online at http://www.nemw.org/GSI/protocols.htm

c. If the federal government adopts treatment standards more stringent than IMO, then those standards shall replace those in Table 1 for new treatment systems installed after the date those federal standards go into effect.

Table 1. Biological performance standards for ballast water treatment technology

Parameter	Limit	Limit Type	Sample Type
Organisms > 50um in minimum dimension	<10 viable[2]/m[3]	Daily Average	Composite[3]
Organisms 10-50 um in minimum dimension	<10 viable/ml	Daily Average	Composite
Escherichia coliform	<250 cfu/100ml	Daily Average	Composite
Intestinal enterococci	<100 cfu/100 ml	Daily Average	Composite

7. Any ocean-going vessel discharging ballast water employing ballast water treatment systems using chlorine, shall not exceed a maximum total residual chlorine limit of .02 mg/l. The usage of other biocides shall not be discharged in concentrations considered to be toxic or harmful to aquatic life or in concentrations that would violate applicable water quality standards.

6.12 Iowa:

Iowa certified the VGP with the following additional permit conditions:

Conditions:

1. Permittee is responsible for securing and for compliance with such other permits or approvals as may be required by the IDNR, federal, state, or local governmental agencies for the project activities described.

[2] "Viable organism" means organisms that are living and able to reproduce.
[3] "Composite" sample type is a combination of individual grab samples taken at periodic intervals over the specified time period. Either samples taken at equal time intervals shall be combined using a volume of each sample that is proportional to the flow that sample represents, or equal volume samples shall be combined that are taken at intervals of equal flow volumes.

3. Discharge of ballast water from vessels employing ballast water treatment systems using chlorine must meet a maximum total residual oxidants limit, measured as total residual chlorine, of 0.038 mg/L. (Minn. R. 7050.0220).
4. Each condition in the proposed permit cannot be made less stringent without potentially violating the requirements of Minnesota State law, including water quality standards.
5. If the MPCA determines that vessel discharges covered by this Certification can no longer comply with Section 401 of the Clean Water Act or Minnesota laws and regulations, then this Certification may be revoked or modified. (Minn. R. 7001.1450, Minn. R. ch. 7050, 7052, and 7053).

6.18 Missouri:

Missouri certified the VGP with the following additional permit conditions:

1. The National Pollutant Discharge Elimination System (NPDES) permit is written such that limitations do not cause the general or numeric criteria to be exceeded nor impair beneficial uses established in the Water Quality Standards, 10 CSR 20-7.031.
2. Representatives from the department shall be allowed to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the letters and conditions of the permit.
3. This Water Quality Certification shall not be construed or interpreted to imply the requirements for other permits are replaced or superceded. Any NPDES Permits, Land Disturbance General Permits, or other requirements shall be complied with.

6.19 Nebraska:

Nebraska certified the VGP with the following permit conditions:

Chapter 6, § 004 of Title 117 – Nebraska's Surface Water Quality Standards, states that:

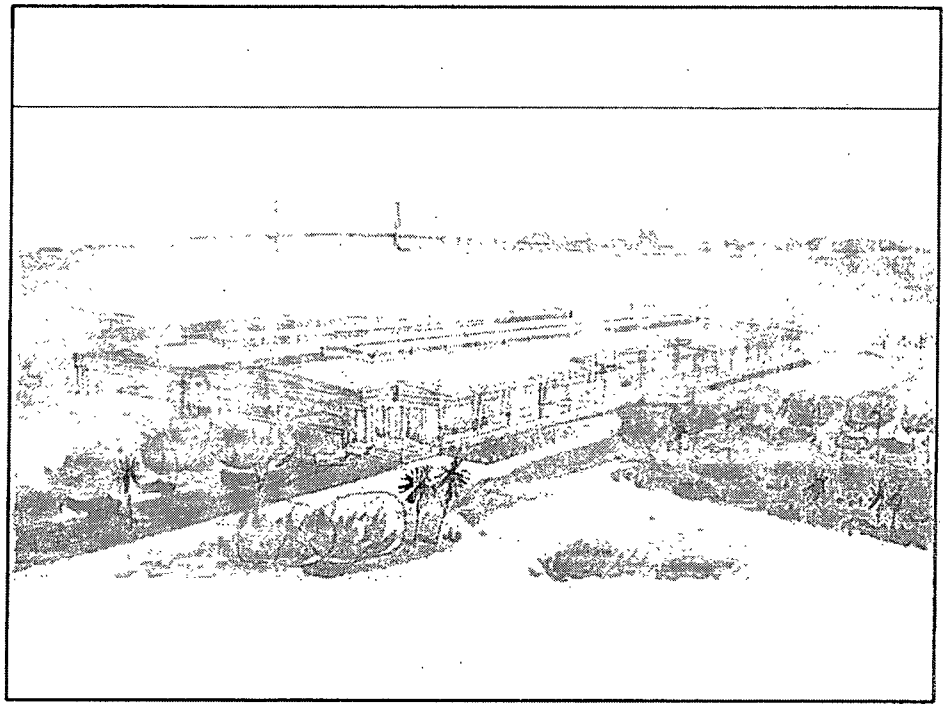
"No discharge of wastewater from domestic, municipal, or industrial sources shall be allowed directly into lakes or impounded waters except:

"004.01 Wastewater from sources authorized by NPDES permits to discharge to these waters prior to May 10, 1982 which have operated under active NPDES permits since then.

"004.02 Noncontact cooling waters from sources authorized by NPDES permits to discharge to these waters.

"004.03 Stormwater from sources authorized by NPDES permits to discharge to these waters."

This precludes allowing discharges into lakes and reservoirs of greywater, bilge water, or any sewage commingled with any other discharge as described in the permits and in Federal Register Vol. 73, No. 117, pp 34296 through 34304. Vessels on these waters will need to discharge to these wastewaters into sanitary dump stations that do not result in discharge to



We reviewed these preliminary plans during several meetings early this month. We are now refining them, based upon the positive and constructive input we received.

We expect to have a final plan to present for review by the public in the next few weeks. And, as you know, we have voluntarily requested to submit our plans to the BAR.

Construction is scheduled to begin this fall.

We need the new terminal for our cruise ship business.

If we are unable to proceed or unreasonably delayed, Union Pier will forever be used for cargo operations.

The choice is clear. [CLICK]

From: Miller, Byron
Sent time: Tuesday, June 14, 2011 7:37:14 PM
To: Tom Dow (TDow@carnival.com) <TDow@carnival.com>
Subject: FW: a few select quotes

Hi Tom, in the event you haven't seen all this yet, I wanted to share some clips and the video from yesterday's press conference. We are putting the hammer down. Hope all's well.

Byron

From: Miller, Byron
Sent: Tuesday, June 14, 2011 9:58 AM
To: Gallagher, Tim (CCL)
Cc: De La Cruz, Jennifer (CCL)
Subject: RE: a few select quotes

Hi Tim, here are the three local TV news pieces...

http://www2.counton2.com/news/2011/jun/13/legal-action-in-dispute-over-sc-cruise-s-05482-vi-83143/

http://www.abcnews4.com/video?autoStart=true&topVideoCatNo=default&clipId=5952195

http://www.live5news.com/category/195958/video-landing-page?autoStart=true&topVideoCatNo=default&clipId=5951323

We shared the full video with all media from yesterday. Also, the ILA membership voted unanimously to intervene in the lawsuit, and the Charleston Metro Chamber of Commerce executive committee will consider same on Friday. Attorneys proceeding to coordinate legal strategy as appropriate.

Byron

From: Gallagher, Tim (CCL) [mailto:TGallagher@carnival.com]
Sent: Tuesday, June 14, 2011 9:05 AM
To: Miller, Byron
Cc: De La Cruz, Jennifer (CCL)
Subject: RE: a few select quotes

Thanks, have shared these with executive team. Will you be getting TV clips/links that you'll be able to share?

From: Miller, Byron [mailto:BMiller@SCSPA.com]
Sent: Monday, June 13, 2011 9:52 PM

PNC Outline 02-24-2011.pdf

Union Pier Concept Plan - Background & Benefits

More details at: http://www.UnionPierPlan.com

Background

Cruise operations in the Port of Charleston are part of the South Carolina State Ports Authority's legislated mandate to increase maritime commerce and port-related jobs.

To better handle ships, passengers, traffic and security requirements, the SCSPA identified a need to improve and enhance the cruise terminal, which opened in 1973.

We began working with the community on how best to accomplish this in October 2009. Initially, we considered just upgrading the existing cruise terminal, which sits at the end of Market Street in a rather congested area.

Through an exhaustive public process, including more than 60 meetings with neighbors and other groups, we were encouraged to:

- study the entire site
- improve traffic flow
- shift the cruise business north
- limit the terminal to one ship
- develop a more appropriate and appealing terminal
- recognize an historic façade
- provide public access to the waterfront
- develop new uses for the property

Each of these concerns and others were incorporated into the Union Pier Concept Plan, which was presented to the community and endorsed by City Council in September.

The new cruise terminal would be relocated north on Union Pier Terminal to an existing structure that would be renovated and modernized, freeing much of Union Pier for public uses and other non-industrial development.

This presents an opportunity to re-knit about 35 acres of current industrial property into the fabric of the city, while also re-connecting the city to the waterfront. The Union Pier Concept Plan offers many benefits for those that live, work and visit in downtown Charleston.

Union Pier Concept Plan Benefits

* Direct Jobs and Purchases – every day a cruise ship is in port, more than 200 local workers are directly employed in support activities. These jobs include longshoremen, check-in agents, baggage handling and other operations personnel. The ship also buys other services and products – many of them locally – including flowers, milk, water and fuel. In 2010, the total annual contributions of the cruise business to the Tri-County were more than $37 million, as well as 407 jobs with a total of $16 million in wages.

* Reduced Cargo Operations Union Pier – shifting cruise operations north on Union Pier Terminal will result in a much smaller industrial footprint on the Peninsula. All BMW and other rolling stock cargo operations are being shifted north to Columbus Street Terminal. This

South Carolina PORTS AUTHORITY

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

December 27, 2011

Mr. Robert T. Clark, District 6 Engineering Administrator
South Carolina Department of Transportation
6355 Fain Boulevard
North Charleston, South Carolina 29406-4989

Dear Mr. Clark:

Subject: Request for Roadway Removal
S-10-396 (Concord St.) & S-10-124 (Hasell St.)

In accordance with Engineering Directive Memorandum 41, the South Carolina State Ports Authority (SPA) requests that specified sections of S-10-396 (Concord St.) and S-10-124 (Hasell St.), within the existing Union Pier Terminal footprint, be removed from the State Highway System. It is envisioned that these roadways will be a part of the Union Pier redevelopment effort currently undertaken by the SPA. Please find enclosed the form entitled Request for Removal of Road from State Highway System.

Sincerely,

Derrick L. Bellamy

Derrick Bellamy, P.E.
Staff Engineer

Enclosures

cc: Mr. Joe T. Bryant, VP Terminal Development
Mr. David N. Smith, Chief Port Engineer
Mr. Tim Keane, Dir. of Planning, Preservation & Sustai

Tim Keane
75 Calhoun St.
Charleston SC
29401
Planning, Preservation & Sustainability

SCPA 005185

9323). The FM Global Red Tag Permit System should be used to monitor all valve operations.

3. Distribute ample hand-extinguishing equipment throughout the premises to provide adequate supplementary fire protection. The 15-20 lb. multipurpose dry chemical extinguisher is recommended. Until sprinkler protection can be placed in service, hose lines should be connected in areas where construction is in progress. Hydrants, hose connections, and other firefighting equipment must be readily accessible at all times - never blocked by construction materials.

Project Details:
This submittal details the following information.

Construction
Plans are to completely renovate and modernize the existing Building 322. New construction includes the Ship Storage Canopy to the north of Building 322.

Building 322 measures 284.5 x 490 ft and the Ship Storage Canopy measures 76 x 154 ft.

Building 322's and the Storage Canopy main roof slope is planned to be 1 in./ft. with the overhanging canopy roofs having a 1/4 in./ft. slope. Plans show the elevation of the Cruise Terminal's standing seam lower roof deck at 23 ft. 4 in. and the second floor/monitor roof at 33 ft. 6 in. The Ship Storage Canopy has a roof elevation of 18 ft. at the eave and extends to 22 ft. 10-1/2 in. at the peak.

The Ship Storage Canopy consists of a 36 ft. wide truck court (4 ft. above finished floor) that stretches the length of the building. The truck court will be constructed of 8 in. concrete slab supported by 12 in. thick concrete walls spaced 12 ft. on-center.

The Cruise Terminal will keep the existing 8 in. reinforced concrete exterior walls. Openings will be sealed off with insulated metal panels. The two-story space along the south façade will have windows and two-story glass curtain wall at the lobby. Other openings include overhead roll-up service doors and hollow-metal personnel doors.

For the main roof of the Cruise Terminal and the Ship Storage Canopy, you are planning on an architectural standing seam roof over a minimum 20 gauge steel deck. The deck will be fastened to steel joists spaced 5 ft. on-center. For the roof monitors and the second floor roof, a mechanically attached FM Approved single-ply TPO membrane over a layer of insulation, vapor retarder, and gypsum cover board has been specified.

Two escalators and two elevators are also specified.

Occupancy
The facility will be used as the new Cruise Ship Terminal. Cruise ship passengers will use this terminal to check themselves and their baggage into their respective cruise ships.

D H E C
PROMOTE PROTECT PROSPER

AFFIDAVIT OF OWNERSHIP OR CONTROL

S. C. Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

Charleston	Beaufort	Myrtle Beach
953-0200	846-9400	238-4528
953-0201 (fax)	846-9810(fax)	238-4526(fax)

I hereby certify that I am the (check one):

X	Record Owner
	Lessee
	Record Easement Holder
	Applicant To Record Owner For Easement
	Contract To Purchase Property

of the below described property situated in Charleston County, South Carolina; and that said property is all of that said property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, I certify that as record owner, lessee, or record easement holder, I have, or will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in said property to conduct the work proposed in the permit application.

WRITE LEGAL DESCRIPTION OF HIGHLAND (as described in deed, lease, etc.) BELOW OR WRITE "SEE ATTACHED" (in large bold letters) AND ATTACH A COPY OF THE DEED, LEASE, EASEMENT, OR MOST RECENT CERTIFIED PLAT OF THE PROPERTY. IF YOU ARE NOT THE RECORD OWNER, LESSEE OR EASEMENT HOLDER, YOU MUST ALSO SUBMIT WRITTEN PERMISSION FROM THE OWNER OF THE PROPERTY TO CARRY OUT THE PROPOSED ACTIVITY.

SEE ATTACHED

I also certify that the project as proposed does not cross any wetlands or areas below mean high water which is in the ownership of other private persons or public or private entities and that there is no disputed claim to the wetlands or areas below mean high water by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Signature of Record Holder or Lessee

Sworn to and subscribed before me at 400 Longpoint Rd. Mt. Pleasant, Charleston County, South Carolina, this 21 day of February, 2012.

Notary Public

My commission expires: Aug. 11, 2016

From:	Lehman, Peter
Sent time:	Friday, June 10, 2011 1:51:57 PM
To:	pfvago@mscgva.ch; rsasso@msccruisesusa.com; npalomba@mscgva.ch
Subject:	FW:
Attachments:	H:\City of Chas Presentation.PDF

Gentlemen,

As a follow up to my recent emails about our continuing progress with the new cruise terminal, I wanted to send down a presentation of the work we have engaged in to date. We have worked diligently to deliver a world class project within the context of our City and in a size and scale that works. We have also been very very mindful of the practical operational opportunities we can unlock with the new facility which leads to cost savings, greater efficiencies, and ultimately a better experience for cruise passengers.

Let me try and take you through the presentation slide by slide:

1) Cover sheet
2) Union Pier Concept Master Plan rendition of the area within Union Pier where the New Terminal would be located.
3) Project Limits
4) This shows the present route for cruise passengers vs. what the new route will be.
5) Road closures now vs. road openings later with a new extended Concord Street.
6) The Site Plan
7) Slides 7 -13 depict different architectural ideas from around the city that we will look to incorporate within the new terminal. Including the unique smells of the indigenous flora.
8) 14-17 show the internal layout of the terminal and how the flows could be as passengers enter, get screened, check in, wait and then proceed to the ship. Slide 15 shows (in blue) the second floor VIP waiting area.
9) Slide 18 shows a depiction of the cross section of the South side of the building.
10) Slides 19-22 show the different building elevations depending on which direction you are facing.
11) Slide 23 shows the grand entrance on the south side where the passengers would drop off luggage and family members before proceeding to park in the adjacent lots where they would then walk to the new terminal.
12) 24-30 show the differing themes and materials we will look to incorporate to give the look and feel of Charleston and our maritime history.
13) Slide 31 is an artistic rendering of what the terminal could look like when it is completed.

When completed, the new terminal will transform the cruise experience for passengers out of Charleston. Please let me know if you have any questions as I would be happy to answer them.

Best regards,

Peter Lehman

What do cruise ships do with the blackwater and graywater that they generate?

- According to federal regulations under the Clean Water Act and international standards, black water, the wastewater from toilets, urinals, and medical sinks, must either be treated by an approved Marine Sanitation Device (MSD) that is certified, approved and inspected by the U.S. Coast Guard, or discharged outside of 12 miles from land. This is another instance where CLIA members have adopted a tougher standard. CLIA members have agreed that all black water will be processed through an MSD, certified in accordance with U.S. or international regulations, prior to discharge at least four miles from shore at a speed of six knots. In addition, as a matter of practice, the cruise lines that embark from Charleston have already voluntarily committed that their treated wastewater will only be discharged when the ship is more than 12 miles from shore.

- In addition, many of the member lines have pioneered the development of, and many ships are equipped with, advanced wastewater treatment technology that treats wastewater beyond the capability of most land-based wastewater treatment facilities.

- Graywater is the wastewater from the sinks, showers, galleys, laundry, and cleaning activities aboard a ship. The EPA regulates graywater under the Vessel General Permit (VGP), which is a subsection of the Clean Water Act. The VGP requires gray water to be discharged outside of 3 miles from land, unless the vessel meets certain criteria or follows specific requirements. Within the scope of the VGP, cruise ships are allowed to discharge gray water within 4 miles, if they meet or exceed the VGP criteria. CLIA members have proactively adopted a standard of prohibiting these discharges within four (4) miles of shore.

How do cruise ships manage ballast water?

- Cruise ships only take on ballast water for the safety of the ship, providing balance to the vessel as it gets lighter, typically from the fuel used during a voyage. Therefore, the volume of ballast water on cruise ships is very small. Open ocean exchange of ballast water, and required reporting, is one means to reduce the risks of invasive species introduction. In addition, the EPA and the U.S. Coast Guard are seeking to establish new regulations on ballast water exchange and discharge. The international shipping industry is also researching and experimenting with other technologies to deal with ballast water treatment into the future.

What is being done to reduce air emissions associated with cruise ships and the tug boats they use?

- Cruise ships rarely use tug boats. Cruise ships are equipped with a number of thrusters designed for propulsion and navigation of the ship, allowing self-docking and eliminating the need for tug boats under normal circumstances.

- To address emissions from the cruise ships themselves, in October 2008 the IMO's Marine Environment Protection Committee (MEPC) agreed to revise and strengthen the emission standards in Annex VI and reduce the amount of sulfur in ship's fuel. The revised law will enter force in July 2010. The current global limit on sulfur in marine fuels is 4.5%. Under the revised Annex this limit will fall in two stages to 3.5% in 2012, and finally to 0.5% in 2020. In December 2009, EPA announced rules to implement MARPOL Annex VI, which imposes more stringent air emissions controls on ocean-going vessels. "Emissions Control Areas" around the coast will require cleaner fuel.

Continued on next page...

From:	Lehman, Peter
Sent time:	Thursday, September 16, 2010 10:55:20 AM
To:	polehman@yahoo.com; Lehman, Peter
Subject:	FW: Charleston Cruise Activities
Attachments:	Ports Authority Resolution 9 14 10.pdf

From: Newsome, Jim
Sent: Wednesday, September 15, 2010 7:53 PM
To: gcahill@carnival.com
Cc: Lehman, Peter; tdow@carnival.com; McClintock, Paul; Miller, Byron
Subject: Charleston Cruise Activities

Dear Jerry,

I hope you are well, I am writing you from Taipei where I am spending the week with our container line customers in Asia.

I would like to update you on our efforts to develop the cruise business with the city of Charleston, which have borne quite some fruit, I would say, as follows:

(1) I am attaching a resolution which passed unanimously in City Council this week in support of what we are doing to manage the cruise business according to our commitments and to ultimately redevelop Union Pier. This is a major step in that it now clears the way for us to move forward with our development plans on the terminal at the north end of our property.
(2) We have engaged CH2MHill to lock down the feasibility and cost estimate on our new cruise terminal, result is due on October 15. With this in hand, I expect we can move forward and have a new terminal in place by mid-2012. In the meantime, we have ordered the new gangway from FMT which will have within six months.
(3) Tom Dow and his team have been instrumental in providing great support to the education of the local neighborhood associations, latest being an environmental tour of the Fantasy last Saturday which had a great impact. We have a well-educated group of neighborhood supporters who speak passionately on our behalf.
(4) We will likely update the earlier economic study done by the College of Charleston and using the Galveston survey as a benchmark, we feel the actual results thus far will exceed the proforma study done earlier.
(5) We had a few dates of conflicts, ie two ships at one time, where one of your large competitors would have a ship here at same time as the Fantasy. We made the strategic decision to ask them not to come on those dates, this likely means we will burn a commercial bridge with that company but this was/is an important part of keeping our credibility at a high level.
(6) The blogosphere on the Post and Courier website is heavily painting our small group of opponents as elitist snobs, further marginalizing their objections
(7) Finally, Carnival and CLIA are getting high marks as good partners for the city in view of the recent charitable event here.
(8) Our entire team in the port is actively engaged in this effort, it is one of the great examples I have seen in my career of inter-functional cooperation.

In short, I believe things are going quite well, the operation is working as well as possible in view of our constrained terminal, and we are ready to move forward to solidify this market for Carnival. As we will be authorizing some significant expenditures for a new terminal shortly, I would obviously appreciate any advice from your side if you for any reason feel that my enthusiasm for this cruise business should be tempered (ie your company does not have the same positive view of the market here and the efforts thus far).

Finally, a word of thanks to the Carnival team. Your entire team is demanding yet supportive, constructive and cooperative. If we encounter problems, we get help in solving them. This is the basis, in my view, for a constructive relationship.

I hope to be in Miami in mid-May at IANA and would look forward to a face-to-face meeting with you if the opportunity presents itself.

Kind regards.
Jim Newsome

James I. Newsome, III
President and Chief Executive Officer
South Carolina State Ports Authority
[illegible]

From:	Skipper, Allison
Sent time:	Monday, November 07, 2011 9:07:27 AM
To:	SGRAF@wfae.org
Cc:	Miller, Byron
Subject:	FW: Charleston Cruises
Attachments:	PSC-CruiseShip-Position 11.pdf Wrong Type of Tourists.doc Charleston Cruise UPT Resolution 091410.pdf Waterfront fight not about cruise ships.pdf Position Outline 08-30-2011.pdf Passenger Survey Data Flyer August 2011.pdf

Sorry about that, Scott! Trying again.

Allison Skipper, APR
Public Relations Associate

South Carolina Ports

From: Skipper, Allison
Sent: Thursday, November 03, 2011 3:40 PM
To: 'SGRAF@wfae.org'
Cc: Miller, Byron
Subject: Charleston Cruises

Dear Scott:

I am attaching/linking to several files to give you some background on the cruise business in Charleston.

1. Preservation Society of Charleston position, as it relates to 'standards of conduct'
2. Sample of news articles referencing the 'wrong' type of tourists
3. City of Charleston Resolution in support of cruise, the Union Pier Plan, and the port's voluntary limits
4. *Charleston Regional Business Journal* op-ed: Waterfront fight not about cruise ships
5. SC Ports Authority position piece
6. Passenger survey data
7. Link to City of Charleston press conference on the Carnival lawsuit: http://vimeo.com/25058586
8. Link to Fox News piece on cruise: http://www.foxnews.com/travel/2011/11/01/cruise-ships-charleston/

I hope you find this material helpful in advance of your interview with Byron next week! Please let us know how we can further assist.

Best Regards,
Allison

Allison Skipper, APR
Public Relations Associate
South Carolina State Ports Authority
Office: 843.577.8121 | Fax: 843.577.8127
Email: askipper@scspa.com
Twitter: SCPorts
Facebook: Cruise Charleston
YouTube: SCPortsTV
http://www.scspa.com

South Carolina Ports

Position Outline 08-30-2011.pdf

has invested $22 million to handle growth for BMW and power generation projects. Shifting cargo north to Columbus Street removes about 200 cargo ships a year, 1,800 car and truck trips a week and multiple train switches a day from the lower Peninsula.

* Streamlined Operation – while the current cruise operation works, it is exceptionally cumbersome due to the antiquated facilities. The existing cruise operation is land intensive and split between facilities, inhabiting more than 600,000 square feet of industrial space on cruise days. The new cruise terminal will be much more compact and easier to manage, requiring only one-fourth the space and adjacent parking, eliminating the need for shuttles between the ship and parking areas.

* Attractive New Terminal – the newly redesigned cruise facility, inside and out, will be much more representative of this fine city. The City's Board of Architectural Review granted conceptual approval in early August. The area around the existing cruise terminal is unattractive and in some cases dilapidated, presenting neither a good face on our city nor an appropriate welcome to arriving ships. The new cruise terminal plan will remove 5,000 feet of chain link, barbed wire fence and replace it with landscaped buffers. In addition, 80-foot tall light poles will be replaced with more appropriate low-level lighting.

* Reduced Traffic - the new cruise terminal will be much more efficient and enhance traffic flow, eliminating the road closure on Washington Street during embarkations. In addition, north-south traffic flow capacity on the Peninsula will be increased due to improvements of Washington and the re-opening of Concord Street, in phase I.

* Cruise Remains in Scale – the new cruise terminal will be a one-berth/one-ship facility, consistent with the size of ships that have called Charleston in the past, ensuring that the cruise business remains in scale with the city and surrounding neighborhoods.

* Pace of Cruise Activity – the market for cruises in Charleston can support an average of about two ships per week, or 104 ships a year, and 2011 activity is consistent with the pace of activity since last May. The Ports Authority has committed in writing to consult with the City should this change.

* Union Pier Redevelopment – once the new cruise terminal is completed, the balance of Union Pier will be master planned with public involvement for public and other uses. Much like the 1996 Union Pier Master Plan, the plan will receive all necessary approvals from planning and council.

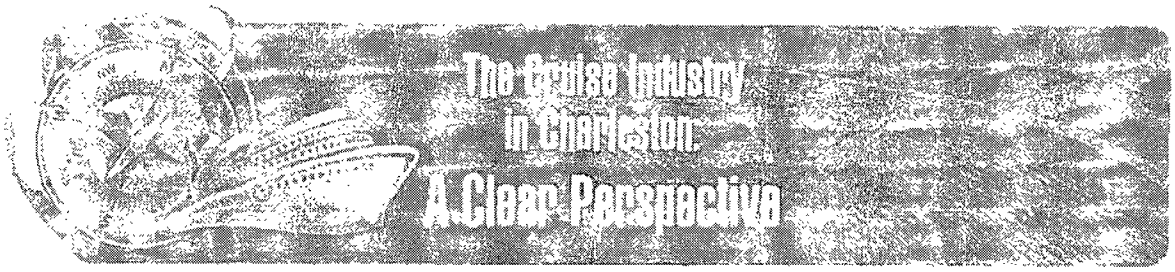
* Preservation of Bennett Rice Mill – the Union Pier Concept Plan stabilizes and incorporates the historic Bennett Rice Mill façade in place, tying the industrial structure into the waterfront's past and future.

* Tourism Benefits to Local Business – in addition to the direct maritime-related jobs and benefits, the cruise business has an important tourism dimension. Cruise passengers stay in local hotels, eat in restaurants, visit attractions and spend in shops.

Next Steps & Timeline
* Finalize Design – late 2011
* Begin Construction – early 2012
* Open New Terminal – early 2013
* Master Plan Non-Maritime/Industrial Properties

Other Resources
http://www.UnionPierPlan.com (details on Union Pier Concept Plan)
http://www.CruiseIndustryFacts.com (environmental issues)
http://www.scspa.com/cruises (cruise calendar & "Cruise Notices" on arriving ships)

* * *



Executive Summary
(continued)

2. What is the actual economic impact of the cruise industry on Charleston?

There has been a great deal of discussion about the economic impacts that the cruise industry has on the Charleston economy. In order to reach a consensus about its value and impact it is important for all stakeholders to accept the estimates utilized when discussing the industry. The de facto data regarding the economic benefits of the cruise industry is the February 2010 report ***"An estimate of the economic contributions of the SC State Ports Authority's 2010 cruise ship activity to the region's economy"*** prepared by John Crotts and Frank Hefner, two professors in the School of Business at the College of Charleston. The figures of $37 million per year and 407 new jobs presented in that report have been widely cited by the SPA, the City of Charleston, and the General Assembly and in other important discussions. Our assessment casts considerable doubt about these estimates, and we believe that it is important for all parties to fully understand the methods and assumptions used to generate these numbers. The following is a list of factors addressed in this report:

- The estimate of $37 million annual impacts by Crotts and Hefner (C&H) overstates the impacts on the City of Charleston due to the study area used in the analysis. C&H use the 3-county area of Charleston, Dorchester and Berkeley counties. The impacts on the City of Charleston are a fraction of that $37 million.[i]
- The passenger spending estimates by Crotts and Hefner are larger than other comparable studies and represent above average spending compared to research of spending by cruise passengers.
- The majority of passengers embarking on cruises originating from Charleston (77% of all passengers served by the SPA in 2011 and, projected to be 83% in 2012 are on Carnival Cruises.[ii]
- The estimated impacts from Carnival purchases of supplies in the Charleston area are overstated and contradict industry procedures and other research. Industry standard operating procedures are for long-term, national contracts with established cruise industry suppliers that serve multiple ports in multiple countries. The industry typically leverages its large-scale spending by ordering many products directly from the manufacturers and not from local merchants.

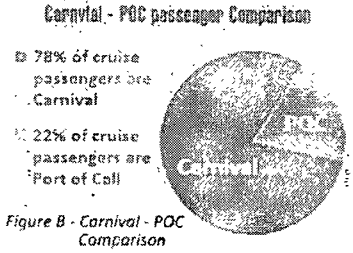
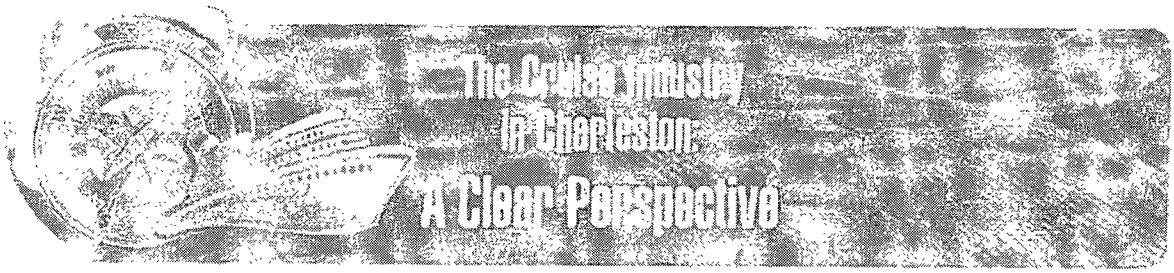


Figure B - Carnival - POC Comparison

- Based on the volume and timing of the embarking and disembarking of passengers and the SPA's security procedures once passengers are on SPA property, the potential for spending in the city by Carnival passengers (78% of all passengers using the port of Charleston) is relatively limited.
- Based on the volume and timing of port-of-call passengers, there are only three ships per year that stay in port longer than four hours. These three ships have a maximum stay of eight hours. This relatively short time period leaves very little time for large scale spending or dining.
- It is most likely that the majority of any spending by port of call (POC) passengers



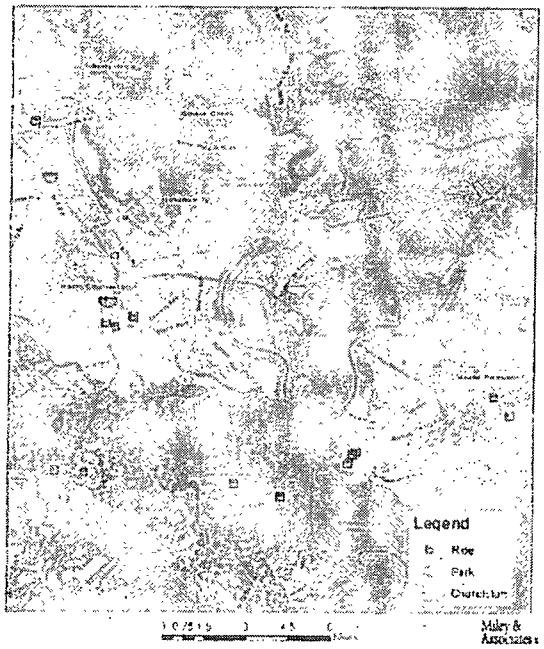
Executive Summary
(continued)

3. What are the risks presented by the cruise industry on Charleston?

While there has been a great deal of attention paid to the potential positive economic impacts of the cruise industry on the Charleston, there has been little discussion about the costs and risks of the cruise industry on the city. There are many costs associated with serving the visitors and passengers on cruise ships. Estimating the costs of these services is beyond the scope of this analysis. However, it is strongly recommended that the City undertake such an analysis. This is especially important given that the City receives no revenues directly from the cruise ships or the SPA but is responsible for providing City services that benefit visitors.

Figure C - Hotels and/or Transportation

Hotels With Free Parking and/or Transportation



Source: http://www.charlestoncvb.com/visitors/special_offers-packages-stay/

Perhaps the greatest risk of the cruise industry is that it becomes a negative influence on the historic "charm" of Charleston. As stated earlier, the average visitor staying in Charleston spends a longer time and more money than the typical cruise ship visitor or passenger. The major concern is that if the cruise business becomes too large it could choke off and displace other visitors to Charleston. If the reputation/perception of Charleston is damaged in the national and international tourism market (even if the reality is different), the overall tourism industry in Charleston could suffer. It is unclear what the level of cruise activity would need to be to reach that "tipping" point. However, it is clear that the reputation of Charleston today in the industry is as high as it has ever been. Recent ratings by Condé Nast and others cite Charleston as one of the best places to visit. The qualities and infrastructure that have produced this wonderful place did not happen by accident or overnight. However, the City's reputation could be harmed by the perception that is has been overrun by the cruise industry.

And finally, there is the risk of the cruise lines leaving Charleston as quickly as they have come. Mobile, Alabama; San Diego, California; and Norfolk, Virginia are three recent cases of communities that spent millions of dollars trying to lure the cruise industry and building expensive new terminals – only to see the cruise companies leave their ports – leaving the communities holding the bag (and the bill) for the new multi-million dollar facilities. There is certainly no reason to expect Carnival to do that in Charleston, yet it did happen to two of Charleston's southern neighbors and there is no guarantee that it will not happen to Charleston.

Cruise ships have been an integral part of our maritime activities for more than three decades. They, too, create jobs and investment. In fact, cruise ships are responsible for hundreds of good jobs and an annual economic impact of more than 37 million dollars in the Tri-County.

As important as the cruise industry is to Charleston's economy, we have been serving it in a facility that is clearly out-of-date and not contextual with its historic location.

Therefore, almost two years ago – in collaboration with the city – and with widespread community input – we set out to change that. We committed to improving our passenger terminal facilities.

[SLIDE 6]

This initially began as an effort focused just on this building -- where we are today -- and those around it outlined in yellow.

However, we were encouraged to look all of Union Pier, and this became a planning exercise in which we considered the entire 63-acre Union Pier property AND the ways in which it interacts with the rest of the peninsula community.

[SLIDE 7]

Security considerations span all three areas, and the plan must meet stringent federal security guidelines.

The best plan will identify the areas within the site where necessary functions occur, while taking into account site conditions and other considerations.

Then we design the physical appearance of the structure and site to fit within the context of the place – in this case, the great port city of Charleston.

[SLIDE 16]

As for the timeline of the design project, we're fortunate that by using an existing building the project will be able to move forward more swiftly than would otherwise be the case.

The team has -- and will -- host stakeholder outreach sessions, and today we kick-off the public input.

Later this month we will continue the stakeholder sessions and intend to bring forward preliminary designs next month.

We'll then seek additional input, finalize the designs and prepare for construction later this year.

At this time, I'd like to turn it over to Thom Penney of LS3P, who will lead the breakout sessions.

[SLIDE 17]

Thom Penney

Good afternoon, my name is Thom Penney of LS3P here in Charleston.

We are proud to be part of the design team selected for this project, led by CH2M Hill.

CH2M Hill is a nationally-renowned firm with extensive experience in these types of projects. And they have chosen to partner with a number of local firms, including ours.

Other local firms engaged in this project include Collins Engineers, Thomas & Hutton and DesignWorks, who also bring extensive experience to round out a dynamic and capable team.

They bring valuable knowledge of not only their specialties, but also of the Charleston area.

We live here in Charleston. We know that the cruise terminal must fit within the context of Charleston, and reflect our unique character.

team to address?"

- [may include traffic, noise, pollution, problem of 'big ugly building' etc.]

- "Do you have any thoughts on how the team can best address those issues?"

  - [may include limit public use of the facility, re-route traffic, etc.]

- With 10 minutes to go, summarize the key points and make sure the participants agree with your summary.

- Thank everyone for participating. Encourage them to stay for the summary of each breakout session. Also encourage participants to attend future public meetings and use comment cards and website for ongoing input.

- What happens if....

  - Someone asks if there will be public access to the terminal when ships are not in town:

    - Say you don't know....that that issue is one that is being explored....and what does the group think about it?

  - Someone asks why the terminal isn't being moved up to the Columbus Street facility:

    - Tell them that the Columbus Street facility is almost full of maritime activity now. It would be impractical to move cruise ship operations there....and, if even if they could be moved there, that would require relocating much of the Columbus Street maritime activity down to Union Pier...thereby making it certain that as it forever remains as it is today.

  - Someone asks what happens if there is a lawsuit filed to stop this facility from being built:

    - Say you are not a lawyer and don't know anything about such a suit...furthermore, this discussion is focused on the building's design.

Begin forwarded message:

From: "Miller, Byron" <BMiller@SCSPA.com>
Date: September 14, 2011 6:50:34 AM EDT
To: "De La Cruz, Jennifer (CCL)" <JDeLaCruz@carnival.com>
Cc: "Dow, Thomas (CarnCorp)" <TDow@carnival.com>, "Jim Newsome" <JNewsome@SCSPA.com>
Subject: Re: Cruise foes, port in power struggle: Shore-side electricity conflict raises pollution, cost issues

In addition, I neglected to mention that the Town of Mount Pleasant just across the harbor voted unanimously last night in favor of a resolution supporting the cruise industry's benefits and the new cruise terminal plan at Union Pier.

Byron Miller
S.C. Ports Authority
e-mail: bmiller@scspa.com
office: 843-577-8197
mobile: 843-514-9397
http://www.scspa.com

On Sep 13, 2011, at 11:19 PM, "De La Cruz, Jennifer (CCL)" <JDeLaCruz@carnival.com> wrote:

Thanks Byron. Appreciate this info and will be sure to share with some of the other folks at Carnival.

Sent from my iPhone

On Sep 13, 2011, at 11:05 PM, "Miller, Byron" <BMiller@SCSPA.com> wrote:

Hi Jennifer & Tom,

By way of an update, Charleston City Council tonight approved 8-3 the 2nd and final reading on the cruise-related ordinance proposed by Mayor Riley, which we supported.

As you'll recall, this ordinance does not limit or impact in any way the cruise business in Charleston. Rather, it speaks to the city's process to collect input should the Ports Authority decide to modify its voluntary cruise management plan.

Council declined to act on a substitute and unacceptable ordinance proposed by the Conservation League and preservation interests.

I am pleased to report that there was strong and compelling support for the cruise business and Carnival by the Mayor, business leaders, maritime interests and the majority of council.

Tom, our shipboard environmental tours were mentioned on multiple occasions, so we continue to see returns from these efforts.

CARNIVAL TO LAUNCH YEAR-ROUND CRUISES

The Port of Charleston's cruise program has taken a huge leap forward with Carnival Cruise Lines' decision to home port the **Carnival Fantasy** in Charleston for year-round cruises to The Bahamas and Key West. This will be the Port of Charleston's first 52-week cruise offering. The itinerary will include five-, six-, and seven-day voyages beginning May 18, 2010. We are delighted Carnival has selected Charleston and look forward to a long and mutually prosperous relationship.

For more information on the **Carnival Fantasy** and cruises in Charleston visit www.Carnival.com.

CELEBRITY CARIBBEAN CRUISES BEGIN

Celebrity Cruise Lines will begin a new service to the Caribbean out of Charleston on February 15. The **Celebrity Mercury**, which has often called Charleston as a port-of-call vessel recently, will be taking on passengers for luxurious 10-and-11-day cruises. There is a natural crossover of Celebrity's type of passenger and a significant share of Charleston's typical visitor. The accommodations, the focus on food, the length of the cruise...it all works very nicely for Charleston visitors. We are ecstatic to have Celebrity bringing their world-class reputation to the Charleston market and are eager to continue outstanding service into Celebrity's 2011 season.

For more information on the **Celebrity Mercury** and cruises in Charleston visit www.CelebrityCruises.com.

NEW CRUISE TERMINAL ON THE HORIZON

The South Carolina State Ports Authority has selected the urban design firm Cooper, Robertson & Partners to update the master plan for Union Pier Terminal in downtown Charleston, including the development of a new Passenger Terminal. The SCSPA and the City of Charleston are working collaboratively on the plan which anticipates a mixed-use development that fits within the historic, aesthetic, and community context of Charleston. We are excited about the tremendous opportunity this project brings to our cruise clients, potential passengers in our marketplace, and to the South Carolina businesses that benefit from cruise activity.

For more information on the new cruise terminal please visit www.UnionPierPlan.com.

CHARLESTON 6-MONTH CRUISE CALENDAR

January 4 *CELEBRITY MERCURY* Port of call

January 25 *CELEBRITY MERCURY* Port of call

February 15 *CELEBRITY MERCURY* Caribbean

February 26 *CELEBRITY MERCURY* Caribbean

March 8 *CELEBRITY MERCURY* Caribbean

March 19 *CELEBRITY MERCURY* Caribbean

March 29 *CELEBRITY MERCURY* Caribbean

April 9 *CELEBRITY MERCURY* Caribbean

April 12 *ATLANTICA* Port of call

April 18 *BRAEMER* Port of call

April 19 *CELEBRITY MERCURY* Caribbean

May16 *MAASDAM* Port of call

May 18 *CARNIVAL*

Special Events

From:	Miller, Byron
Sent time:	Wednesday, February 23, 2011 11:11:32 AM
To:	Bill Hewitt <w.b.hewitt@comcast.net>
Subject:	FW: cruise, traffic

For posterity, here was the exchange... it appears we might be splitting the check!

From: Miller, Byron
Sent: Thursday, September 23, 2010 4:00 PM
To: Bill Hewitt; Nancye00@aol.com; was@euroamericanfunds.com
Subject: RE: cruise, traffic

Okay, Bill, we now have both a deal and witnesses (unwilling as they are)!. I have it marked on my calendar.

Best regards,
Byron

From: Bill Hewitt [mailto:w.b.hewitt@comcast.net]
Sent: Thursday, September 23, 2010 3:48 PM
To: Miller, Byron; Nancye00@aol.com; was@euroamericanfunds.com
Subject: RE: cruise, traffic

Byron,

Thanks for the material. Let's make a real bet...if the ro-ro operation is out of Union Pier by the end of April 2011 (I just gave you an extra 30 days from this am) I'll buy you a 39 oz. steak dinner at Oak, and if not, you buy me a steak dinner at Oak. If you park cars on the Union Pier side of Washington Street (so that it's not closed) I'll also buy you a bottle of wine to drink with your steak (up to $100) and if you aren't parking the cars on Union Pier you can buy me the bottle of wine (I'll share it with you while I eat my NY Strip.)
I see you're leaving town so as to not be hassled by the Fantasy traffic mess!

All the best,

Bill

From: Miller, Byron [mailto:BMiller@SCSPA.com]
Sent: Thursday, September 23, 2010 3:34 PM
To: Nancye00@aol.com; w.b.hewitt@comcast.net; was@euroamericanfunds.com
Subject: cruise, traffic

Dear Nancye, Bill & Bill,

Thank you again for your time today. I really gained a lot from our productive discussion and truly appreciate all that you do to make this city a better place to live.

Since this morning, I met with our cruise, traffic and operations staff. I learned that based on our analysis of the operation, the street closure during embarkation is indeed necessary for safety and traffic flow. As we talked about earlier, the process for embarking passengers is currently a bit "cumbersome," to be generous. This makes it quite sensitive to any disruption in how traffic flows during the roughly four-hour period when the streets are closed for embarking ships only. Any hiccups to this would be immediately felt across the system and failure would be likely.

In addition, there seems to be no fair or equitable way to draw the line where some are granted special passes and others are not – for example, I've learned since this morning that we have similar requests in hand from other residents and businesses right near you. However, we will continue to monitor and evaluate the cruise traffic, aggressively managing the operation and seeking to minimize the traffic impact where possible. That's exactly what we tried to do earlier this year by re-routing traffic east on the peninsula, installing new signage and putting the queues/lanes inside the fence on our property. That seems to have been effective.

Again, I am sorry for the inconvenience that you endure with this street closing every five to seven days and I really appreciate your understanding. I also appreciate the support you communicated for the plan to shift the cruise terminal north into the new building, as well as the eventual redevelopment. That new terminal is still two years away, so our neighbors have challenged us to find a solution to end the street closure before then. As mentioned, we are preparing for relocation of the ro-ro cargo operations from Union Pier to Columbus Street. When that happens, we want to be able to end the Washington street closure...for good. We believe this move could

CRUISING FROM CHARLESTON -
FREQUENTLY ASKED QUESTIONS
Page 5

Luggage Information:

1. How early can I drop off luggage?

   Early drop-off luggage is accepted between 9:00 a.m. and 11:00 a.m. on sailing days. Early drop-off is for passengers with early flight arrivals or early check-out from hotels.

   Luggage only is accepted for early drop-off. Passengers are asked to return at 12:00 noon when check-in staff and process is available.

   The location for early-drop off of luggage is Union Pier – Gate # 2.

2. Where do I drop off my luggage during regular check in process? Do I surrender my checked luggage before or after parking?

   Checked through luggage is collected prior to parking.

   You will follow a route within Union Pier Terminal and be directed to the luggage collection tent after you purchase the parking permit.

   After depositing the checked through luggage, you will be directed to the parking areas.

3. Where do I leave my luggage if I am not parking, but being dropped off instead?

   You will be directed along a route within Union Pier Terminal to the luggage collection tent.

   After the checked through luggage is deposited at luggage collection tent, you will be directed to the shuttle bus location for passengers being dropped off and who are not parking.

4. What size luggage can I carry on with me?

   Carry-on luggage should be no larger than 22" x 14" x 9" (approximately). Luggage size limits are similar to those for airline travel.

Continued . . .

- The Concept Plan was developed directly from that feedback, and moves the passenger operations north on the property, opening up more than 35 acres for public and private use, and unparalleled access to the waterfront.

- It's a great plan, and it benefited greatly from the active participation of a diverse group of people from throughout this community.

- Already, we are seeing the benefits of the plan.

- The cruise ship business is a vital economic driver for the maritime industry. Cruise ships buy products and services here, and many businesses benefit.

- And passengers spend money in shops, restaurants, hotels and attractions.

- The construction of the new terminal alone will have an estimated economic contribution of $43 million and create more than 300 much-needed jobs.

- Our current terminal is at the foot of Market Street, at the southern end of the Union Pier property -- 63 acres along the Cooper River from the northern end of Waterfront Park all the way up to Laurens Street.

- All of the property is used for maritime purposes. As such, it is not open to the public.

- In the Concept Plan, which can be seen at UnionPierPlan.com, you can see that the cruise ship terminal moves way north on the property, leaving more than 35 acres available for public and other uses, including unparalleled access to the waterfront.

- Two weeks ago, BMW's growing export business, along with other rolling stock and non-container cargoes, was moved to a new and improved Columbus Street Terminal.

- As a result of the move, daily trainloads of vehicles will no longer enter Union Pier Terminal. And other cargo traffic has already been greatly reduced.

1. PURPOSE STATEMENT

As an integral part of a larger redevelopment effort, as defined in the "Concept Plan" dated September 2010, the South Carolina State Ports Authority (SCSPA) is seeking to convert an existing warehouse building at the Port of Charleston-Union Pier Terminal into a modern passenger cruise terminal.

SCSPA has requested CH2M HILL prepare a conceptual analysis of the cruise terminal project, including a visual observation of existing conditions, preliminary programming, schematic site and facility design, a ships mooring and berthing analysis for Fantasy and Conquest class passenger vessels; and provide a preliminary opinion of probable construction cost.

The existing building, known as warehouse B322, was constructed in 1971 and is a pre-engineered metal building of approximately 129,000 square feet, resting on a 13 acre site. The design objective is to analyze the existing site, infrastructure and building for conversion to an operational cruise terminal, utilize existing components where practical, identify gaps and deficiencies, while addressing the structural and seismic upgrades to the building and wharf that are necessary to support the resulting increases in passenger traffic loads and specifically, the "change of use" for the building.

Not only will this renovation better accommodate the growing demands of the cruise industry, including enhanced security requirements, but it will also benefit the local economy by creating jobs and generating revenue through increased tourism. Mitigating impacts on existing infrastructure and traffic is another improvement. CH2M HILL's solutions will support the goals of the SCSPA to create a contextual, attractive, and appealing cruise terminal.

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2. KICK-OFF MEETING SUMMARY

During the first week of September, selected team members went to Charleston to conduct a preliminary site investigation, attend a public meeting regarding the Union Pier Concept Plan, and to confirm the Scope of Work for the development of the cruise terminal at Building B322. At various meetings of varying participation and during numerous discussions, the following was recorded.

A Concept Plan was prepared by New York Architecture firm Cooper Robertson, with traffic and wharf-structural studies prepared by Kimley Horn and Moffatt & Nichol, respectively. SCSPA has hired FMT to design and construct a passenger ship-to-shore gangway for the existing cruise terminal (B325.) The intent is to relocate the gangway to the new terminal (B322) once construction is complete.

Ports Executive Director Jim Newsome made a presentation of the Concept Plan at a public meeting, which was attended by approximately 250 people, providing facts and benefits of the project. The annual financial impact to Charleston is anticipated to be between $37 and $50 million, with one 3500-passenger ship visiting twice a week and current bookings through 2012. One direct result will be 250 jobs. Strict environmental standards are being followed, and the additional challenges of traffic and appropriate scale for the city are also being considered. A Cruise Neighbors Advisory Council has been formed. The benefits include the removal of cargo operations from Union Pier, overall reduction of traffic, better traffic management, end of Washington Street closures, and no trains. Furthermore, this will project will unlock the southern pier to development, increase public access, enable shoreline restoration, and allow for the reopening of Customs House wharf and the creation of Bennett Rice Mill Façade Park. The desired project schedule is 30 months, with 9 months for design, 3 for bidding, and 18 months for construction.

Logistics of existing Port operations at B325 were discussed. Typically, waste is put in three dumpsters, with the ship making arrangements. Historically, ships stores truck count varies from zero to 27. For each trip, 1500 metric tons of water are loaded - currently fire hydrants and a fire pump are utilized for this. Bunker fuel is barged up to the seaward side of the ship. Carnival has requested "bilge water tanks" be provided by the Port Authority. Current operations in building B322 include break-bulk cargo and BMW vehicle export. It is understood that the cargo activities will cease when the BMW operation is relocated. Maintenance activities are carried out by the Authority's employee maintenance crews, although they will consider contracting maintenance in the future. The Authority wants to encourage Ports of Call. Depth is maintained at 35 feet, but is authorized to 42 feet.

Assumptions and directives were reviewed. Limit of this study is the terminal boundary; nothing outside of the boundary except for utility issues. All Concept Plan ideas for elements outside the terminal boundary are assumed to be viable (traffic). The cruise terminal will not interact with any other elements of the Concept Plan.

The architectural theme will be similar to the Charleston Visitor Center, with consideration of the local vernacular seen in such structures as the Rice Mill Façade. Principles of

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sustainability should be incorporated throughout the project, although LEED certification will not be sought. The project will comply with City Zoning and State Building Codes and Standards, but will not require review or permitting by local agencies. Cruise terminal development will not be considered a "change of use" by the US Army Corps of Engineers, although State code will require upgrades associated with a "change of use." The preferred procurement method is Design/Bid/Build. Design/Build procurement will only be used if the schedule becomes a critical element of the project or if specific elements of the project lend themselves to this method.

The cost estimate will delineate major items that present a "menu of options" for flexibility in execution of the project and considerations for possible phasing of work. Specific areas of interest include seismic upgrades, shore power, ships water, parking lot improvements, Concord Street restoration, rail removal, ship-to-shore gangway options, architectural envelope/facade of building, considerations for future multi-purpose uses – i.e. weddings and banquets, gathering of civic or private groups, retail sales, and business office use.

Elements identified as potentially early work phases include shore power, ships water, offsite utility construction/installation, upgrading fenders and bollards, seismic upgrades and repair of piling, demolition of building skin, seismic upgrades, and new roof.

The railroad tracks on-terminal will eventually be demolished. There will be no new storm water outfalls. Where practical and affordable, curbs and signage will be used, so as not to rely on striping to control traffic. Security of the federally designated restricted areas will be reduced to the cruise terminal and the wharf immediately fronting the cruise terminal, and will not include the parking lot. SCSPA noted this new design will provide relief to the current security operational staffing requirements at Union Pier Terminal. Transportation planning on-site must ensure cruise traffic gets onto Union Pier Terminal and does not queue/back up on City streets.

South Carolina Electric and Gas (SCE&G) provides and maintains the power running along each side of Concord Street and through the center of the parking lot area. Concord Street is identified as the main entry for all cruise traffic, and would close to regular traffic during cruise days, but would remain open to the public during non-cruise days.

Stakeholder meetings are considered critical to the success of the project. CH2M HILL recommended involvement and input from the Cruise Line, USCBP and USCG as necessary during the early development of the project.

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Below is a list of questions identified at the kick-off and SCSPA's subsequent *response* (Note, some items may remain open):

Site/Civil:

1. Does the port have any records of fire flow testing at any of the hydrants along Concord Street in the Vicinity of building 322?
   - *I understand we have some recent tests from our fire pump that is located on the terminal. I am in the process of acquiring that information and will upload it to our ftp site once received.*
2. Do you have any drainage percolation test results for the project area?
   - *No.*
3. Request a site plan denoted with areas that typically flood along any information relative to the approximate intensity of a storm that would cause flooding to the degree shown on the mark up.
   - *We are in the process of producing a map. In general, a fairly recent paving project removed low lying area where our current BMW operation parks.*
4. Could you provide a list of government agencies that will require formal permits or even a Plan review & approval process?
   - *We currently have our legal counsel looking into this matter. As of yet, we have not heard a response. Since the Port is not subject to local building codes, we will not have any reviews or approvals with any other agencies unless we have a "change of use" review. The City of Charleston will review for Architecture & aesthetics. CH2 should not make any contacts regarding permits at this time.*
5. Is an recent Boundary / Topography Survey of the Project Site available that would show current Property lines and easements (ie: whether Concord is a City or State right of way or if it is owned by the Port) and any existing Concord Street / Laurens St intersection information?
   - *The electronic drawing labeled "UPcurmap" has shows the extents of our property. Concord Street is not owned by the SCSPA. Initially, the street was owned by the State. At the time of closure, the SCSPA requested the property be transferred to them. The State declined saying the City had also requested the transfer to them. To my knowledge, it is still State property. On the Charleston County Property Tax Map Concord Street is shown, but no parcel number, nor ownership is assigned. The SCSPA will handle any Concord Street issues.*
6. What is the designated route / flow of incoming traffic from offsite?? Concord.. how many blocks? Any other thoughts regarding entrance from Washington?
   - *The designated route would be as follows: From Ebay Street heading South;(L) Chapel Street which becomes Washington Street; (L) Charlotte Street; (R) Concord Street arrive at terminal entrance.*
   - *During the Union Pier Concept Plan Phase, the City of Charleston identified the need to transfer cruise passengers from the City streets to the SCSPA property. The Concord Street entrance and queuing around the perimeter of the property was the solution to the City's concern.*

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3.2 Architecture

For the building, several design options were evaluated, from simple conversion to total demolition of the building. The long-span roof framing members with just a single row of steel columns down the center of the building are complimentary to traditional planning requirements found in a modern cruise terminal. To the extent feasible, the long-span rigid steel frame and poured concrete portions of exterior walls will remain and be utilized in the building conversion. Following necessary structural repairs and seismic retrofitting of the building frame, the existing long-span steel structure will be sandblasted to remove corrosion, and then repainted for re-use.

Due to the age and condition of the building, and the fact that the building function is changing, we are recommending removal of the building envelope components, including but not limited to, the metal wall panels and metal roof panels (neither of which are insulated,) and windows and doors.

Most, if not all, of the interior systems and finishes will be demolished, and recycled where applicable. Floor finishes will be removed to prepare the concrete slab to accept new finishes. Lighting fixtures, mechanical and electrical equipment, and furnishings will be removed. Any components that will not be utilized in future improvements will be removed, capped, or covered depending on the function and location of the item in question.

Sustainable practices will be implemented in the handing, storage, and disposal or recycling of building materials during demolition, as well as subsequent construction. The contractor should implement a construction waste management plan to maximize recycling opportunities throughout all the project's phases.

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3.4 Mechanical/Plumbing/Fire Protection

3.4.1 General

Due to the age of the building, most, if not all, of the existing mechanical, plumbing and fire protection systems have reached the end of their life cycle. Considering the age of the facility and the "change of use," it is anticipated that the mechanical, plumbing and fire protection systems serving the existing building will be demolished. Removal of existing mechanical equipment includes all appurtenances including, but not limited to, ductwork, equipment supports, curbs, electrical services and controls. Removal of existing plumbing piping, fixtures and equipment includes all appurtenances including, but not limited to, valves, water supply piping, and drainage piping to minimum 6 inches below finished floor. Existing water supply and sanitary drainage lines will be removed to the point of service or be capped for future connections to the new building.

3.4.2 Fire Protection

Fire suppression piping was observed to be corroded and nearing its service life of approximately 40 years. It is anticipated that all existing fire suppression piping in the building will be demolished, including the existing fire standpipe equipment, piping, and all appurtenances back to the existing domestic water mains. Existing water lines may be capped just before the main, for future connections to the new building where appropriate. Piping and equipment will be removed from the building site to allow for the new construction.

3.4.3 Fire Alarm

The fire alarm system was observed to be nearing the end of its service life, and new code requirements render the system obsolete. All existing fire alarm conduit, wiring, and devices in the existing building will be demolished. Removal will include wire, conduit, notification devices, fire alarm panel and all appurtenances within the existing building. Conduit, wiring, fire alarm devices and fire alarm equipment will be removed from the building site to allow for the new construction.

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3.6 Wharf

3.6.1 Mooring

Bollards

Existing deck fittings are 100 metric ton bollards spaced at approximately 75 feet along the front face of the wharf. These will need to be replaced with larger bollards in order to hold the larger vessels common in today's cruise industry.

Fenders

The existing fender system consists of timber piling, which will have to be removed and replaced with a more efficient fender system that will adequately resist the anticipated berthing energy of the design vessel.

3.6.2 Shore Power

There is no shore power presently installed at the wharf.

3.6.3 Ships Water

The five Ships Water services along the east edge of the Wharf within the project limits will be demolished in order to accommodate larger services. The 4" DIP branch lines under the Wharf as well as the 3" RPZ backflow preventers and 2½" brass valves and hose connections shall be removed. The cast in place vault boxes will be abandoned in place.

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areas. The dry detention could also be connected by pipe extension to the site drainage system so that it could drain down relatively quickly after storm events without relying only upon percolation and evaporation.

4.1.4 Sanitary Sewer System

The new cruise terminal design will include the addition of several restroom facilities sized to service ship embark /debark cycles based on the relevant plumbing codes for this type of facility. The estimated peak flow sewage rate is approximately 114 GPM, based on the total sewer fixture unit count of 227.5 FU. No sanitary sewage discharge from any of the ships is anticipated or included in the sewer design concept for this project.

The existing sewage lift station serves three very small toilet rooms and is inadequate in size and condition to provide the 50 GPM design flow rate required for the Project. The existing 6" DIP gravity sewer service lines and 3"& 4" DIP force main piping that are hung on the underside of B322 and southward along the Wharf should be dismantled, removed and capped off just upstream of the branch connection to Building 318. The existing sewage lift station within B322 should also be dismantled and removed from the site.

The nearest available sewer infrastructure of adequate size to serve the cruise terminal is a municipal gravity sewer manhole within the Concord Street corridor approximately 200 feet west and 850 feet south of B322. From existing sewer system plans provided by SCSPA the maximum depth of the gravity sewer at the nearest manhole location is indicated as approximately 5 feet. A physical confirmation of the sewer system elevations at the tie in point should be performed prior to detailed design. However, based upon a 5 foot sewer depth and the distance from the cruise terminal to the tie-in point, there would not be enough fall in the system to extend a gravity sewer service. A new sanitary sewer lift station and force main line sized for the increased design flow will be required. The lift station should include a duplex submersible pump system, within a 6' diameter wet well located upland, somewhere near the south west corner of the building. The pump size is estimated to be approximately 5hp. The force main sewer line should be a 4" PVC, C-900 line from the new lift station west approximately 300 feet to the east right of way line of Concord Street, then continue south just outside of the right of way approximately 850 feet then turn west entering the right of way and connecting the existing CWS sanitary sewer manhole.

4.1.5 Paving/Drainage

The existing asphalt paving is in serviceable condition. However, there are a number of areas that should be improved for the conversion to a cruise terminal facility. There has been differential settling over time at some locations within the asphalt paved areas that have created localized low areas that do not fully drain. There is approximately 8,500 lineal feet of rail road tracks within the project site that could be a tripping hazard and potential liability. There are also many small projections in the asphalt where uneven settling occurred over piles or other subsurface structures that were abandoned in place and paved over. The occurrence of the paving "bumps" seems to be limited to the general area where Building 323 and Building 329 were previously demolished. These bumps in the asphalt paving are tripping hazards and in some cases are high enough to hit the undercarriage of a low vehicle.

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entering the ticketing/waiting area and check-in. Once allowed to board, passengers will exit the waiting area and access the passenger ship-to-shore gangway via the boarding corridor on the second level, reached through a vertical circulation core consisting of escalators and elevators. Stairs will be provided for emergency egress from the second level.

The disembarkation spaces include Baggage Laydown, Restrooms, and US Customs and Border Protection areas: Primary (offices, holding cells,) Roving Control Room, Queuing, Primary Inspection (ten stations,) and Secondary Screening. Debarking passengers will enter the building via the passenger ship-to-shore gangway and second level boarding corridor, and descend to Baggage Laydown via escalator or elevator or monumental stair. Passengers proceed, with their bags, through Customs and Border Protection Screening, and once cleared, exit the terminal and re-enter the United States.

The new cruise terminal will occupy approximately 108,000 square feet of the existing B322 footprint, generally remaining a single story, long-span, pre-engineered metal building, with a single row of columns down the center. The new terminal is expected to serve a 3,000+ passenger vessel, porting twice a week. It is anticipated the new facility will include a two-story vertical circulation core consisting of stairs, elevators, escalators and access to the passenger boarding corridor. The overall design character of the building will invoke the Charleston vernacular in elements such as wide porticos, narrow façades, and gabled dormers.

The rigid frame of the existing warehouse that remains will be structurally modified to meet the seismic criteria dictated by state law, as well as to support the new exterior wall assemblies and roof system. The existing poured concrete portions of the exterior walls will remain and be integrated into the new architectural facade. The new standing seam metal roof shall be pre-finished, insulated panels, certified as Energy Star compliant or Cool Roof rated. Insulated metal wall panels will be pre-finished and will have a high R-value to further increase the energy efficiency of the building envelope. The concrete walls will receive a finish treatment in keeping with the architectural character of the region.

The location of exterior openings will be optimized according to required circulation and interior space functions. All exterior glazing, doors and windows, shall be impact resistant in response to the design wind velocity of 135 mph with a 3-second gust. Insulated, low-e glazing is preferred, to minimize heat gain. Upgrading to a higher level of wind resistance can be accomplished for an additional cost, at the request of the Port.

Interior partitions and soffits will be constructed of engineered metal studs with gypsum wallboard. Concrete masonry units will be used in areas with elevated security or fire-resistance requirements. Some partitions will be full-height, and extend and seal to the underside of the roof deck. Suspended acoustical ceilings will be limited to general office areas and a system of suspended or metal grid ceiling with gypsum wallboard will be needed in areas requiring a hard ceiling for security or fire-resistance purposes. Exposed painted ceilings are planned for the large seating and baggage laydown areas.

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Life Safety/Code Analysis

This analysis assumes the project will be governed by the 2009 NFPA 101 Life Safety Code and the 2006 edition of the South Carolina Building Codes (SCBC) for new construction, (which are based on International Building Code, with South Carolina modifications.) The 2009 edition of the SCBC is scheduled to take effect January 1, 2011.

The Cruise Terminal will be classified as Assembly (A-3) occupancy, with accessory Business occupancy accounting for less than 10% of the area on any floor. The facility will be Type I-B construction, fully sprinklered. At least four exits are required, with a maximum travel distance of 250 feet. All public areas shall be accessible to persons with disabilities, in accordance with the Americans with Disabilities Act.

The Plumbing Code requires, at minimum, one drinking fountain for every 1000 persons (4 total), one service sink, one toilet fixture per 500 persons, male (4) and female (4), and one lavatory for every 750 persons (5). However, this type of facility will require higher fixture counts in order to accommodate the peak passenger volume without compromising the guest experience.

Code Analysis	
Project Name	**Union Pier Cruise Terminal** Building 322 Conversion for South Carolina State Ports Authority
Project Location	Charleston, SC
Wind Zone Velocity	**135 mph w/3 second gust**
Seismic Zone	**D (Site Class E)**
Applicable Codes	
Building	**2006 South Carolina Building Code with modifications (IBC)**
Life Safety	**2009 NFPA 101 Life Safety Code**
ADA	**Americans with Disabilities Act; ICC/ANSI A117.1** Accessible and Useable Buildings and Facilities
Plumbing	**2006 South Carolina Plumbing Code**
Mechanical	**2006 South Carolina Mechanical Code** **2006 South Carolina Fuel Gas Code with modifications**
Electrical	**2008 National Electrical Code**
Energy	**2006 South Carolina Energy Conservation Code** Energy Efficiency Standards Act (SC Statute)
Fire Prevention	**2006 South Carolina Fire Code with modifications**

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4.2.5 Passenger Ship-to-Shore Gangway

The passenger ship-to-shore mobile gangway that will be used for the new cruise facility is presently under construction, by FMT Aircraft Gate Support Systems (see Appendix A), for use at Building 325, the current location for the Port's cruise operation. The plan is to relocate the gangway to the new cruise terminal when the facility is complete. The gangway is a movable device with articulating ramps that bridge the vertical distance between the finished floor of the building's vertical circulation core and the ship's door entrance. The addition of a horizontal boarding corridor, connected to a point on the building and extending perpendicular and parallel to the wharf's edge, will provide the necessary horizontal range of movement of the gangway north and south along the wharf. The combined horizontal and vertical versatility of the entire passenger ship-to-shore gangway system is designed to accommodate a wide range of vessel door configurations, at a range of positions along the ships' lengths and at differing elevations above the wharf, also accounting for tidal changes.

The gangway is connected to the landside terminal building via an embarkation/ disembarkation corridor. The horizontal boarding corridor is typically elevated above the wharf deck, usually in the mid-range of the water side vertical access door range requirements. This allows the ramp slopes of the ship-to-shore gangway to be minimized for a more comfortable passenger boarding experience. As the location of the ship side passenger access door varies from vessel to vessel, the corridor needs to be of a sufficient length to accommodate various positions of the passenger gangway. The face of the horizontal boarding corridor is expected to consist of a continuous series of sliding glass doors that can be opened in a number of horizontal configurations to accommodate the mobile gangway's landside connection transfer span.

Two options were considered for the length of the corridor. Option 1, or the near term options, considered the primary ship currently calling at the port: the Carnival Cruise Line (CCL) *Fantasy*, and the seasonal call of a Conquest class vessel. In this option, the ships were assumed to berth only in the starboard-to configuration. A horizontal boarding corridor approximately 100 feet long was deemed appropriate to accommodate these vessels, while still providing flexibility to accommodate a limited range of other ships.

Option 2 considered a larger range of vessel sizes as well as allowing for berthing of the ships in either a starboard-to or port-to configuration (see Figure 3 on the following page.) For this option the horizontal boarding corridor is planned to be approximately 275 feet in length.

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4.3 Building Structural

4.3.1 Building Seismic Upgrades

The South Carolina State Ports Authority (SCSPA) is evaluating the costs and impacts associated with converting portions of the Union Pier Terminal from current industrial cargo use to a cruise terminal facility. As part of this work, Building 322, an existing open storage warehouse near the north end of the terminal, is being considered for conversion to a cruise terminal building. This change in use results in a change in Occupancy Category from Category II to Category III under the International Building Code (IBC), triggering the requirement that the building be brought up to current code requirements.

The following provides a preliminary assessment of the existing building's structural condition and discussion of potential upgrades required to update the building to comply with current structural building code requirements for this alternate use. A preliminary assessment of the wharf itself was provided previously as part of a separate study (Ref. Union Pier Terminal Master Plan, Feb, 2010) and is not included herein.

Background

Constructed in the early 1970's, the existing open storage Building 322 sits atop an existing concrete wharf structure. Based on review of existing reports and limited field observation, the existing building is in generally good condition. Some nominal surface corrosion can be seen on some of the main load-carrying members, but the corrosion does not appear to be severe enough to warrant anything more than cleaning and re-painting.

The building is approximately 314 feet long by 450 feet wide, and is constructed of typical light-frame metal building construction (metal siding/roof sheeting, supported by steel channel purlins and girts.) The primary load carrying system consists of 2 sets of steel moment resisting rigid frames spaced 25-feet apart that span the building's primary direction (N-S), with metal frame/concrete shear walls along the building perimeter in the opposite direction (E-W). The moment frames have pinned-base anchor bolt connections supported directly on pile caps that are integral to the concrete wharf structure. The concrete shear walls located around the perimeter of the building are cast integrally around the moment frame column bases.

Evaluation Approach

The approach used to evaluate the existing structure included both a qualitative evaluation based on experience and engineering judgment, along with some limited quantitative numerical analysis of the existing building frame system to determine the expected behavior under the current IBC design loads. Having been constructed in the early 1970's, the existing structure was likely not explicitly designed to resist seismic loads, and the original design was likely controlled by wind loads. The Charleston area has long been known to be an area of higher seismic risk, however most structures built before the mid 1970's did not explicitly design for seismic forces. In addition, the wind load criteria for coastal areas in the U.S. have also been increased in recent years due to better awareness of hurricane wind impacts.

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4.7 Pile-Supported Wharf Structures

4.7.1 Wharf Structural Concrete Repairs

The necessary structural repairs, to the six pile-supported wharf structures identified as part of the cruise terminal project development area, are based on the recommendations of the Moffatt & Nichol report (M&N Report) entitled, *Union Pier Terminal Master Plan, Evaluation of Marine Structures, Draft Submittal,* dated February 18, 2010. In addition to the pile-supported wharf structure that supports Building 322, there are five other pile-supported wharf structures that comprise the proposed Union Pier Terminal (UPT) project:

- North Wharf
- Open Storage 1
- Truck Ramp
- Access Bridge
- Open Storage 2.

Moffatt & Nichol conducted a condition survey of the six marine structures and presented its findings and recommendations in the M&N Report, listed above. The M&N condition survey report addresses only the condition of six pile-supported wharf (marine) structures. It does not address the pre-engineered metal building structure of SCSPA Building 322. The M&N Report also included an above-the-water-line inspection of the top portion of the concrete piles, the pile caps, and the wharf deck slab soffits. The M&N Report recommended concrete repairs apply to the above-the-water-line structural elements. The M&N Report does not include under-water inspections of the wharf bearing piles, the condition of the mud line, nor geotechnical sampling, testing and reporting of the subsurface conditions for the seismic retrofit analyses and upgrades.

The M&N Report provides the approximate plan dimension, surface area and unit costs of the recommended Structural Concrete Repairs, as outlined below:

Marine Structure	Area (SF)	Concrete Repairs Unit Cost ($/SF)	Estimated Cost ($)
North Wharf	72,000	$25.00	$1,800, 000
Open Storage 1	103,000	$10.00	1,030,000
Building 322 Wharf	129,600	$5.00	648,000
Truck Ramp	9,900	$5.00	49,500
Access Bridge	6,750	$35.00	236,250
Open Storage 2	69,000	$15.00	1,035,000
		Total Structural Concrete Repairs Estimated Cost	$4,798,750
		Rounded Total Estimated Cost =	$4.8 Million

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4.7.4 Mooring and Berthing Analysis

A mooring analysis has been prepared for the Carnival *Conquest* cruise ship to be moored at the existing wharf at Charleston, South Carolina. This analysis considers an existing wharf used primarily for container vessels. Modifications to the wharf are required for adequate mooring of the cruise ship. Currently, fendering is provided by timber piling, and 100 metric bollards are located at 75-foot on center spacing. The 952-foot vessel was positioned centered on the proposed cruise pier, which would engage three of the eight proposed fenders along the pier. It is assumed to arrive at full draft of 26.9 feet. Additional assumptions and results are presented below.

The mooring system design process requires evaluation of the forces that the ships mooring lines and pier fenders and bollards must resist. Sources of load on a ship in a pier-side mooring can be static, quasi-static, and dynamic. Static loads can be represented as a constant force such as a steady wind or current force. Quasi-static loads are understood to be dynamic but can be reliably represented by an equivalent static load such as the use of a 30-second duration wind speed to represent an unsteady or time-varying wind field. Dynamic loads include time-varying or unsteady winds such as wind gusts or shifts where change in speed or direction can occur, currents, waves, and passing ship forces. The analysis focuses on the mooring forces associated with steady wind, current, waves, swell and tidal changes at the project site. The analysis also considers the forces and moments imposed by passing ships while the vessel is at berth.

A computer program, OPTIMOOR, from Tension Technology International was used to evaluate moored ship behavior in six degrees of freedom, the horizontal plane directions of surge, sway, and yaw, relative to an initial equilibrium position. Vessel surge motion occurs in the longitudinal direction, fore and aft. Vessel sway motion occurs in the transverse direction, toward or away from the berth. Vessel yaw motion is an angular rotation about the ship's vertical axis.

Input to the program includes: non-linear mooring line load-extension characteristics; linear fender compliance parameters; mooring arrangement and berth geometry; tide conditions; the magnitude and direction of the applied environment; and moored vessel wind and current force and moment coefficients. Computer program results include maximum static mooring line tensions, total bollard forces, fender reactions, and vessel excursions for the applied environment.

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Assumptions

- Tides: +5.76 feet to 0.00 feet MLLW
- Current: Maximum 1.6 m/s (3.1 knots) from -45° true (flood) and 135°
- true (ebb)
- Wind: 35 knots from any direction
- Mooring Lines: Polypropylene, 25 lines – 10 fwd, 15 aft, 3 inch Diameter,
- Minimum Breaking Load (MBL) of 196 kips, Pre-tension at 8%
- of Breaking Strength
- Fenders: 7-feet x 14-feet High Capacity Foam Filled Fenders
- Bollards: 100 and 150-metric ton single bit cast steel bollards
- Dredge Depth: 35 feet Mean Low Low Water
- Pier Deck Elevation: +13 feet Mean Low Low Water
- Vessel LOA: 290 m (952 feet)
- Vessel LBP: 247.7 m (812.5 feet)
- Vessel Draft: 8.2m (26.9 feet)
- Vessel Beam: 35.5m (116.5 feet)

Mooring plan

The Mooring Layout Plan, presented on the following page, illustrates the preliminary ship position and the mooring plan evaluated for the mooring analysis.

Based on the arrangement shown, a 19-line mooring arrangement provides good mooring capability for the vessel for the following simultaneous conditions: winds up to 40 knots and currents up to 1.0 knot over the semidiurnal tidal range of 0.00 to +5.76 feet MLLW. The arrangement uses 7 lines forward, 4 spring lines, and 8 lines aft. The line inclinations range from 3° to 50° at the mean low low water level condition to 5° to 55° at the mean high high water level condition.

Mooring line and equipment information was based upon information provided by Carnival Cruise Lines. The modeled ship's lines were assumed to be 3 inch diameter polypropylene lines with a break strength of 196 kips. Line pre-tensions were set at 5 kips. No mooring tails were assumed to be present.

Vessel mooring equipment includes an arrangement of winches and double bitts on the fore and aft mooring decks. The size and strength of the ship's fittings are assumed to be compatible with the mooring lines.

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SCPA 007331

R.002452

4.7.5 Shore Power

A new 23KV overhead distribution power will be provided by SCE&G to a dip pole located on the northwest corner of the facility. The cabling and conduit from the dip pole to the shore power substation will be provided by the SCSPA via underground PVC schedule 80 ductbank and transition to PVC coated RGS conduit located under the wharf. The meter cabinet will be located at the dip pole.

The primary 25KV power cable will terminate at a primary main power circuit breaker, (see Figure 5,) located within the Shore Power Substation. The main circuit breaker will serve as the service disconnect and will feed a 15/7.5MVA , 3 Phase, 23KV/11KV/6.6KV neutral grounded resistor tertiary connected less flammable filled substation transformer. The substation transformer secondary will feed an 11KV power circuit breaker and a 6.6KV power circuit breaker. A key interlock system will be provided to achieve independent secondary 11KV and 6.6KV power circuit breakers from being closed at the same time.

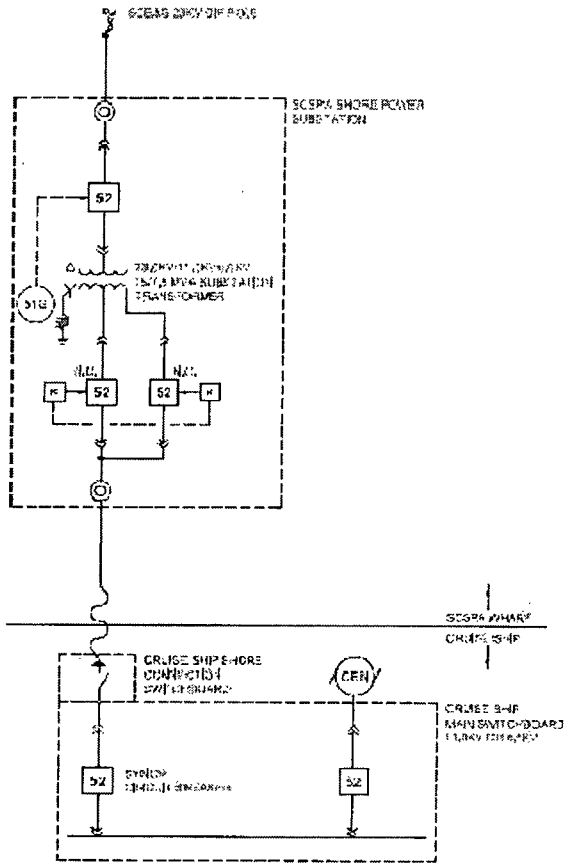

Figure 5

The neutral ground resistor will be provided with a ground-fault relay and will trip the main circuit breaker in the event of a ground-fault condition. Additional shore side monitoring, protection relays, and grounding will be provided in conjunction with the ships system to ensure safety, protection, and reliability of both ship and shore electrical systems and qualified personnel.

All enclosures will be painted stainless 316.

15KV Power will be routed to the ship through five 15KV SHD-GC CPE flexible "Ship cables." Each flexible cable will be provided with 15KV receptacle plug compatible with the ship's 15KV receptacle connector.

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Opt	FAC	Area	Description	Takeoff Quantity	Total Cost/Unit	Total Amount
			EIFS Systems			
			Caulking and sealants, butyl based, bulk, in place, 77 LF per gallon, 1/2" x 1/2"	765.00 lf	1.28 /lf	980
			EIFS Systems	**11,146.00 sf**	**12.66 /sf**	**141,057**
			EIFS Framing for Exterior Wrap			
			Parapet framing, 18 ga x 6" W x 3' H studs @ 24" O.C., installed on 2nd story, incl galv top & bottom track	750.00 lf	9.44 /lf	7,081
			Welding structural steel in field, single pass, 0.1 Lb/LF, 1/8" thick, continuous fillet, type 6011	125.00 lf	5.24 /lf	654
			Angle framing, structural steel, less than 4", field fabricated, incl cutting & welding	3,000.00 lb	7.47 /lb	22,395
			Angle framing, structural steel, 2"x2"x1/4", field fabricated, incl cutting & welding	750.00 lf	22.16 /lf	16,622
			Sheathing, plywood on walls, CDX, 3/4" thick	10,500.00 sf	1.19 /sf	12,439
			EIFS Framing for Exterior Wrap	**11,146.00 unit**	**5.31 /unit**	**59,192**
			Char Contextual Charleston Elevation	1.00 ls	630,787.19 /ls	630,787
	Skin		New Building Skin (Roof & Walls)			
			Demo Roof & Siding			
			Roofing and siding demolition, siding, metal, vertical, remove all	185,000.00 sf	1.62 /sf	299,484
			Selective demolition, rubbish handling, 100' haul, load, haul, dump and return, hand carried, cost to be added to demolition cost.	570.76 cy	43.57 /cy	24,866
			Selective demolition, rubbish handling, loading & trucking, chute loaded, including 2 mile haul, cost to be added to demolition cost.	570.76 cy	50.30 /cy	28,710
			Selective demolition, rubbish handling, dumpster, 40 c.y., 13 ton capacity, weekly rental, includes one dump per week, cost added to demolition cost.	15.00 week	1,299.36 /week	19,490
			Demo Roof & Siding	**155,000.00 sf**	**2.40 /sf**	**372,550**
			Metal Roofing, Conceptual			
			Standing seam insulated panel roofing 22ga 6" insulated	154,789.00 sf	27.36 /sf	4,235,281
			Metal Roofing, Conceptual	**155,000.00 sf**	**27.32 /sf**	**4,235,281**
			Composite Metal Panels - see also 08900			
			Insulated Metal Sandwich Panel Siding 22ga 2" Insulated	43,546.00 sf	21.16 /sf	921,348
			Composite Metal Panels - see also 08900	**43,546.00 sf**	**21.16 /sf**	**921,348**
			Skin New Building Skin (Roof & Walls)	155,000.00 sf	35.67 /sf	5,529,179
	Tinteri ors		Terminal Bldg Interiors			
			Skylights			
			Skylights, sandwich panels, fiberglass, for roofs, 2-3/4" thick, 250 SF and up	3,000.00 sf	29.43 /sf	88,301
			Skylights	**3,000.00 sf**	**29.43 /sf**	**88,301**
			Passenger Area Acoustic Treatment			
			Acoustic Structure	48,500.00 sf	1.38 /sf	67,042
			Acoustic Treatment	48,500.00 sf	2.26 /sf	109,112
			Passenger Area Acoustic Treatment	**48,500.00 sf**	**3.63 /sf**	**176,154**
			Diamond Polish & Coating-Baggage & Traffic Areas			
			Concrete stain, floors, interior, acid stain, two coats	51,483.00 sf	0.67 /sf	34,550
			Diamond Polish Concrete Floor Slab	51,483.00 sf	2.75 /sf	141,626
			Diamond Polish & Coating-Baggage & Traffic Areas	**51,483.00 sf**	**3.42 /sf**	**176,176**
			Ceiling Paddle Fans			
			Fans, ceiling fan, paddle blade air circulator, industrial grade, reversible, 4 blade, 21,015 CFM, includes 3 speed switch	50.00 ea	850.78 /ea	42,539
			Ceiling Paddle Fans	**50.00 ea**	**850.78 /ea**	**42,539**
			Tinteriors Terminal Bldg Interiors	110,000.00 sf	4.39 /sf	483,172
			Term Terminal (Building 322)	1.00 ls	6,643,138.52 /ls	6,643,139
	Wharf		Wharf			
		Shore Power	Shore Power			
			Shore power MV distribution total all-in cost complete per kW	15,000.00 kW	354.32 /kW	5,314,847
			23525			**5,314,847**
			Shore Power Shore Power		/kW	5,314,847
			Wharf Wharf	1.00 ls	5,314,847.12 /ls	5,314,847
			O2 Option 2 - Expanded Approach	**1.00 ls**	**14,004,079.95 /ls**	**14,004,080**

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SCPA 007369

R.002454

Questions for SPA Related to Traffic/Parking
Cruise Ship Terminal

1. In Union Pier Plan, section III, pg 19: transportation analysis shows "impact on neighborhood streets will be negligible." Where is the supporting data?

This was a conclusion of the detailed traffic analysis, which you are certainly welcome to review. I have a copy here that I could loan you – it's a thick document and not particularly engaging reading, but that's probably what you'd expect from traffic engineers. The transportation analysis evaluated not only the cruise traffic but also looked at forecast traffic conditions downtown through the year 2028. Considering there are 20,000 vehicle trips per day on East Bay and 6,000 on Washington Street today, it really should not be surprising that the cruise-related traffic will have minimal impact on the neighborhood streets.

2. What is the average number of passengers/cruise?

Currently on the 2011 calendar, there are 92 total cruise ship visits – 70 are embarkation, debarkations or both. All but one of the embarkations is on the Carnival Fantasy, which has a design capacity of 2,052 but can carry up to 2,600. The other 22 are port-of-calls by 17 other ships, with an average capacity of about 1,150 passengers.

3. What is the average number of personal vehicles/cruise? Recent P&C article cited 400-500 cars/cruise. Where did that figure come from?

For the typical Fantasy embarkation, about 500 cars pay for parking in SCSPA-provided storage areas. The remaining passengers are delivered by shuttle from local hotels, taxis, limos, or drop-offs. There is an illustrative table on Page III.16 of the Concept Plan that shows traffic by hour and by type. While it gives a pretty good idea of the timing of the flow, the raw numbers are somewhat different based on our experience. First, this table is for a 3,450 passenger ship, so most of the counts we see are considerably lower. Second, we don't have nearly as many coaches as this suggests.

For port-of-calls, it depends on the size of the ship and the landside excursions. Tomorrow, the Veendam is in port – they have groups going to Patriots Point, Magnolia Gardens, a carriage tour, Boone Hall and an historic Charleston tour including the Joseph Manigault House. They'll have separate shuttles throughout the day. On a typical port-of-call, one-third go on these organized shore excursions, one-third explore on their own and one-third remain on board. This varies based on the cruise line and the demographic -- European originating cruises have higher percentage of shore excursions, etc.

4. What is average number of service vehicles/cruise?

For embarkations, it depends on the length of the cruise and the amount of provisioning that the ship requires (food, machinery, recycling, etc.). The number of trucks and other service vehicles can range from 3 to 25. The typical volume would be in the 10-15 range. There is typically no provisioning or servicing of port-of-call vessels, beyond the shoreside excursions referenced in 3.

5. What is the average number of public transportation vehicles/cruise?

I'm not aware of any.

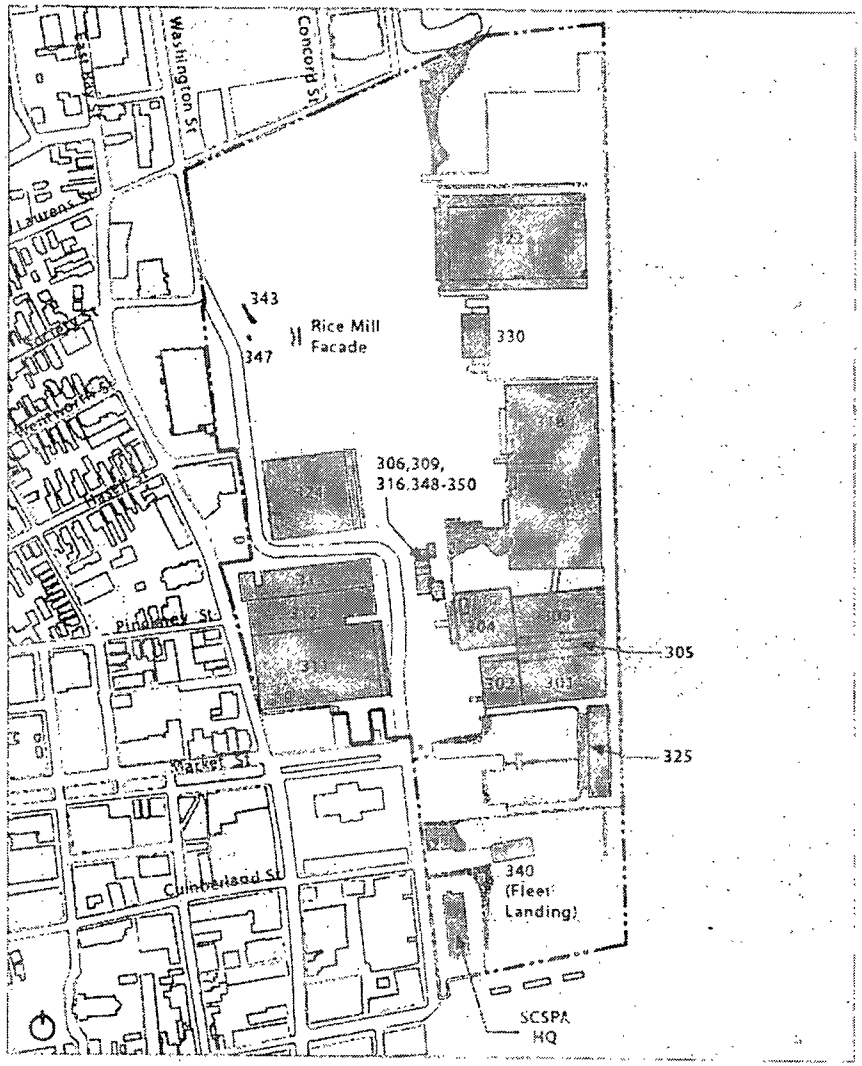
6. With new terminal, will Washington St, Laurens St & Concord St be open to local traffic?

EXISTING CONDITIONS

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

BUILDING INVENTORY

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



Existing structures

R.002456

SCPA 007484

VESSEL CHARACTERISTICS

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

RECOMMENDED DESIGN VESSEL SIZE (POST-PANAMAX)

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

VESSEL BERTHING REQUIREMENTS

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

GANGWAY REQUIREMENTS

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

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

Cruise market - 2008 Assessment of Attractiveness of Port of Charleston

↑ Strong ■ Fair ↓ Weak

R.002457

SCPA 007493

CONCEPTUAL SITE PLAN

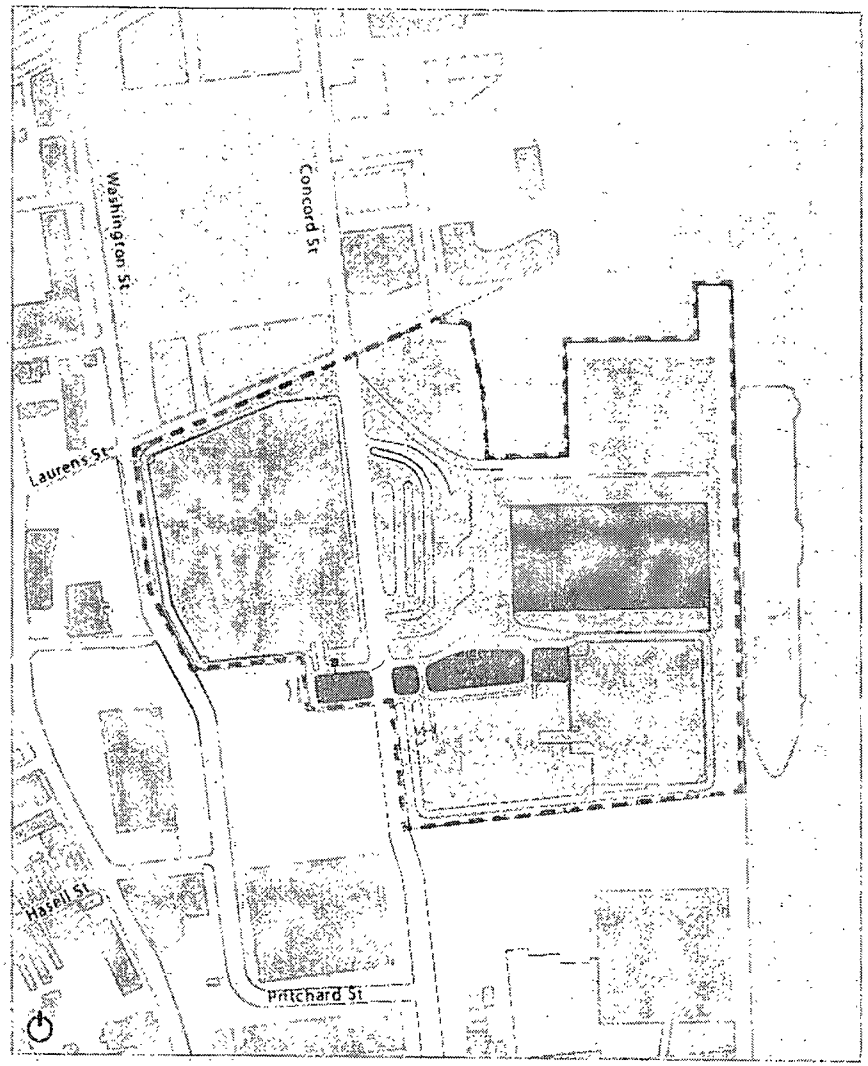
UNION PIER - CONCEPTUAL SITE PLAN

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

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

BUILDING 322 - CRUISE TERMINAL

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



Concept plan

R.002458

SCPA 007496

CRUISE TERMINAL PROGRAM

CUSTOMS AND BORDER PROTECTION (CBP)

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

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

REQUIRED CBP/FIS PROGRAM

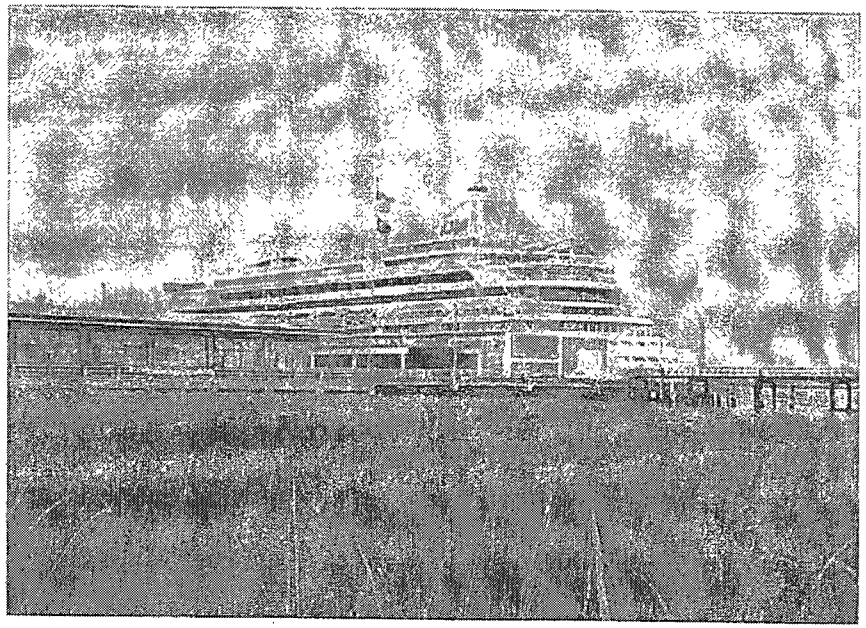
Primary Processing	19,228 NSF
Secondary Processing	4,502 NSF
Secondary Operations and Support	535 NSF
CBP Administration and Support	4,309 NSF
Exit Podium	315 NSF
Total CBP/FIS	**28,889 NSF**

CREW AREA

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

CONCLUSION

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



R.002459

SCPA 007504

PROJECTED TRAFFIC VOLUMES

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

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

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

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

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

QUEUING WITHIN SITE

Existing Conditions

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

Proposed Plan

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

R.002460

SCPA 007507

From: Bellamy, Derrick
To: Bryant, Joe
Subject: CST - Cruise Alternative
Date: Monday, March 29, 2010 11:36:01 AM
Attachments: Cscurmap_Cruise_Terminal_Concept.pdf

Joe,

Attached is a concept drawing for the Cruise Terminal at the Columbus Street Terminal. Based on the documents provided by CRP, it was not apparent what size terminal was actually required. They essentially used the entire footprint of building 322. Therefore I placed the terminal building footprint between the existing ramps (distance of 520 ft long) for a footprint of 52,000 sq. ft. The ground transportation area has a footprint of 65,000 sq. ft.

I made an effort to plan a ground transportation area, parking & queuing space. The more I got into the layout, the more I realized that several decisions would have to be made in order to "make it work." Decisions would include:

- Given the defined area what's the best use to facilitate parking POV; queuing individuals; stores (shown on previous layouts);
- Are there any CBT requirements for this location that would be different from the UPT?
- Do you split the bus/taxi traffic from the individual planning to park? If so who uses the Charlotte St. entrance and who uses the Chapel St. entrance.
- The attached drawing shows queuing (two lanes snaking back at forth) near Chapel St. Will this be enough for the City?
- Do individual drop their luggage off then park and walk or park and get picked up. This decision will dictate the row layout.

It is my hope that we can use the drawing as a starting point for discussion.

Derrick L. Bellamy, P.E.
South Carolina State **Ports Authority**

From:	Miller, Byron
Sent time:	Monday, June 07, 2010 4:50:12 PM
To:	Lehman, Peter
Subject:	FW: New Charleston Cruise Terminal

---Original Message---

From: De La Cruz, Jennifer (CCL) [mailto:JDeLaCruz@carnival.com]

Sent: Monday, June 07, 2010 9:51 AM

To: Miller, Byron

Subject: RE: New Charleston Cruise Terminal

Thanks, Byron. Very helpful and I will pass the info on to Jim.

Regards,

Jennifer

---Original Message---

From: Miller, Byron [mailto:BMiller@SCSPA.com]

Sent: Sunday, June 06, 2010 1:37 PM

To: De La Cruz, Jennifer (CCL)

Subject: New Charleston Cruise Terminal

Hi Jennifer,

Thanks again for sharing the inquiry from Jim Berra about timing and issues associated with Charleston's new cruise terminal. While a thorough project schedule will be developed as design and engineering progress, we would very much like to have the new Charleston cruise terminal operational by the 2012 cruise season.

As you know, Charleston's plan is to shift its cruise operations north on the Union Pier Terminal footprint, into a retrofitted 151,200-square foot building with immediately adjacent surface parking. The design parameters are for a 3,430-passenger ship. This new terminal would remake Charleston's cruise operation, allowing both vessels and passengers to be handled much more efficiently and effectively. Attached is a PDF with aerials and drawings that reflect both the existing site conditions and the new terminal location.

From:	Miller, Byron
Sent time:	Sunday, June 06, 2010 1:37:21 PM
To:	Newsome, Jim; McClintock, Paul; Lehman, Peter
Subject:	FW: New Charleston Cruise Terminal
Attachments:	Cruise Terminal Schematics.pdf

Attached is the message in response to a question from Carnival's Jim Berra...

From: Miller, Byron
Sent: Sun 6/6/2010 1:37 PM
To: Jennifer (CCL) De La Cruz (JDeLaCruz@carnival.com)
Subject: New Charleston Cruise Terminal

Hi Jennifer,

Thanks again for sharing the inquiry from Jim Berra about timing and issues associated with Charleston's new cruise terminal. While a thorough project schedule will be developed as design and engineering progress, we would very much like to have the new Charleston cruise terminal operational by the 2012 cruise season.

As you know, Charleston's plan is to shift its cruise operations north on the Union Pier Terminal footprint, into a retrofitted 151,200-square foot building with immediately adjacent surface parking. The design parameters are for a 3,430-passenger ship. This new terminal would remake Charleston's cruise operation, allowing both vessels and passengers to be handled much more efficiently and effectively. Attached is a PDF with aerials and drawings that reflect both the existing site conditions and the new terminal location.

Major issues to be resolved are the relocation of current cargo operations and permitting/seismic upgrades related to the new facility. The first step is a new gangway. We're now evaluating proposals and aim to have the new passenger loading bridge under contract this summer and operational for the 2011 cruise season. The next step is to retain an architectural/design firm for the new terminal building and surrounding area.

Please feel free to share this message in whole or in part with Jim, and let me know if you need any additional information.

See you Friday!

Sincerely,
Byron

Byron Miller
Director, Marketing, Public Relations & Planning
South Carolina State Ports Authority
e-mail: bmiller@scspa.com
office: 843-577-8197
mobile: 843-514-9397
http://www.scspa.com

tidal challenges may not be as severe at SC so it likely would translate to a lower construction cost there given the same design/construction parameters. This cost is estimated. This work was accomplished during larger projects and the cost was a part of other work done and not identified as a separate line item.

- Background – The two cruise berths located at T30 were relocated to T91. This was part of a larger program to return T30 to use as a container terminal. While some of the infrastructure to support shore power remains at T30 those berths no longer have shore power.

3. **How many berths were modified? Out of how many total? Is the plan to provide it at all berths?**
   - 4 berths were modifies, but only two have the electrical equipment needed to operate shore power. In addition to T91 we have identified an additional 11 berths that have some potential for shore power. T5 – 2 berths; T18 – 3 berths; T25 – 1 berth; T30 – 2 berths; T46 – 2 berths; and P66 – 1 berth. Attached is a study that discusses the possibilities of shore power at the Port of Seattle. We currently have one project identified in our capital plan for shore power. However issues with power availability and costs of uplands work make that project unlikely in the near term.
4. **Who paid for the vessel modifications? How much per vessel?**
   - The cruise lines paid for vessel modifications. We understand that Princess paid $500K and Holland America paid $1.1M.
5. **How many vessels were modified?**
   - We are not sure how many vessels were modified specifically for calls in Seattle. The ships calling in Seattle change regularly. For example in 2009 we had 5 vessels calling Seattle that had been modified for shore power, in 2010 that number will be 4.
6. **What % of vessels using the berth use shore power? What % of vessels calling Seattle use shore power?**
   - At T91 46% of the cruise vessels using the 2 cruise berths use shore power.
7. **Who does the actual connection – longshore, port personnel, vessel personnel?**
   - Connections are made by vessel personnel. To accommodate this the controls for the jib crane are operated from the vessel by vessel personnel.
8. **Any estimates on A/Q improvements or plans to try to determine it?**
   - I was not able to gather this information.
9. **Anything else that you might think of that would help us in evaluating the cost/benefit of shore power.**
   - Consider where your residential populations are, proximity matters when it comes to diesel emissions.
   - How clean is your grid power? In the northwest our power is mostly hydroelectric.
   - Consider the cost of grid power. What is the ROI? Hydro is relatively inexpensive.
   - Look at labor costs. If union labor must make every connection you may have higher costs.
10. **What pitfalls or surprises were encountered?**
    - Flexibility was an issue. The location of the shore power connection varies by vessel. We had to develop a system that would accommodate various connection locations.
    - Plugs are not universal.
    - Power requirements are not universal. Most cruise vessels are 11 kV and most cargo

"Carnival Fantasy's year-round service is a welcome addition to the Port of Charleston and fits well within the context of the internationally acclaimed Charleston tourism market," Jim Newsome said. "Cruise business benefits Charleston because it provides a positive economic impact in the form of jobs, investment and visitor spending. We look forward to continuing our successful, long-standing relationship with Carnival."

"Carnival's year-round service provides an important opportunity not only to enhance our local economy but also to introduce new visitors to our historic city," said Mayor Riley.

The 2,056-passenger Carnival Fantasy features a host of on-board amenities and facilities including a 12,000-square-foot health spa, extensive children's facilities for kids in three age groups, a variety of formal and casual dining options and 12 lounges and bars.

Also featured is Carnival WaterWorks, an expansive, all-ages aqua park featuring a 300-foot-long water slide, 82-foot-long dual racing slides and a splash zone. Carnival Fantasy also offers Serenity, an exclusive adults-only retreat, and a resort-style main pool area.

Carnival Fantasy will sail this afternoon on a five-day voyage from Charleston to Freeport and Nassau, The Bahamas.

About Carnival Cruise Lines

Carnival is the largest and most popular cruise line in the world, with 22 "Fun Ships" operating voyages ranging from three to 15 days in length to the Bahamas, Caribbean, Mexico, Alaska, Hawaii, New England, Canada, Europe, and Bermuda. For additional information on Carnival's "Fun Ship" vacations, contact any travel agent, call 1-800-CARNIVAL, or visit carnival.com.

SCBIZ

Carnival Cruise Lines enters Charleston market

Tuesday, 18 May 2010 By Daniel Brock

dbrock@scbiznews.com

CHARLESTON -- Local leaders and Carnival Cruise Lines officials exchanged no less than five commemoratory plaques — and a number of gift baskets — during a ceremony on Tuesday as the cruise company launched its first year-round service from Charleston.

Charleston Mayor Joe Riley and S.C. Ports Authority CEO Jim Newsome were among several who addressed an upbeat crowd of business leaders, lawmakers and cruise agents in a bustling entertainment hall aboard the 2,056-passenger Carnival Fantasy.

"Jim, with the (SPA) board members took the initiative to reaffirm Charleston's role in the cruise industry," Riley said. "Today is a historic and meaningful event."

Carnival will operate almost 70 five-, six- and seven-day trips from the passenger terminal in downtown Charleston to the Bahamas and Key West, Fla., in addition to a handful of sailings starting next year going to Bermuda.

The Fantasy was scheduled to depart for the Bahamas at 4 p.m.

Cruise line officials said that Charleston's location near major hubs in the Southeast played a large part in the decision to bring year-round service here.

"As we looked at markets like Charlotte, Raleigh-Durham, Charleston and Columbia, they're really under-penetrated cruise markets," said Jim Berra, Carnival's chief marketing officer. "We thought it was a real opportunity to grow our sourcing." Previously, Carnival voyages from Charleston have been only seasonal, including two five-day cruises on the Carnival Triumph this year and two planned for the Carnival Glory next year.

Berra said that Carnival's relationship with the city and the planned new passenger terminal were also taken into consideration.

Officials from other agencies in the region also felt that today's announcement could mean that their ship has come in as well.

"An announcement like this is good for business overall," said Sue Stevens, the airports director for the Charleston County Aviation Authority. "(Companies like Southwest) notice that customers will fly here to catch cruises."

The Fantasy is one of the smaller ships in the Carnival fleet, but is has undergone major

Newsome, Jim

From: Adame, Jeannie
Sent: Friday, April 09, 2010 1:51 PM
To: Newsome, Jim
Cc: Miller, Byron
Subject: RE: cruise ship garbage

Jim,

That is correct. I have verified again with both Royal Caribbean and Carnival. Voluntarily, both of them do not discharge **anything** inside 12 miles to include ground up food waste.

Jeannie

Jeannie Adame
Manager, Environmental Affairs
South Carolina State Ports Authority
Phone: 843-577-8175
Mobile: 843-514-9593
Take the Pledge for Growth!

From: Newsome, Jim
Sent: Friday, April 09, 2010 1:19 PM
To: Adame, Jeannie
Subject: RE: cruise ship garbage

Can I assume that ground food waste is done 12 miles out as well on voluntary basis.

From: Adame, Jeannie
Sent: Friday, April 09, 2010 12:10 PM
To: Newsome, Jim
Subject: cruise ship garbage

Jim,

I checked with Byron and he said he believes that statement in the table came from the cruise lines directly, but he would have to check his e-mail trail. I think part of the confusion comes from trying to simplify the waste stream into just "garbage". Below is the answers from Carnival to a reporters recent question:

We have worked closely with the City Police Department to create new way-finding and signage, route traffic east on the peninsula, and get traffic off City streets and onto our property as soon as possible. Those actions have dramatically reduced traffic problems.

We have also worked to communicate with the community more effectively by posting details of upcoming cruise ship visits on our website, and sending e-mail notices as well.

As a result, automobile traffic is now being well managed, and at the sole expense of the PA Authority

[CLICK]

A second challenge is maintaining a size and scale of cruise ship activity that preserves Charleston's unique character. After all, that's why the ships and their passengers are here in the first place.

We have made very clear our commitment to continue managing the cruise business in a scale appropriate to Charleston, by planning for a one-berth one-ship terminal designed to handle ships up to 3,500 passengers.

Furthermore, we have said we see the Charleston cruise market as accommodating about two ships

This building is more than 40 years old. It urgently needs upgrades to properly serve passengers and ships and to conform to post-9/11 security standards.

And that still remains an option.

But the community encouraged us to look beyond our current footprint...to consider a more northern location for the passenger terminal...and also to consider the terminal's context...that is, how it fits within our entire property and the neighboring properties.

The result of this collaborative process was to recommend the relocation of the passenger terminal further north...right here on the map.

[CLICK]

We have cargo operations there right now. About 200 cargo ships come in and out every year. And there is also considerable truck and rail traffic supporting its operation.

[CLICK]

There are several obvious advantages to moving our passenger terminal to this location.

[CLICK]

So in the coming weeks, we will issue a Request for Proposals for an architect for that terminal. *[CLICK]*

We expect to have chosen an architect early next year, *[CLICK]* complete the design within a year from now, *[CLICK]* begin construction, *[CLICK]* and be ready to occupy the new facility within two years. We would then proceed with master planning the non-maritime components, again, with the full engagement of the public.

[CLICK]

I can assure you that we will continue to communicate with the community – especially our neighbors – throughout that process.

We will also keep the community up-to-date on our Website – UnionPierPlan.com – and you are welcome to write, call or e-mail your comments.

We encourage you to fill out a comment card to let us know what you think about the plan.

From the start of this process a year ago, I think we've made it very clear that we have an urgent need to improve our passenger terminal facilities.

The community has told us – and we agree – that the best option is relocating those facilities to the northern part of our Union Pier property.

There are many benefits, including moving the cargo operations, trucks, and train traffic off of the property. And the greatest benefit is the potential of opening up the southern portion of the property for a wide variety of public and other uses.

If, for any reason, we are unable to move expeditiously on this option, we would have to revert to a much less desirable option...which is to make the necessary improvements on our existing terminal.

We would upgrade this building, and leave the rest of the property just about the way it is today.

The existing cargo operations would continue. Cargo ships, trains and train tracks would remain. And Union Pier would continue to be separated from the rest of the peninsula by a chain link fence.

We think that would be a tragedy. And our sense is that the community agrees.

[CLICK]

We need now to move forward, designing a new passenger terminal and beginning the process to redevelop Union Pier. We cannot do one without the other.

The non-maritime redevelopment of Union Pier is arguably the most important redevelopment opportunity in the Charleston area, and potentially on the entire East Coast.

We would be foolish to miss this opportunity, along with the chance to develop an appropriately scaled cruise business that provides significant economic benefit to so many Charlestonians.

Our process will continue to be open and collaborative. We look forward to working closely with our Cruise Neighbors Advisory Council and regularly posting updates on www.UnionPierPlan.com.

I ask for your vocal support in this. My thanks again to all who have participated in this process. Our work continues. And it continues together.

[CLICK]

Union Pier Plan Community Outreach
FREQUENTLY ASKED QUESTIONS

What is the area of focus for the Union Pier Cruise Terminal Plan?

It includes the current Passenger Terminal as well as the areas where cruise ship passengers presently park their cars, board and debark cruise ships.

Who is responsible for creating the Union Pier Cruise Terminal Plan?

The SCSPA has the prime responsibility in this process. However, the SCSPA is working very closely with the City of Charleston throughout the process. The team of professional planners that was selected to develop the plan itself is led by Cooper, Robertson & Partners, one of the nation's leading planning and design firms with extensive experience in Charleston and with prominent waterfronts throughout the world. Public input is also encouraged throughout the process.

What's the timeline for the project?

By February we hope to present some options that are responsive to the input we've received. The completed plan would then be brought before the City of Charleston Planning Commission, with the goal to have the plan adopted by Charleston City Council. The SCSPA would then seek appropriate development partners. All of this could take a few years. There will be the opportunity for public involvement at every step throughout the process.

What is the financial plan for the cruise facility and the surrounding area?

We must create a financially viable plan. This means a plan that not only makes sense economically, but is also realistic and responsive to market conditions, preserves Charleston's character, and provides the Port with a reasonable return on its investment. This plan is currently being developed.

Didn't the SCSPA commission a Master Plan for this property several years ago?

A Master Plan for the property was developed and approved in 1996. Not only have many physical and market conditions changed since then, but also the facility must be updated to comply with the Maritime Transportation Security Act of 2002 (post-9/11 requirements). Accordingly, the SCSPA requested proposals from a number of leading planning firms during the summer of 2009 and selected Cooper, Robertson & Partners in early September.

Why doesn't the plan address more of the SCSPA's Union Pier property?

This planning process focuses on the area around the cruise terminal, which requires immediate upgrades. But we're not closing our eyes to how we might better achieve the project goals and address public input through the surrounding area.

How can you reduce the traffic congestion around the cruise terminal?

That's one of the key issues the planning team will be addressing. The team includes Kimley-Horn, a national leader in transportation, traffic and parking planning. Kimley-Horn is very familiar with downtown Charleston's traffic challenges. Their work will include a plan for managing both vehicular and pedestrian traffic.

What is the best way to manage the large number of people coming off of the ships?

This is certainly one of the issues that the master plan will address. It is important to effectively manage the cruise visitors, such as productively directing visitors to onshore attractions. On many vessels, one-quarter to one-third of visitors take organized visits to offsite attractions, such as the gardens. In addition, the Charleston Area CVB meets each ship to help guide visitors.

Is there a demand for more cruise ship business in Charleston?

Charleston is a very attractive destination for cruise ships from all over the world. In order to meet this demand, we need to modernize and update our one-berth cruise facility. This will allow us to meet security requirements and cruise ship customer expectations.

What economic impact does the cruise industry provide for Charleston?

The cruise business can provide positive economic benefits through increased consumer spending, construction projects, venue enhancements, employment increases, and other related items. An economic study of Charleston's cruise business is currently underway and will be released in early 2010.

What other cruise cities are comparative to the plans for Charleston?

Baltimore and Norfolk both have one-berth embark/debark facilities. However, Charleston is unique. Even though these cities may be similar, planning must reflect Charleston's distinctive characteristics and attributes.

How many terminals will there be?

There will be only one terminal capable of handling one embarking/debarking ship at a time. It is possible that under extraordinary circumstances (such as extreme weather conditions, a ship in distress, etc.), a second ship could be berthed there.

Union Pier Cruise Terminal – Kickoff Event
Thursday, October 8, 2009

KEY MESSAGING

We'd like the public to FEEL involved, BE involved, and SUPPORT in principle our plan for the Union Pier Cruise Terminal and its surrounding property. [NOTE: only if asked, we can estimate that the area includes approximately 17 acres]

We will achieve our goal by focusing on messages that will resonate positively with the public.

- Creating a financially viable plan for a new cruise terminal that is attractive, accommodating, and in keeping with the character of historic Charleston
- Complying with today's enhanced cruise security requirements
- Mitigating impacts on existing infrastructure and traffic
- Identifying additional uses for the Union Pier property that bring enjoyment to Charlestonians and enhance the local economy
- Increasing public access to Charleston's historic waterfront

Or, as a single sentence...

Through an open, collaborative process, we are creating a financially viable Union Pier Cruise Terminal plan that reflects the character of historic Charleston, complies with today's enhanced security requirements, mitigates impacts on existing infrastructure and traffic, identifies uses for the property that bring enjoyment to Charlestonians and enhances the local economy, and increases public access to Charleston's historic waterfront.

I would not pro-actively reference the 1996 plan. This is a fresh exercise, much more than an 'update.' The property is being looked at anew, within an entirely different economic and security landscape.

Here's how these message points can be played out in the October 8th event.

southern end of Columbus Street Terminal, while keeping our major roll-on, roll-off customer at Union Pier. The Union Pier footprint would not accommodate the growth of our major roll-on, roll-off customer so it was decided to move them to Columbus Street Terminal. Columbus Street Terminal will be an all cargo terminal in future, as it always has been, and is required to support our current and anticipated cargo growth, along with our other cargo terminal facilities. We recently invested over $20 million in improvements to Columbus Street Terminal with the aim of supporting the considerable cargo growth that we forsee there in the next years. The port's principle mission is to grow maritime commerce, not sell real estate. We feel that any subsequent studies, as advocated by others, will only duplicate work already done and thus not be productive.

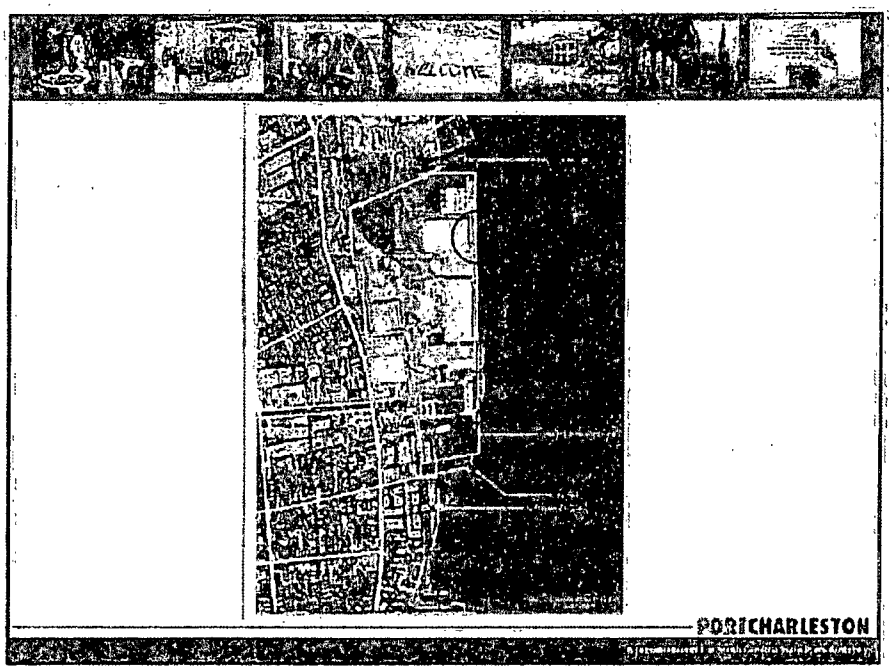
We also have been asked, in a few isolated instances, to accept a codified limit to the number and size of cruise ships that call our terminal in Charleston. We know of no major port in this country which operates under or accepts regulation on the amount of business that it handles. This would be problematic for a number of reasons, including the message that it would send to our present and potential customers, the potential knock-on effect in our other business segments, and even the impact on our ability to secure bond-financing on future development and honor our current bond covenants. Businesses generally do not accept statutory limits on the amount of business that they do. We need to preserve the prerogative to grow our port in a multitude of business segments as part of our mission to grow maritime commerce and support the economic development of this state. We have addressed the concerns of the City by giving a significant, voluntary undertaking to limit the number of cruise calls per year to 104 ships at a one berth terminal in Charleston of ships consistent with the size that have called Charleston in the past (approximately 1,900 to 3,500 passenger design capacity). Voluntary undertakings are the only appropriate way to handle this. This plan offers a significant reduction in the number of ships calling Union Pier Terminal when compared to previous cargo ship operations. We do not believe that the port's maritime commerce activities are subject to City regulation. We will consult with the City and various constituents well in advance of increasing the number of ships. We have no current plans to exceed the voluntary limitation of 104 ships. We will come back to this point later.

Fears have been expressed that Charleston would be overrun with cruise ships without appropriate regulation. This sensationalism is not borne out by any reasonable and factual assessment of the size of the Charleston cruise market. Charleston is a niche cruise market mainly supported by customers who drive to Charleston from a four or five state area. More than 80 percent of the embark/debark passengers come from these states. Market assessments from the Cruise Lines International Association (CLIA) website on the number of people in those states who takes cruises, when considering the limited range of destinations from Charleston, clearly show that the voluntary limit on the number of ships above approximates both the size of the passenger market and the size of ship that would be successful in this Charleston. Key West is often used in comparison, and this is not a justifiable comparison as this is a strictly port-of-call market handling up to three ships per day and over 350 ships and 850,000 passengers in 2010..

We also hasten to point out that cruise ships calling our terminal constitute a maritime commerce activity, not dissimilar to an airline serving an airport. We have a heavy

Traffic	There will be no increase in traffic from what currently exists. There will be a better traffic management plan than what currently exists. "There will be a simple, one-step cruise handling process obviating the need for shuttle buses and road closures." *Newsome letter para 3, 4, 5 p. 1-2.*
Modifications to Building 322	Detailed plans and an updated project description for modifications to Building 322 are in preparation and will be provided to you upon completion. All work performed to renovate Building 322 is interior within the existing four walls and dimensions of the building. "The northern end of Union Pier offers an opportunity to **retrofit an existing cargo warehouse and** is the most economically efficient and environmentally sustainable solution for a new cruise terminal … ." *Newsome letter para 5 p.2 (emphasis added.)*
Covered Staging Area	SPA staff is preparing plans reflecting the sheltered staging area for loading/unloading ship supplies.
Shore Power	It is well known that the Carnival ship that will call at the new terminal with the most frequency is the *Fantasy*, which is not equipped to connect with shore power. OCRM should be cognizant that the "shore power" discussion is nothing more than a thinly veiled attempt by the project opponents to discourage Carnival cruise lines from home-porting the *Fantasy* in Charleston. But more importantly shore power is prohibitively expensive infrastructure. "Shore power is extremely costly, and where it has been employed it has been subsidized by utilities and government grants so that it is cost-neutral to cruise line customers." *See Newsome letter shore power discussion para 12, 13, 14, 15 p. 3-4.* What OCRM should acknowledge is that significant measures are being taken to reduce air emissions based on the mandated reductions in NOX, SOX, and PM 2.5. *Newsome letter para 13 p. 3.*
Air Quality Standards	You have requested that SPA demonstrate that cruise ships are compliant with Air Quality standards. SPA has multiple statutory authorizations, obligations, and responsibilities, but monitoring and regulating air quality is not an SPA responsibility. However, DHEC's Bureau of Air Quality does have the responsibility of monitoring air quality and has collected ambient air quality data at or near other SPA facilities in Charleston County. SPA assumes that data is available to OCRM. As Mr.

	Newsome noted, "[t]he cruise lines calling Charleston are extensively regulated for environmental conduct and voluntarily exceed those regulations in all respects." *Newsome letter para 11 p. 3.* Moreover, movement of cargo operations from Union Pier to the Columbus St. terminal, along with the voluntary limitations that the SPA has imposed on the frequency of cruise embarkation/debarkation, has significantly reduced the maritime emissions at Union Pier. *Newsome letter para 12 p. 3.*
Description of activities to occur in the future at current location of cruise terminal.	I'm also attaching an Affidavit of Mr. Newsome that was filed in a pending challenge against the City of Charleston related to the cruise terminal. Note in paragraph 8 of this Affidavit that redevelopment of portions of Union Pier are under consideration. However, should the SPA continue to use Union Pier for "cargo ships" or "shipping activities" as is the focus of your inquiry, such activities are consistent with the SPA's statutory mandate to "foster and stimulate the shipment of freight and commerce through" the State's ports. *Newsome Affidavit p. 2, S. C. Code Sec. 54-3-140 et seq.* Moreover, in accordance with S. C. Code Sec. 54-3-130(9), the SPA is authorized to "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 ... ." In furtherance of its statutory responsibilities, the "total number of ships calling on Union Pier" could increase which would have a significant beneficial impact on the citizens of the State of S. C. and should not be of concern to your agency.
Value and enjoyment of adjacent owners.	The Union Pier terminal is identified as TMS 459-00-00-009. A review of GIS data indicates that the parcel south of and adjacent to Union Pier is the Waterfront Park owned by the City of Charleston. The City supports the SPA's permit application. There are multi-family residential structures north of and adjacent to Union Pier. These structures are located in a maritime redevelopment area and were built and purchased with actual notice that the Port of Charleston conducted operations on the adjacent property. The extent of operations is no different, upon completion of the renovation of Building 322, than it is now. If anything, the operations are more limited, given the SPA's voluntary agreement to control the frequency of embarkation/debarkation of cruise



Now here's a closer view...where you can see the property bordered by Waterfront Park to the south and the Maritime Center to the north.

We originally considered making significant upgrades to our current passenger terminal at the foot of Market Street. *[CLICK]*

The building is nearly 40 years old. It urgently needs upgrades to properly serve passengers and ships and to conform to post-9/11 security standards.

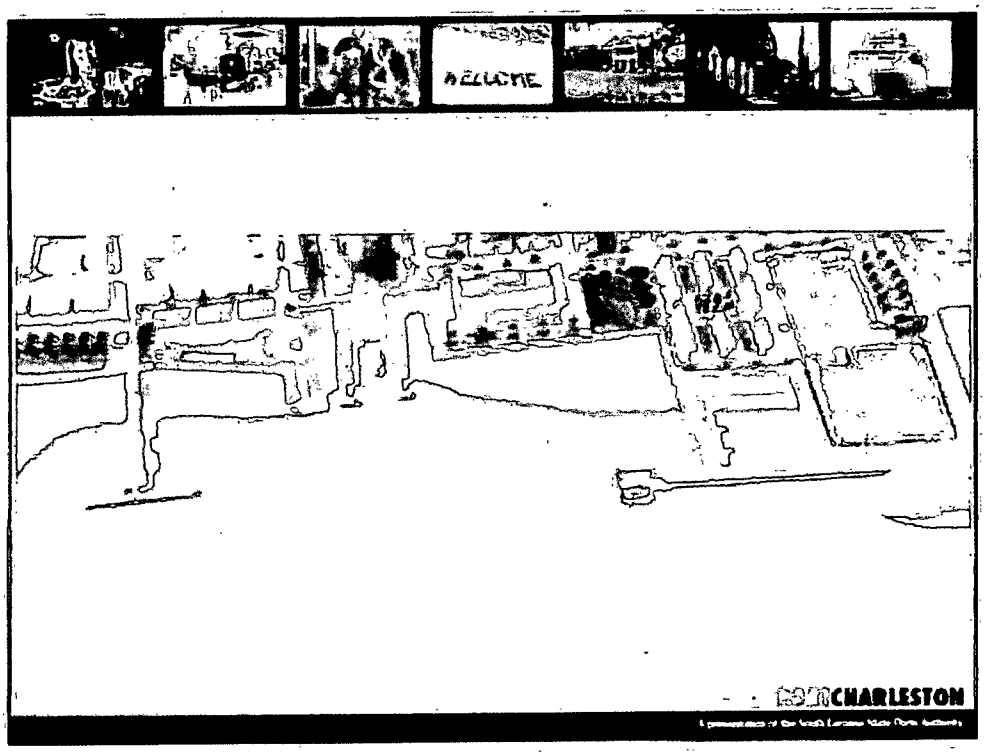
That remains an option.

But the community encouraged us to look beyond our current footprint...to consider a more northern location for the passenger terminal...and also to consider the terminal's context...that is, how it fits within our entire property and the neighboring properties.

The result of this collaborative process was to recommend the relocation of the passenger terminal farther north...right here on the map. *[CLICK]*

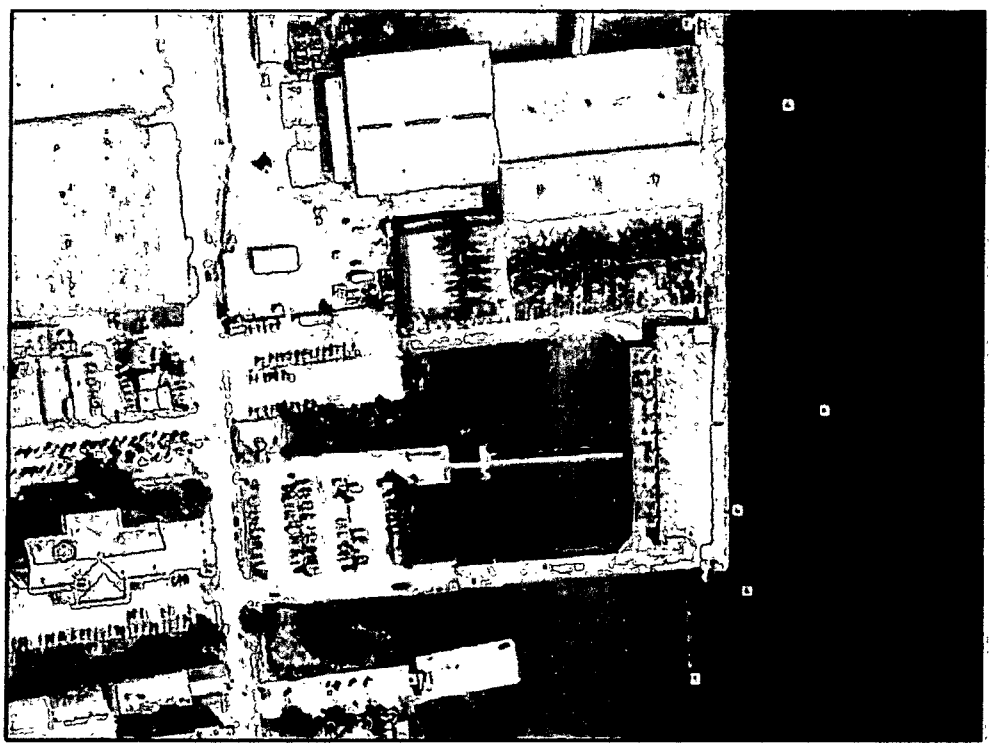
We have cargo operations there right now. About 200 cargo ships come in and out every year. There is truck traffic and rail cars moving along two parallel tracks.

[CLICK]



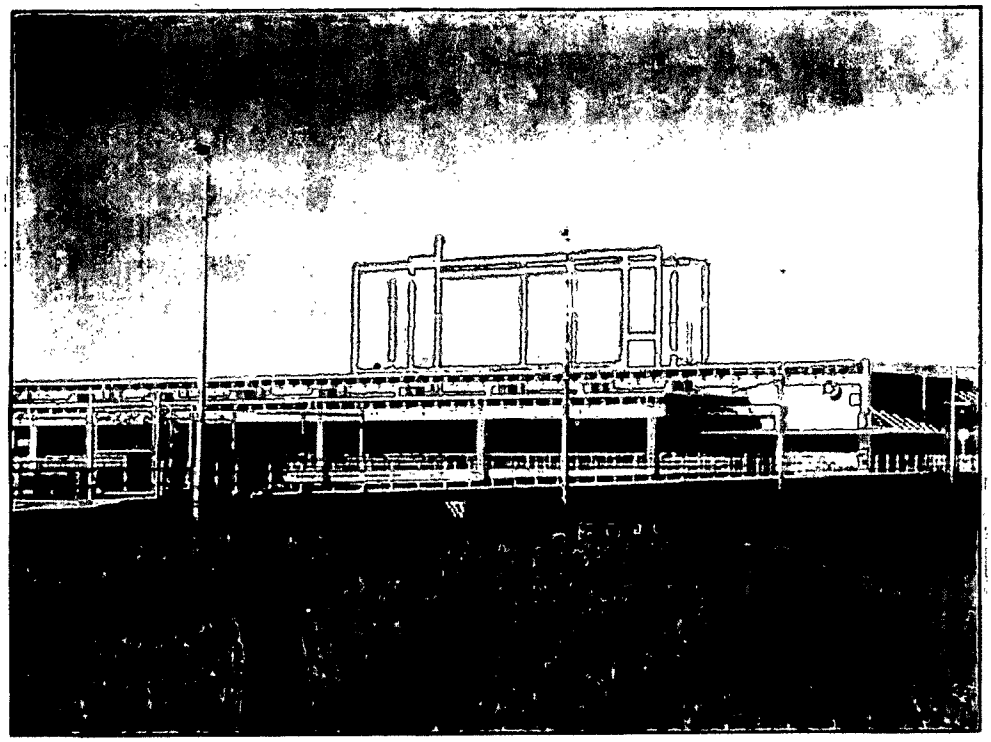
which includes restoring a natural shoreline twice the length of Waterfront Park...restoring the Bennett Rice Mill facade - set in a new park...and providing public access to wharfs and waterside pathways with magnificent harbor views.

It also enables us to relocate more than 180 cargo ships off of Union Pier, reduce rail traffic, remove railroad tracks, create green spaces and view corridor....AND improve traffic flow on the peninsula. {CLICK}



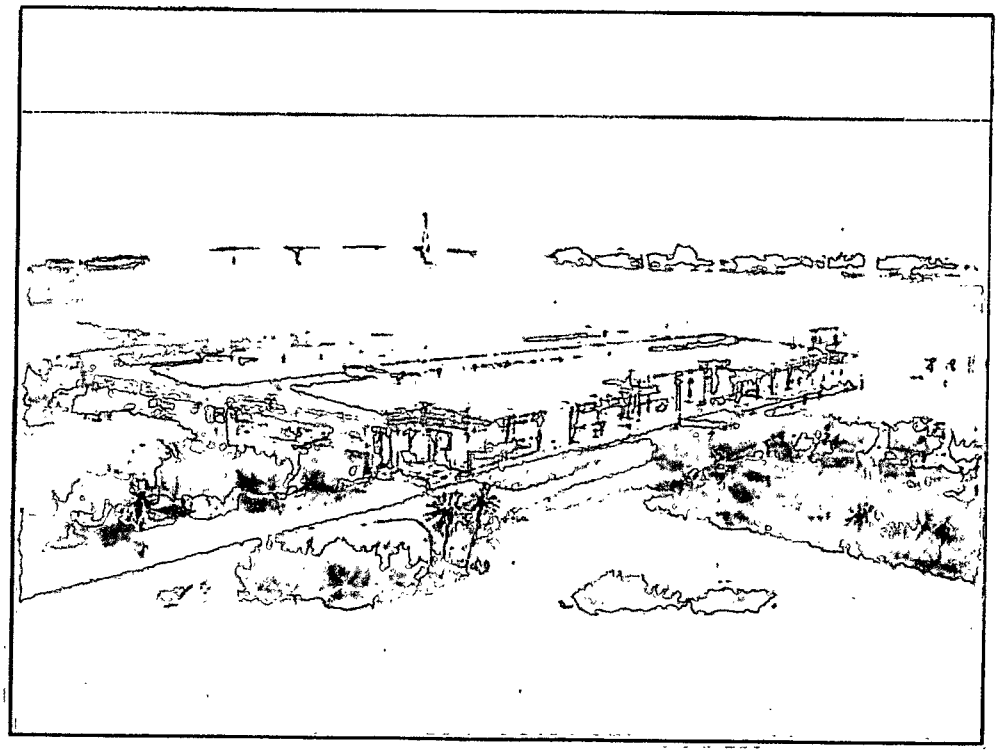
Here's an aerial view of our existing terminal - desolate and undistinguished.

Now here's a rendering of our new terminal site [CLICK]



Our existing building is out-of-date and unattractive.

Compare it now to the preliminary proposed design for our new terminal! [CLICK]



We reviewed these preliminary plans during several meetings early this month. We are now refining them, based upon the positive and constructive input we received.

We expect to have a final plan to present for review by the public in the next few weeks. And, as you know, we have voluntarily requested to submit our plans to the BAR.

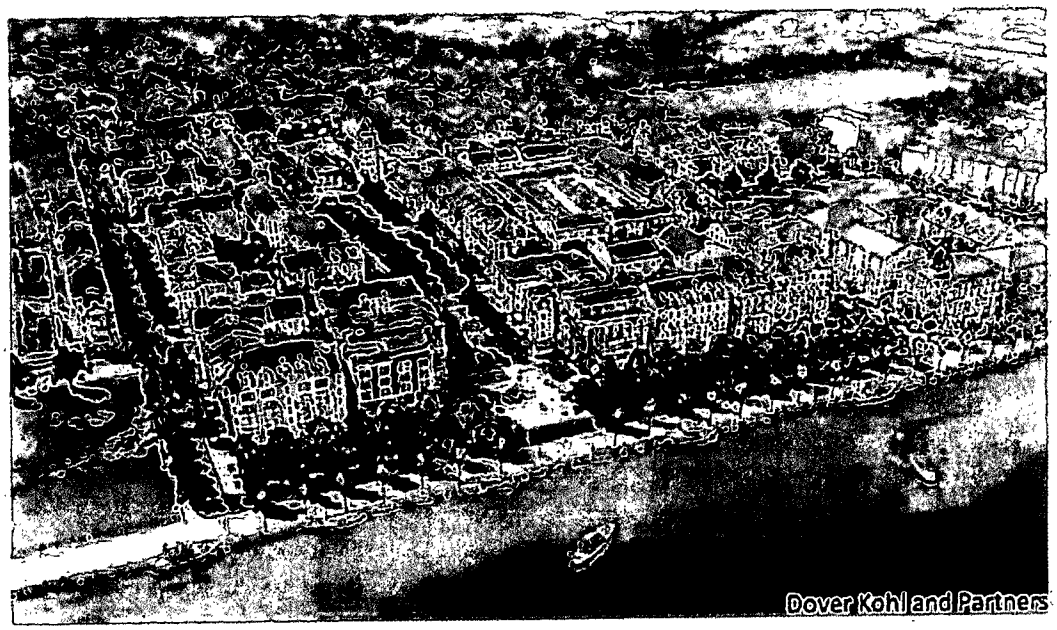
Construction is scheduled to begin this fall.

We need the new terminal for our cruise ship business.

If we are unable to proceed or unreasonably delayed, Union Pier will forever be used for cargo operations.

The choice is clear. [CLICK]

A Case for the Redevelopment of Union Pier



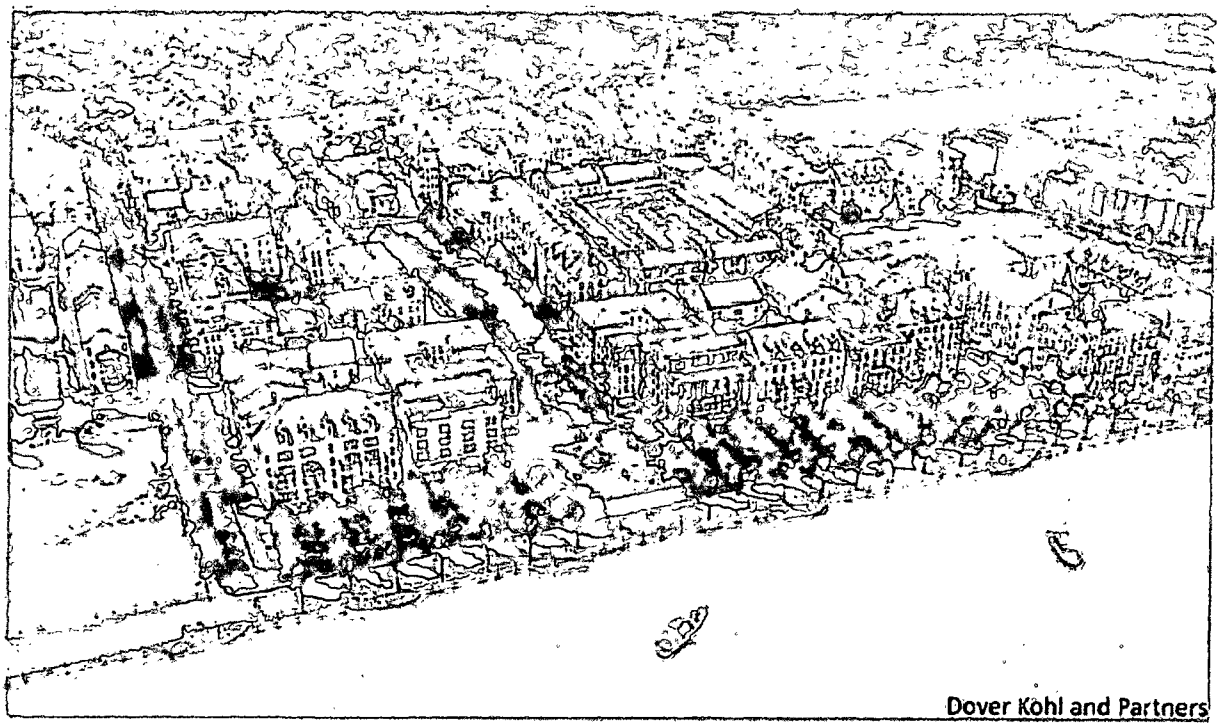
Presented by

South Carolina Coastal Conservation League

with

Dover Kohl and Partners
and
Urban Advisors Ltd

May 2011

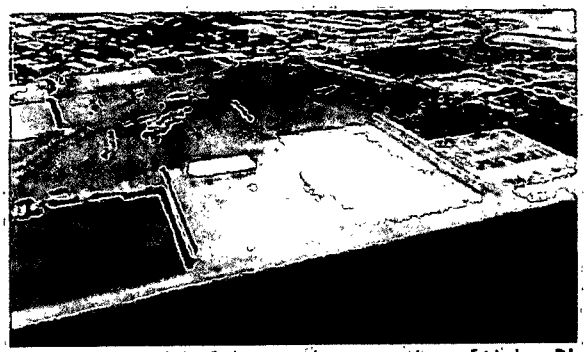


Dover Kohl and Partners

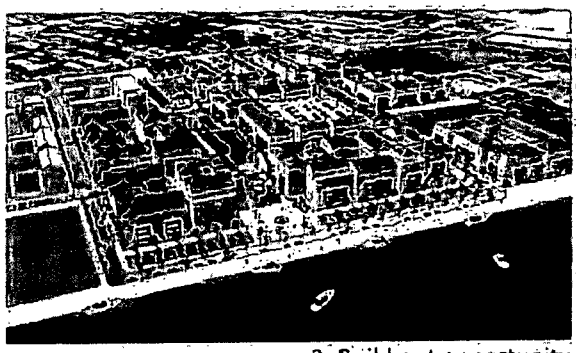
The Dover Kohl Plan:

- Is an alternative development plan for the northern portion of Union Pier
- Extends the Cooper Robertson concept plan for the southern portion of Union Pier northward.
- Extends Waterfront Park and public access to the water
- Adds valuable waterfront property back to the tax rolls
- Provides 994 new residential units and 80,000 square feet of commercial space
- Generates $100 and $130 million to the SPA in raw land value.
- Creates a real estate value between $502 and $532 million dollars
- Contributes between $29 and $35 million annually in new consumer spending
- Generates new residential annual tax revenue between $4 and $7 million for taxing agents in Charleston County*

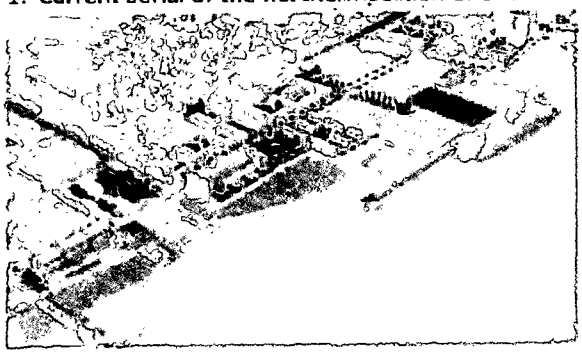
*This includes Charleston County, the City of Charleston, Charleston County School District, Trident Technical College, Parks and Recreation. It excludes available tax credits.



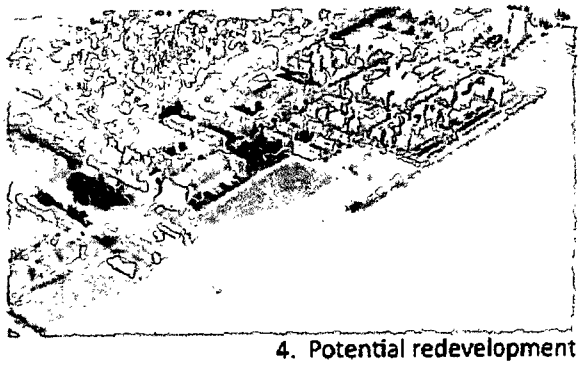
1. Current aerial of the northern portion of Union Pier



3. Build out opportunity



2. Cooper Robertson plan and footprint



4. Potential redevelopment

Over the years, this historic area has seen population and households decline, but is now experiencing a revitalization that can be reinforced with this project. By extending the plan that Cooper Robertson and Partners has planned for the southern portion of Union Pier, the City of Charleston can attract new residents and revenue, revitalize the waterfront and generate income for the State Ports Authority.

The scenario for Union Pier by *Dover Kohl and Partners* envisions the addition of 994 housing units 80,000 square feet of new commercial space, 6.5 acres of open space including a new waterfront park, walkways that provide public access to the waterfront, courtyards and public plazas.

This adds valuable waterfront property back onto the tax rolls and generates $4 and $7 million dollars in new residential tax revenue. Redevelopment represents real estate value between $500 and $532 million. Residual land value to the State Ports Authority is between $100 and $130 million, or otherwise equivalent of $3.28 million per acre for the northern portion alone.

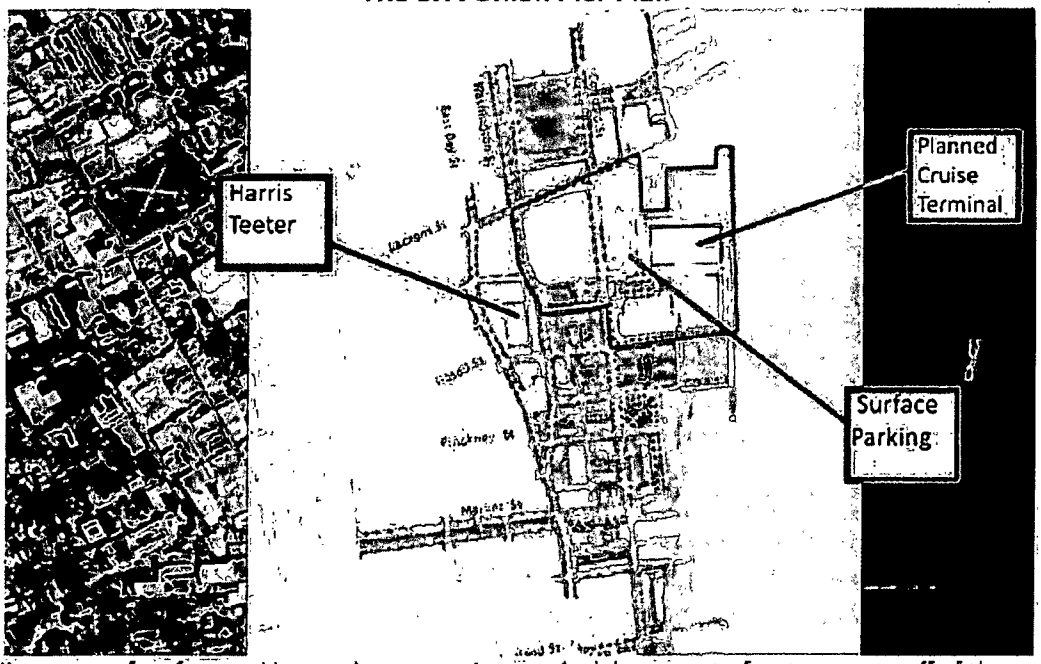
The amount of commercial space envisioned is limited to what can be supported on-site so that this plan does not detract from existing downtown businesses or from the proposed development in earlier area plans.

This Dover Kohl Plan is feasible because of Union Pier's unique location. The market for real estate at this location spans the eastern seaboard and extends into the Midwestern states and perhaps further. The combination of a nearly national market with local construction pricing yields demand that enables feasibility.

Plans to build a passenger terminal on this site will add annual revenue to the local economy, in the form of fees to the SPA and tourist spending estimated at $37 million*, however, those benefits are not specific to Union Pier and could be achieved at other locations. The opportunity for the city to add to the vitality of its core area is location specific; there is only one site like this in Charleston.

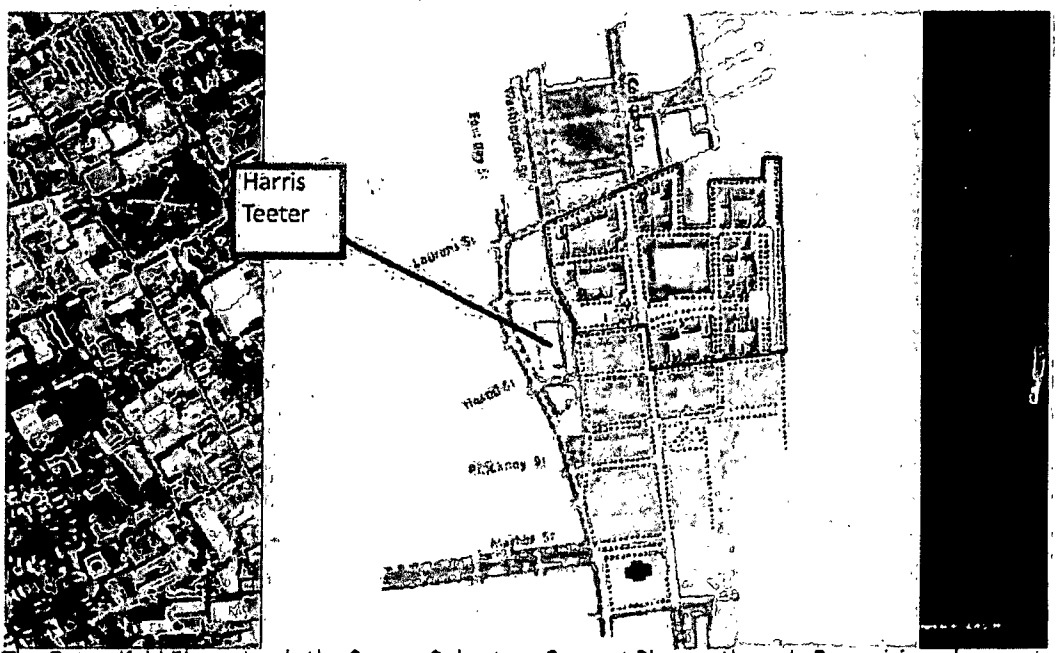
*SPA study as completed by Professors Crotts and Hefner

The SPA Union Pier Plan



Nine acres of surface parking, and a new cruise terminal, keeps waterfront property off of the tax rolls and limits possible revenue for the City, County and School Board. The financial impact of this scenario is parking and passenger fees to the SPA, between $7 and $12 million.

The Dover Kohl Plan



The Dover Kohl Plan extends the Cooper Robertson Concept Plan northward. Re envisioned as an extension of our historic City center, this property would generate $4-$7 million in new tax revenue, over $500 million in real estate value and over $100 million in land value to the SPA.

South Carolina has statutorily placed the state's maritime commerce responsibilities in the hands of the Ports Authority. There's not a serious port around that artificially limits the amount of business it will do. That's similar to saying, "we like 400 jobs, but not 401." At the same time, we understand the context of the city. That's exactly why we are designing our cruise terminal with that in mind – it's a one-berth one-ship terminal. And we have committed -- in writing – to the size and scale of the operation.

What would lead to increased cruise activity?

We don't see any significant changes in the level of cruise activity. In 2011, we have 68 origination cruises and 21 port-of-calls. We think a nice compliment to the current operation would be a seasonal schedule of origination cruises to Bermuda or perhaps the western Caribbean. Our commitment is to 104 ships a year, or about two a week on average. If there were a change, we have committed to engage the public as we have for two years now.

Is the cruise ship component of the Port of Charleston a good bet given the ongoing uncertainty in our economy?

Cruising has fared pretty well in the down economy – in 2010, the number of passenger nights rose 9%, according to USDOT, after a slight decline in 2009. Given our region's population growth and Charleston's appeal, we believe it is a solid and attractive business proposition for our port, our state and the city. Plus, these are our neighbors taking the embarkation cruises – nearly a third are from right here in South Carolina. Also, it helps introduce people to our city – about 40% have never visited Charleston before, but 97% of them say they'll come back.

Given the level of investment the Ports Authority plans to make in a cruise ship terminal, is it reasonable to expect that increased cruise activity must be sought to cover the investment?

Even under a lower level of activity than we currently enjoy, the terminal will pay for itself. This is a 100% responsibility of the SCSPA, so it is – and must be – financially justifiable. Sensitive commercial details are obviously protected from disclosure under law, but you can be sure we wouldn't pursue the business if it didn't make economic sense.

What is the difference between cruise ship "port of calls" and "embarkation" ports?

Port-of-calls are ships that began their cruise somewhere else and the guests just visit for the day then get back on the ship. Embarkation ships, or origination ships, start and end their cruises here. We have a mix of both port-of-calls and embarkations. We have 68 origination cruises this year and 21 port-of-calls by 15 different ships owned by 11 different companies. In contrast, Key West is only port-of-calls. And because they're near the big cruise ports in south Florida, it's easy for ships to just pop in. They get up to three a day, host 350 ship calls a year and 850,000 passengers. That's not Charleston. Any suggestion that Charleston could ever become that is just false. There just aren't that many cruise ships sailing up and down the East Coast. We are naturally limited both by geography and demographics.

Why is the northern end of Union Pier the only workable scenario for the Ports Authority to accommodate cruise ships?

Columbus Street is not an option. That terminal is essential to cargo operations and we are completing a $20-million expansion there for that very purpose. Cruise would eliminate rail access on the dock for heavy lift moves and would be impossible from an operational standpoint of mixing cargo and passenger activities. Even IF the cruise terminal could be moved to Columbus Street, that means Union Pier would continue to be used for cargo operations -- it would be necessary for core port operations. Plus, any new terminal location – like Patriots Point - would require new construction and environmental impacts that would have to be considered. From a sustainability perspective, reusing the existing building and pier is a great solution.

The only options are (1) we shift the cruise terminal north on Union Pier and enjoy all the great benefits associated with that, or (2) we keep cruise where it is and re-build cargo operations on Union Pier. Do you want a mile of chain link fence, barbed wire and warehouses? Or do you want a cruise terminal that we can be proud of and an amazing opportunity to open 35 acres to the water? We think the latter is a much more attractive alternative for the city, the state and the port.

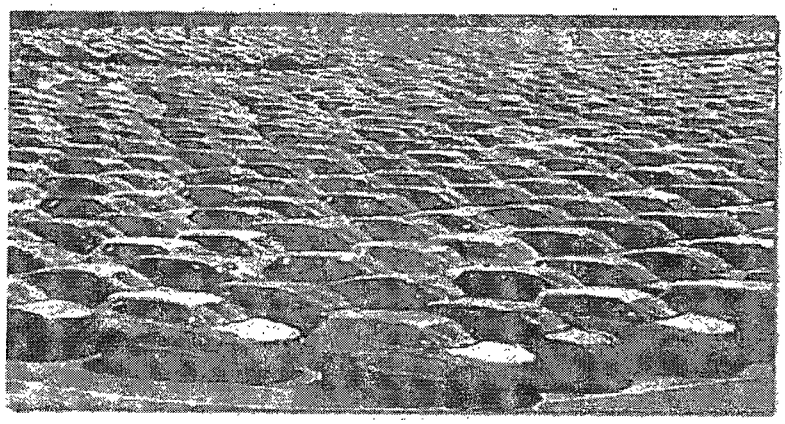
The cruise industry is expanding at the national and global scale (Cruise Lines International Association

Updated Columbus Street Terminal Fully Operational

Published Feb. 28, 2011

An improvement project to help support BMW's growing export business at the S.C. State Ports Authority's Columbus Street Terminal started handling cargo last week and is fully operational, the SPA said in a news release.

The six-month, $22 million improvement project also will accommodate other rolling cargo, large machinery, power-generating equipment and additional non-container cargo. A few details remain to completely finish the project, which improves more than 70 acres of storage yard and adds rail infrastructure, the SPA said.



A primary driver of the work is BMW's growing export business, the SPA said. BMW manufactures X5, X6 and the new X3 vehicles at its manufacturing plant in Spartanburg County. In 2010, BMW's exports were valued at more than $4 billion.

"BMW is a strategic customer of the Port of Charleston, and this relocation to a more robust and capable terminal is essential to handle port growth," said Jim Newsome, president and CEO of the ports authority. "BMW's success in South Carolina demonstrates the impact trade and our ports have on jobs and economic health."

Part of the improvements include relocation of roll-on, roll-off cargo operations from Union Pier Terminal to the larger Columbus Street Terminal, where the first BMW shipments arrived by rail on Tuesday.

Ships serving the BMW business began calling at Columbus Street Terminal over the weekend with the arrival of "K" Line's California Highway, which is still in port today.

Other carriers calling on the terminal will include Wallenius Wilhelmsen, Hoegh Line and American Roll-on Roll-off Carrier LLC, as well as numerous other break-bulk carriers. The expansion will also serve increases in other non-container cargoes.

The SPA said the move means that daily trainloads of vehicles will no longer cross streets south of Columbus Street Terminal. Cargo operations, including other rail, will continue at Union Pier until the new cruise terminal opens and the redevelopment of non-maritime properties begins, the SPA said.

Facts regarding the proposed Union Pier Development Plan and the repositioning of the cruise terminal:

The deal is done. It is between the State Port Authority and the Cruise Lines. It is in effect for 3 years.

The land for proposed development is owned by the SPA. It is not own by the city of Charleston.

The deal will allow for 94 cruise ships to visit Charleston annually in 2011, and similar numbers are planned for 2012. The neighborhoods closest to and thereby most affected by the Union Pier Plan are: Ansonborough, The Garden District, Gadsden Wharf and Cannon Elliotborough.

Plans are for the current cruise ship terminal to be positioned two blocks north, which puts its location just south of Laurens Place condominiums.

This will alleviate congestion of both vehicular and pedestrian traffic around the Market Street area by removing from the streets immediately surrounding the area, 1800 trucks and cars weekly, 2 to 3 train switches daily and 200 cargo ships annually. This traffic will be moved north to Columbus Street, as will the BMW holding lot.

The United Nations' International Maritime organization (IMO), on March 26th, 2010, approved an "Emission Control Area" within 230 Miles of the North American coast, requiring cruise ships to use cleaner fuels while transiting and while at the dock. The level of sulfur in fuel will be reduced by 98 percent and smog-forming nitrogen oxide pollution by 80 percent. The EPA fact sheet can be found at www.tiny.co/emissions.

The new cruise ship terminal will be a one berth/one ship situation. The SPA has stated in written form that, if, in the future, they feel that they will require an adjustment in this number, they will bring it in front of the community for discussion.

The firm chosen to work with the SPA on the concept plan to develop the acreage they own surrounding the proposed cruise ship terminal is Cooper Robertson, who also did Waterfront Park, a natural extension of the city. The SPA has agreed to shore up the Bennett's Rice Mill façade, and they will be working with the Historic Charleston Foundation and The Preservation Society to do so. The concept plan will allow the waterfront area to present a combination of residential, retail, a hotel, restaurants, gardens, parks, and a pier for strolling and fishing, all of which will be easily accessible to the residents of Charleston for their enjoyment. This concept plan is in the initial stages, and residents are encouraged to discuss and present their ideas as the plan develops. www.unionpierpier.com

Job opportunities will be provided as the cruise business increases next year, and many more will be available to local residents as the development of the retail, residential, hotels, and restaurants gets under way. Projected to go into our local economy next year, 2011, from the cruise ship industry alone, is $50,000,000. (This analysis was done by Professor John Crotts of the College of Charleston.)

Exhibit B

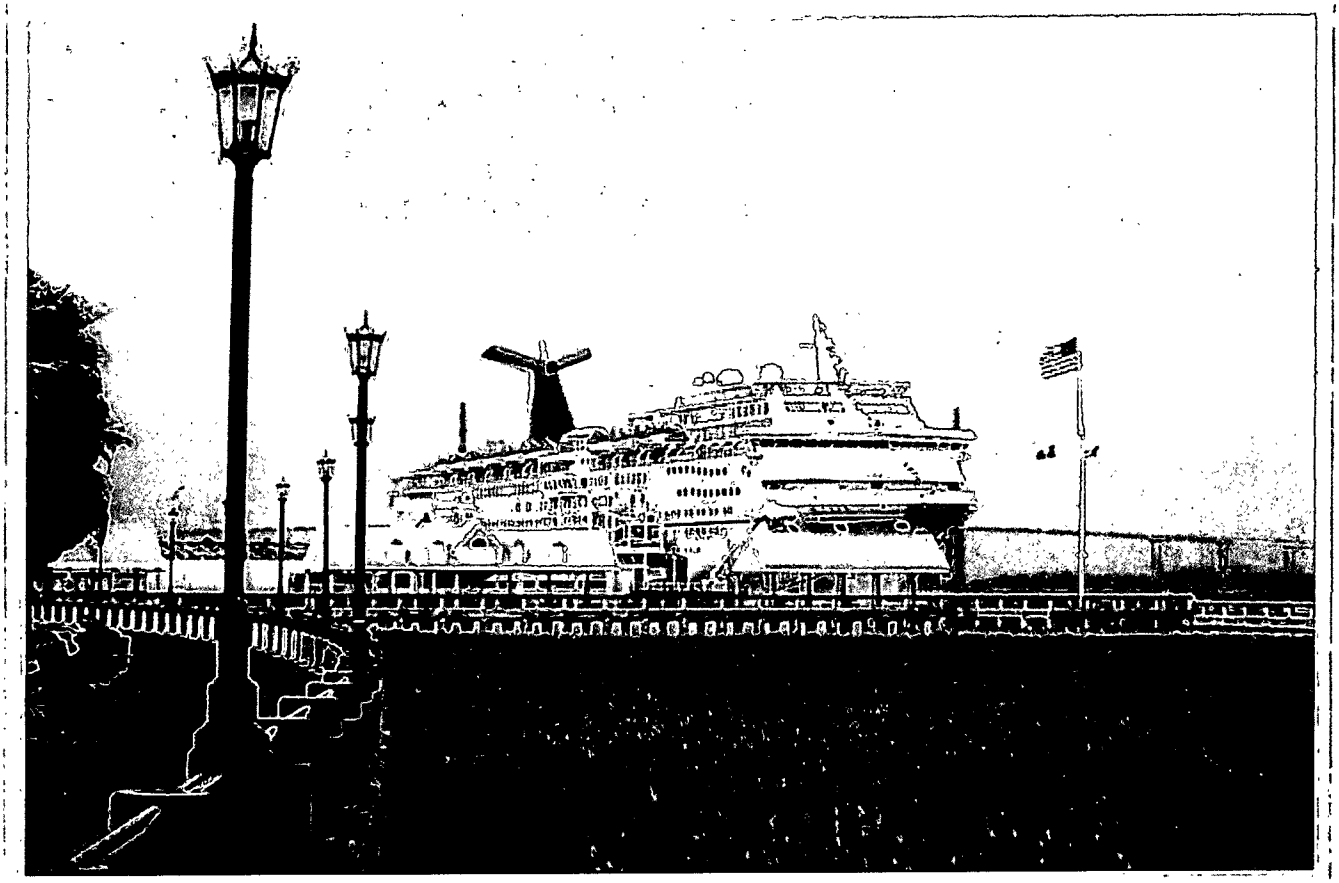
The Post and Courier

Proposed legislation to bring shore-side power to Charleston cruise terminal

Tyrone Richardson

Email

Posted: Friday, January 17, 2014 12:53 p.m., Updated: Friday, January 17, 2014 7:08 p.m.



file/staff Cruise ships that tie up to Union Pier, such as the Carnival Fantasy, have to run engines to generate onboard power for their crews and passengers. Buy this photo

Cruise ships docked in Charleston soon could be plugging into a shoreside power outlet, a welcome development for groups that have complained about fumes from the idling vessels.

State Reps. Jim Merrill and Leon Stavrinakis announced a plan Friday to authorize up to $5

million to install the necessary equipment at the State Ports Authority passenger terminal at Union Pier.

Merrill, R-Charleston, and Stavrinakis, D-Charleston, both serve on the House Ways and Means Committee. They expect their proposal to be included in this year's budget.

"With this new technology, Charleston will be a national leader in both economic growth and environmental innovation," Stavrinakis said in a statement. "Shoreside power will ultimately bring more tourism dollars to Charleston while cleaning up our air at the same time."

Shoreside power has been mentioned as one way to bring together the feuding sides in a long-running dispute about the future of the cruise industry in Charleston.

Merrill said the shoreside power could ease the tensions.

"It definitely should take away one concern that is expressed, and what we want to do is find a solution," he said. "We see the ports authority's position of requiring shore power on every ship puts them at an economical disadvantage, and it doesn't work on all ships, but for those that have it, this gives them the option."

The SPA applauded the efforts by Merrill and Stavrinakis on Friday, but it stopped short of fully endorsing shoreside power for cruise ships.

"While we understand that shoreside power has been the focus of conversations to date, the industry is also pursuing other more modern technologies that provide equal or greater benefits," the maritime agency said in a statement. "We anticipate utilizing the industry's most modern and efficient technologies at the new passenger terminal at Union Pier and applying these proposed funds, if appropriated, to implement these practices."

Environmentalists and neighborhood groups have complained about pollution in the historic district coming from cruise ships idling their engines at Union Pier. Most complaints target the Carnival Fantasy, which is based in Charleston year round.

On Friday, the groups said they support what the lawmakers are proposing.

"We commend this effort for attempting to address the serious health and environmental effects of cruise ship diesel soot, and hope efforts are made to explore the other means of reducing cruise impacts on the historic peninsula," said Carrie Agnew, executive director of the Charleston Communities for Cruise Control. "We have always and continue to support shore power at the new terminal, wherever it is ultimately built."

Dana Beach, executive director of the Coastal Conservation League, said it would be "a huge step forward."

"We have said consistently that shore-side power is the only way we can completely protect the health of residents from the emissions from cruise ships," Beach said Friday.

Last year, his Charleston-based group released a study that concluded hooking a cruise ship to shoreside power source would cut toxic emissions by 19 percent to 90 percent, depending on the type of fuel the vessel burns.

The SPA took a close look at shoreside power while planning a new $35 million cruise terminal it wants to open at Union Pier. It concluded it was too costly.

In 2011, the SPA estimated it would have invest $5.6 million to provide shoreside power,. Carnival Cruise Lines would have to spend about another $1.5 million to retrofit the Fantasy, the cruise ship that calls on Charleston most often.

The SPA wants to redevelop a warehouse at the north end of Union Pier to replace its current cruise terminal at the south end of the terminal. The new building could handle larger ships and more passengers.

Lawsuits have stalled those plans.

In addition to shoreside power, groups like Charleston Communities for Cruise Control and the Coastal Conservation League have argued for limits on ship visits and passengers.

R.002494

Exhibit C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

PRESERVATION SOCIETY OF CHARLESTON

and

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE,

Plaintiffs,

vs.

UNITED STATES ARMY CORPS OF ENGINEERS JOHN M. McHUGH, in his Official Capacity as the Secretary of the U.S. Army, THOMAS P. BOSTIC, In His Official Capacity of Chief of Engineers U.S. Army Corps of Engineers,

Defendants

SOUTH CAROLINA STATE PORTS AUTHORITY,

Intervenor/Defendant.

C/A No. 2:12-cv-02942-RMG

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

YOU WILL PLEASE take notice that the Intervenor/Defendant, South Carolina State Ports Authority (hereinafter "SPA"), by and through its undersigned attorneys, hereby moves before this Court for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting SPA judgment on the claims raised by Plaintiffs.

This Motion is based on the grounds that there is no dispute of material facts as alleged in the parties' pleadings and the Intervenor/Defendant is entitled to a judgment dismissing the Complaint as a matter of law. Here Plaintiffs seek judicial review of the decision of the

Defendant United States Army Corps of Engineers (hereinafter "the Corps") to issue an authorization to the SPA in accordance with 33 USC Sec. 403, the Rivers and Harbors Act, tc install five piling clusters embedded into the Cooper River, under the existing footprint of a building located on Union Pier Terminal ("Union Pier"), the Port of Charleston. The installation of five piling clusters, hereinafter referred to the as the "SPA project," results in direct impacts to 41 square feet of river bottom in the shallow open waters located under Union Pier. Union Pier includes 2,470 linear feet of continuous pile supported wharf and berth space. The five piling clusters are being added to the thousands of pilings that presently support Union Pier. Based on the minimal impacts of the SPA project the Corps provided authorization of the project under Nationwide Permit 3 (NWP 3) which allows for maintenance of existing structures or fills.

Under the Administrative Procedures Act, "A court shall set aside agency findings, conclusions and actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A); Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 413-414, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971). In Motor Vehicle Mfrs. Assn. v. State Farm Mut. Auto. Ins. Co., the U.S. Supreme Court articulated the scope of the "arbitrary and capricious" standard of review:

> The "scope of review under the "arbitrary and capricious" standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made." ... In reviewing that explanation, we must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." ... Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

463 U.S. 29, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983) (internal citations omitted).

"Review under this standard is highly deferential, with a presumption in favor of finding the agency action valid... . Especially in matters involving not just simple findings of fact but complex predictions based on special expertise, 'a reviewing court must generally be at its most deferential.'" [internal citations omitted] Ohio Valley Env. Coalition et al. v. Aracoma Coal Co. et al., 556 F.3d 177, 192 (4th Cir. 2009). "Under the APA, the Corps' factual findings, such as field data, observations, and calculations, shall not be set aside unless 'arbitrary' or 'capricious.'" Precon Dev. Corp. v. U.S. Army Corps of Engineers, 658 F.Supp.2d 752, 763 (E.D. Va. 2009).

This Motion is based on the Corps' Administrative Record and supported by the Memorandum filed contemporaneously with this Motion. Specifically, the SPA seeks summary judgment as to the following:

- The Corps' decision to authorize the SPA's project under NWP 3 is in accordance with law, based on applicable procedures and regulations, and is not arbitrary, capricious, or an abuse of discretion.

- The Corps' decision to authorize the SPA's project under NWP 3 does not violate NEPA and the Corps properly assessed environmental impacts at the time of reissuance of NWP 3 and at the time of authorization of the SPA's project.

- The Corps' decision to authorize the SPA's project under NWP 3 does not violate Section 106 of the Historic Preservation Act or the regulatory procedures of the Advisory Council on Historic Preservation.

- The Plaintiffs lack standing to invoke the jurisdiction of this Court.

s/*Mary D. Shahid*

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July 15, 2013
Charleston, SC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

PRESERVATION SOCIETY OF CHARLESTON and SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, Plaintiffs, vs. UNITED STATES ARMY CORPS OF ENGINEERS JOHN M. McHUGH, in his Official Capacity as the Secretary of the U.S. Army, and THOMAS P. BOSTIC, in his Official Capacity of Chief of Engineers of Engineers, Defendants SOUTH CAROLINA STATE PORTS AUTHORITY, Intervenor/Defendant.	C/A No. 2:12-cv-02942-RMG **MEMORANDUM IN SUPPORT OF INTERVENOR'S MOTION FOR SUMMARY JUDGMENT**

Intervenor, South Carolina State Ports Authority, (hereinafter SPA), by and through its undersigned counsel, submits this Memorandum in Support of its Motion for Summary Judgment filed contemporaneously on July 15, 2013.

Introduction

This action arises out of a determination made by the United States Army Corps of Engineers ("the Corps") authorizing impacts to "not more than 0.01 acres of waters of the United States associated with the installation of additional pilings underneath an existing pile supported structure." AR 112. These pilings are necessary to support renovations to an existing building